

109 FERC ¶ 61,390
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

LSP-Cottage Grove, L.P and
LSP-Whitewater Limited Partnership

Docket Nos. RP03-604-000
RP03-604-001
RP05-70-000
(not
consolidated)

v.

Northern Natural Gas Company

ORDER ON COMPLAINT, REHEARING, AND
PROPOSED SERVICE AGREEMENT AMENDMENTS

(Issued December 30, 2004)

1. This proceeding began with a Complaint filed by LSP-Cottage Grove, L.P. and LSP-Whitewater Limited Partnership (Cottage Grove and Whitewater) concerning charges under two Letter Agreements dated April 10, 1995 (1995 Letter Agreements or Letter Agreements) that governed their contracts for firm transportation service with Northern Natural Gas Company (Northern Natural). The Commission subsequently issued an *Order on Complaint and to Show Cause*¹ (*Show Cause Order*) finding that the 1995 Letter Agreements appeared to contain material deviations from Northern Natural's *pro forma* service agreements which would require that Northern Natural file them with the Commission. The Commission also required Northern Natural to show cause why some of the provisions that appeared to be material deviations are not unlawful. Northern Natural filed a response to the *Show Cause Order*. Subsequently, the parties informed the Commission that they were attempting to settle their dispute. On November 15, 2004, in Docket No. RP05-70-000, Northern Natural filed proposed amendments to Complainants' service agreements for firm transportation that would supercede the 1995 Letter Agreements and other proposed amendments to their service agreements for interruptible transportation and storage.

2. In this order, the Commission rejects the proposed amendments to the Complainants' contracts for firm and interruptible transportation service. The Commission finds that a key provision of those amendments requires the shippers to pay for interruptible service in Northern Natural's Field Area, regardless of whether

¹105 FERC ¶ 61,326 (2003).

the shippers use that service, and that such a provision is anti-competitive. As a result, the 1995 Letter Agreements and the contract provisions in effect when the Complaint was filed survive and control the relations between the parties. With respect to the two 1995 Letter Agreements, the Commission finds they contain material deviations from the pipeline's *pro forma* service agreements. The Commission also finds that some of the material deviations, including those that were the subject of the Complaint, are unlawful. Among other things, the two Letter Agreements, like the proposed amended firm agreements, require the Complainants to pay for Field Area interruptible transportation service whether or not they use it.

3. On the merits of the Complaint, the Commission finds that Northern Natural may not charge Complainants for failing to use Northern Natural's interruptible service under Paragraph E(3) of the 1995 Letter Agreements because these provisions are unlawful. The Commission finds moot the rehearing request by Cottage Grove and Whitewater for fast track processing and for ruling on their Complaint without considering the lawfulness of the provisions of the 1995 Letter Agreements.

4. This order benefits the public by ensuring that Northern Natural observes the contracting practices required by the Natural Gas Act (NGA) and by resolving this dispute between Northern Natural and its customers.

Background

5. In 1994 Northern Natural applied for certificate authority to construct facilities to serve two 262 MW combined cycle cogeneration plants built by Cottage Grove and Whitewater in Minnesota and Wisconsin respectively.² The Commission issued certificates for the new construction in 1995.³

6. Cottage Grove and Whitewater executed two Letter Agreements dated April 10, 1995 with Northern Natural which governed their contracts for firm and interruptible transportation service. In 1996, Cottage Grove and Whitewater executed contracts for firm transportation. At that time, Northern Natural offered two firm transportation services, one under Rate Schedule TF with a uniform year-round rate,

² The Commission granted Cottage Grove and Whitewater qualifying facility status (Cottage Grove: 69 FERC ¶ 62,130 (1994), 75 FERC ¶ 62,093 (1996); Whitewater: 69 FERC ¶ 62,129 (1994)) and also found they were exempt wholesale generators (*LSP-Cottage Grove, L.P.*, 77 FERC ¶ 62,035 (1996); *LSP-Whitewater, L.P.*, 77 FERC ¶ 62,034 (1996)).

³ *Order Granting Certificate and Denying Protest*, 73 FERC ¶ 61,260 (1995) (Cottage Grove, Docket No. CP94-763-000); *Order Issuing Certificate*, 71 FERC ¶ 61,418 (1995) (includes Whitewater, Docket No. CP95-130-000).

and the other under Rate Schedule TFX, with a higher winter (November –March) than summer (April-October) rate.

7. Cottage Grove executed a contract for firm transportation of 29,120 MMBtu/day for twenty-one years under Rate Schedule TF. (Later, the parties increased the contract demand to 31,400 MMBtu/day.). In its Letter Agreement, Cottage Grove agreed to pay a fixed rate of \$5.671/MMBtu, which was equal to the then applicable maximum TF12 rate⁴. This was the maximum TF reservation rate applicable to Cottage Grove's service when it became operational in October, 1997.⁵ Cottage Grove's TF firm contract was for service only in Northern Natural's market area.⁶ Thus, the primary receipt point listed in its contract was at Demarc, the demarcation point between the Northern Natural's market and field areas.

8. Whitewater executed a contract for firm transportation for 30,400 MMBtu/day for twenty years under Rate Schedule TFX at discounted reservation rates. Whitewater agreed to pay \$5.22/MMBtu per day from April through October, and \$9.42/MMBtu per day from November through March. The maximum TFX reservation rates in effect on April 1, 1995, were \$6.805/MMBtu for April through October and \$11.342/MMBtu for November through March.⁷ Whitewater's TFX firm contract was also only for service in the market area, with the primary receipt point being at Demarc.

⁴ TF 12 refers to firm transportation under rate schedule TF for twelve months of the year.

⁵ This rate was in effect when the parties executed the Cottage Grove Letter Agreement. *See* Sixteenth Revised Sheet No. 50 (effective April 1, 1995) and Seventeenth Revised Sheet No. 50 (effective April 1, 1995), both of which show the Market-to-Market TF 12 Base Tariff Rate as \$5.671/MMBtu. The maximum TF12 base reservation rate was the same when Cottage Grove became operational. *See* 36 Revised Sheet No. 50, Rate Schedule TF, Northern Natural Gas Company, FERC Gas Tariff, Fifth Revised Volume No. 1 (effective October 1, 1997).

⁶ Northern Natural's Field Area extends from Texas to Clifton, Kansas, and its Market Area extends from Clifton, Kansas to points north.

⁷ *See* Sixteenth Revised Sheet No. 51 (effective April 1, 1995) and Seventeenth Revised Sheet No. 51 (effective April 1, 1995). In September, 1997, when Whitewater became operational, the maximum TFX reservation rates were also \$6.805/MMBtu from April through October and \$11.342/MMBtu from November through March. *See* 2 Substitute 35 Revised Sheet No. 51 (effective July 1, 1997).

9. Each shipper also executed two contracts for interruptible transportation (TI) service in Northern Natural's field area at \$0.05/MMBtu (the nickel rate) and contracts for Firm Delayed Delivery (FDD) storage service at the maximum rates. As discussed in more detail below, Paragraphs E(3) and E(4) of the shippers' firm contracts provided that they would pay the nickel rate with respect to all gas received at Demarc or in the Market Area for transportation under the firm transportation agreements, even when the shippers did not use Northern Natural's field area TI service to bring the gas to Demarc. Northern Natural did collect this through annual adjustments in the rates paid under the firm transportation agreements.

10. Cottage Grove became commercially operational on October 1, 1997, and Whitewater, on September 17, 1997.

11. In June, 2003, Northern Natural billed Cottage Grove and Whitewater for additional amounts for transportation service from October, 1997 through March, 2003 under Paragraph E(3) of the two 1995 Letter Agreements. Northern Natural stated that it mistakenly failed to bill Cottage Grove and Whitewater the nickel rate for gas they received in the Market Area during the period in question, without having transported the gas in the production area under their TI service agreements. Cottage Grove and Whitewater filed a complaint against Northern Natural in September, 2003, alleging Northern Natural improperly billed them and they did not owe the additional amounts. Cottage Grove and Whitewater also filed copies of the Letter Agreements and claimed confidentiality for them under the Commission's regulations.⁸ Northern Natural filed an Answer stating that it was entitled to certain adjustments to the Market Area reservation rates of the shippers.

12. On December 22, 2003, the Commission issued its *Show Cause Order* in which it made findings concerning the 1995 Letter Agreements. In examining the Letter Agreements, the Commission found some matters which required consideration prior to a determination concerning the billing dispute. The Commission stated in the *Show Cause Order* that some of the provisions in the Letter Agreements appear to be material deviations⁹ from the pipeline's *pro forma* service

⁸ 18 C.F.R. § 388.112 (2004), FERC Order No. 630-A, and the Secretary's Filing Instructions (Revised August 8, 2003).

⁹ *Order on Complaint and to Show Cause*, 105 FERC ¶ 61,326 at P 14 n.11. The Commission stated material deviations in the Cottage Grove Letter Agreement appear to include Paragraph A (page 3 concerning fuel); Paragraph E; Paragraphs E(1) through E(7); and Paragraph K and material deviations in the Whitewater Letter Agreement appear to include Paragraph A (page 2 concerning fuel); Paragraphs E(1) through E(6); and Paragraph K.

agreements.¹⁰ The Commission's regulations require that pipelines file contracts with material deviations with the Commission and make them available to the public.¹¹ The Commission has held that a material deviation includes any provision in a service agreement that is not in the approved language of the Form of Service Agreement and (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff and (2) affects the substantive rights of the parties.¹² Section 4 of the NGA and the filed rate doctrine prohibit pipelines from charging rates that are not on file with the Commission.¹³

13. The *Show Cause Order* stated that because the Letter Agreements appeared to contain material deviations, the Commission was considering denying the parties' request that they receive privileged treatment and making them available to the public to satisfy the requirement of section 4 and its regulations.¹⁴ In accordance with 18 C.F.R. § 388.112(d) of the Commission's regulations, the Commission gave the parties 15 days to comment in writing on the Commission's intent to release the 1995 Letter Agreements. The Commission also found that some of the material deviations may be contrary to the Commission's policies and regulations or the pipeline's tariff. Among other things, the Commission was concerned that Paragraph E (4) of the agreements could unlawfully restrict competition from, for example, capacity release. Accordingly, the Commission required Northern Natural to show cause, within 30 days, why a number of the provisions in the agreements are not unlawful and to provide certain information.

