UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northern Natural Gas Company Docket No. RP06-109-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO REFUND AND CONDITIONS

(Issued December 22, 2005)

1. On November 23, 2006, Northern Natural Gas Company (Northern) filed an Eleventh Revised Sheet No. 259 to its FERC Gas Tariff, Fifth Revised Volume No. 1, to revise its nomination provisions set forth in section 28 of its General Terms and Conditions (GT&C). Under its proposal, Northern would permit certain local distribution companies (LDC) with multiple power plants in an established Operational Zone to aggregate volumes for purposes of calculating Daily Delivery Variance Charges (DDVC) and imbalance penalties. However, Northern would require the shipper to nominate to the individual power plants within the Operational Zone instead of making one general nomination to the Operational Zone. Northern asserts that shippers must nominate to the individual power plants within the Operational Zone to maintain system integrity. Northern requests a December 24, 2005, effective date for its tariff sheet.

2. For the reasons set forth below, the Commission accepts and suspends Northern's proposed tariff sheet to become effective on the earlier of May 24, 2006, or a date specified in a further order of the Commission, subject to refund, conditions, and further review. Further, we direct Northern to file the information requested below within 21 days of the date this order issues. We will provide parties with 15 days to file reply comments.

Background

3. Northern's currently effective section 28 requires that shippers make nominations "by path, *i.e.*, specific receipt point to specific delivery point." However, section 28 also provides, "For nomination purposes, a Point of Delivery in the Market Area may be defined as a currently established Operational Zone applicable for deliveries to the facilities of a single LDC."[1] Thus, if a particular LDC has multiple delivery points in an

---

[1] Northern currently has three Operational Zones, all located within the Market Area.

Operational Zone where it may receive gas onto its facilities, the LDC (and other shippers) may treat all those delivery points as a single delivery point for purposes of nominating service on Northern, instead of making separate nominations to each of the LDC's individual delivery 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, the DDVC.[2] If, as section 28 permits, a shipper makes one nomination for service to more than one of an LDC's delivery points in an Operational Zone, then any DDVC or imbalance charges are based on the difference between the scheduled deliveries for the entire Operational Zone and actual deliveries to the zone, and not to individual deliveries within the Operational Zone.

4. On October 5, 2005, Northern filed a non-conforming Rate Schedule TFX service agreement in Docket No. RP06-2-000 for service with Northern States Power Company – Generation (NSP). NSP is an LDC providing gas distribution service in Minnesota, North Dakota, and South Dakota. It also owns gas-fired power plants in the same area.[3] NSP entered into the subject non-conforming Rate Schedule TFX service agreement with Northern to ship gas not only to its own power plants, but also to power plants owned by third parties with which NSP has "tolling arrangements." NSP uses tolling arrangements "at locations…where NSP owns no delivery facilities but has contracted to provide natural gas as generation fuel in exchange for the plant's electrical output."[4]

5. In its transmittal letter in Docket No. RP06-2-000, Northern stated that section 28 of its tariff would permit NSP to make a single nomination to all its power plant delivery points where it owns facilities in Operational Zone EF. Northern's tariff would require Northern to aggregate NSP's deliveries to those power plant delivery points for the purposes of calculating DDVCs and imbalances. However, Northern stated that for operational purposes, it needs to track deliveries to the power plants at the point level, rather than the Operational Zone level. Therefore, Northern asked NSP to provide nominations for each individual power plant delivery point, including those where NSP owned facilities. Northern stated that, in return, NSP requested that, for purposes of calculating DDVC and imbalance penalties, its deliveries to all power plants be aggregated, including deliveries to the power plants owned by third parties where NSP did not own any facilities. Northern and NSP accordingly included a non-conforming provision in the subject service agreement providing that, to the extent NSP makes

[2] Northern's DDVC provisions are found in section 48 of its GT&C.

[3] Northern uses the designation NSP-Generation to group NSP's power plant markets in Operational Zone EF. The legal name of the company is NSP-Minnesota.

[4] Northern's Transmittal Letter in Docket No. RP06-2-000 at 2, fn. 2.

separate nominations for each power plant delivery point, Northern would aggregate all power point deliveries, including those to facilities NSP did not own, for purposes of calculating DDVC and imbalance penalties.

6. In its November 3, 2005, letter order,[5] the Commission found this provision to be an impermissible term and condition of service that could present a significant potential for undue discrimination among shippers. Accordingly, the Commission directed Northern to either remove the provision from the NPS agreement, or include the provision as part of its generally applicable tariff and offer the provision to all similarly situated shippers in a non-discriminatory manner. In the subject filing, Northern proposes to include this provision as part of its generally applicable tariff.

