

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Northern Natural Gas Company

Docket No. RP07-343-001

ORDER DENYING REHEARING

(Issued July 30, 2007)

1. On May 7, 2007, Northern States Power Company (Minnesota) (NSP-MN) and Northern States Power Company (Wisconsin) (NSP-WI) (jointly, the NSP Companies) filed a request for rehearing of the Commission's April 6, 2007, Order¹ in the captioned proceeding.² The April 6 Order accepted Northern Natural Gas Company's (Northern) revised Rate Schedule Firm Deferred Delivery (FDD) tariff provisions and denied Northern's request for waiver of its pre-existing tariff provisions. In reaching its decision, the Commission found that Northern's new tariff provisions would increase flexibility of FDD shippers on a not unduly discriminatory basis. However, with regard to Northern's waiver request, there was no cause to grant waiver of the existing tariff since Northern's existing tariff provisions were reasonable and were applied in a not unduly discriminatory manner. Absent a showing that some unusual situation beyond the shipper's control caused the penalties under the pre-existing provisions to attach, there was no basis for waiving them. The NSP Companies seek rehearing of this determination. As discussed below, the Commission denies the NSP Companies' request for rehearing.

Background

2. On March 9, 2007, Northern filed revised tariff sheets³ to change the authorized overrun charges and account balance transfer provisions under its Rate Schedule FDD storage service. In addition, Northern requested waiver of its pre-existing tariff

¹ *Northern Natural Gas Company*, 119 FERC ¶ 61,024 (2007) (April 6 Order).

² The Commission issued an order granting rehearing for further reconsideration on June 6, 2007.

³ Tenth Revised Sheet No. 135, Sixth Revised Sheet No. 136 and Sixth Revised Sheet No. 138 to its FERC Gas Tariff, Fifth Revised Volume No. 1.

governing the crediting of authorized overrun charges already billed to certain shippers to allow Northern to refund the charges. In effect, granting the waiver would have allowed the pre-existing tariff to operate as if the changed provisions of the revised tariff sheets were already in place. Northern requested an April 9, 2007, effective date for the revised tariff sheets.

3. Northern proposed two changes to its FDD tariff provisions. First, Northern revised Paragraph 2.B to provide that, in the event a shipper had multiple FDD service agreements, Northern would net the account balances for all of a shipper's service agreements before determining the appropriate authorized overrun charges, provided that the shipper had elected the same withdrawal option (either Gas-In-Place, 4-Step Withdrawal or 3-Step Withdrawal) for each of the service agreements. The proposal also stated that Northern would perform the netting of contracts when it applied its service fees which coincide with the three periodic service parameter requirements, *i.e.*, August 31, January 31 and March 1. Second, Northern clarified Paragraph 2.F of Rate Schedule FDD to provide that, if a shipper had multiple FDD service agreements, the shipper would be able to transfer account balances between accounts only if the shipper previously elected the same withdrawal option for each service agreement involved.

4. Northern stated that it billed three shippers authorized overrun charges, NSP-MN, NSP-WI and Aquila, Inc. (Aquila) for \$67,234.69, \$2,461.25 and \$2,133.32, respectively, for their January 31, 2007, balances and contended that if the proposed tariff revision had been in effect, it would not otherwise have charged these shippers for overruns. Northern requested that the Commission grant a waiver of its tariff's existing penalty provision to allow it to credit or return overrun charges to the affected FDD shippers for their January 31, 2007, and March 1, 2007, balances.

5. On March 21, 2007, Northern Municipal Distributors Group and the Midwest Region Gas Task Force Association (NMDG/MRGTF) filed a motion to intervene and protest, which argued that there was no basis for waiving the pre-existing tariff provisions. In addition, on March 21, 2007, the NSP Companies filed a motion to intervene in support of Northern's filing. The Commission found that both entities timely intervened and both were made parties to the proceeding.

6. The April 6 Order denied Northern's waiver request and accepted the revised tariff sheets, effective April 9, 2007, as proposed.

Request for Rehearing

7. The NSP Companies request rehearing of the April 6 Order's denial of Northern's request to waive its tariff provision for crediting authorized overrun charges. The NSP Companies claim that there are facts relevant to the waiver request that were not included in Northern's filing or the intervention of the NSP Companies which demonstrate an

unusual situation that provides good cause to grant the waiver. The NSP Companies claim that there are three reasons they incurred overrun charges: (1) inexperience with dealing with multiple FDD contracts with the same withdrawal option; (2) good-faith misinterpretation of Northern's tariff; and (3) good-faith miscommunication between Northern and the NSP Companies. Because of these reasons, the NSP Companies were operating their FDD portfolios under the mistaken belief that Northern's tariff permitted netting of imbalances for multiple FDD service agreements with the same withdrawal option and the portfolios were therefore managed to avoid overrun charges on that basis.⁴ The NSP Companies contend that taken together, these reasons provide good cause for the Commission, on rehearing, to grant Northern's waiver request.

