

148 FERC ¶ 61,191
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Northern Natural Gas Company

Docket No. RP14-1181-000

ORDER ACCEPTING TARIFF FILING

(Issued September 16, 2014)

1. On August 14, 2014, Northern Natural Gas Company (Northern Natural) filed the tariff records listed in the Appendix to this order proposing various modifications and enhancements to its Interruptible Liquefaction and Delivery Service (ILD Service). The tariff records are proposed to be effective September 30, 2014. For the reasons discussed below, the Commission accepts Northern Natural's tariff records to be effective September 30, 2014, or the date the facilities authorized in Docket No. CP13-53-000 are placed into service.

Background

2. On January 18, 2013, in Docket No. CP13-53-000, Northern Natural filed an application under section 7 of the Natural Gas Act (NGA) to amend its certificate of public convenience and necessity issued on March 15, 1976.¹ Northern Natural requested authorization to construct and operate the Garner Plant LNG Offloading and Utilization Project to offload liquefied natural gas (LNG) at its existing Garner Plant peak shaving facility in Hancock County, Iowa (Garner Plant) for operational use on its system and to provide a new LNG liquefaction and delivery service to third party shippers on an interruptible basis. Northern Natural also requested approval of the associated *pro forma* tariff sheets. On June 20, 2013, the Commission issued an order amending Northern Natural's certificate and accepting its proposal subject to conditions.²

¹ *Northern Natural Gas Co.*, 55 FPC 1170 (1976).

² *Northern Natural Gas Co.*, 143 FERC ¶ 61,244 (2013).

3. On June 30, 2014, in Docket No. RP14-1068-000, Northern Natural filed tariff records for the ILD Service in compliance with the June 20, 2013 certificate order. On July 29, 2014, the Director of the Office of Energy Market Regulation issued a letter order accepting the proposed tariff records.

4. Northern Natural seeks to modify and enhance the ILD Service and has proposed various tariff changes.

Northern Natural's Proposal

5. Northern Natural is establishing a storage point for the Garner LNG Payback point to allow shippers to use storage service to effectuate the payback process after taking delivery of LNG. Under the payback process, a shipper who receives LNG under the ILD Rate Schedule is required to deliver the natural gas equivalent of the LNG to the Garner Plant within a defined period.

6. Northern Natural is clarifying that the Performance Obligation Charge will be calculated based on the scheduled or confirmed quantities of LNG delivery that are not taken. The Performance Obligation Charge is accrued on a daily basis and is a \$2.00 per dekaththerm (Dth) charge for quantities of LNG that were scheduled or confirmed but not taken.

7. Northern Natural is requesting authorization to waive the Performance Obligation Charge if circumstances warrant, to do so in a not unduly discriminatory manner, and in order to provide transparency Northern Natural will post any waiver granted for a 30 day period. Northern Natural explains, for example, that a waiver of the Performance Obligation Charge will allow it to not bill these charges in the event a shipper acts in accordance with the terms of a transaction but variances occur between the final quantity of LNG actually offloaded and the quantity scheduled due to weight differences. Northern Natural submits another example for granting waiver of the Performance Obligation Charge would be where failure of a shipper to perform is due to a mechanical or weather-related issue that impacts the carrier for a specific delivery, but the volumes are subsequently made up by a later delivery. Northern Natural contends that the Performance Obligation Charge should not apply in these types of instances. Because a variety of circumstances beyond the shipper's control may cause failure to perform, Northern Natural requests the ability to waive the Performance Obligation Charge in a not unduly discriminatory manner.

8. In addition to the changes described above, Northern Natural made several other revisions including changes to the insurance and termination provisions of the ILD Rate Schedule; a change in the payback period for redelivering LNG volumes; clarifying the ILD Rate Schedule's indemnification provisions; modifying its Creditworthiness provisions to ensure that security covers the value of LNG delivered under the ILD Rate

Schedule; clarification that charges collected in excess of Northern Natural's replacement cost from shippers' failure to deliver payback volumes shall be credited to firm and interruptible Market Area "throughput" shippers; and updating the Rate Schedule ILD *pro forma* service agreement.

Public Notice and Interventions

9. Public notice of Northern Natural's filing was issued on August 15, 2014. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2014)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2014)), all timely filed motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

10. The filing is jointly protested by the Northern Municipal Distributors Group and the Midwest Region Gas Task Force Association (Distributors Group). The Distributors Group objects to the proposed tariff provision that would provide Northern Natural with the right to waive the Performance Obligation Charge in a not unduly discriminatory manner. The Distributors Group states that the Performance Obligation Charge is a penalty charge that would be credited to Northern Natural's customers that did not pay this penalty pursuant to the crediting mechanism in the tariff. The Distributors Group contends that the ILD Service is secondary in nature to the primary use of LNG service to protect existing customers, and is thus tightly controlled so as to prevent harm to system services. The Distributors Group argues that the fundamental problem with Northern Natural's proposal is that by granting Northern Natural the right to waive the Performance Obligation Charge it attempts to shift the risk from the ILD Shipper utilizing the LNG to the remaining customers on Northern Natural's system. The Distributors Group submits that in light of the stringent requirements on the ILD Shippers, there is nothing that supports this shifting of risk.

