

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 13, 2005

In Reply Refer To:
Northern Natural Gas Company
Docket Nos. RP05-667-000
RP03-604-004
RP05-70-001
RP05-70-002
RP05-70-003

Northern Natural Gas Company
P.O. Box 3330
Omaha, NE 68103-0330

Attention: Mary Kay Miller, Vice President
Regulatory and Government Affairs

Reference: Uncontested Settlement Agreements with LSP

Ladies and Gentlemen:

1. On September 13, 2005, Northern Natural Gas Company (Northern) filed two uncontested Settlement Agreements to resolve all issues in its complaint proceeding with LSP-Whitewater Limited Partnership and LSP-Cottage Grove, L.P., (collectively, LSP) in Docket No. RP03-604-000, *et al.*, and Docket No. RP05-70-000, *et al.*¹ In addition, Northern filed eight non-conforming service agreements (2005 Amendments) which implement the Settlement Agreements. Northern also filed an Eleventh Revised Sheet No. 66C to its FERC Gas Tariff, Fifth Revised Volume No. 1, to include the 2005 Amendments on its list of non-conforming agreements. Northern requests the tariff sheet become effective October 14, 2005.

¹ LSP filed the complaint on September 12, 2003, to address certain rates Northern charged for transportation services. During the complaint proceeding, the Commission determined that the subject agreements involved in the complaint contained certain impermissible provisions and directed Northern to file revised agreements with those provisions removed (112 FERC ¶ 61, 233 (2005)).

2. Northern files the Settlement Agreements to modify and supercede the underlying 1995 Letter Agreements it filed with the Commission on May 5, 2005, in Docket No. RP03-604-004, *et al.* On August 29, 2005, the Commission determined the 1995 Letter Agreements contained impermissible provisions and directed Northern to revise the agreements with the impermissible provisions removed.² Northern states the subject Settlement Agreements are the result of settlement negotiations between parties and would resolve all outstanding issues in the complaint proceedings in Docket No. RP03-604-000, *et al.*, in Docket No. RP05-70-000, *et al.*, and in Northern's pending court appeal.³

3. In general, each of the Settlement Agreements: (1) provides that Northern will execute amendments to its service agreements with the shipper in question consistent with the settlement; (2) provides a discounted rate between Northern and the shipper for firm transportation service, as adjusted for inflation. That rate is \$6.1634 per Dt per month for Rate Schedule TF service with Cottage Grove, and \$5.7176 per Dt per month for Rate Schedule TFX summer service with Whitewater (\$10.1195 per Dt per month for winter service); (3) establishes the TI rate as the minimum Field Area Rate Schedule TI rate set forth in Northern's tariff, and implements caps for the respective TI rates; (4) provides that shippers owe no amounts to Northern for the period ending December 31, 2001; (5) provides that Northern's previous invoices of \$590,488 to Cottage Grove and \$927,038 to Whitewater pursuant to the subject complaint proceedings are null and void; and, (6) sets forth new payment schedules for Cottage Grove to reimburse \$315,568 to Northern and Whitewater to reimburse \$325,083 to Northern.

4. Further, each of the Settlement Agreements: (1) sets forth certain conditions for Commission approval of the Settlement Agreements, which we discuss below; (2) requires the shipper to withdraw its complaint against Northern once conditions precedent to the effectiveness of the amendments are satisfied; (3) requires Northern to withdraw its appeals pending with the D.C. Court of Appeals upon termination of the proceedings in Docket Nos. RP03-604-000 and RP05-70-000; and, (4) provides that the settlement will be null and void should the Commission modify the Settlement Agreements or amendments "in any manner including a determination that the rates are negotiated rates or that the Amendments are non-conforming, unless the Parties agree to file the Amendments as non-conforming service agreements and such non-conforming service agreements are accepted by the Commission without modification and without the requirement that Northern modify its FERC Gas Tariff in any manner."

² 112 FERC ¶ 61,233 (2005).

³ *Northern Natural Gas Company v. FERC*, No. 05-1208 (D.C. Cir.).

5. Northern's 2005 Amendments include four service agreement amendments with Whitewater: a Rate Schedule TFX (modified firm transportation) amendment, a Rate Schedule FDD (firm deferred delivery) amendment, and two Rate Schedule TI (interruptible transportation) amendments. The 2005 Amendments also include four service agreement amendments with Cottage Grove -- a Rate Schedule TF (firm transportation) amendment, a Rate Schedule FDD amendment, and two Rate Schedule TI amendments.