8. First, the NSP Companies claim that the 2006-2007 winter withdrawal period was the first time that either of the NSP Companies held FDD portfolios with multiple contracts that had the same withdrawal option, and therefore their first occasion to interpret the scope of their flexibility under Paragraph 2.B of the FDD rate schedule. They submit that historically, both NSP-WI and NSP-MN had a single FDD contract with a 4-Step Withdrawal provision, but in June 2006, both NSP-WI and NSP-MN entered into an additional FDD storage agreement with a 4-Step Withdrawal. Second, the NSP Companies state that in reviewing Paragraph 2.B and the other provisions of Rate Schedule FDD at the start of the 2006-2007 withdrawal season, they found no explicit prohibition against netting among multiple contracts with the same withdrawal option, which is evident from Northern's revised tariff language filed in this proceeding. They note, in addition, that Rate Schedule FDD permitted shippers to transfer account balances between accounts and contend that netting across multiple FDD contracts is fully consistent with the right to transfer account balances, which is recognized by the Commission's acceptance of the revised tariff sheets in this proceeding. Based on this review, they therefore concluded that each NSP Company could balance across its multiple FDD contracts with the same withdrawal option. However, the NSP Companies sought verbal confirmation from Northern which leads to their third reason that the NSP Companies incurred authorized overrun charges. The NSP Companies state that although they understood Northern to have confirmed that netting across multiple FDD contracts with the same withdrawal option was permitted, it soon became evident that a miscommunication had occurred. Unfortunately, continue the NSP Companies, in conjunction with their inexperience with, and plausible interpretation of, the relevant tariff language, the NSP Companies incurred the penalties under the pre-existing tariff.

9. The NSP Companies state that the facts discussed above constitute an "unusual situation" sufficient to justify granting the waiver. Accordingly, the NSP Companies request, on rehearing, that the Commission grant the waiver requested by Northern.

⁴ Each of the NSP Companies' FDD portfolios was managed separately for balancing purposes, *i.e.*, there was no netting of any NSP-MN FDD contract with any NSP-WI FDD contract.

10. The NSP Companies assert that NMDG/MRGTF's argument in its March 21, 2007, protest stating that the waiver would encourage a shipper or pipeline to seek a waiver any time a tariff provision proposed in the future would change the past to its advantage, ignores the fact that Northern, not the NSP Companies or Aquila, requested the waiver. The NSP Companies assert that granting the waiver would not advantage Northern. They claim that Northern would return revenues, which it could otherwise retain for its own benefit.⁵ The NSP Companies claim that Northern's decision to seek a waiver allowing for the return of the overrun charges reflects an appropriate concern for good relations with its customers and is consistent with the chain of events resulting in the NSP Companies' incurring the overrun charges in the first instance.

11. The NSP Companies argue that the fact that the waiver requested by Northern would, if granted, cause economic injury only to Northern may explain the abbreviated nature of Northern's justification for the request in its original application.⁶ The NSP Companies state that they were sensitive to this fact and were only concerned that the Commission be assured that the waiver was not discriminatory. To that end, after the filing was submitted by Northern, the NSP Companies obtained Northern's assurance that the proposed change to Paragraph 2.B would not reduce the authorized overrun charges of any shipper dating back at least to January, 2006. The NSP Companies so informed the Commission of that assurance in their March 21, 2007, motion to intervene.

12. The NSP Companies stress that denying the waiver due to Northern's lack of a complete explanation in its original filing harms the NSP Companies. Therefore, the NSP Companies respectfully submit that the Commission now has a detailed explanation that provides good cause for granting the waiver as requested by Northern.

Discussion

13. The Commission is still not persuaded that good cause exists to grant waiver of the pre-existing tariff. The Commission finds that the NSP Companies' reasons were not unusual situations beyond the NSP Companies' control. The NSP Companies' inexperience with the relevant tariff language, a good-faith misinterpretation of that language and a good-faith miscommunication between the NSP Companies and Northern

⁵ The NSP Companies submit that the overrun charges are not subject to the general penalty and daily delivery variance charge (DDVC) revenue crediting provisions provided in sections 57.1.a and 57.2.a-e of Northern's GT&C.

⁶ The NSP Companies state that NMDG/MRGTF's protest is a mystery to the NSP Companies because NMDG/MRGTF appears to understand that the overrun charges were not subject to general crediting under section 57 of Northern's tariff as NMDG/MRGTF does not claim in its protest that granting the waiver would reduce the amounts of any credits its members would receive under that section.

are all situations within the NSP Companies' control. If the pre-existing tariff language was so easily subject to the interpretation the NSP Companies relied on, there would have been no need for the revised tariff filing that is the subject of this docket. Possible "miscommunications" notwithstanding, it is plain that Northern did not interpret its pre-existing tariff as the NSP Companies apparently did. Nevertheless, as a gesture to maintain good customer relations, Northern asked the Commission to waive the pre-existing tariff so that it would operate as if the proposed netting provisions were retroactively in place.

14. Having considered all the arguments on rehearing, the Commission finds the penalties attached because of a misreading of the tariff which was plain on its face. Provisions that are not in a tariff cannot be assumed to be part of the tariff. Therefore, the NSP Companies have not shown that some unusual situation beyond the shipper's control caused the penalties to attach, and there is no good cause for waiving them.⁷ To grant waiver would set a precedent for waiving tariff provisions based on a misinterpretation of the tariff.

The Commission orders:

The Commission denies the NSP Companies' rehearing request.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁷ 18 C.F.R. § 385.101(e) (2007).