14. In response to the request for comments on release of the agreements, Northern Natural stated it had no objections to making the 1995 Letter Agreements public and Cottage Grove and Whitewater stated they had no objections to making

¹⁰ Northern Natural's *pro forma* service agreements for TF and TFX service on the date of the Letter Agreements, April 10, 1995, consisted, in relevant part, of Original Sheet Nos. 400-402 (Rate Schedule TF) and Original Sheet Nos. 412-414. Northern Natural's current *pro forma* service agreement for TF and TFX service is contained in Substitute Third Revised Sheet No. 400, Third Revised Sheet No. 401, Substitute Second Revised Sheet No. 401, and Substitute First Revised Sheet No. 403.

¹¹ 18 C.F.R. §§ 154.1 (b) and (d) of 18 C.F.R. (2004).

¹² *ANR Pipeline Co.*, 101 FERC ¶ 61,096 at P 7 (2002) (*ANR*); *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 at 62,002 (2001); *ANR Pipeline Co.*, 97 FERC ¶ 61,224 at 62,022 (2001).

¹³ Section 4(c) of the NGA; *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577-82 (1981); *Northern Natural Border Pipeline Co.*, 102 FERC ¶ 61,329 (2003).

¹⁴ 105 FERC ¶ 61,326 at P 15.

them public if Northern Natural had no objections. Accordingly, the Commission released the Letter Agreements to the public by an order issued February 2, 2004.¹⁵ The Commission provided a period of 20 days for interventions by members of the public and statements of position by members of the public and Cottage Grove and Whitewater concerning the Letter Agreements.¹⁶ There were no interventions or statements.

15. On January 21, 2004, Northern Natural filed a response to the *Show Cause Order*, contending that the various provisions which concerned the Commission are in fact lawful. Subsequently, on April 19, 2004, Northern Natural notified the Commission that the parties had reached an agreement in principle to resolve the complaint and that they were in the process of reducing the settlement to writing.¹⁷ Northern Natural also stated that, as part of the settlement, the parties would negotiate new service agreements and that Northern Natural would provide the Commission with the revised service agreements. Northern Natural stated it was the parties' intent that the revised service agreements appropriately address the issues in the *Show Cause Order*. The parties requested that the Commission hold the complaint proceeding, Docket No. RP03-604-000, in abeyance pending completion and filing of the new service agreements. Once the new service agreements were completed, Northern Natural stated Complainants would file to withdraw the complaint. The Commission took no further action on the Complaint after Northern Natural's April 19 letter.

16. On July 23, 2004, Northern Natural filed a letter in which the parties requested the Commission to continue to hold the Docket No. RP03-604-000 proceeding in abeyance.¹⁸ Northern Natural stated that the parties had executed a settlement agreement, but that they had not finalized the new service agreements. Again the Commission issued no order regarding the proceeding, and took no action on the complaint.

17. On November 15, 2004, Northern Natural filed a letter in Docket No. RP03-604-000 notifying the Commission that the parties had executed revised transportation and storage service agreements which reflect the negotiated

¹⁵ 106 FERC ¶ 61,097 (2004).

¹⁶ *Id.*

¹⁷ Letter of Northern Natural Gas, Docket No. RP03-604-000 (dated April 14, 2004, filed April 19, 2004).

¹⁸ Letter of Northern Natural Gas, Docket No. RP03-604-000 (July 23, 2004).

settlement¹⁹ Northern Natural also filed amendments to each of the complainants' service agreements pursuant to NGA section 4 as non-conforming service agreements at the same time it filed its notice. The amendments to the service agreements provide that they supercede the 1995 Letter Agreements, as well as certain other prior agreements. The Commission docketed the revised agreements in a separate proceeding, Docket No. RP05-70-000. Northern Natural stated that, if the Commission accepts the revised agreements without conditions that the parties believe are materially adverse or unacceptable and if Complainants receive other necessary approvals, then the revised agreements would resolve the Complaint and Complainants would file with the Commission to withdraw the Complaint. Northern Natural also stated it believed that the revised agreements appropriately address each of the issues discussed in the *Show Cause Order*.

18. As the Commission is rejecting Northern Natural's proposed amendments to the complainants' firm and interruptible transportation contracts, the 1995 Letter Agreements, including the former provisions that raised Commission concerns, are still in effect. Thus, in this order, the Commission will first discuss the 1995 Letter Agreements and explain why various provisions of those agreements are unlawful due to their anti-competitive effect or for other reasons. The Commission will then address the newly filed amended service agreements and explain why the amendments fail to resolve the Commission's concerns with the original agreements.

Complaint and Show Cause Order

19. In this portion of the order, the Commission finds there are material deviations in the 1995 Letter Agreements that would require Northern Natural to file the Letter Agreements with the Commission and make them available to the public if they had not already been filed and released to the public. The material deviations also require Commission review to determine whether they are just and reasonable. The provisions that are material deviations in both Letter Agreements are Paragraphs E(1) through E(5), Paragraph K, and the provision in Paragraph A regarding payments for fuel. A portion of Paragraph E in the Cottage Grove Letter Agreement is also a material deviation. The Commission also finds that some of the material deviations are unlawful and are, therefore, null and void. The unlawful provisions include chiefly Paragraphs E(3) and E(4) of the Letter Agreements, but others as well.

¹⁹ Letter of Northern Natural Gas, Docket Nos. RP03-604-000 and RP05-73-000 [*sic*] (November 15, 2004) (Accession No. 20041118-0038).

(1) Restrictions on the Use of Transportation--Paragraphs E(3) and E(4)

20. The dispute between Complainants and Northern Natural centers on whether Northern Natural may charge Complainants under Paragraph E(3) of the 1995 Letter Agreements for transactions known as Mileage Indicator District (MID) 16B to MID 16B transactions.²⁰ Paragraph E(3) of the 1995 Letter Agreements provides in relevant part,

if [Complainant] chooses to receive gas in the Market Area and not utilize the interruptible transportation service set forth in paragraph B above [Field Area TI service for which Complainants agreed to pay the nickel rate], then the reservation rate charged during the immediately succeeding calendar year pursuant to Paragraph A [the TF12 reservation rate for Cottage Grove and the TFX reservation rate for Whitewater] shall be increased by an amount equal to the volume of gas received in the Market Area during the previous year without utilizing the interruptible transportation described in Paragraph B multiplied by the then-effective interruptible commodity rate pursuant to this Agreement [the nickel rate] and divided by the product of the MDQ times twelve (12). This calculation shall be made annually and be effective on January 1 immediately following the commencement of [TF service for Cottage Grove and TFX service for Whitewater] and every year thereafter. Any increase in the rates set forth in Paragraph A shall be charged evenly during the immediately succeeding calendar year.²¹

21. MID 16B is a paper point, located at the demarcation point between the Field Area and the Market Area and known as Demarc.²² During October 1997 through March 2003, Complainants nominated transactions under their TI agreements from the gas supplier designated MID 16B in the Field Area of the Demarcation Point of Interconnection to Whitewater's MID 16B in the Market Area of the Demarcation

²⁰ Northern Natural bases its Field Area rates on commodity rates for 100-mile increments. However, Northern Natural appears to charge for Field Area transportation by actual mileage used. MIDs refer to portions of the Field Area. Northern Natural calculated a matrix showing maximum Field Area interruptible transportation rates for each MID and to and from each MID (currently on Sheet Nos. 59-60A). The rate for service from MID 16B to MID 16B is \$0.00.

²¹ Paragraphs E and E(1) of Cottage Grove's Letter Agreement provide that, to the extent the additional charge results in a charge in excess of the TF12 maximum rate applicable to Cottage Grove, Cottage Grove will be shifted to the TFX Rate Schedule. These provisions are addressed in a later section of this order.

²² Answer of Northern Natural Gas Company to Complaint at 3 (October 15, 2003) (public version).

Point of Interconnection.²³ The rate for MID 16B to MID16B TI transactions was \$0.00, and accordingly Northern Natural did not bill Cottage Grove and Whitewater the nickel rate for the MID 16B to MID 16B Rate Schedule TI transactions. However, for purposes of Paragraph E(3) in Cottage Grove and Whitewater's firm service agreements, Northern Natural did treat these transactions as Field Area interruptible transportation transactions. Therefore, it did not consider that Complainants had received gas in the Market Area without using their interruptible transportation in the Field Area, and Northern Natural accordingly also did not charge Complainants the nickel rate for these transactions under Paragraph E(3) of the FT and FTX service agreements.

22. Subsequently, Northern Natural reconsidered these transactions, decided that it made a mistake, and billed Complainants under Paragraph E(3). Northern Natural states that the MID 16B to MID 16B transactions did not use Cottage Grove's and Whitewater's interruptible service agreements for service in the Field Area as required by Paragraph B(2) of the 1995 Letter Agreements, thereby triggering the provisions in Paragraph E(3) authorizing Northern Natural to charge the nickel rate under the firm agreements. Complainants assert they used interruptible transportation in the Field Area in their MID 16B to MID 16B transactions and therefore satisfied the requirement in Paragraph E(3). Complainants state in support of their position that at times Northern Natural allocated the volumes in the MID 16B to MID 16B transactions, that is, pro-rated the volumes that could be transported, which they view as indicating that these transactions constituted actual transportation.

