

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 29, 2005

In Reply Refer To:
Northern Natural Gas Company
Docket Nos. RP03-604-004
RP05-70-001
RP05-70-002

Northern Natural Gas Company
P.O. Box 3330
Omaha, NE 68103-7200

Attention: Dari Dornan, Senior Counsel

Reference: Service Agreements with Cottage Grove and Whitewater

Ladies and Gentlemen:

1. In 1995, Northern Natural Gas Company (Northern) entered into service agreements with LSP – Cottage Grove, L.P., (Cottage Grove) and LSP – Whitewater Limited Partnership (Whitewater) for transportation and storage services in Northern's Market Area. On September 12, 2003, Cottage Grove and Whitewater filed a complaint against Northern regarding a billing dispute under these agreements. In investigating the complaint, the Commission found that the subject agreements contained certain material deviations from Northern's *pro forma* service agreements that were unlawful and impermissible. The Commission directed Northern to file amended agreements removing the unlawful provisions.

2. Instead of filing the 1995 agreements with the impermissible provisions removed, Northern informed the Commission that it was negotiating new agreements with Cottage Grove and Whitewater. On November 15, 2004, Northern filed its newly negotiated agreements in Docket No. RP05-70-000, which superseded the 1995 agreements. On December 30, 2004, the Commission issued an order¹ rejecting Northern's newly negotiated agreements, determining they still contained unlawful and impermissible provisions. Northern filed for rehearing and clarification of the Commission's

¹ 109 FERC ¶ 61,390 (2004).

December 30, 2004, Order. On April 20, 2005, the Commission issued an Order on Rehearing and Clarification and on Compliance Filing² denying rehearing and directing Northern to file its original 1995 service agreements with Cottage Grove and Whitewater with the unlawful provisions removed.

3. On May 5, 2005, Northern filed its 1995 service agreements with Cottage Grove and Whitewater to comply with the Commission's April 20, 2005 Order. Northern states that it removed from its agreements all impermissible provisions. Northern notes that among the provisions it removed was one allowing Whitewater and Cottage Grove to convert to alternative storage services during the term of the agreements. Northern states that in the April 20, 2005 Order, the Commission found that these provisions presented too much potential for undue discrimination unless Northern agreed to offer it to all shippers as part of its generally applicable tariff. Northern agreed to withdraw these provisions from its agreements and from any subsequent agreements it files in this proceeding.

4. Northern also includes below the signature line of each of its 1995 agreements the following provision: "Northern's execution of this Agreement is subject to the outcome of any appeal of the Commission's April 20 Order and any suit filed by Northern with respect to the 1995 Letter Agreement." Northern argues that the Commission provided Northern with such rights in its April 20, 2005, Order.

5. The Commission noticed Northern's filing on July 21, 2005, allowing for protests to be filed as provided by section 154.210 of the Commission's regulations. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2005), all timely filed motions to intervene and any 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 this proceeding or place additional burdens on existing parties. Cottage Grove and Whitewater filed a protest, as discussed below.

6. Cottage Grove and Whitewater argue that Northern failed to fully comply with the Commission's April 20, 2005 Order, protesting two elements of Northern's revised 1995 agreements. First, they assert the Commission should direct Northern to retain the provision allowing Cottage Grove and Whitewater to switch storage services during the term of the agreements. They argue the Commission never explicitly directed Northern to remove these provisions from its 1995 Letter Agreements, but instead only discussed the provisions in the context of Northern's modified 2004 agreements, which the Commission subsequently rejected. Cottage Grove and Whitewater contend that

² 111 FERC ¶ 61,108 (2005).

Northern overstepped its bounds by unilaterally removing these provisions from its 1995 agreements and that the Commission should direct Northern to re-insert the provisions into the agreements.

7. We agree with Northern that it should remove from its agreements all provisions allowing Cottage Grove and Whitewater to switch storage services during the term of its agreements. Even though the Commission only addressed these provisions in the context of Northern's modified 2004 agreements, the Commission found in its December 20, 2004, and April 20, 2005 Orders that the provisions were unlawful and impermissible, since they provided too much potential for discrimination. When the Commission directed Northern to file its original 1995 agreements, it was the Commission's intent that Northern remove all impermissible provisions from those agreements. Since the Commission determined that provisions allowing shippers to switch storage services during the term of the agreements are impermissible (unless offered to all shippers), Northern was correct in removing them from its 1995 agreements.

8. Further, Cottage Grove and Whitewater protest Northern including in each agreement a reservation making the agreements subject to the outcome of any appeal of "the Commission's April 20 Order and any suit filed by Northern with respect to the 1995 Letter Agreement." They argue that this language is neither needed nor appropriate, since agreements filed with the Commission are always subject to the outcome of further proceedings. They assert that language reserving litigation rights does not belong on the face of agreements. They also argue that inclusion of this language may arguably be construed as a waiver by the shippers of their legal rights to Commission approval of abandonment of service of service under these agreements, or to Commission approval of further revisions to the 1995 agreements. Cottage Grove and Whitewater ask that the Commission direct Northern to remove these provisions from its agreements.

9. We agree with Cottage Grove and Whitewater. In its April 20, 2005 Order, the Commission directed Northern to file its original 1995 agreements with all impermissible provisions removed. By introducing additional provisions into its agreements, Northern

went beyond the Commission's direction and thus failed to comply with directives of the order. Accordingly, we direct Northern to file revised agreements, within 15 days of the date this order issues, removing the subject provisions from its agreements.

By direction of the Commission.

Linda Mitry,
Deputy Secretary.

cc: All Parties

Frank X. Kelly
Steve Stojic
Gallagher, Boland and Meiburger, L.L.P.
818 18th Street, N.W., Suite 800
Washington, D.C. 20006-3520