11. The Distributors Group asserts that risks associated with mechanical failure of the ILD Shipper's equipment or with weather related events are the normal risks that any shipper must take. The Distributors Group contends there is no reason for Northern or its other customers to either shoulder such risk or indemnify an ILD Shipper for these risks. The Distributors Group argues that the ILD Shipper can insure itself against such risks and should be liable in the event that it does not do so.

12. The Distributors Group submits that Northern Natural's proposal to post any such waiver for only a limited 30 day period is inadequate. The Distributors Group states that in order to apply for a waiver on the basis that a similar waiver has been previously granted, it is obvious that a shipper must know that such a waiver has, in fact, been granted. The Distributors Group states that once the 30 day period expires, and as time

goes on, it will become more and more difficult for a shipper to discover that such a waiver has previously been granted. The Distributors Group assumes that Northern Natural is not suggesting that it will not grant a similar waiver after the 30 day posting, but only that it will no longer post the waiver on its website.

13. The Distributors Group states that Northern Natural attempts to ground its request for waiver authority by stating that it is possible that “variances occur between the final quantity of LNG actually offloaded and the quantity scheduled due to weight differences.” The Distributors Group argues that rather than allowing waivers in a non-discriminatory manner, such differences could be handled by means of a tolerance level, which would be applied to all shippers equally and consistently, and not just to those who happen to see or recall Northern Natural’s 30 day posting. The Distributors Group also contends that Northern Natural could file case-by-case requests for a waiver.

14. The Distributors Group contends that Northern Natural has failed to provide any reason to support shifting the risk associated with the ILD Service from the ILD Shipper to its other customers. Accordingly, the Distributors Group requests that the proposed waiver language in Section 3 of Rate Schedule ILD be rejected.

Northern Natural’s Answer

15. On September 2, 2014, Northern Natural filed an answer in response to the Distributors Group’s adverse comments. Rule 213(a) of the Commission’s Rules of Practice and Procedure does not permit answers to protests or answers to answers unless otherwise ordered by the decisional authority.³ We will accept Northern Natural’s answer because it provides information that has assisted in our decision-making process. Northern Natural states the Performance Obligation Charge is applicable to scheduled or confirmed quantities of LNG delivery that are not taken. Northern Natural recognizes that there may be instances when the charge is not appropriate, such as when there are minor variances in the amount scheduled or confirmed and the amount actually taken due to weight differences, or in the event of mechanical failures, weather related issues, or other unforeseen circumstances that cause a delay in taking the quantities. Northern Natural does not believe it is appropriate to impose the Performance Obligation Charge in these types of instances, or to require multiple, case-by-case requests for waiver in such circumstances.

16. The Distributors Group argues that a waiver of the Performance Obligation Charge shifts the risk from the ILD Shipper to the remaining customers on Northern

³ 18 C.F.R. § 385.213(a) (2014).

Natural's system.⁴ However, Northern Natural explains there would be no shifting of risk under its proposed tariff language. Northern Natural points out that there are no operational risks if an ILD Shipper fails to take LNG from the Garner Plant. In such a case, the LNG not taken from the Garner Plant is available for Northern Natural's other system operations. Therefore, Northern Natural submits there is no risk to be shifted from ILD shippers to Northern Natural's other shippers, as the Distributor Group alleges.

17. Northern Natural states it is responsible for operating its system to provide service to all customers and must do so taking the ILD Service into consideration. As a prudent operator, Northern Natural submits it may determine whether or not a variance in the amount of LNG taken or a delay in taking the LNG has had a detrimental impact on the system and whether or not the Performance Obligation Charge should be waived.

18. Northern Natural contends that waiving the Performance Obligation Charge "in a not unduly discriminatory manner" is a standard that has been repeatedly accepted by the Commission and should be accepted in this proposal.⁵ Northern Natural further proposes to make any waiver transparent in the granting of waivers by posting all waivers granted on its website. Northern Natural submits that all customers retain the right to utilize FERC hotline or complaint procedures if they allege discriminatory action on the part of Northern Natural. Northern Natural contends that requiring it to make a filing requesting a specific waiver for each instance, as suggested by the Distributors Group, would be a burden on the Commission's time and resources. Northern Natural asserts with the transparency proposed by Northern Natural, all customers will have the opportunity to monitor its use of the waiver provision. Northern Natural states that the Distributors Group suggests that posting the waivers for 30 days does not allow customers to "discover" whether a waiver in a certain situation has previously been granted. However, Northern Natural states that its customers can monitor the website to determine when waivers have been granted. Further, Northern Natural states it is required to maintain the website postings for three years pursuant to section 284.12(b)(3)(v) of the Commission's regulations. Northern Natural contends if a customer is concerned about past waivers, it can simply request these past postings from Northern Natural.