23. The Commission does not agree that Complainants' MID 16B to MID 16B transactions use their interruptible transportation as required in Paragraph E(3) of the 1995 Letter Agreements. Paragraph E(3) of the Letter Agreements provides that Complainants will pay an increased reservation rate if they receive gas in the Market Area "and do not utilize the interruptible transportation service set forth in Paragraph B" Paragraph B(1) of the Letter Agreements provides, in relevant part, that the Complainants agree to enter into interruptible Field Area throughput (TI) service agreements with each such TI agreement providing for "the transportation of a volume of gas up to the MDQ from Northern Natural's Field Area receipt points south of the Demarcation Point to the Demarcation Point" Paragraph B(2) provides Northern Natural will charge Complainants the nickel interruptible transportation rate "for transportation from points south of the Demarcation Point to the Demarcation Point" Complainants' MID 16B to MID 16B transactions do not transport gas from south of the Demarcation Point to the Demarcation Point and therefore do not use their interruptible transportation as required by Paragraph E(3). Moreover, MID 16B is a paper point, so that gas cannot be physically transported at that point.

²³ Complaint at 11.

24. Despite our finding that the complainants' MID 16B transactions did not satisfy the Paragraph E(3) requirement that they use their Field Area interruptible service to feed their Market Area firm service, the Commission will not permit Northern Natural to recover the charges provided for by Paragraph E(3) in such circumstances. For the reasons explained below, the Commission finds this provision, together with a similar provision in Paragraph E(4) of the Letter Agreements, is an unlawful material deviation from the applicable Form of Service Agreement, which Northern Natural failed to file with the Commission and improperly restricts competition. As such, the provision is unenforceable.

25. The *Show Cause Order* stated Paragraphs E(3) and E(4) were possible material deviations and required Northern Natural to show cause why Paragraph E(3) is an authorized discount and why Paragraph E(4) does not unlawfully restrict competition from other transportation such as capacity releases. Paragraph E(4) of the 1995 Letter Agreements provides that, if Cottage Grove or Whitewater transports gas in the Field Area via released firm capacity of a third party or alternate Field Area transportation and does not utilize the interruptible transportation service in its Letter Agreement, then the reservation rate it pays, designated in Paragraph A, shall be increased in the same manner as Paragraph E(3) provides when the Complainants do not use Northern Natural's interruptible field area service to bring gas to the market area.²⁴ Thus, both Paragraphs E(3) and E(4) require the Complainants to pay the same nickel rate they would pay if they shipped under their interruptible field area service agreements, even when they use an alternate method to bring gas to Northern Natural's market area. The only difference between the two provisions is that Paragraph E(3) applies when the alternate method is use of another pipeline's service and paragraph E(4) applies when the alternate method is taking a capacity release from another field area shipper.

26. In its response to the *Show Cause Order's* requirements to explain why these provisions are lawful, Northern Natural asserts that in structuring the transactions with Cottage Grove and Whitewater, it anticipated and required a certain level of revenue from the service agreements to recover the costs of its capital investment. Northern Natural states that based on projections made to it by the shippers' parent company, Northern Natural determined a required revenue and calculated a rate for each specific service. Northern Natural asserts that Paragraphs E(3) and E(4), which concern using transportation other than interruptible transportation in the field area to obtain gas supplies, were designed to cover the situation where Cottage Grove and Whitewater did not use their interruptible transportation service as expected and, as a

²⁴ The increase is an amount equal to the volume of gas received in the Market Area without using their interruptible transportation or transported by capacity release or alternate Field Area transportation multiplied by the interruptible commodity rate of \$0.05/MMBtu less the weighted average released capacity commodity rate actually paid to Northern Natural to transport the volumes to the Demarcation Point.

result, Northern Natural would not receive the projected level of revenue needed to justify the economics of the transaction and grant the discounts on the firm transportation service. In such event, Northern Natural asserts, it would adjust other rate components to meet the projected level of required revenue.

27. Northern Natural asserts that in the various agreements between Northern Natural, Cottage Grove, and Whitewater, the Market Area Reservation rate for firm service was discounted from Northern Natural's maximum tariff rate based on the parties' mutual understanding and agreement that Northern Natural would collect the nickel rate on all interruptible volumes, whether sourced in the Field Area or the Market Area. The 1995 Letter Agreements provide that Northern Natural would bill Cottage Grove and Whitewater the nickel rate in all instances for interruptible transportation. To the extent the interruptible rate allowed by Northern Natural's tariff for the specific interruptible transportation used by Cottage Grove and Whitewater did not allow collection of the full nickel rate, the difference is an adjustment to Northern Natural's Market Area Reservation rate. Northern Natural asserts these provisions in no way limit Cottage Grove's and Whitewater's ability to release the capacity associated with the firm throughput service agreements or limit their ability to utilize capacity release to serve their plants. Northern Natural asserts it designed these provisions to maintain the economics of the transaction by preventing Cottage Grove and Whitewater from negotiating a discounted rate for service and then failing to provide the revenues on which the discounted rate was predicated.

28. As a preliminary matter, Paragraphs E(3) and E(4) of the 1995 Letter Agreements are clearly material deviations from Northern Natural's *pro forma* service agreement. These provisions (1) go beyond filling in the blank spaces with appropriate information allowed by the tariff and (2) affect the substantive rights of the parties.²⁵ The Commission also finds, as explained below, that Paragraphs E(3) and E(4) are unlawful.

29. While Paragraph E(3) explains how Northern may adjust the reservation rate for firm service, it also contains interruptible service rate elements. The overall effect of the arrangement is that Cottage Grove and Whitewater must pay for interruptible transportation service when they do not use it. Thus, Paragraph E(3) is actually a charge for interruptible service when it is not used, and as such, is contrary to the Commission's regulations.²⁶

²⁵ *ANR Pipeline Co.*, 101 FERC ¶ 61,096 at P 7 (2002); *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 at 62,002 (2001); *ANR Pipeline Co.*, 97 FERC ¶ 61,224 at 62,022 (2001).

²⁶ 18 C.F.R. §§ 284.7(e), 284.9(c), and 284.10(c)(1) (2004).

30. The Commission's policy, as stated in Part 284 of its regulations, is that apart from a reservation charge for firm service, customers pay only for units of service that they use through a volumetric rate. Section 284.10(c)(1) of the regulations provides that the rate for an interruptible service must be a volumetric rate "that recovers the costs allocated to the service to the extent that the projected units of that service are actually purchased and may not include a demand charge, a minimum bill or minimum take provision that has the effect of guaranteeing revenue." Thus, Northern Natural may only charge a volumetric rate for interruptible transportation service and may only charge that volumetric rate when interruptible service is actually used. It may not charge for interruptible service, as it is doing in this case, by collecting the Nickel Rate when Complainants do not use their interruptible service. Paragraph E(3) is also contrary to section 284.10(c)(1) of the Commission's regulations because it guarantees revenue to Northern Natural from interruptible transportation service.²⁷

31. The provisions of Paragraph E(3) are also contrary to the Commission's policies and regulations concerning the bundling of services. In Order No. 636, the Commission prohibited the bundling of transportation and sales services because combining these services gave a pipeline a competitive advantage over other pipelines. The Commission has also found that unnecessary bundling of other services, such as storage and transportation, is per se unjust and unreasonable. It is only when there are countervailing considerations that the Commission will consider the bundling of services as just and reasonable, such as where there is an operational need for the bundling of the two services.²⁸

32. Paragraph E(3) effectively bundles interruptible Field Area transportation service with firm Market Area transportation service. Complainants must pay for both Market Area firm transportation service and Field Area interruptible service, if they do not use their interruptible service. As a result, Paragraph E(3) discourages Complainants from buying gas supplies on other pipeline systems and from using transportation on other pipeline systems since they would have to pay both the nickel rate for interruptible transportation in Northern Natural's Field Area and the costs of transportation on another pipeline. Paragraph E(3) is contrary to the unbundling

²⁷ See *Northern Natural Border Pipeline Co.*, 106 FERC ¶ 61,327 at P 13-14 (2004) (rejecting the pipeline's proposal to transform the rates for existing interruptible park and loan services from volumetric usage charges to reservation charges billed to each unit of contract demand).

²⁸ *Transcontinental Gas Pipe Line Corp.*, 87 FERC ¶ 61,087 at 61,398 (1999), *order on reh'g*, 94 FERC ¶ 61,362 at 62,321-22 (2001).

required by Order No. 636 and to the Commission's regulations and it is inconsistent with our often stated goal of encouraging a competitive market for natural gas and transportation services. Consequently Paragraph E(3) is unjust and unreasonable. Moreover, the Commission held both before and after restructuring that a customer should pay only for the facilities that it actually uses.²⁹ Paragraph E(3) violates this policy as well.

