

133 FERC ¶ 61,103  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Northern Natural Gas Company

Docket No. RP10-1394-000

ORDER ACCEPTING TARIFF SHEETS

(Issued October 29, 2010)

1. On September 30, 2010, Northern Natural Gas Company (Northern) filed revised tariff sheets<sup>1</sup> to amend sections of its firm rate schedules and its General Terms and Conditions (GT&C) that address shippers' rights to reduce contract demands in certain instances. Northern seeks an effective date of November 1, 2010, for its proposed tariff sheets. In this order, the Commission accepts Northern's proposed tariff sheets.

**I. Background**

2. Northern explains that its Rate Schedule TF, Rate Schedule TFX, and Rate Schedule FDD (hereinafter Firm Rate Schedules) contain provisions that give local distribution companies (LDC) certain reduction rights related to state unbundling programs in the event a firm customer chooses another supplier and that supplier does not take assignment of the LDC's firm capacity on Northern. Northern states that these contract reduction rights are available in circumstances where Northern is kept revenue neutral. Northern states that these contract reduction rights were added to its Firm Rate Schedules in 1998 (for Rate Schedules TF and TFX) and 1999 (Rate Schedule FDD).

3. Northern also describes section 42 of its GT&C, which contains hardship reduction provisions that allow shippers to reduce firm entitlements in three situations: (1) in the event a firm industrial customer ceases receiving transportation service from the shipper and begins receiving gas directly from Northern or indirectly from Northern through another shipper (i.e., an LDC bypass); (2) in the event a shipper serves a firm industrial customer that permanently discontinues operations; and (3) in the event a firm industrial customer taking direct firm service from Northern permanently discontinues

---

<sup>1</sup> See Appendix.

operations. Northern states that this hardship reduction provision was added to the GT&C as part of a settlement approved by the Commission on June 26, 1992.<sup>2</sup>

## **II. Details of Filing**

4. In its filing, Northern proposes to make the following revisions to its tariff: (1) move the LDC bypass provision in section 42 of its GT&C to the corresponding section in its Firm Rate Schedules that addresses contract reductions related to state unbundling programs to clarify that LDCs may reduce their entitlement in both circumstances; (2) clarify that the concept of revenue neutrality in the Firm Rate Schedules for bypass situations and state unbundling programs includes situations where Northern has constructed facilities for the shipper and the shipper has agreed to reimburse Northern for the cost of those facilities; and (3) eliminate section 42 of the GT&C (which would eliminate the hardship reduction provisions set forth in that section).

5. Northern states that the Firm Rate Schedule provisions that address contract reductions for LDCs appear to overlap with the LDC bypass provision in section 42 of the GT&C. Northern therefore states that it is revising language in the Firm Rate Schedules to clearly reference state unbundling situations. Additionally, Northern states that it seeks to add a second default reduction provision related to an LDC bypass by a firm end use customer, subject to Northern remaining revenue neutral. Northern seeks to clarify language requiring that it be kept revenue neutral in situations where Northern has constructed facilities and the firm shipper seeking a contract reduction has agreed to reimburse Northern for the costs of the facilities.

6. Northern next addresses the hardship provisions in section 42 of the GT&C, which are related to situations where a shipper seeks to reduce its contract demand due to an industrial customer permanently shutting down its facility. Northern proposes to eliminate those provisions, arguing that they are outdated and inconsistent with an open access environment. Northern explains that the hardship provisions were initially designed to address the inequity that could occur when an industrial customer shut down and stopped paying a volumetric rate to the LDC shipper, despite that shipper's obligation to continue to pay Northern on a demand basis for the duration of the agreement, with minimum contract extension terms of five years. Northern states that in today's environment, contract extensions are no longer required and shippers have numerous options to manage their capacity requirements, including staggered contract terms, capacity release, alternate delivery point rights, and permanent realignment. Northern also states that LDCs now have the ability to require large end users to contract directly with Northern for firm capacity. Northern contends that shippers have also

---

<sup>2</sup> Northern September 30, 2010 Transmittal Letter at 2 (citing *Northern Natural Gas Co.*, 59 FERC ¶ 61,379 (1992)).

become more sophisticated in managing contracts, and the capacity release market has become much more liquid than it was in the early 1990s. Therefore, Northern argues that it and its other customers should not be forced to bear the risk of a firm industrial customer discontinuing operations.

7. Northern also contends that removal of the hardship reduction provision will level the playing field among shippers. Northern states that because it allocates capacity based on the net present value of bids, shippers eligible for the hardship reduction have less risk than shippers who cannot avail themselves of this provision. Northern therefore explains that shippers eligible for the hardship reduction can submit a longer term bid with less risk than other shippers. Northern states that this disparity is particularly unfair in the right of first refusal process, where shippers currently holding capacity are required to match the rate and term bid by other bidders. Northern also contends that because it is the shipper that initially contracts with a firm industrial customer, it is the shipper that relied on the customer's creditworthiness, not Northern. Therefore, Northern believes it and its other customers should not be required to hold the risk that a firm industrial customer will be unable to sustain its operations.

