

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northern Natural Gas Company

Docket No. RP05-181-000

ORDER ACCEPTING TARIFF SHEET AND SERVICE AGREEMENTS SUBJECT
TO CONDITIONS

(Issued March 23, 2005)

1. On February 11, 2005, Northern Natural Gas Company (Northern) filed non-conforming service agreements and a letter agreement comprising a service transaction it proposes to enter into with CenterPoint Energy Minnesota Gas (CenterPoint). Northern's filing includes: (1) a maximum rate TF service agreement; (2) a discounted rate TFX service agreement;¹ (3) a discounted rate TFX backhaul agreement (Trailblazer agreement); and, (4) a letter agreement. The proposed agreements relate to service commencing November 1, 2007, when Northern's current contracts with CenterPoint expire. Northern states that the proposed agreements contain certain non-conforming provisions which were necessary in order to retain CenterPoint as a shipper on its system. Northern also filed a tariff sheet to include the proposed agreements on its list of non-conforming service agreements.² Northern requests a March 25, 2005, effective date for its tariff sheet.

2. The Commission will accept Northern's proposed Rate Schedule TFX and TF Service Agreements subject to the conditions discussed below. Further, the Commission

¹ Northern's Rate Schedule TF provides a firm transportation service with a uniform year-round rate. Rate Schedule TFX provides a firm transportation service with a higher rate in winter (November-March) than summer (April-October).

² Ninth Revised Sheet No. 66C to Northern's FERC Gas Tariff, Fifth Revised Volume No. 1.

will accept the proposed tariff sheet to be effective March 25, 2005, as proposed. This acceptance benefits the public by permitting Northern to retain its system load shippers and prevent any cost shift to other customers caused by the loss of such load.

Background

3. Northern states that CenterPoint is its largest customer, accounting for 21 percent of its peak day deliveries and 19 percent of its revenue. Northern states that CenterPoint recently issued a Request for Proposal to construct an intrastate pipeline to serve CenterPoint's Minneapolis market and bypass Northern beginning November 1, 2007 when its current contracts with Northern expire.

4. Northern states that CenterPoint received seven responses to its request and had finalized negotiations with one bidder to build its intrastate pipeline before Northern commenced its negotiations with CenterPoint. According to Northern, the loss of the CenterPoint load (734,598 Dt per day during November through March, and 356,521 Dt per day during April through October) would result in a 10 to 15 percent rate increase for its remaining customers based on maximum rates in a future rate case. However, Northern states that it was able to negotiate a new long-term agreement with CenterPoint to avoid the loss of Centerpoint as a customer and that the instant proposal, including the non-conforming provisions, was necessary to accomplish this agreement. Northern states that CenterPoint has a limited right to revert to its arrangement for the construction of the intrastate pipeline but that right expires in June 2005. As a result, the subject agreements give CenterPoint the right to void the agreement with Northern if all issues and all rehearings in this proceeding are not resolved by June 2005.

Details of Filing

5. Northern's proposal, which it maintains constitutes one comprehensive, interrelated, agreement that must be reviewed and approved as a package is comprised of: (1) a maximum rate TF service agreement; (2) a discounted rate TFX service agreement; (3) a discounted rate TFX backhaul agreement; and, (4) a letter agreement. Northern states that the agreements are for service commencing November 1, 2007, when Northern's current contracts with CenterPoint expire.³ Northern also filed a tariff sheet to include these agreements on its list of non-conforming service agreements.

³ The primary terms of Northern's Rate Schedule TF agreement and discounted Rate Schedule TFX agreement with CenterPoint are through October 31, 2019, with possible extensions through October 31, 2022. The term of Northern's Trailblazer agreement is through October 31, 2013.