33. The Commission finds that Paragraph E(4) is unlawful as well. In Order Nos. 636 and 637, the Commission stated that a primary purpose of its capacity release program is to promote increased competition on a pipeline by allowing firm shippers to release their capacity in competition with the pipeline's interruptible service. In this case, Cottage Grove and Whitewater must pay Northern Natural a set amount of revenue for interruptible transportation in its Field Area, even if Cottage Grove or Whitewater could obtain a lower rate by using released capacity. This would discourage releases and undercut the Commission's competitive goals.³⁰ In *Natural Gas*,³¹ the Commission held that a contract provision that suspended the effectiveness of a discount during the period of a capacity release could discourage capacity releases and was inconsistent with the Commission's regulatory requirement that pipelines permit the release of capacity "without restriction on the terms and conditions of the release."³² The Commission makes the same finding here. Since Cottage Grove and Whitewater cannot save money by using released capacity, they will be discouraged from seeking it out as an alternative. The result is to dampen the market for released capacity. The Commission's policy of promoting a robust secondary market could be thwarted by such a restriction on Cottage Grove's and Whitewater's use of capacity release. Consequently, the Commission finds the restriction on the use of capacity release in Paragraph E(4) of the 1995 Letter Agreements consisting of the requirement to pay Northern Natural \$0.05/MMBtu less the weighted average released capacity commodity rate actually paid to Northern Natural to be null and void.

²⁹ *Panhandle Eastern Pipe Line Co.*, 57 FERC ¶ 61,264 (1991), *reh'g denied in pertinent part*, 59 FERC ¶ 61,244 at 61,853 (1992); *see El Paso Natural Gas Co.*, 61 FERC ¶ 61,173 at 61,633-34 (1992).

³⁰ Interstate pipelines must permit firm shippers to release firm capacity to the pipeline for resale. 18 C.F.R. § 284.8 (a) (2004). "Firm shippers must be permitted to release their capacity, in whole or in part, on a permanent or short-term basis, without restriction on the terms or conditions of the release." 18 C.F.R. § 284.8 (b) (2004).

³¹ 82 FERC ¶ 61,298 at 62,174-76 (1998).

³² *Citing* 18 C.F.R. § 284.243 (1997), now 18 C.F.R. § 284.8 (b) (2004).

34. The Commission finds it is unlawful for Northern Natural to discourage the use of transportation provided by others as it does in Paragraphs E(3) and E(4) of the Letter Agreements. These provisions are contrary to Commission policy and regulations and are null and void. Therefore, Northern Natural cannot enforce Paragraph E(3) and the Commission accordingly grants the complaints filed by Cottage Grove and Whitewater.

(2) Other Paragraph E Provisions

35. The *Show Cause Order* also cited other Paragraph E provisions of the 1995 Letter Agreements besides Paragraph E(3) and E(4) (collectively, other Paragraph E provisions) as possible material deviations. These provisions vary the reservation and interruptible rates Complainants must pay. The *Show Cause Order* required that if Northern Natural contends the other Paragraph E provisions are discounts, then it must show cause why these discounts are authorized.

36. The other Paragraph E provisions at issue are the following. For Cottage Grove: Paragraph E applies Rate Schedule TFX to Cottage Grove's TF service in each of the situations described by Paragraphs E(1), E(2), E(5), and E(6) so as to permit Northern Natural to charge a rate in excess of the maximum TF12 rate that would otherwise cap Cottage Grove's rate for its firm service.³³ Paragraph A of the Cottage Grove Letter Agreement provided for a fixed rate of \$5.671 per MMBtu, which initially was equal to the applicable maximum TF12 rate. The maximum TFX rates were higher than the maximum TF12 rate.³⁴ Paragraph E(1) provides that if Northern Natural's TF12 Base Market Area maximum rate falls below the rates in Paragraph A, then, to the extent the rates in Paragraph A are below the TFX maximum rate, the rates in Paragraph A will be charged. Paragraph E(2) provides that the TF reservation rate in Paragraph A shall be increased if Northern Natural's maximum FDD storage rates fall below the rates in the Letter Agreement which were the maximum FDD storage rates at the time. The increase will be equal to the amount of revenue Northern Natural has lost because of the decrease in the maximum FDD storage rates. Paragraph E(5) provides for an inflation adjustment of the reservation rate in Paragraph A for firm transportation and also for interruptible and storage rates beginning January 1, 2001 and each January 1 thereafter. Paragraph E(6) provides that, in the event Northern Natural implements a different rate design,

³³ Paragraph E also applied Rate Schedule TFX to Cottage Grove's TF service in the circumstances described in Paragraphs E(3) and E(4), but as we have already found those provisions are unlawful, we need not address this issue with respect to them.

³⁴ The initial maximum TF rate was lower than both the initial maximum TFX summer rate, \$6.805/MMBtu, and the initial maximum TFX winter rate, \$11.342/MMBtu.

the reservation and commodity rates will be adjusted so as to achieve the same economic value to both parties based on one hundred percent load factor utilization at the rates as adjusted.

37. For Whitewater, Paragraphs E(1) and E(2) provide that the discount on the TI rate will vary. Northern Natural will increase the discounted TI rate if the blended maximum TFX rate (Paragraph E(1)) or the maximum FDD storage rate (Paragraph E(2)) falls below the rates established and escalated in the Letter Agreement.³⁵ Northern Natural will decrease the TI rate if the blended minimum TFX rate or the minimum FDD storage rate rises above the rates established and escalated in the Letter Agreement. In all cases, the economic value of the contracts to Northern Natural is to be maintained. Paragraph E(5) provides for an inflation adjustment of the reservation rate in Paragraph A for firm transportation and also for interruptible and storage rates beginning January 1, 2001, and each January 1 thereafter, so long as the resulting rate does not exceed the applicable maximum rate. Paragraph E(6) provides that, in the event Northern Natural implements a different rate design, it will adjust the reservation and commodity rates to achieve the same economic value to both parties based on one hundred percent load factor utilization at the rates as adjusted.

(a) Northern Natural's Response

38. Northern Natural contends the other Paragraph E provisions are lawful discounted rate provisions and that the provisions involve only the negotiation of a discounted reservation rate that meets the economics of the requesting shipper and result in rates that are within Northern Natural's maximum and minimum rates.

39. Northern Natural states it structured the discounted rate provisions with Cottage Grove and Whitewater to realize the economics of the transactions it negotiated with them which included the construction of facilities. Northern Natural states the rates and services agreed to under the 1995 Letter Agreements provided an overall cost for the service which was distributed between the various services³⁶ (firm, interruptible and storage). Northern Natural asserts there is no language in its

³⁵ Paragraph A of the Whitewater Letter Agreement provides that the blended TFX monthly reservation rate is \$6.97/MMBtu. Paragraph C of the Whitewater Letter Agreement provides that Whitewater will initially pay the maximum FDD storage service rates which included a monthly reservation fee of \$1.4710/MMBtu and a monthly capacity fee of \$0.3062/MMBtu.

³⁶ Northern Natural's Response at 8.

tariff that prohibits this result. It also asserts that its obligation to its other customers demands that it structure its transactions to effectuate a level of demand revenue that supports the discounted rate.

40. Northern Natural asserts that it attempted to provide services for Cottage Grove and Whitewater priced so that the construction of the Cottage Grove and Whitewater plants was economic for their parent corporation while at the same time attracting this additional load to its system. It asserts that “[n]othing in Northern Natural’s Tariff or Commission precedent at the time prohibited Northern Natural from negotiating discounted rates for different services that were adjusted in the event of certain circumstances.” Northern Natural states the parties also recognized that circumstances could change over the 20-year term of the contracts impacting the underlying economics of the transaction. Therefore, Northern Natural states the parties agreed that rate changes could be made during the term of the 1995 Letter Agreements. Northern Natural asserts that both parties desired to maintain the same economic value during the entire contract period and, therefore, to adjust the rates in both Letter Agreements.

41. Northern Natural asserts the provisions in the 1995 Letter Agreements are lawful as long as “the discounted rate was given to meet competitive conditions, was within the minimum and maximum tariff rates, and the pipeline did not unduly discriminate in the granting of the discount, the provision was lawful.”

42. In its Response, Northern Natural asserts that the Cottage Grove provisions also contemplate that if Northern Natural is unable to collect the agreed upon rate under the TF Rate Schedule, the service agreement would be converted to a TFX Service Agreement. As such, the service would be subject to the terms of the TFX Rate Schedule. Thus, Northern Natural asserts, the service would not be subject to a rate schedule other than the applicable rate schedule. Northern Natural asserts further that the effect of these provisions is the termination of service under one rate schedule, the TF Rate Schedule, and the activation of service under another rate schedule, the TFX Rate Schedule.

**(b) Commission Decision Regarding
Other Paragraph E Provisions**

43. During the time the 1995 Letter Agreements have been in effect, the Commission has clarified its policies concerning permissible discounts, and Northern Natural has modified its tariff to more clearly define the type of discounts it offers. On October 16, 1996, the Commission found, among other things, in *Natural Gas Pipeline Company of America*³⁷ that discounts that supplement the terms and

³⁷ 77 FERC ¶ 61,028 (1996), *order on reh’g and clarification*, 82 FERC ¶ 61,298 at 62,179-80 (1998).

conditions of the pipeline's *pro forma* service agreement are material deviations from *pro forma* service agreements so that the discount agreements must be filed as non-conforming service agreements. In the *Natural* rehearing order, issued March 26, 1998, the Commission permitted pipelines to revise their tariffs to include a limited number of generic volume-related terms for discounts that could be used in individual contracts. If a pipeline revised its tariff to include such terms, then it would not be required to file a contract containing such a term.³⁸

44. Several pipelines made such tariff filings to include standard discounts in their tariffs, including Northern Natural.³⁹ On July 23, 1999, Northern Natural filed to include in section 54(b) of the General Terms and Conditions (GT&C) of its tariff specific discounts related to factors such as volume, time period, and location.⁴⁰ On December 29, 1999, Northern Natural filed to amend section 54(b) to include a discount based on index prices or a formula for specified receipt and delivery points. The Commission initially rejected this proposal on the grounds that the discount would vary or fluctuate whereas other Commission-approved discounts were constant.⁴¹ Ultimately, however, the Commission accepted these types of discounts, subject to Northern Natural revising its tariff to provide that all such discount

³⁸ The Commission subsequently considered a number of such tariff filings including *Tennessee Gas Pipeline Co.*, 84 FERC ¶ 61,340 (1998); *Natural Gas Pipeline company of America*, 84 FERC ¶ 61,099 (1998); and *National Fuel Gas Supply Corp.*, 85 FERC ¶ 61,126 (1998).

