

142 FERC ¶ 61,145
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 25, 2013

In Reply Refer To:
Northern Natural Gas Company
Docket No. RP13-481-000

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

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

Ladies and Gentlemen:

1. On January 28, 2013, Northern Natural Gas Company (Northern) filed revised tariff records¹ to provide Northern and a shipper with the option to mutually agree to waive a trial by jury in connection with litigation related to transportation service agreements. Northern has revised the General Terms and Conditions (GT&C) as well as the *pro forma* service agreements for Segmented Firm Throughput Service (SFTS), Firm Deferred Delivery Service (FDD), System Management Service (SMS), and MID Pooling Service (MPS) in its tariff to reflect this option. For the reasons discussed below, the revised tariff records listed in footnote no. 1 are accepted, effective February 28, 2013, subject to conditions, and subject to the outcome of the proceeding in Docket No. RP11-2061-004.²

¹ Northern Natural Gas Company, FERC NGA Gas Tariff, Gas Tariffs, [Sheet No. 215, G T and C Billing and Payment, 4.0.0](#); [Sheet No. 310, G T and C Cross-Reference, 3.0.0](#); [Sheet No. 406, Segmented Firm Throughput Service Agreement, 1.0.0](#); [Sheet No. 442C, Firm Deferred Delivery Service Agreement, 1.0.0](#); [Sheet No. 453, SMS Service Agreement, 1.0.0](#); [Sheet No. 458, MID Pooling Service Agreement, 1.0.0](#).

² Northern states that Sheet Nos. 215 and 310 include changes that are currently pending Commission action in Docket No. RP11-2061-004.

2. Specifically, Northern proposes to add a new provision to section 7, Liability of Parties, in its GT&C to state the following:

Northern and Shipper may agree to waive a trial by jury with respect to litigation directly or indirectly arising out of, under or in connection with, any agreement entered into pursuant to Northern's FERC Gas Tariff.

3. Northern further proposes to modify section 58, Cross-Reference for Tariff-Permitted Provisions in Service Agreements, in its GT&C to allow Northern and a shipper to agree to a waiver of jury trial in either a separate agreement or in a service agreement.

4. Northern also proposes to modify the *pro forma* service agreements for SFTS and MPS to include an "other" provision, where provisions listed in GT&C section 58 may be included in the service agreement. In addition, Northern proposes to add a new provision to the *pro forma* service agreements for the FDD and SMS agreements to state the following:

[if applicable] to the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury with respect to litigation directly or indirectly arising out of, under or in connection with, this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

5. Northern states that in an effort to avoid time-consuming jury trials and unpredictable verdicts, it would like the ability to agree with a shipper to waive the use of a jury trial.

6. Northern acknowledges that the Commission has not permitted a waiver of jury trial to be a condition of obtaining the basic service that the pipeline is obligated by its certificate to provide. However, Northern states that parties should be given the opportunity to mutually agree to waive a jury trial and include the applicable provision in a transportation service agreement without causing the agreement to be non-conforming.

7. Public notice of the filing was issued on January 29, 2013. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), all timely filed motions to intervene and any unopposed motion 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 the proceeding or place additional burdens on existing parties. U.S. Energy Services, Inc. (U.S. Energy), and the Northern Municipal

Distributors Group (NMDG)³ & the Midwest Region Gas Task Force Association (MRGTF)⁴ filed motions to intervene and comments. Indicated Shippers⁵ filed a protest.

8. U.S. Energy urges the Commission to clarify, pursuant to precedent, that a shipper is not required to agree to Northern's optional waiver of a jury trial provision as a condition of obtaining any service provided by Northern pursuant to its certificate.

9. NMDG/MRGTF submit that when a fundamental right like the right to request a jury trial is to be the subject of a waiver, the proposed tariff should also clearly state that a shipper need not agree to such a waiver. NMDG/MRGTF note that unlike many of the provisions which Northern and a shipper can negotiate (e.g., certain operational issues, delivery points, contract extensions, Right of First Refusal, hourly takes, pressure, evergreen provisions), a jury trial waiver affects a fundamental federal constitutional and statutory right. NMDG/MRGTF assert that in such circumstances, while parties may be permitted to agree to a waiver, parties should be fully aware that a shipper is not required to sign such a waiver to receive basic service.

10. Indicated Shippers assert that Northern's transmittal letter makes it unclear whether Northern intends to follow Commission precedent prohibiting pipelines from making a jury waiver a condition of obtaining service. Therefore, Indicated Shippers request that the Commission require Northern to include tariff language stating that waiver of a jury trial is not a condition of obtaining service that Northern is required by its certificates to provide.

³ NMDG 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.

⁴ MRGTF is composed of the following municipal-distributor and local distribution customers 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; and 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.

⁵ For this proceeding, Indicated Shippers consist of Apache, Occidental, and SWEPI.

11. On February 15, 2013, Northern filed an answer to the comments and protest. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or adverse comments unless otherwise ordered by the decisional authority. We will accept Northern's answer because it has provided us with information that assists us in our decision-making process.

12. In its answer, Northern states that it is willing to amend its filing, if the Commission believes it necessary, to clarify its waiver of jury trial provision is not a condition to obtaining service, as suggested by Indicated Shippers.

13. The Commission's policy precludes requiring waiver of a jury trial as a condition of obtaining the basic service that a pipeline is obligated by its certificate to provide.⁶ Northern's answer states that it will amend its tariff to make clear that agreeing to waive a jury trial is not a condition to receiving service on its system. Accordingly, Northern's proposed tariff records are accepted, effective February 28, 2013, subject to its making a compliance filing within 15 days of this order, to revise its tariff as stated in its answer.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁶ See, e.g., *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113 at P 24, *order on compliance*, 131 FERC ¶ 61,056, at P 4 (2010).