

125 FERC ¶ 61,149
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 6, 2008

In Reply Refer To:
Northern Natural Gas Company
Docket No. RP09-18-000

Northern Natural Gas Company
1111 South 103rd Street
Omaha, NE 68124-1000

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

Reference: Waiver Request for Prearranged Capacity Release at Negotiated Rate

Ladies and Gentlemen:

1. On October 9, 2008, Northern Natural Gas Company (Northern) requested waiver of the Commission's regulations to facilitate a prearranged capacity release at a negotiated rate between CenterPoint Energy Minnesota Gas (CenterPoint), the releasing shipper, and Highwater Ethanol, L.L.C. (Highwater), the replacement shipper. On October 31, 2008, the Commission issued a letter order in Docket No. RP96-272-082¹ accepting Northern's proposed negotiated rate agreement with CenterPoint for service under Rate Schedule TFX. The agreement was for firm transportation service to an ethanol plant, owned by Highwater, and located in Northern's Operational Zone ABC. Service under the agreement will commence on November 1, 2009. The agreement included a negotiated reservation rate which was above Northern's currently effective maximum tariff rate for Rate Schedule TFX service. Northern stated that the agreement's negotiated rate incorporated an estimated \$4.2 million in construction costs for facilities it would build to accommodate service under the agreement, with a projected in-service date of November 1, 2009. The rate provisions of the agreement also provide for a future rate adjustment to reflect the actual construction cost of the facilities.

2. In the instant filing, Northern requests waiver of the Commission's regulations to allow CenterPoint to permanently release the capacity under this negotiated rate

¹ Letter order issued October 31, 2008, in Docket No. RP96-272-082.

agreement to Highwater, effective November 9, 2008. Specifically, Northern requests that the Commission waive section 284.8(h)(1)² of its regulations to allow the prearranged release to occur, even though the negotiated rate under the agreement is not at the maximum tariff rate. Northern argues that circumstances are appropriate for the Commission to grant such waiver since the purpose of the permanent release is to transfer capacity from a shipper who purchased the capacity specifically to serve the ethanol plant, to the owner the plant who will use the capacity for the same purpose. Northern adds that granting this waiver will facilitate CenterPoint's refund of a deposit to Highwater, which is contingent upon Highwater's acquiring the permanent release. Northern cites to cases where the Commission has previously granted waiver of section 284.8(h)(1) under similar circumstances.³

3. Northern includes with its filing a 12 Revised Sheet No. 66B.01 to its FERC Gas Tariff, Fifth Revised Volume No. 1, to reflect the shipper name change on its list of negotiated rate agreements. Northern requests a November 9, 2008, effective date for the tariff sheet.

4. The Commission noticed Northern's filing on October 15, 2008, allowing for protests as provided by section 154.210 of the Commission's regulations. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2008), 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. The Northern Municipal Distributors Group and The Midwestern Region Gas Task Force Association (NMDG/MRGTF)⁴ filed a protest.

5. NMDG/MRGTF argues that Commission regulations are clear under section 284.8(h)(1): if a capacity release is not at the maximum rate, the releasing shipper must post that capacity for bidding. It adds that section 47 of Northern's General Terms and Conditions provides the same requirement. NMDG/MRGTF expresses concern that, given that the agreement includes a provision that will allow Northern to adjust the reservation rate to reflect actual construction costs, there is no assurance that the negotiated rate in question will ultimately be equal to, or above, Northern's maximum

² Section 284.8(h)(1) provides that a prearranged capacity release at the maximum rate need not be posted for bidding pursuant to section 284.8(e) of the regulations.

³ Transcontinental Gas Pipe Line Corp., 113 FERC ¶ 61,331 (2005); Northern Natural Gas Company, 117 FERC ¶ 61,354 (2006).

⁴ NMDG/MRGTF is a consortium of municipal-distributors and local distribution companies that are customers of Northern.

tariff rate. NMDG/MRGTF also cites to 1 Revised Sheet No. 66B.09 of Northern's FERC Gas Tariff, which summarizes the agreement between Northern and CenterPoint, and contemplates that the negotiated rate under the agreement could be less than the maximum rate.⁵ NMDG/MRGTF asserts that, without knowing whether the negotiated rate will ultimately be below or above the maximum rate, it is inappropriate to grant the requested waiver. It adds that, if Northern can establish conclusively that the negotiated rate would be at or above the maximum rate, the waiver may be appropriate.

NMDG/MRGTF adds that, since the projected in-service date of the facilities in question is not until November 1, 2009, there is adequate time to determine the exact level of the negotiated rate using actual construction costs, and Northern can refile its request when the actual rate becomes known, assuming the rate is at or above the maximum tariff rate.

6. Under the circumstances, we find no need to delay granting Northern waiver of section 284.8(h)(1) of the Commission's regulations to allow the prearranged capacity release at a negotiated rate between CenterPoint and Highwater, and facilitate the refund of the deposit to Highwater. CenterPoint, the releasing shipper, acquired the capacity to serve Highwater's ethanol plant in Northern's market area. Highwater, as replacement shipper and owner of the plant, will use the capacity for the same purpose. No other party has expressed any interest in obtaining the capacity at a higher value, including NMDG/MRGTF, and granting this waiver will allow the releasing and replacement

⁵ Footnote 51 of Revised Sheet No. 66B.09, governing the subject agreement, provides that "[i]n the event the adjusted rate based on Northern's actual capital requirements results in a rate less than Northern's maximum annual average reservation rate the following rate provisions will apply...." The footnote then sets forth certain conditions.

shippers to resolve their contractual refund. We therefore grant the requested waiver and accept Northern's 12 Revised Sheet No. 66B.01 effective November 9, 2008.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All Parties

Dari Dornan
Senior Counsel
Northern Natural Gas Company
1111 South 103rd Street
Omaha, Nebraska 68124-1000

Frank X. Kelly
Steve Stojic
Gallagher, Boland & Meiburger, L.L.P.
818 18th Street, N.W., Suite 800
Washington, D.C. 20006-3520