6. Northern states that its agreements contain certain non-conforming provisions that Northern asserts were necessary to retain CenterPoint as a customer and prevent a substantial loss of system load. In general, the non-conforming provisions that Northern places in one or more of the proposed agreements include: (1) a growth option allowing CenterPoint to increase its MDQ at certain intervals over the contract term, at specific levels, and at pre-determined rates; (2) a commitment by CenterPoint to take its full service requirements from Northern; (3) a provision whereby CenterPoint agrees not to bypass Northern in its existing service territories; (4) a renegotiation provision should the Commission not approve the subject provisions; (5) a provision obligating CenterPoint to support the agreed-to transportation rates; (6) revised TF12/TF5 entitlements;⁴ (7) a provision requiring Northern to grant a Most Favored Nation (MFV) provision to CenterPoint should it grant one to another shipper; (8) a provision requiring Northern to exercise commercially reasonable best efforts to secure any approvals required for the construction of new facilities under the agreements, and; (9) a provision clarifying that the three subject service agreements and letter agreement constitute the entire agreement between the parties.

7. In addition, Northern's letter agreement also requires Northern to pay between \$250,000 and \$300,000 annually to CenterPoint to promote load growth. Northern asserts that it requires each non-conforming provision to compete with the alternative intrastate pipeline, and that the Commission must approve the agreements to allow Northern to retain the single largest market on its pipeline.

Notice

8. The Commission issued notice of Northern's filing on February 23, 2005. Interventions, comments, and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2004)). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2004)), 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 the proceeding or place additional burdens on existing parties. Virginia Power Energy Marketing, Inc. (VPEM), Cornerstone Energy, Inc. (Cornerstone), the Indicated Shippers, and Northern Municipal Distributors Group and the Midwest Region Gas Task Force Association (NMDG/MRGTF) filed protests, which we address below. Northern and CenterPoint filed answers. The Commission, therefore,

⁴Pursuant to Northern's Rate Schedule TFX, TF12 refers to firm transportation service for 12 months of the year. TF5 refers to the additional firm transportation under Rate Schedule TFX for the five winter months.

waives its regulations (18 C.F.R. §385.213(b) (2004)) to accept the answers filed by Northern and CenterPoint in order to develop a full understanding of the proposal.

Discussion

9. As pointed out by Northern, many of its proposed service agreement provisions materially deviate from Northern's *pro forma* service agreements and rate schedules.⁵ Therefore, the Commission must review the proposed service agreement contracts to determine the nature and the effect of these proposed material deviations.⁶ The Commission previously held that material deviations fall into two general categories: (1) material deviations that must be prohibited because they present a significant potential for undue discrimination among shippers; or, (2) material deviations that can be permitted without substantial risk of undue discrimination.

10. One type of material deviation that is generally not permitted is a negotiated term and condition of service. In Order No. 637, the Commission established a policy against permitting pipelines to negotiate terms and conditions of service with individual customers that are different from those provided other customers.⁷ Therefore, where a material deviation in a non-conforming contract constitutes a negotiated term and

⁵ The Commission considers a material deviation as any provision of a service agreement which goes beyond the filling in of spaces in the form of service agreement with the appropriate information provided for in the tariff, and that affects the substantive rights of the parties. *ANR Pipeline Co.*, 97 FERC ¶ 61,224 at 62,022 (2001).

⁶ 18 C.F.R. § 164.1(d) (2002).

⁷ In Order No. 637, the Commission stated that it generally considered negotiated terms and condition of service to be related to operational conditions of transportation service. The Commission cited examples of these conditions as "scheduling, imbalances, or operational obligations such as OFOs". Order No. 637, III FERC Stats. & Regs. P31, 300 at 31,344. Subsequently, the Commission held that negotiated terms and conditions of service include any provisions that result in a customer receiving a different quality of service than that provided other customers under the pipeline's tariff or that affect the quality of service received by others. *Dominion Transmission, Inc.*, 93 FERC ¶61,177 (2000).

condition of service, the Commission requires that the pipeline modify its tariff to offer the negotiated service to all of its customers.⁸

