UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

November 3, 2005

In Reply Refer To:
Northern Border Pipeline Company
Docket No. RP06-11-000

Northern Border Pipeline Company
P.O. Box 542500
Omaha, NE 68154-8500

Attention: Raymond D. Neppl, Vice President
Regulatory Affairs & Market Services

Reference: New Daily Index Price Formula to Calculate OFO Penalty

Ladies and Gentlemen:

1. On October 7, 2005, Northern Border Pipeline Company (Northern Border) filed Second Revised Sheet No. 260D to its FERC Gas Tariff, First Revised Volume No. 1 to amend subsection 10.63(h) of its General Terms and Conditions (GT&C) to change its penalty for violating an Operational Flow Order (OFO) from a fixed price to a formula based on a daily indexed price. We will accept the referenced tariff sheet to become effective November 6, 2005, as requested.

2. Notice of Northern Border's filing was issued on October 12, 2005. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2005). 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. On October 19, 2005, the Process Gas Consumers Group (PGC) filed a protest.

3. Currently, subsection 10.63(h) of Northern Border's GT&C provides that a shipper is subject to an OFO penalty of $15.00 for each dekatherm (Dth) of gas by which it deviates from the requirements of the OFO. Northern Border states that, due to recent events involving increased natural gas prices, it is concerned that the existing $15.00 per Dth OFO penalty may not provide a sufficient incentive for shippers to comply with the

OFO in order to preserve the integrity of its system. Northern Border also notes that, with current NYMEX prices at Henry Hub averaging "around $14.224 per Dth for the month of November, 2005 and $15.119 for the peak month of January, 2006,"[1] natural gas prices could reach and exceed $15.00 per Dth on a peak day. Northern Border asserts that if daily cash prices reach or exceed the current $15.00 per Dth penalty level along major points on its system, Northern Border's line pack could be severely compromised since there would be little incentive for shippers to remain in balance.

4. To avoid this situation, Northern Border proposes to change the OFO penalty in subsection 10.63(h) of its GT&C from the existing fixed rate charge of $15.00 per Dth to a formula, based on a daily index price that is three times the midpoint price for Chicago city-gates published in Platts *Gas Daily* for the flow day on which the OFO is issued. Specifically, Northern Border's proposed subsection 10.63(h) provides:

> If a Shipper fails to comply with an OFO it will be subject to a daily Failure to Comply OFO Charge for each Dekatherm of gas by which it deviated from the requirements of the OFO. The daily Failure to Comply OFO Charge shall be computed based on a price per Dekathem equal to three times the midpoint of the range of prices reported for "Chicago city-gates" as published in the Daily price survey in Platts Gas Daily for the flow day on which the OFO is issued.

5. Northern Border states that it will incur no financial gains from its proposed tariff change since subsection 10.63(h)(ii) of its tariff requires Northern Border to credit its penalty revenues.

6. PGC protests Northern Border's filing, contending that Northern Border's proposed OFO penalty is not sufficiently tailored and could result in unduly punitive penalties. PGC recognizes the importance of ensuring system integrity, and makes two proposals that it argues would ensure such integrity by deterring OFO violations and by preventing commodity arbitrage while also avoiding excessive or unduly punitive OFO penalties. Specifically, PGC proposes that the OFO penalty equal the mid point price for Chicago city-gates published in Platts *Gas Daily* for the flow day on which the OFO is issued, plus either (i) twenty percent of that mid-point price, or (ii) a flat fee, such as twenty dollars.

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[1] *See* Northern Border Transmittal Letter at 2.

7. PCG points out that Northern Border, in support of its OFO proposal, cites *Paiute Pipeline Company*[2] as an example of the Commission supporting the use of an OFO penalty in an amount two times to four times an index price, but PGC attempts to discredit this comparison on the grounds that *Paiute* imposes these penalties while also providing for tolerance bands while Northern Border does not.

8. By definition, an OFO penalty applies only during critical periods. Therefore, the penalty level must sufficiently deter conduct that would threaten system integrity. The proposed penalty in Northern Border's filing meets this standard. Contrary to PGC's assertion that Northern Border's proposed OFO penalty is excessive, we find that Northern Border's proposed OFO penalty is consistent with OFO penalties the Commission recently approved in *Viking Gas Transmission Company*[3] and *Midwestern Gas Transmission Company*.[4] While the pipeline in *Paiute* included in its OFO penalty proposal a tolerance band within which no penalty would be imposed, the Commission has not required OFO penalty provisions to include such tolerance bands. For example, in *Northwest Pipeline Corporation*,[5] the Commission approved a tariff containing an OFO penalty equal to the greater of $10.00/Dth or four times the highest absolute price reflected in the local daily price survey with no tolerance bands.

9. In the Commission's *Order Regarding Future Monitoring of Voluntary Price Formation, Use of Price Indices in Jurisdictional Tariffs, and Closing Certain Tariff Dockets* issued on November 19, 2004, in Docket No. PL03-3-005,[6] the Commission stated that if the pipeline uses an index provided by an index developer that meets all or substantially all of the standards of the *Policy Statement on Natural Gas and Electric Price Indices*[7] and the index location meets the minimum average criteria for liquidity, the Commission will apply a presumption that the use of the index price location will result in just and reasonable charges. Northern Border meets the first requirement by

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[2] 111 FERC ¶ 61,107 (2005).

[3] 112 FERC ¶ 61,098 (2005).

[4] 112 FERC ¶ 61,345 (2005).

[5] 100 FERC ¶ 61,347 P 77 (2002).

[6] *Price Discovery in Natural Gas and Electric Markets,* 109 FERC ¶ 61,184 (2004).

[7] 104 FERC ¶ 61,121 (2003).

using price indices published by Platts *Gas Daily*, an industry publisher that the Commission found satisfied the minimum requirements. Northern Border has also met the second requirement by providing data demonstrating that the selected index points meet the minimum liquidity standard for daily volumes traded of at least 25,000 MMBtus per day on average in a 90 day review period. Accordingly, the Commission accepts the revised tariff sheet to become effective November 6, 2005, as requested.

By direction of the Commission.

Magalie R. Salas,
Secretary.