6. Northern states the 2005 Amendments contain no provisions the Commission has previously found unlawful. Northern identifies one provision as materially deviating from its *pro forma* amendment.⁴ Section 4 of the Rate Schedule TFX amendment with Whitewater and Rate Schedule TF amendment with Cottage Grove provides that the effectiveness of that service agreement is subject to: (1) Commission approval of the companion Rate Schedule FDD and Rate Schedule TI agreements for each shipper as discounted rate agreements; (2) parties' receipt of certain certifications, approvals, and consents pertaining to their credit and financing agreements; and, (3) Commission approval of the subject agreements without modification or conditions that are materially adverse or unacceptable to Northern or the shipper. Northern notes the Commission already found a similar provision to be a permissible material deviation in its December 30, 2004, Order in Docket No. RP03-604-000, *et al.*⁵

7. The Commission noticed Northern's filing on September 16, 2005, allowing for protests as provided by section 154.210 of the Commission's regulations. Pursuant to Rule 214, 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. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. No party filed a protest or adverse comments. LSP filed comments supporting the agreements.

8. Although Northern did not expressly file the two Settlement Agreements pursuant to the Commission's settlement rules (18 C.F.R. § 385.602 (2005)), the Commission views Northern's filing as an uncontested settlement of the issues pending before the Commission in Northern's complaint proceedings in Docket No. RP03-604-000, *et al.*, and Docket No. RP05-70-000, *et al.* Therefore, the Commission will treat Northern's Settlement Agreements as an uncontested settlement pursuant to section 385.602(g) of the Commission's Rules of Practice and Procedure.⁶

⁴ Sheet Nos. 402-405 of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1.

⁵ 109 FERC ¶ 61,390 at P74 and 75 (2004).

⁶ 18 C.F.R. § 385.602 (2005).

9. We agree with Northern that section 4 of the Rate Schedule TFX amendment with Whitewater and Rate Schedule TF amendment with Cottage Grove, placing certain conditions on the effectiveness of the Settlement Agreements, represents a material deviation since that provision is not incorporated into Northern's *pro forma* amendment. Based on our review of the Settlement Agreements and underlying 2005 Amendments, however, the Commission has identified one additional provision that does not conform to Northern's *pro forma* service agreement and thus constitutes a material deviation. Section 1(a) of Northern's Rate Schedule TFX amendment with Whitewater provides that "Shipper shall have the option, to be exercised not less than one (1) year prior to the expiration of the primary term, to extend the term of the Agreement for an additional ten (10) year period. The rates payable by Shipper during such ten (10) year extension period shall be the maximum tariff rates set forth in Northern's FERC Gas Tariff." Northern includes a similar provision as section 1(a) of its Rate Schedule TF amendment with Cottage Grove. Northern does not provide shippers with such an extension option in its TF and TFX rate schedules or its General Terms and Conditions (GT&C).

10. The Commission previously held that material deviations fall into two general categories: (1) those that must be prohibited because they present a significant potential for undue discrimination among shippers; and, (2) those that can be permitted without substantial risk of undue discrimination.⁷ The Commission reviewed Northern's proposed 2005 Amendments to determine the nature and effect of the two material deviations we identify above. We find that section 4 of the Rate Schedules TF and TFX amendments, placing certain conditions on the effectiveness of the service agreements, does not pose a risk of undue discrimination or a negative impact upon other shippers, and does not affect the quality of service that Northern provides. As Northern points out, the Commission has previously approved such provisions allowing renegotiation of agreements if the Commission modifies particular provisions. Accordingly, we find this material deviation to be permissible.

11. However, the Commission finds that the section 1(a) provisions allowing the two shippers to extend their agreements for ten years at the maximum rate with one-year's notice are impermissible material deviations. The Commission has only permitted a pipeline to negotiate provisions giving shippers the right to extend their contracts if its tariff contains a provision offering to negotiate such provisions on a not unduly discriminatory basis.⁸ Northern's tariff does not currently include any such provision. Accordingly, we direct Northern to either remove the agreement extension provision

⁷ 110 FERC ¶ 61,321 at 62,247 (2005).

⁸ *Saltville Gas Storage Company, L.L.C.*, 110 FERC ¶ 61,324 at 62,263 (2005), finding a similar contract extension provision in a service agreement to be an impermissible term and condition of service. See *Texas Eastern Transmission, L.P.*, 109 FERC ¶ 61,145 at P6 (2004), concerning a contractual right of first refusal.

from its amendments, or in the alternative, incorporate language into its generally applicable tariff permitting it to negotiate evergreen provision options with all shippers on a not unduly discriminatory basis. We direct Northern to make its filing within 15 days of the date this order issues.

12. The Commission finds that Northern's Settlement Agreements constitute an uncontested settlement of the issues in the complaint proceedings in Docket No. RP05-667-000, Docket No. RP03-604-000, *et al.*, and Docket No. RP05-70-000, *et al.*, that is fair and reasonable and in the public interest, except as discussed above. Accordingly, we approve the Settlement Agreements and 2005 Amendments, subject to the above condition. Further, we accept Northern's Eleventh Revised Sheet No. 66C, effective October 14, 2005, as proposed. The Commission's approval of these settlements does not constitute a precedent regarding any principle or issue in this proceeding.

By direction of the Commission.

Magalie R. Salas,
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