Details of Filing

7. Northern proposes two changes to its nomination procedures. First, it proposes to revise the provisions in section 28 defining the term "Point of Delivery in the Market Area" for nomination purposes. As revised by the italicized language below, section 28 would state that such a point of delivery "may be defined as a currently established Operational Zone applicable for deliveries to the facilities of a single LDC, *as well as an LDC's delivery points serving an electric generation plant where the LDC has a tolling arrangement.*"

8. Second, Northern proposes to add the following language to section 28 of its GT&C:

> *An LDC may aggregate delivery points that serve power plants in an operational zone for DDVC and imbalance purposes; provided, however, the shipper must nominate such delivery points on an individual basis. Shipper must use commercially reasonable efforts to provide one-hour notification prior to flow to Northern's Gas Control Department of expected volumes and burn rate.*

9. It appears that under Northern's proposal, shippers nominating to more than one power plant within an Operational Zone must tender separate nominations for deliveries to each power plant in that zone, including deliveries to facilities owned by the same LDC. This contrasts with Northern's existing tariff provision which permits shippers to make a single nomination to the general Operational Zone for deliveries to more than one power plant within that zone, as long as deliveries are to facilities owned by the same LDC. Northern explains that power plants represent a significant load on its system, and plants may operate an intermittent basis. Therefore, to ensure system integrity, it needs

[5] 113 FERC ¶ 61,128 (2005).

to know the specific nominations to each power plant within an Operational Zone. Northern adds that this requirement also increases the accuracy of tracking power plant generation activities.

10. However, Northern's proposal would also somewhat broaden the deliveries which may be aggregated for purposes of calculating DDVC and imbalance penalties. Under the existing tariff, Northern only aggregates deliveries nominated to facilities in an Operational Zone which are owned by the same LDC. As revised, the tariff would permit aggregation of deliveries to a power plant with which the LDC has a "tolling arrangement," thus not requiring the LDC to own the facilities into which Northern delivers the gas or the power plant.

Notice and Protests

11. The Commission noticed Northern's filing on November 30, 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 (2005), all timely filed motions to intervene are granted. The Northern States Power Company – Minnesota filed comments supporting Northern's proposal. Virginia Power Energy Marketing, Inc. (VPEM) filed a protest, CenterPoint Energy Resources Corp. (CenterPoint) filed a conditional protest, and Power Generators Group (PGG) filed a late motion to intervene and protest on December 12, 2005.[6] Northern and NSP filed answers[7] opposing PGG's late motion to intervene and protest. Northern and NSP argue that PGG has failed to offer good cause to accept its late intervention and protest. Granting the late intervention of PGG and accepting the protest for filing at this early stage of the proceeding will not disrupt the proceedings or place undue additional burdens or prejudice on the existing parties. Therefore, for good cause shown, the Commission will grant the late motion to intervene by PGG and accept the protest for filing. In addition, the Commission grants any other late filed motions to intervene filed before the issuance date of this order.

12. Protesters raise numerous concerns with Northern's proposal. VPEM argues that Northern's proposal is unduly discriminatory, since Northern will continue to assess disciplinary DDVC charges to other shippers that may potentially pose operational challenges. VPEM also notes that in its November 3, 2005, Order, the Commission held that, should Northern choose to file a generally applicable tariff provision, it would have to fully support the proposal and show that implementing the provision would be

[6] PGG intervenes on behalf of its members, the Lincoln Electric System (LES) and Missouri River Energy Services (MRES).

[7] The Commission's Rules of Practice and Procedure do not permit answers to either protests or answers (18 C.F.R. § 385.213(a)(2)(2005)). However, the Commission finds good cause to admit Northern and NSP's answers since they will not delay the proceeding, will assist the Commission in understanding the issues raised, and will insure a complete record on which the Commission may act.

operational feasible and would not undermine system integrity. VPEM argues that Northern fails to demonstrate that its proposal does not undermine system integrity. VPEM asserts the fundamental purpose of the DDVC mechanism is to deter shipper conduct that may be detrimental to system integrity, and if this is so, then the waiver of such charges undermines system integrity.

13. CenterPoint filed a conditional protest, requesting three clarifications to Northern's proposal. First, it requests that Northern define a "tolling arrangement" in its tariff. It argues that Northern's discussion of a "tolling arrangement" in footnote No. 1 of its transmittal includes a reference to NSP, and wants to assure that this service is not restricted only to NSP. Second, CenterPoint contends that Northern's proposed tariff language appears to require *all* parties serving power plants to individually nominate the plants' loads. CenterPoint argues this provision deviates from Northern's current tariff requirements, and does not believe Northern should require CenterPoint to separately nominate individual loads (power plant and other loads) behind its facilities. CenterPoint requests that Northern revise its tariff to explicitly state that this service is optional, and does not *require* an LDC to separately nominate individual loads behind its facilities. Third, CenterPoint contends that when a shipper uses the subject service, the three parties to the arrangement – the power plant, the party supplying gas to the plant, and the party behind whose facilities the plant lies – should execute an end-user agreement to assure that Northern accurately attributes imbalance volumes to the proper parties.

