FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 3, 2005

In Reply Refer To:
Northern Natural Gas Company
Docket No. RP06-2-000

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

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

Reference: Non-Conforming Service Agreement with Northern States Power

Ladies and Gentlemen:

1. On October 5, 2005, Northern Natural Gas Company (Northern) filed a non-conforming service agreement for service with Northern States Power Company-Generation (NSP). Under the agreement, Northern would transport certain quantities for NSP, as set forth in Appendix A of the agreement, under Rate Schedule TFX[1] for the months of April through October. Northern proposes the agreement become effective on November 1, 2005, and terminate October 31, 2010. Northern states that NSP will use this agreement to serve multiple power generating plants in Northern's Operational Zone EF.

2. Northern identifies one provision of its agreement as being non-conforming. This provision involves how NSP nominates to an Operational Zone. Under section 28 of Northern's currently effective General Terms and Conditions (GT&C), when a shipper has multiple delivery points within one of Northern's established Operational Zones,[2] that shipper may combine the delivery points for nomination purposes. The shipper may then make one nomination for the entire Operational Zone instead of making nominations to

[1] TFX is a modified firm transportation service.

[2] Northern currently has three Operational Zones, all located within the Market Area, and delineated on Sheet 26 of its tariff.

individual points within the zone. Nominated quantities to the Operational Zone cannot exceed the collective entitlements of the individual delivery points within the Operational Zone. Further, Northern's tariff requires its firm shippers to take daily volumes at their delivery points as close to daily scheduled volumes as possible. If the shipper does not conform to this requirement, it is subject to a charge for variances from scheduled quantities. This charge is called the Daily Delivery Variance Charge (DDVC).[3] If a shipper has combined its delivery points into an Operational Zone, and makes one nomination for the Operational Zone, then any DDVC charges are based on the difference between the scheduled deliveries for the Operational Zone and actual deliveries to the zone.

3. NSP serves a number of power plants located at different delivery points in Northern's Operational Zone EF. Northern states that it has requested NSP to provide nominations for each individual power plant delivery point, rather than make one general nomination to the Operational Zone as section 28 of Northern's tariff would ordinarily permit. Northern asserts that, for operational purposes, it needs to track NSP's nominations at the point level rather than the zone level, but does not specify its operational concerns. Northern has agreed, however, that it will aggregate deliveries for all power plants for purposes of calculating any DDVCs NSP might incur. This agreement is set forth in non-conforming sections 4.a and 4.b of NSP's TFX agreement. Under section 4.a, Northern would aggregate volumes delivered to all of NSP's individual delivery points within the Operational Zone when calculating DDVCs and imbalance penalties, consistent with section 28 of its tariff. Also, section 4.b of the non-conforming provision provides that, should the Commission determine the agreement contains impermissible negotiated terms and conditions or require Northern to include any provision into its generally applicable tariff, section 4.a would become null and void. Further, should the Commission direct Northern to revise its tariff, Northern may choose, at its sole discretion, whether to make the necessary tariff change. Northern contends that, because of the unique circumstances surrounding the subject agreement, the Commission should permit the non-conforming provision.

4. Along with the agreement, Northern filed a Twelfth Revised Sheet No. 66C to its FERC Gas Tariff, Fifth Revised Volume No. 1, to include the NSP agreement on its list of non-conforming service agreements. Northern requests a November 1, 2005, effective date for the tariff sheet.

[3] Northern's DDVC provisions are set forth in section 48 of its GT&C.