³⁹ *Northern Natural*, 88 FERC ¶ 61,095 (1999); *Northern Natural*, 90 FERC ¶ 61,064 (2000), *order on reh'g*, 98 FERC ¶ 61,106 (2002), *order on remand*, 105 FERC ¶ 61,299 (2003); *Northern Natural*, 95 FERC ¶ 61,424 (2001).

⁴⁰ On July 23, 1999, the Commission accepted Northern Natural's proposed tariff language which provided that Northern Natural may provide a specific discounted rate: (1) to certain specified quantities under the Service Agreement; (2) if specified quantity levels are actually achieved or with respect to quantities below a specified level; (3) to production reserves committed by the Shipper; (4) during specified time periods; (5) to points of receipt, points of delivery, supply areas, transportation paths or defined geographical areas; or (6) in a specified relationship to the quantities actually transported (*i.e.*, that the rates shall be adjusted in a specified relationship to quantities actually transported). 88 FERC ¶ 61,095 (1999). At the end of the July 23, 1999 order, the Commission stated "should Northern Natural execute a discount agreement that is not specifically listed as an example in the GT&C, it must file the agreement as a nonconforming service agreement with the Commission pursuant to Sections 154.1(d) and 161.3(h)(2) of the Commissions' regulations." *Id.* at 61,226.

⁴¹ 90 FERC ¶ 61,064 (2000), *order on reh'g*, 98 FERC ¶ 61,106 (2002).

agreements use the same rate design as the pipeline's tariff rates and that the basis differential rate formula will produce a rate per unit of contract demand, to the extent the firm reservation charge is discounted.⁴² On May 25, 2001, Northern Natural filed to revise section 54(b) of its GT&C to include discounts which would adjust the components of a rate up or down so as to maintain the same overall revenue. This adjustment of components would be triggered by a Commission order that changed Northern Natural's maximum or minimum rates, such that one of the discounted components would be above the maximum rate, or below the minimum rate. In no event could a component be adjusted so that it was higher than the maximum rate or below the minimum rate. The Commission accepted this proposal on June 22, 2001.⁴³

45. We will review the lawfulness of the other Paragraph E provisions based on current Commission policies and the provisions of Northern Natural's tariff now in effect, rather than considering the lawfulness of those provisions during earlier time periods.

46. With respect to the Cottage Grove Letter Agreement, the Commission finds that the portion of Paragraph E applying the TFX rate schedule to Cottage Grove's TF service is unlawful and that Paragraph E(1) is unlawful. Paragraphs E(2), E(5), and E(6) are lawful.

47. Northern Natural may not apply TFX rates, whether maximum or discounted, to service under the TF rate schedule. The Commission does not find Northern Natural's explanation that the Cottage Grove Letter Agreement would be converted to a TFX agreement convincing. Paragraph E of the Cottage Grove Letter Agreement does not contain any provisions providing for the termination of service under the TF rate schedule and the activation of service under another rate schedule. Nor does it provide for conversion of Cottage Grove's TF Service Agreement to a TFX Service Agreement. There is nothing that states the existing TF Service Agreement will terminate and a new service agreement will be executed. The only statement in Paragraph E concerning the application of TFX rates to the transportation service that Cottage Grove is taking is that if the listed events occur, Cottage Grove's TF Service Agreement shall become subject to the TFX rate.

48. The provision in Paragraph E subjecting TF service to the TFX rate schedule is unlawful and Northern Natural must give the discounts in Paragraph E of the Cottage Grove Letter Agreement based on the maximum rates for TF service. In addition, the Commission finds that Paragraph E(1) of the Cottage Grove Letter Agreement, which, by its terms, charges more than the maximum rate for TF service, is unlawful.

⁴² 105 FERC ¶ 61,299 at P 20 (2003).

⁴³ Commission Letter Order, 95 FERC ¶ 61,424 (2001).

Northern Natural may not charge more than the maximum rate under the TF rate schedule for TF service. The provisions found unlawful in this paragraph are null and void.

49. The provisions in Paragraph E(2) of the Cottage Grove Letter Agreement increase the TF reservation rate to make up for lost revenues if Northern Natural's maximum firm storage rates decrease below the then-maximum FDD rates that Cottage Grove had agreed to pay. This Cottage Grove discount constitutes a material deviation from Northern Natural's tariff, since it does not fall within any of the standard types of discount Northern Natural offers pursuant to section 54(B) of its GT&C. Section 54(b)(7) authorizes Northern Natural to include in a discount agreement for a particular service a provision that provides if one component of the rate for that service subsequently exceeds the applicable maximum rate, then the other rate components may be adjusted up or down so as to maintain the same overall revenue. Thus, that tariff provision limits Northern Natural to adjusting the components of the rate for one particular service so as to provide the same revenue from that service. By contrast, Paragraph E(2) of the Cottage Grove Letter Agreement would increase the rate for a service provided under one rate schedule to make up for a decrease in the maximum rate for a separate service provided under another rate schedule. While the Commission finds that Paragraph E(2) is a material deviation, the Commission concludes that the deviation is permissible. It simply provides for the adjustment of the rates paid by Cottage Grove, without affecting the quality of either Cottage Grove's service or the service provided any other shipper. Nor does it require Cottage Grove to pay for a service that it does not receive, and thus it does not raise the anti-competitive concerns raised by Paragraphs E(3) and (4) discussed above.

50. The provisions in Paragraph E(5) of the Cottage Grove Letter Agreement provide for an inflation adjustment. This provision also constitutes a material deviation from Northern Natural's tariff, since section 54(b) of its GT&C does not provide for a discounted rate that is adjusted for inflation. Section 54(b)(8) permits Northern Natural to negotiate discounted rates that fluctuate based on published index prices for specific receipt or delivery points or other agreed-upon pricing reference points for price determination. However, Paragraph E(5) does not adjust the discounted rate for changes in such published index prices, but rather for changes in the rate of inflation. While Paragraph E(5) is a material deviation, the Commission finds that it is a permissible deviation for the same reason as the provision in Paragraph E(2). If Northern Natural wishes to offer discounts of the type provided in Paragraphs E(2) and (5) without filing each such non-conforming agreement for Commission approval, it may propose to modify section 54(b) of its GT&C to include these types of discounts among the standard types of discounts that it offers.

51. Paragraph E(6) provides for the adjustment of the reservation and commodity rates of an individual rate for a service to maintain the same economic value of the contractual arrangement in the event there is a change in rate design. This type of

discount adjustment is currently included in Northern Natural's tariff as a standard discount.⁴⁴ Therefore, the provisions in Paragraph E(6) are just and reasonable as they are included in one of the standard discounts in Northern Natural's tariff.

52. With respect to the Whitewater Letter Agreement, the Commission finds that Whitewater took service under the TFX rate schedule under what were initially discounted rates. It also took interruptible service at a discounted rate. The provisions in Paragraphs E(1) and E(2) of the Whitewater Letter Agreement vary the TI rate up or down if the blended TFX rate or the storage rate decrease below or increase above the levels established in the Letter Agreement. Paragraphs E(1) and E(2) thus vary the amount of the TI discount. The purpose of these provisions is to maintain the overall economic value of the contract for Northern Natural.

53. These discounts to Whitewater are material deviations from Northern Natural's tariff and form of service agreements for the same reason as those in Paragraph E(2) of the Cottage Grove Letter Agreement. They are not discounts authorized by Northern Natural's tariff.⁴⁵ However, the Commission finds that the Paragraph E(1) and E(2) provisions in the Whitewater Letter Agreement are permissible material deviations, since they are not minimum take or minimum bill provisions. They do not require Complainants to take a certain amount of gas because they are related only to transportation service and, then, only to interruptible transportation service, which as this order discusses, the pipeline may not require a shipper to use. In addition, they do not guarantee a certain amount of revenue

⁴⁴ Section 54.B (7), Sixth Revised Sheet No. 303, Northern Natural Gas Company FERC Gas Tariff, Fifth Revised Volume No. 1.

⁴⁵ At present, Northern Natural's tariff provides for specific discounts such as one based on specific points and another based on index prices. Section 54(B), Eighth Revised Sheet No. 303, Northern Natural Gas Company, FERC Gas Tariff, Fifth Revised Vol. No. 1.

through the collection of commodity costs⁴⁶ since Complainants may or may not use their interruptible transportation. This is especially true since the provisions in Paragraphs E(3) and E(4) are unlawful.

54. The provisions in Paragraph E(5) of the Whitewater Letter Agreement are acceptable for the same reasons as Paragraphs E(5) and E(6) of the Cottage Grove Letter Agreement.

(3) Fuel

55. The *Show Cause Order* cited the portion of Paragraph A of the 1995 Letter Agreements providing for payment for fuel use and lost and unaccounted for gas (Fuel) as a possible material deviation and required Northern Natural to show cause why it is lawful. Paragraph A of the Cottage Grove Letter Agreement provides: “In the event actual Market Area Fuel utilization for the Cottage Grove project exceeds that provided for in Northern Natural’s Tariff, LSP agrees to reimburse Northern Natural for that incremental fuel.”⁴⁷ The Whitewater Letter Agreement contains similar language.⁴⁸ The Letter Agreements capped the amount of Fuel that Cottage Grove and Whitewater had to pay at 4.5 percent.