19. In sum, Northern Natural asserts that the Distributors Group's concerns are misplaced. Northern Natural submits that there would be no risk shifted to its customers

⁴ Northern Natural states that contrary to the Distributors Group's comments at p. 6, the Performance Obligation Charge is not included in Section 57 of the General Terms and Conditions of its Tariff.

⁵ Citing, e.g., *Discovery Gas Transmission, L.L.C.*, 111 FERC ¶ 61,377 (2005).

and its proposed transparency via posting each waiver ensures Northern Natural will act in a not unduly discriminatory manner.

Discussion

20. The only provision that has been protested is Northern Natural's proposal to waive the Performance Obligation Charge on a not unduly discriminatory basis. The Distributors Group contends that the proposed waiver language unreasonably shifts the risk of the ILD Service from ILD Shippers to Northern Natural's other customers and therefore requests that it be rejected.

21. The Commission has reviewed the terms of the ILD Service, the Distributors Group's protest, and Northern Natural's answer and finds that contrary to the Distributors Group's assertion, providing Northern Natural the ability to waive the Performance Obligation Charge in a non-discriminatory manner does not inappropriately shift risk from the ILD Shippers to Northern Natural's other customers. By its very nature, and as even recognized by the Distributors Group, the ILD Service is a secondary service that can only be rendered without impacting system operations or other customers. Section 2 of Rate Schedule ILD states that "[d]eliveries hereunder shall be made at Northern's sole discretion based upon Northern's determination of the quantities available in excess of those required by Northern to operate its system." As Northern Natural states in its answer a prudent pipeline operator is responsible for operating the system for the benefit of all of its customers, and waiving the Performance Obligation Charge in appropriate circumstances will not harm the system because gas not taken by ILD Shipper is available for operational use. Moreover, Northern Natural's proposal avoids the need for processing routine waiver requests on a case-by-case basis, as requiring Northern Natural to file for a waiver of the tariff on a case-by-case basis as requested by the Distributors Group would be inefficient, given that the circumstances under which Northern Natural contemplates waiving the charge (e.g., weight differences, mechanical failures, or weather delays) are not likely to be isolated incidents.

22. The Commission also finds that Northern Natural's transparency provisions are adequate because waivers will be available on Northern Natural's web site for 30 days and Commission recordkeeping requirements will allow interested parties to request Northern Natural's web postings for a period of three years. This will provide shippers with the information they need to bring any alleged pattern of undue discrimination in the granting of waivers to the Commission's attention. Finally, the waiver of the Performance Obligation Charge is the type of past occurrence or past default for which the Commission has permitted pipelines to waive tariff provisions on a not unduly discriminatory basis.⁶ Accordingly, the Commission will accept the tariff records listed

⁶See, e.g., *Discovery Gas Transmission, L.L.C.*, 111 FERC ¶ 61,377, at PP 14-15 (continued ...)

in the Appendix to this order to be effective September 30, 2014, or the date the facilities authorized in Docket No. CP13-53-000 are placed into service.

The Commission orders:

The tariff records listed in the Appendix to this order are accepted, effective September 30, 2014, or the date the facilities authorized in Docket No. CP13-53-000 are placed into service.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Northern Natural Gas Company
FERC NGA Gas Tariff, Gas Tariffs

Tariff Sheets Accepted to be Effective September 30, 2014, or the date the facilities authorized in Docket No. CP13-53-000 are placed into service

[Sheet No. 135D, Rate Schedule FDD, 6.0.0](#)
[Sheet No. 142C, Rate Schedule PDD, 5.0.0](#)
[Sheet No. 144, Rate Schedule IDD, 5.0.0](#)
[Sheet No. 168, Rate Schedules ILD, 2.0.0](#)
[Sheet No. 169, Rate Schedules ILD, 1.0.0](#)
[Sheet No. 170, Rate Schedules ILD, 1.0.0](#)
[Sheet No. 285A, G T and C Credit Worthiness, 1.0.0](#)
[Sheet No. 285B, G T and C Credit Worthiness, 2.0.0](#)
[Sheet No. 307, G T and C Penalty, 2.0.0](#)
[Sheet No. 403, Firm Throughput Service Agreement, 1.0.0](#)
[Sheet No. 451, ILD Service Agreement, 1.0.0](#)
[Sheet No. 451A, ILD Service Agreement, 1.0.0](#)