### **III. Notice, Interventions and Comments**

8. Public notice of Northern's filing was issued on October 4, 2010. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2010). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2010), 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.

9. The Process Gas Consumers Group And Ag Processing Inc a cooperative (Industrials) filed a protest raising three issues. First, Industrials contend that the proposal to move the LDC bypass provision from Northern's GT&C to the Firm Rate Schedules restricts the applicability of this provision for existing or future rate schedules. Second, Industrials argue that Northern's proposal to require revenue neutrality when Northern constructs facilities that the shippers agree to pay for makes it more cumbersome and onerous for shippers to utilize this provision and opens the door for Northern to require a showing of revenue neutrality before allowing firm entitlement reduction.<sup>3</sup> Third, Industrials contend that the proposal to eliminate the hardship reduction in the case of an industrial plant shutdown is unwarranted. Industrials argue that Northern has not met its burden of showing that adjustments for plant shutdown have become necessary nor did Northern show how its proposal is consistent with the

---

<sup>3</sup> Industrials October 12, 2010 Protest at 4.

Commission's equitable sharing policy or how its proposal avoids placing disproportionate burden on small customers.

10. The Northern Municipal Distributors Group<sup>4</sup> and the Midwest Region Gas Task Force Association<sup>5</sup> (NMDG/MRGTF) filed a protest and request for rejection of Northern's proposal. NMDG/MRGTF's protest addresses (1) Northern's proposal to eliminate the hardship reduction provisions in section 42 of the GT&C, and (2) Northern's proposal to move the LDC bypass language to the Firm Rate Schedules as well as its proposal to modify that language.

11. Concerning the proposal to eliminate the hardship reduction, NMDG/MRGTF contend that Northern has not provided any facts to support its contention that LDCs are in a different position with respect to their sales obligations to end users. Further, NMDG/MRGTF argue that while today's environment is different than the early 1990s, the hardship reduction provisions related to industrial plant shut downs remain critical to LDC shippers. NMDG/MRGTF contend that the hardship reduction provisions provide a valuable right to shippers, which they have relied on in establishing their firm entitlements, and that Northern should not be allowed to change them here.<sup>6</sup> NMDG/MRGTF assert that Northern has not provided any evidence that the hardship reduction provisions have been abused.

12. With respect to the proposal to move the LDC bypass provisions from the GT&C to the Firm Rate Schedules, NMDG/MRGTF claim that the proposal is unnecessary, confusing, and should be rejected. In addition, NMDG/MRGTF suggest that existing

---

<sup>4</sup> NMWG is composed of the following Iowa municipal-distributor customers of Northern: Alton; Cascade; Cedar Falls; Coon Rapids; Emmetsburg; Everly; Gilmore City; Graettinger; Guthrie Center; Harlan; Hartley; Hawarden; Lake Park; Manilla; Manning; Orange City; Osage; Preston; Remsen; Rock Rapids; Rolfe; Sabula; Sac City; Sanborn; Sioux Center; Tipton; Waukee; West Bend; Whittemore; and Woodbine.

<sup>5</sup> MRGTF is composed of the following municipal-distributor and local distribution customer of Northern: Austin; Centennial Utilities; Community Utility Company, city of Duluth, Minnesota – Duluth Public Utilities; Great Plains Natural Gas Company, a Division of MDU Resources Group Inc.; Hibbing; Hutchinson; New Ulm; Northwest Natural Gas Company; Owatonna; Round Lake; Sheehan's Gas Company, Inc.; Two Harbors; Virginia; Westbrook, Minnesota; Midwest Natural Gas, Inc.; Superior Water Light & Power; St. Croix Valley Natural Gas, Wisconsin, d/b/a St. Croix Gas, Wisconsin; and Watertown, South Dakota.

<sup>6</sup> NMDG/MRGTF October 12, 2010 Comments at 7.

language<sup>7</sup> in the Firm Rate Schedules that allows Northern and a shipper to agree to reduction rights must be deleted as contrary to Commission policy that reduction and termination rights are valuable rights that must be provided on a non-discriminatory basis.<sup>8</sup> NMDG/MRGTF argue that such language is discriminatory and should be eliminated because it allows Northern to negotiate a more favorable reduction right with a specific customer, rather than having all reduction rights clearly set forth in Northern's tariff and made available to all shippers in a non-discriminatory fashion.