⁴⁶ The Commission has prohibited the collection of commodity or variable costs through minimum bill, minimum take, and other provisions guaranteeing revenue. 18 C.F.R. § 284.7(e) (2003). The Commission initially became concerned about minimum bill and minimum take provisions when pipelines were the major sellers of gas. The pipelines collected variable costs, including gas costs, through the commodity rate which was charged on each unit of gas sold. A number of pipelines included in their sales rate schedules a provision known as a minimum commodity bill which required the customer to pay the full commodity charge for a specified percentage of its contract entitlement whether or not the customer actually took gas at that percentage level. The minimum commodity bill thus ensured a pipeline recovery of a certain percentage of variable costs. The Commission determined that the pipelines were collecting variable costs through the minimum commodity bill that they had not incurred and that the collection of the variable costs through the minimum commodity bill served as a barrier to competition. Accordingly, the Commission eliminated variable costs from the minimum commodity charge portion of natural gas pipeline sales tariffs. *Elimination of Variable Costs From Certain Natural Gas Pipeline Minimum Commodity Bill Provisions*, FERC Stats. & Regs., 1982-1985 Regulations Preambles ¶30,571 at 30,958-59 (May 25, 1984).

⁴⁷ Cottage Grove Letter Agreement at 3, Attachment 5 to Complaint.

⁴⁸ Whitewater Letter Agreement at 2, Attachment 6 to Complaint.

56. Northern Natural states upon review subsequent to execution of the 1995 Letter Agreements, Northern Natural recognized that it could not charge a fuel rate different than the rate set forth in its tariff. As a result, Northern Natural states it has not made any adjustments to the discounted rate under this provision and effectively deems such provision to be null and void.

57. The Commission finds the provisions concerning fuel payments in both of the Letter Agreements are material deviations from Northern Natural's *pro forma* service agreements. Northern Natural's *pro forma* service agreements in effect at the time provided that the Shipper would pay the maximum rates in effect under the applicable Rate Schedule, not more than the maximum.⁴⁹ The maximum Fuel Percentage at the time the Letter Agreements were executed was 2.0 percent, not 4.5 percent.⁵⁰ Thus, the provisions in the Letter Agreements that provide that Cottage Grove and Whitewater will pay more than Northern Natural's tariff requires for Fuel and will pay a percentage up to 4.5 percent for Fuel are not in the approved language of the Form of Service Agreement and (1) go beyond filing in the blank spaces with appropriate information allowed by the tariff and (2) affect the substantive rights of the parties.

58. The Commission also finds that the cited provision of Paragraph A is unlawful. Northern Natural may not charge rates for fuel that are greater than the fuel rates in its tariff. The cited provision of Paragraph A in the Letter Agreements is null and void.

(4) Confidentiality

59. The *Show Cause Order* cited Paragraph K of the 1995 Letter Agreements concerning confidentiality as a possible material deviation. Paragraph K provides that each Party to a Letter Agreement will maintain the "Agreement, all of its

⁴⁹ *For example*, Section 4, Original Sheet No. 402; Firm Throughput Service Agreement, Rate Schedule TF, Northern Natural Gas Company; FERC Gas Tariff, Fifth Revised Volume No. 1 (effective November 1, 1993).

⁵⁰ Northern Natural's Market Area Fuel Percentages in effect at the time the Letter Agreements were signed were 1.0 percent for fuel and 1.0 percent for "Unaccounted For" gas. Original Sheet No. 54, Northern Natural Gas Company, FERC Gas Tariff, Fourth Revised Volume No.1. These Fuel Percentages were superceded on September 1, 1995 by those in First Revised Sheet No. 54, Northern Natural Gas Company, FERC Gas Tariff, Fifth Revised Volume No. 1. First Revised Sheet No. 54 states that Northern Natural's Fuel Percentages will be redetermined in an NGA section 4 rate case and that the Unaccounted For percentage is 1.0 percent.

contents, and subsequent documentation and communications . . . in strict confidence” and that it will not permit disclosure to any third party without the express written consent of the other Parties.⁵¹

60. The Commission finds Paragraph K in both of the Letter Agreements is a material deviation from Northern Natural’s *pro forma* service agreements. Northern Natural’s *pro forma* service agreements contain no provisions requiring confidentiality.⁵² The Paragraph K provisions are not in the approved language of the Form of Service Agreement and (1) go beyond filing in the blank spaces with appropriate information allowed by the tariff and (2) affect the substantive rights of the parties. Consequently, these provisions were and are material deviations from Northern Natural’s *pro forma* service agreements.

61. In addition, Paragraph K is contrary to section 4(c) of the NGA and the Commission’s regulations⁵³ which require that contracts for the transportation of natural gas be filed with the Commission unless they conform to the pipeline’s *pro forma* service agreement. The Commission has already addressed the issue of the unlawfulness of the Paragraph K confidentiality provisions by making the Letter Agreements public in its February 2 order.⁵⁴

Rehearing Request

62. Cottage Grove and Whitewater request rehearing of the *Show Cause Order*. They assert they are suffering economic harm⁵⁵ and ask the Commission to determine the billing dispute expeditiously under its fast track processing provisions⁵⁶ independently of the lawfulness of the Paragraph E(3) of the 1995 Letter Agreements

⁵¹ Cottage Grove Letter Agreement at 17, Attachment 5 to the Complaint; Whitewater Letter Agreement at 17, Attachment 6 to the Complaint.

⁵² The Commission also finds below that Paragraph K of the Letter Agreements is unlawful.

⁵³ 18 C.F.R. § 154.1(b) and 1(d) (2004).

⁵⁴ 106 FERC ¶ 61,097 (2004).

⁵⁵ Complainants assert they have posted a surety bond in the amount of \$1,741,322 at a cost of \$43,539; that they are being billed for additional surcharges each winter month, including \$75,599 for December, 2003; that they may be required to post additional surety bonds; that they cannot recover the cost of surety bonds; and that they need price certainty for gas which is an input to their final product..

⁵⁶ 18 C.F.R. § 206(h) (2004).

because even if Paragraph E(3) is lawful, in their view, it does not support imposition of surcharges against the Complainants. In the alternative, Cottage Grove and Whitewater ask the Commission to grant rehearing of its decision to defer resolution of the billing dispute and, at a minimum, decide the tariff-based portion of the dispute. They assert that a decision on the retroactive billing for the period 1997 through the end of 2001 is purely a matter of tariff interpretation and that resolution does not depend on the Commission's determination with respect to the lawfulness of the Letter Agreements.

63. The Commission finds the request for rehearing has been rendered moot by subsequent events, including the parties' requests that the Commission not act on this matter pending their settlement discussions and the issuance of this order.

Northern Natural's Filing of Non-Conforming Agreements in Docket No. RP05-70-000

64. On November 15, 2004, Northern Natural filed eight non-conforming service agreement amendments in Docket No. RP05-70-000. Northern Natural states that the instant agreement amendments supersede the April 1995 Letter Agreements at issue in the Docket No. RP03-604-000 complaint proceeding, as well as other prior agreements between the parties. Four of the agreement amendments are for Rate Schedule TI service, two with Cottage Grove (Contract Nos. 24198 and 24199) and two with Whitewater (Contract Nos. 24200 and 24201). Each of these agreements provides that for interruptible service in the Field Area the shipper will pay Northern Natural's minimum interruptible rate for transportation from receipt points south of the Demarcation Point to that point.⁵⁷ Two of the agreement amendments are for firm transportation service in the market area, one for Rate Schedule TF service with Cottage Grove (Contract No. 24042), one for Rate Schedule TFX service with Whitewater (Contract No. 23479). Each of these agreements includes discounted rate provisions described more fully below. Finally, two of the agreement amendments are for Rate Schedule FDD⁵⁸ service, one with Cottage Grove (Contract No. 23281) and one with Whitewater (Contract No. 23282).

65. Northern Natural identifies certain provisions in the amendments that deviate materially from its *pro forma* agreement for amending service existing agreements, as we discuss below. Northern Natural asks the Commission to accept the amendments as discounted rate agreements. Northern Natural argues that the material deviations do not affect the quality of service shippers receive, and are the type of provisions

⁵⁷ Rate Schedule TI provides that the minimum rate for transportation service in the Field Area is \$0.0040/Dth for each 100 miles of service.

⁵⁸ Firm Deferred Delivery.

that are unique to the situation. Northern also includes with its filing an Eighth Revised Sheet No. 66C to its FERC Gas Tariff, Fifth Revised Volume No. 1, to include the instant agreements on its list of non-conforming service agreements.

66. The Commission issued notice of Northern Natural's filing on November 17, 2004. Interventions, comments, and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2004)). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2004)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. No party filed a protest or adverse comments. Cottage Grove and Whitewater filed comments in support of the filing.

67. For the reasons discussed below, we reject Northern Natural's Rate Schedule TF agreement amendment with Cottage Grove and its Rate Schedule TFX agreement amendment with Whitewater. We also reject Northern Natural's TI agreement amendments. We conditionally accept Northern Natural's Rate Schedule FDD agreement amendments. We direct Northern Natural to file revised FDD agreement amendments reflecting the changes discussed below within 30 days of the date this order issues. Since all eight agreements are inter-related, should Northern Natural decide to renegotiate all eight agreements, it should file to withdraw its two conditionally accepted FDD agreement amendments within 30 days of the date this order issues. Finally, we conditionally accept Northern Natural's Eighth Revised Sheet No. 66C, subject to Northern Natural modifying the list of non-conforming agreements to include only those agreements the Commission finds acceptable.