5. The Commission noticed Northern's filing on October 6, 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.

6. Virginia Power Energy Marketing, Inc., (VPEM) protests Northern's non-conforming provision. VPEM asserts the Commission should reject the provision since implementing it may lead to inequitable and preferential treatment. It also argues that Northern has failed to show that implementing the non-conforming provision would not result in system impairment for other shippers. Should the Commission accept the non-conforming provision, VPEM recommends the Commission make the acceptance conditioned upon Northern making equivalent terms and conditions available to all similarly situated shippers through its generally applicable tariff. VPEM, however, warns that Northern would have to carefully craft any "generally applicable" tariff language. It argues that Northern is essentially allowing NSP to waive certain deterrent charges and penalties. According to VPEM, it would be insufficient to allow all Operational Zone shippers consenting to individual meter nominations to retain pooling benefits, since this would merely expand the class of shippers receiving undue preference. Instead, VPEM recommends that, when Northern waives DDVCs and imbalance penalties for NSP, it should waive those charges and penalties for all shippers.

7. Northern filed an answer to VPEM's protest. Generally, the Commission does not permit answers to protests (see 18 C.F.R. § 385.213 (2004)). However, the Commission will accept Northern's answer in order to fully consider the proposal. First, Northern states that, contrary to VPEM's assertion, implementing its proposed provision would not affect system integrity. It argues that, with NSP agreeing to provide nominations to individual points, the more specific nomination information Northern receives will increase its ability to maintain system integrity. Also, regarding VPEM's recommendation that the Commission direct Northern to let all shippers waive DDVCs and imbalance penalties when Northern is waiving them for NSP, Northern states that offering its proposal to all shippers on its system could expose Northern to major system operational problems.

8. Since Northern does not offer the provision in question as part of its generally applicable tariff, the provision represents a material deviation. 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. One category of material deviation that is generally not permitted is

negotiated terms and conditions of service.[4] We find that Northern's proposal requiring NSP to nominate to individual delivery points within its Operational Zone, but allowing Northern to aggregate deliveries to the entire Operational Zone before calculating DDVCs and imbalance penalties, is clearly a term and conditions of service, since it involves the method by which NSP schedules service and what conduct will cause it to incur penalties. As such, the non-conforming provision could present a significant potential for undue discrimination among shippers. For instance, requiring NSP to nominate to individual delivery points within its Operational Zone places an additional burden on NSP not required upon other Operational Zone shippers. Further, the provision could insulate NSP from having to pay certain variance and imbalance charges that other shippers who nominate to individual points would have to pay. Since this provision could result in undue discrimination or preferential treatment among shippers, we find this provision to be an impermissible material deviation.

9. As a result, and consistent with Commission action in *ANR*,[5] we conditionally accept Northern's proposed non-conforming agreement subject to Northern choosing one of two courses of action. First, it may remove the provision from its agreement. This would eliminate any potential for undue discrimination among shippers and result in a conforming agreement. Alternatively, Northern may propose a generally applicable tariff provision proposing the non-discriminatory conditions under which it will offer such provisions. To the extent Northern desires to condition the offering of such provisions to address operational concerns, it must do so on a not unduly discriminatory basis. Therefore, Northern would have to revise section 28 of its GT&C to clearly delineate for what class of customers[6] and under what operational conditions it would require Operational Zone shippers to nominate to individual delivery points within the zone, while nevertheless aggregating deliveries for purposes of calculating DDVCs and imbalance penalties. Northern must show that it could implement the provision on a not unduly discriminatory basis. It must also fully support its proposal, showing that implementing such a provision would be operationally feasible, *i.e.*, would not undermine system integrity. We direct Northern to make its filing within 21 days of the date this

[4] *Columbia Gas Transmission Corp*., 97 FERC ¶ 61,221 at 62,003 (2001).

[5] *ANR Pipeline Co*., 97 FERC ¶ 61,224 at 62,026 (2001).

[6] *See Columbia Gulf Transmission Co*., 105 FERC ¶ 61,351 (2003), where the Commission approved the pipeline's proposal to incorporate into its tariff contract reduction rights for certain customer classes.

order issues. Further, we reject Northern's Twelfth Revised Sheet No. 66C as moot, since whatever course of action Northern chooses will result in its agreement being conforming.

By direction of the Commission.

Magalie R. Salas,
Secretary.

cc: All Parties

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