13. NMDG/MRGTF contend that Northern has not provided any reason for the proposed change that would permit reductions for a bypass by a customer, which then obtains its gas directly from Northern, but not where the bypassing customer obtains gas indirectly through Northern's facilities from an upstream supplier, as is allowed under Northern's current tariff.<sup>9</sup> NMDG/MRGTF also object to proposed language in section B.3 of the Firm Rate Schedules that it believes would limit the amount of contract demand that could be reduced. NMDG/MRGTF argue that the proposed language eliminates a shipper's right to specify the exact reduction requested up to the level of contract demand of incremental firm service.

14. NMDG/MRGTF next contend that Northern's proposal grafts an additional requirement on the revenue neutrality condition in instances when Northern constructs facilities that the shippers agree to pay for.<sup>10</sup> NMDG/MRGTF state that in addition to the revenue neutrality language currently in the Firm Rate Schedules, Northern now proposes additional revenue neutrality language requiring Northern to consider, in addition to any other relevant factors, any agreements for reimbursement of the cost of construction of facilities.<sup>11</sup> NMDG/MRGTF contend that this language could lead to the inequitable

---

<sup>7</sup> The existing language that NMDG/MRGTF object to provides as follows: "Northern and Shipper may agree to reduction rights. If Northern and Shipper are unable to agree, Shipper shall be entitled to the following [reduction rights] . . ." See, e.g., Rate Schedule TF (Firm Throughput Services), Section B.

<sup>8</sup> NMDG/MRGTF October 12, 2010 Comments at 13 (citing *Tuscarora Gas Transmission Co.*, 131 FERC ¶ 61,091, at P 9 (2010); *Texas Gas Transmission, LLC*, 129 FERC ¶ 61,168, at P 11 (2009); *Enbridge Pipelines (Midla) L.L.C.*, 129 FERC ¶ 61,098, at P 17 (2009); *Tennessee Gas Pipeline Co.*, 97 FERC ¶ 61,225, at 61,029-30 (2001)).

<sup>9</sup> *Id.* at 14-15.

<sup>10</sup> *Id.* at 16.

<sup>11</sup> *Id.*

result where Northern charges the end-use customer (directly or indirectly) while continuing to charge the LDC for the cost of facilities that Northern constructed on behalf of the LDC to provide service to the end-use customer.<sup>12</sup>

15. NMDG/MRGTF also object to Northern's proposal to add a new requirement that to receive relief under the reduction provisions, the LDC must certify that the end use customer has ceased to pay or is expected to pay. Additionally, NMDG/MRGTF argue that Northern's proposed changes to the effective date of a shipper reduction (based on the later of the first day of the month following the date of the LDC Shipper's request, the date the firm end use customer ceased paying the LDC, or the effective date of the incremental firm service purchased from Northern) is inappropriate. NMDG/MRGTF argue that this proposed effective date provision could permit a bypassing end-use customer to shut down operations for several months before using the incremental service purchased from Northern.<sup>13</sup>

16. On October 20, 2010, Northern filed an answer addressing the protests, comments, and request for clarification. On October 22, 2010, NMDG/MRGTF filed an answer to Northern's answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Northern's and NMDG/MRGTF's answers and will, therefore, reject them.

#### IV. Discussion

17. For the reasons discussed below, we accept Northern's revised tariff sheets, to be effective November 1, 2010, as requested. Although protesters object to Northern's proposal to remove certain contract reduction rights that currently exist in its tariff, Northern is under no obligation to offer these rights. "[T]he Commission does not require pipelines to permit customers to terminate or reduce their contractual obligations to pay for reserved capacity before the end of their contract terms. Rather pipelines may offer such a right on a voluntary basis, so long as there is no undue discrimination among shippers."<sup>14</sup> Because Northern's reduction rights are offered to all Firm Rate Schedule shippers on a not unduly discriminatory basis, we find that Northern's proposal is consistent with Commission policy and protesters' objections are without merit.

---

<sup>12</sup> *Id.* at 17.

<sup>13</sup> *Id.* at 18.

<sup>14</sup> *Columbia Gulf Transmission Co.*, 105 FERC ¶ 61,351, at P 11 (2003).

18. First, Northern proposes to eliminate the hardship reduction rights that allow shippers to reduce their firm entitlement in situations where an industrial customer permanently discontinues operations. Because Northern proposes to eliminate this right altogether, which is within its NGA section 4 rights to do, we accept it here. NMDG/MRGTF argues that its members relied on these provisions, and both NMDG/MRGTF and Industrials contend that Northern has not shown the provision to have been abused or that its elimination is necessary. Such a showing, however, is not relevant to this inquiry. Where the Commission has not required these rights to be offered in the first instance, Northern's proposal to eliminate them for all shippers is just, reasonable, and not unduly discriminatory.