14. Finally, PGG asserts that Northern's proposal discriminates against power plants not served and/or owned by LDCs. It explains that even though its members -- the Lincoln Electric System and Missouri River Energy Services -- are active members of the Midwest Independent System Operator (MISO) and Mid-continent Area Power Pool (MAPP) and participants in the wholesale power market, they are not eligible to use Northern's proposed service since the service is available only to LDCs. PGG contends that Northern's proposal benefits power plant owners through increased system flexibility and lower operating costs. It argues that power plants it owns are similarly situated to power plants LDCs own, and thus Northern should afford them the same benefits. PGG also argues that the proposal gives LDC-served power plants an unjust commercial and operational advantage, which could have anti-competitive consequences. PGG adds that NSP's power plants offer nothing distinctive or unusual that warrants Northern offering NSP such extensive benefits that it does not offer PGG. It recommends the Commission direct Northern to amend its proposal to offer this provision to all power plant owners.

15. PGG also expresses concerns over Northern's proposed notification period. Under Northern's proposal, a shipper "must use commercially reasonable efforts to provide one-hour notification prior to flow to Northern's Gas Control Department of expected volumes and burn rate." PGG argues this notification period ignores the reality of the power market, where a power generator will not have an hour to respond to system

emergencies such as unplanned generator shutdowns. PGG suggests that Northern revise its proposal to require that a shipper notify Northern as soon as possible, but in no event longer than one hour, from a change in the expected operation of the power generators.

16. In their answers, Northern and NSP argue that PGG's protest raises issues that are outside of the scope of this proceeding. They argue that PGG's challenges are directed to Northern's existing tariff provision, which permits operational zone nominations for deliveries to power plants served by LDCs, but not for deliveries to power plants directly connected to Northern. They further argue that under Northern's proposal, LDCs cannot aggregate power point delivery points outside of their operational zone.

Discussion

17. The Commission accepts and suspends Northern's filing, subject to refund, conditions, and further review, to become effective on the earlier of May 24, 2006, or a date specified in a further order of the Commission. As discussed below, the Commission requires further information to fully evaluate Northern's proposal and to address the issues raised in the protests, including whether the proposal may be unduly discriminatory.

18. It appears that the revised tariff language in Northern's proposal would have the effect of requiring all shippers seeking to nominate deliveries to a point that serves a power plant to make nominations to that point on an individual basis.[8] That would be true whether or not the deliveries at that point are made to facilities owned by an LDC. In this respect, Northern's proposal appears to treat all power plants in the same manner. However, Northern proposes to allow deliveries to some power plants to be aggregated for purposes of calculating DDVC and imbalance penalties, while excluding other plants from this benefit. Specifically, Northern's proposal allows aggregation where deliveries are made to several power plants which are connected to Northern by facilities owned by the same LDC or have a tolling arrangement with that LDC. However, power plants with no such tie to an LDC do not receive this benefit. In order to address the concerns raised by protesters about this proposal, we direct Northern to file additional information.

19. Specifically, Northern should: (1) describe its proposal in more detail and explain how the proposal deviates from its currently effective nomination procedures for nominations within Operational Zones; (2) clarify whether its proposal would in fact require all nominations to delivery points serving power plants to be made on an individual delivery point basis regardless of the circumstances, and the operational basis for any such requirement; (3) explain the reasons for its proposal concerning the

[8] In its answer, Northern states that its proposal would not require LDCs to nominate power plant delivery points separately. However, Northern also states, if LDCs failed to nominate their power point deliveries separately, their deliveries at those points could not be aggregated for the purposes of calculating DDVC and imbalance penalties.

aggregation of deliveries to power plants for purposes of calculating DDVC and imbalance charges; (4) provide a detailed explanation of any operational basis for its proposal to calculate DDVC and imbalance penalties differently depending on whether or not deliveries are made to power plants which are connected to Northern by facilities owned by the same LDC or have a tolling arrangement with that LDC; and (5) explain any other reason for finding that this aspect of Northern's proposal is not unduly discriminatory. In addition, we direct Northern to address all other concerns that the protesters raise, including, but not limited to: (1) the definition of "tolling arrangement," and whether the definition should be included in the tariff; (2) the basis for proposing a one-hour notification period; and, (3) the need for new end user agreements. We direct Northern file this information within 21 days of the date this order issues. We will provide parties 15 days to file reply comments.

Suspension

20. Based on a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept Northern's Eleventh Revised Sheet No. 259 for filing and suspend its effectiveness for the period set forth below, subject to refund and the conditions in this order.

21. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.[9] It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.[10] Such circumstances do not exist here. Accordingly, the Commission will exercise its discretion to suspend the tariff sheet for the maximum period and permit the tariff sheet to take effect the earlier of May 24, 2006, or a date specified in a further order of the Commission, subject to refund and the conditions set forth in the body of this order and the ordering paragraphs below.

The Commission orders:

(A) Northern's Eleventh Revised Sheet No. 259 is accepted and suspended, subject to refund and conditions and further review, to become effective on the earlier of May 24, 2006, or a date specified in a further order of the Commission.

---

[9] *See Great Lakes Gas Transmission Company*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

[10] *See Valley Gas Transmission, Inc*., 12 FERC ¶ 61,197 (1980) (one-day suspension).

(B) Northern is directed to make the appropriate information filing discussed above within 21 days of the date this order issues.

(C) Parties may file comments within 15 days from the date Northern files its additional information.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.