Rate Schedule TF and TFX Agreements

68. Northern Natural includes as part of its instant filing two non-conforming agreement amendments for firm transportation service: one for TFX service with Whitewater and the other for TF service with Cottage Grove. Section 2(a) of Northern Natural's TFX agreement with Whitewater contains the following provision:

Effective January 1, 2004, Shipper shall pay an annual average base reservation fee equal to \$7.2181/Dth/month for Market Area MDQ ("Base Fee"). Effective January 1, 2005, and on January 1 of each year hereafter, an additional amount shall be added to the Base Fee based on the following formula ("Nickel Rate Formula"): (1) An amount equal to \$0.0517 times all volumes delivered to POI No. 62883 in the previous year less (2) actual dollars paid to Northern for Field Area transportation pursuant to Shipper's interruptible service agreements with Northern [CR #s 24200 and 24201] during the previous year. The net of (1) and (2) will then be divided by the MDQ and shall be added to the Base Fee. Subject to approval of Shipper, Northern shall have the right to allocate the Base Fee, as adjusted by the Nickel Rate Formula, between winter and summer months and excess

receipt point rates (as set out in Northern's FERC Gas Tariff) to achieve the annual average Base Fee, as adjusted by the Nickel Rate Formula; provided that at no time may Northern attempt to collect more than the maximum TFX rate as set out in its FERC Gas Tariff.

Northern Natural includes a similar provision as section 2(a) of its Rate Schedule TF agreement with Cottage Grove, only modifying the rates and delivery point.

69. These provisions have the identical effect of requiring Whitewater and Cottage Grove to pay the nickel rate for interruptible service in the Field Area whether or not they actually use that service, as paragraphs E(3) and (4) of its 1995 Letter Agreements discussed above. Paragraphs E(3) and (4) required Whitewater and Cottage Grove to pay \$0.05 per Dth for interruptible service they actually received in the Field Area. Those paragraphs then provided for the firm reservation charge paid by Whitewater and Cottage Grove in the following year to be increased by \$0.05 multiplied by the volumes they received in the market area in the preceding year without using Field Area interruptible service, thereby in essence requiring the two customers to pay the \$0.05 nickel rate for interruptible service in the Field Area whether or not they used the service.

70. The amended agreements take a somewhat different route to arrive at the same result. During the year service is received Cottage Grove and Whitewater pay only the minimum rate for interruptible service actually received in the Field Area, or \$0.0040\Dth for each 100 miles of service. Then the firm reservation charges they pay in the following year are increased by the adjusted \$0.0517 nickel rate multiplied by the total volumes they received at their market area delivery point during the preceding year, with a credit for the minimum rate paid for interruptible service actually received in the Field Area. The end result is that Cottage Grove and Whitewater pay \$0.0517 for the interruptible service they actually receive in the Field Area. They also must pay \$0.0517 for volumes received in the market area without using interruptible service in the Field area. In other words, under the amended agreements, Cottage Grove and Whitewater must pay the adjusted nickel rate for interruptible service in the Field Area, whether or not they use that service.

71. Since these provisions of the Cottage Grove's amended Rate Schedule TF agreement and Whitewater's amended Rate Schedule TFX agreement have the same functional effect as the provision in paragraphs E(3) and E(4) of the 1995 Letter Agreements, they are contrary to Commission regulations and policy for the same reasons discussed above with respect to the 1995 Letter Agreement provisions. The requirement that Cottage Grove and Whitewater pay for interruptible Field area service they do not use improperly requires those customers to pay a reservation charge and/or minimum bill for interruptible service, improperly bundles market area firm transportation service and interruptible Field Area service, and has the anti-competitive effect of discouraging use of capacity released by other shippers in competition with Northern Natural's sale of interruptible service.

72. The Commission also observes that, in its November 15, 2004 filing, Northern Natural did not identify the pricing provisions in section 2(a) of the amendment to Cottage Grove's Rate Schedule TF service agreement and the same section of the amendment to Whitewater's Rate Schedule TFX service agreement as material deviations from the form set forth in Northern Natural's tariff for amending its service agreements. Northern Natural apparently viewed those rate provisions as permissible provisions to include in the blank in the amendment form for "[rate provisions]." While Northern Natural's transmittal letter described certain material deviations from the amendment form, the transmittal letter made no mention of the instant pricing provisions. Northern Natural also did not redline the provision in the redlined version of the amendment agreements highlighting differences from the amendment form, required by current Commission policy.⁵⁹

73. The Commission has held that a material deviation is any provision that (1) goes beyond filling in the blank spaces in the agreement form "with the appropriate information allowed by the tariff" and (2) affects the substantive rights of the parties.⁶⁰ When a pipeline lists permissible conditions in its tariff for discounts, such conditions may be included in the rate portion of the customer's service agreement, with constituting a material deviation.⁶¹ As previously discussed, section 54(B) of Northern Natural's GT&C sets forth a list of allowable discounts to which Northern Natural and a shipper may agree. However, none of the allowable discounts listed in that section permits Northern Natural to adjust the discount given for one service, in this instance firm transportation service, so as, in effect, to require the customer to pay for interruptible service in the Field Area regardless of whether such service is used. Therefore, nothing in Northern Natural's tariff authorized it to include the pricing provisions at issue here in the blank in its amendment form for "pricing provisions." Moreover, the pricing provisions obviously affected the substantive rights of the parties. Therefore, the pricing provisions were material deviations and should have been so highlighted in Northern Natural's filing.

74. Since we find the rate provisions of Northern Natural's TFX agreement amendment with Whitewater and its TF agreement amendment with Cottage Grove are unlawful, we reject those two firm transportation agreement amendments. However, although we are rejecting the two firm transportation agreement amendments, we will discuss the other material deviations in case Northern Natural decides to resubmit its TFX and TF agreements with acceptable rate provisions. First, section 7 of Northern Natural's TFX agreement provides that:

⁵⁹ *East Tennessee Natural Gas Co.*, 107 FERC ¶ 61,197 at P 16 (2004).

⁶⁰ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 at 62,002 (2001).

⁶¹ *Transcontinental Gas Pipe Line Corp.*, 87 FERC ¶ 61,051 (1999).

The effectiveness of this Agreement is subject to (1) FERC approval or acceptance of this amendment and amendments of the same date to Contract Nos. 23282, 24200 and 24201 (Whitewater Amendments) as discounted rate agreements . . . (3) FERC approval of the Amendments, without modifications or conditions that are materially adverse or unacceptable to Northern Natural or Shipper; provided that such party that finds a modification or condition materially adverse or unacceptable, as determined by that party in its sole discretion, shall notify the other party within twenty (20) days after the date of the FERC order, that such modification or condition is materially adverse to it or is unacceptable. Unless the parties agree otherwise, in the event the FERC amends, modifies or requires amendment or modification of the Whitewater Amendments, then the parties agree to negotiate in good faith new service agreements or amendments with the same economic value to both parties....

Northern Natural includes a similar provision as section 6 of its Rate Schedule TF agreement amendment with Cottage Grove, and in the remainder of the agreement amendments filed as non-conforming amendments to its service agreements with Cottage Grove and Whitewater.

75. Although this provision represents a material deviation from Northern Natural's *pro forma* service agreements, we find it acceptable. The provision merely allows Northern Natural and the shipper to renegotiate agreement amendments should the Commission not accept a specific provision(s) included in any agreement amendment in the instant filing. We find this provision reasonable since all eight agreement amendments are inter-related and since it will not affect the quality of the service provided to Cottage Grove and Whitewater or the service received by other shippers using Northern Natural's system.

76. Also, sections 2(g) of Northern Natural's two firm transportation agreement amendments provide:

In the event that Northern Natural implements a rate design different from that existing at the date of this Agreement, or implements any non-discountable surcharge, the reservation and commodity rates shall be adjusted so as to achieve the same economic value to both parties based on one hundred percent (100%) load factor utilization at the rates as adjusted above.

77. This provision is acceptable, since Northern Natural allows such a discount pursuant to section 54(B)(7) of its GT&C.⁶²

78. Finally, sections 5(a) of Northern Natural's two firm transportation service agreement amendments provide:

Shipper agrees that if it utilizes Northern Natural's capacity release program to release, on either a temporary or permanent basis, any capacity subject to the rates contained herein at a rate greater than the rate contained herein, Shipper shall receive a demand charge credit only for the amount of the rate agreed to herein.

79. Northern Natural added this provision to the TF and TFX agreement amendments in accordance with section 6 of its *pro forma* agreement amendment.⁶³ Section 6 of the *pro forma* agreement amendment provides a blank for Northern Natural to include in the agreement amendment "Other Provisions Permitted By [Northern Natural's] Tariff Under the Applicable Rate Schedule and pursuant to section 58 of the GENERAL TERMS AND CONDITIONS of" its tariff.⁶⁴ Section 58 of Northern Natural's GT&C includes among the provisions that may be agreed upon between Northern Natural and a shipper a provision concerning the level of the demand charge credit Northern Natural will provide the shipper if it releases its capacity. Section 58 cites section 47.J(ii) of the GT&C as authorizing such an agreement.⁶⁵ Section 47.J(ii) provides that Northern Natural will give a releasing shipper a credit equal to all demand revenues received from the replacement shipper,

⁶² Section 54(B)(7) provides that, among other things, "rate components may be adjusted upward or downward to achieve the agreed-upon overall rate, so long as none of the resulting rate components exceed the maximum rate or are below the minimum rate applicable to the rate component."

⁶³ Substitute Third Revised Sheet No. 403, Northern Natural Gas Company, FERC Gas Tariff, Fifth Revised Vol. No. 1.