19. Second, Northern proposes to move its LDC bypass provision (currently in its GT&C) to the section in its Firm Rate Schedules addressing contract reductions related to state unbundling programs. Again, because Northern is not required to offer these contract reduction rights in the first instance, our inquiry is limited to whether Northern's proposal would offer those rights on an unduly discriminatory basis. We find that it would not. Contrary to Industrials' claim, Northern's proposal to move these provisions from the GT&C to the Firm Rate Schedules does not limit the applicability of these rights to existing rate schedules. Under the existing GT&C provision, these rights are already limited to firm shippers. With respect to Industrials' concern about the applicability of LDC bypass rights for future rate schedules, we decline to address that here and will examine the details of potential future rate schedules when and if Northern proposes them.

20. NMDG/MRGTF argue that Northern should be required to remove existing language in its tariff that allows it to negotiate reduction rights with individual shippers, with the reduction rights set forth in its Firm Rate Schedules to apply in the event Northern and a shipper are unable to agree. We find, however, that the existing language in Northern's Firm Rate Schedules allowing it to negotiate reduction rights does not pose a risk of undue discrimination, and NMDG/MRGTF has not shown this language to be unjust and unreasonable. In *Tuscarora*, a case NMDG/MRGTF cite as support for their position, the Commission found that "[t]he option to negotiate, at the outset, a reduction in quantity at a specific time is a valuable right;" however, the Commission did not reach the situation where a generally applicable tariff allowed for negotiating a reduction right with shippers with specific rights offered to all shippers in the event agreement was not possible.<sup>15</sup> Northern's existing tariff language puts all customers on notice that they may

---

<sup>15</sup> *Tuscarora Gas Transmission Co.*, 131 FERC ¶ 61,091, at P 9 (2010) (*Tuscarora*). *Tuscarora* concerned a provision that deviated from the form of service agreement. The issue here is different, in that Northern's Forms of Service Agreement have a generally applicable negotiation provision, but the outcome of such negotiations may differ, and absent agreement, a default set of reduction rights will apply.

negotiate reductions rights at the outset, and what rights would apply absent a successful negotiation. Of course, such negotiations must be undertaken by the pipeline in a good faith, non-discriminatory manner, and any special terms that are negotiated must be posted pursuant to the Commission's regulations at 18 C.F.R. § 284.13 (2010). Accordingly, assuming the negotiations under the existing tariff are conducted as discussed above, with any special terms posted as required, we find this language is not unduly discriminatory.

21. NMDG/MRGTF also object to proposed changes in the LDC bypass provision in the Firm Rate Schedules that they contend would limit their reduction rights.<sup>16</sup> Moreover, both NMDG/MRGTF and Industrials contend that the revenue neutrality provisions proposed by Northern are inappropriate, making them more cumbersome for shippers to utilize and potentially resulting in Northern recovering the same costs from multiple customers. However, since Northern need not retain the LDC bypass provisions at all, the issue is whether the conditions in the reduction rights that are retained would operate in an unduly discriminatory manner. We find that because the conditions NMDG/MRGTF object to must be applied evenhandedly to all shippers under the Firm Rate Schedules, they are not unduly discriminatory. The conditions set forth in the Firm Rate Schedules appear reasonably designed to limit Northern's obligation to reduce a customer's firm entitlement to those instances where Northern will remain revenue neutral. To the extent Northern has constructed facilities that a shipper has agreed to pay for, we believe such agreements are relevant to determining revenue neutrality. Furthermore, because the proposed provisions require Northern to be kept revenue neutral, they appear to prevent Northern from over-recovering its costs as a result of the contract reduction. Accordingly, we accept Northern's proposed tariff revisions.

The Commission orders:

Northern's revised tariff sheets listed in the Appendix are accepted.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

---

<sup>16</sup> The reduction rights NMDG/MRGTF believes are being inappropriately limited by the proposed change are summarized above at P 2-3.

**Appendix**

Northern Natural Gas Company  
Gas Tariff, FERC NGA Gas Tariff

Tariff Sheets Accepted, Effective November 1, 2010

Sheet No. 1, Table of Contents, 1.0.0  
Sheet No. 105, Rate Schedule TF, 1.0.0  
Sheet No. 119, Rate Schedule TFX, 1.0.0  
Sheet No. 120, Rate Schedule TFX, 1.0.0  
Sheet No. 142, Rate Schedule FDD, 1.0.0  
Sheet No. 142A, Rate Schedule PDD, 1.0.0  
Sheet No. 142A.01, Rate Schedule PDD, 0.0.0  
Sheet No. 201A, G T and C Table of Contents, 1.0.0  
Sheet No. 277, Reserved for Future Use, 1.0.0  
Sheet No. 278, Reserved for Future Use, 1.0.0