⁶⁴ The Commission required Northern Natural to place all of the provisions permitted to be included as other provisions in Northern Natural's *pro forma* service agreements in a unique tariff section. 102 FERC ¶ 61,171 at P 19 (2003). Northern Natural has placed all of the tariff-permitted sections in section 58 of its GT&C. First Revised Sheet No. 308 and Original Sheet No. 309, Northern Natural Gas Company, FERC Gas Tariff, Fifth Revised Vol. No. 1.

⁶⁵ Substitute Fifth Revised Sheet No. 288, Northern Natural Gas Company, FERC Gas Tariff, Fifth Revised Vol. No. 1.

“unless Northern and the Releasing Shipper have agreed to a different credit.”⁶⁶ Thus, Northern Natural properly included the provision in section 5(a) of the TF and TFX agreement amendments under its existing tariff provisions.

80. However, upon examining section 5(a) of the two firm transportation service agreement amendments, the Commission finds that both section 5(a) and the tariff provisions that authorize Northern Natural to enter into agreements limiting the demand credits provided to releasing shippers may be unjust and unreasonable under section 5 of the NGA. The effect of section 5(a) and of the authorizing tariff provisions is that, if a shipper releases capacity at a rate higher than the shipper is paying to Northern Natural, the incremental revenue received from that released capacity will go to Northern Natural and not the shipper. These provisions thus appear to be unlawful. In Order No. 636-A, the Commission held that “a releasing shipper paying discounted rates is entitled to receive proceeds from a release even if such proceeds exceed its reservation fee. This ensures that shippers holding capacity have the incentive to release that capacity when others place a higher value on the capacity than the capacity holders do. The Commission will not limit competition by exempting discounted fixed-rate firm contracts from the capacity release mechanism nor will it permit the pipeline to retain incremental proceeds.”⁶⁷ Accordingly, we find Northern Natural must show cause why section 47.J(ii) and section 58, to the extent it permits agreements under section 47.J(ii) to be included in Northern Natural’s *pro forma* service agreements, including its *pro forma* amendment agreement, are not unlawful and should not be removed from its tariff.

FDD Service Agreements

81. Northern Natural includes as part of its instant filing two Rate Schedule FDD service agreement amendments – one for service with Whitewater and one for service with Cottage Grove. We accept Northern Natural’s two FDD agreement amendments subject to the conditions we discuss below.

82. There are two additional provisions in these agreement amendments that are material deviations warranting discussion. First, section 4 of Northern Natural’s FDD agreement with Whitewater and section 4(a) of its FDD agreement with Cottage Grove provide that:

⁶⁶ Substitute Fifth Revised Sheet No. 288, Northern Natural Gas Company, FERC Gas Tariff, Fifth Revised Vol. No. 1.

⁶⁷ Order No. 636-A, FERC Stats. & Regs., Regulations Preambles ¶30,950 at 30,562 (1992).

Shipper agrees that if it utilizes Northern Natural's capacity release program to release, on either a temporary or permanent basis, any capacity subject to the rates contained herein at a rate greater than the rate contained herein, Shipper shall receive a demand charge credit only for the amount of the rate agreed to herein.

83. This provision is similar to the capacity release provision Northern Natural includes in its firm transportation agreement amendments, which we discuss above. Consistent with our discussion above, we find this provision may be unlawful and direct Northern Natural to show cause why it is not unlawful.

84. Section 5 of Northern Natural's Rate Schedule FDD agreement amendment with Whitewater and section 4(b) of its FDD agreement amendment with Cottage Grove provide:

In the event that, during the term of the Agreement, Northern Natural offers to its customers any new or alternative form of firm storage or other mutually agreeable service, then Shipper shall have the option, subject to Northern Natural's FERC Gas Tariff and the availability of capacity, of converting its FDD Agreement and the service thereunder to such other service for the remaining term of the FDD service, provided that the total annual charges payable by Shipper for such new service are not less than the annual charges which would have been payable as provided in this Agreement by Shipper for FDD Service. In the event the maximum unit rate for the new service is less than the unit rate paid by Shipper for FDD service, then Shipper's newly converted volumes shall be increased so that the total annual charges remain unchanged. Conversely, in the event the maximum unit rate for the new service exceeds the unit rate paid by Shipper for FDD Service, then Shipper's newly converted volumes shall be reduced so that the total annual charges remain unchanged. Subject to Northern Natural's FERC Gas Tariff and the availability of capacity, Shipper may contract for volumes under the new service in excess of those obtained in the conversion of Shipper's FDD Service, but said incremental volumes will be at the maximum rates for the term of such new service. Subject to Northern Natural's FERC Gas Tariff and the availability of capacity, Shipper may contract for volumes under the new service in excess of those obtained in the conversion of Shipper's FDD service, but said incremental volumes will be at the maximum rates for the term of such new service.

This provision allows a shipper to convert its FDD service to a new or alternative firm storage service over the term of the FDD agreement. Essentially, the shipper would be allowed to terminate its agreement with Northern Natural

and enter into a new agreement for a different firm storage service at a similar economic value. The option for a shipper to convert firm storage service before its contract terminates represents a valuable right to that shipper, since it would provide a shipper with flexibility not offered to other shippers. This provision has the potential to give one shipper a competitive advantage over other shippers. In *ANR Pipeline Company*,⁶⁸ the Commission held that “consistent with Order No. 637, where a material deviation in a non-conforming contract constitutes a negotiated term and condition of service, the Commission would require that the pipeline modify its tariff to offer the negotiated service to all its customers or explain why it can only provide the service to this one customer.” A shipper’s ability to terminate an FDD agreement and convert the service to another firm storage service provides a valuable benefit to that shipper. Therefore, the Commission has held that such a provision presents too much potential for undue discrimination unless it is offered in the pipeline’s tariff pursuant to generally applicable conditions.⁶⁹ Accordingly, we direct Northern Natural to either: (1) remove that provision from its FDD agreement amendments or (2) file a tariff provision proposing the non-discriminatory conditions pursuant to which it proposes to offer such provisions.

IT Service Agreements

85. Northern Natural includes in the instant filing four Rate Schedule TI service agreement amendments, two with Whitewater and two with Cottage Grove. the Commission finds that the TI agreement amendments are integrally related to the firm agreement amendments that the Commission has rejected. That is, the rates for interruptible transportation service in the TI agreement amendments are related to the revenues from interruptible service contemplated in the firm agreement amendments. Consequently, the Commission also rejects the proposed TI agreement amendments.

Filing of Underlying Agreements

86. All that Northern Natural has filed in the instant proceeding are amendments to underlying agreements. These amendments reference and modify the underlying agreements. Northern Natural, however, did not include with its filing the actual underlying agreements. Before the Commission can approve Northern Natural’s two FDD agreement amendments in the instant filing without condition, it must review the underlying agreements to fully understand the contractual arrangements that the amendments are intended to create and to assure they do not contain provisions that are unlawful or contrary to Commission policy. Accordingly, we direct Northern

⁶⁸ 97 FERC ¶ 61,224 at 62,024 (2001).

⁶⁹ *ANR Pipeline Co.*, 97 FERC ¶ 61,223 at 62,017 (2001).

Natural to file the underlying agreements for its two FDD agreement amendments submitted in the instant filing, showing all material deviations from its *pro forma* service agreements in redline.

The Commission orders:

(A) The Commission finds the 1995 Letter Agreements contain material deviations from Northern Naturals' *pro forma* service agreements and are required to be filed with the Commission and made available to the public.

(B) The Commission declares that Paragraphs E(3) and E(4) of the Letter Agreements found to be unlawful in this order are null and void and prohibits Northern Natural from billing or collecting from Cottage Grove and Whitewater any amounts pursuant to those provisions.

(C) The Commission finds other provisions of the 1995 Letter Agreements are unlawful, as discussed in the body of this order.

(D) The Commission requires Northern Natural to revise its 1995 Letter Agreements with Cottage Grove and Whitewater consistent with the discussion in this order and to file the revised provisions along with the contracts to which they relate within 30 days of the date this order issues.

(E) The Commission finds Cottage Grove and Whitewater's request for rehearing is moot.

(F) In Docket No. RP05-70-000, the Commission rejects Northern Natural's proposed agreement amendments for firm transportation service under rate schedules TF and TFX and its proposed agreement amendments for TI service as discussed in the body of this order.

(G) In Docket No. RP05-70-000, the Commission directs Northern Natural to file the underlying agreements for its two FDD agreement amendments submitted in the instant filing within 30 days of the date this order issues.

(H) In Docket No. RP05-70-000, the Commission accepts Eighth Revised Sheet No. 66C subject to Northern Natural's filing a revised Sheet No. 66C within 30 days of the date this order issues that reflects only those agreement amendments the Commission accepts in this order.

(I) Within 30 days of the date this order issues, Northern Natural must show cause why section 47.J(ii); section 58, to the extent it permits section 47.J(ii) to be included in Northern Natural's *pro forma* service agreements; sections 5(a) of the TF and TFX firm transportation agreement amendments in Docket No. RP05-70-000; and section 4 of Northern Natural's FDD agreement amendment with Whitewater and section 4(a) of its FDD agreement amendment with Cottage Grove in Docket No. RP05-70-000 are not unlawful and should not be removed.

(J) In Docket No. RP05-70-000, with respect to section 5 of Northern Natural's Rate Schedule FDD agreement amendment with Whitewater and section 4(b) of its FDD agreement amendment with Cottage Grove, the Commission directs Northern Natural, within 30 days of the date this order issues, to either: (1) remove these provisions from its FDD agreement amendments or (2) file a tariff provision proposing the non-discriminatory conditions pursuant to which it proposes to offer such provisions.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.