11. However, not every material deviation from a *pro forma* service agreement entails such a risk of undue discrimination that the Commission cannot permit the deviation. The key factor in determining whether to approve a material deviation agreed to, at least in the context of a negotiated rate agreement, is the extent to which the option of obtaining service at the recourse rate is an adequate alternative.⁹ In non-negotiated rate situations, such as the instant case, where a recourse rate is not a factor, the Commission may approve a material deviation where it determines that there is no significant potential for undue discrimination among shippers.¹⁰

12. In the instant case, the Commission finds that Northern's service agreements contain several non-conforming, material deviations from Northern's tariff or *pro forma* service agreements that are sufficiently connected to the proposed rates that they do not present a substantial risk of undue discrimination or a substantial negative impact upon other shippers and do not affect the quality of service provided. These provisions include:

⁸ *ANR Pipeline Co.*, 97 FERC ¶ 61,224 at 62,024 (2001). Northern's Letter Agreement anticipates such action and provides that to the extent the Commission deems the Letter Agreement, the TF Service Agreement, the TFX Service Agreement or the Trailblazer Agreement to contain impermissible terms and conditions, the parties will renegotiate these agreements to retain the same economic value to both parties. However, it states that if the Commission does not find the terms and conditions to be impermissible but accepts the four filed agreements subject to a condition that Northern change its tariff to offer any provisions contained in the four agreements to similarly situated shippers, Northern will do so. In the alternative, Northern may request, and CenterPoint agrees, that Northern and CenterPoint will negotiate to provide each party the same economic value associated with such provision(s) in lieu of making such tariff filing. Letter Agreement at 11.

⁹ For example, if a customer desires a special contact demand reduction or early termination right not provided for in the generally applicable tariff, the availability of service at the recourse rate does not provide an adequate substitute, since the recourse rate would not include any such provision. Therefore, pipelines are not permitted to negotiate such provisions, unless they are offered, subject to reasonable conditions, as a part of the pipeline's generally applicable tariff. *ANR Pipeline Co.*, 97 FERC ¶ 61,224 at 62,026 (2001).

¹⁰ *See, ANR Pipeline Co.*, 98 FERC ¶ 61,181 (2002).

(1) a renegotiation provision should the Commission not approve the subject provisions; (2) a provision obligating CenterPoint to support the agreed-to transportation rates, and; (3) a provision clarifying that the three subject service agreements and the letter agreement constitute the entire agreement between the parties. All other non-conforming items not discussed herein are also accepted for these reasons. Accordingly, the Commission finds that these provisions are permissible and will accept them without condition.

13. Northern's agreements, however, contain certain non-conforming provisions that deviate materially from Northern's tariff and *pro forma* service agreements and may pose a risk of undue discrimination. We address these provisions below.

Growth Options, Bypass, and Full Service Requirement Provisions

14. At the center of Northern's proposal are three interconnected non-conforming proposals. The first two provisions provide that CenterPoint will take the full requirement of its service needs from Northern,¹¹ and that CenterPoint will not bypass Northern.¹²

¹¹ Section 7 of Northern's proposed discounted Rate Schedule TFX service agreement provides:

[i]n consideration for Northern agreeing to the rates contained herein, CenterPoint Energy Minnesota Gas represents and warrants that for the Term of Agreement, Northern shall service CenterPoint Minnesota Gas' full service requirements in CenterPoint Energy Minnesota Gas' (or successor(s) thereto) service territories currently served by the firm entitlement on Appendices A and B hereof as of the effective date of the Agreement (Existing Entitlement).

Northern proposes a similar full service requirements provision in section 6 of its proposed Rate Schedule TF Agreement.

¹² Section 8 of Northern's discounted Rate Schedule TFX agreement provides:

[i]n consideration for Northern agreeing to the rates contained herein, CenterPoint Energy Minnesota Gas represents and warrants that it will not bypass or pursue a bypass of Northern in any of CenterPoint Energy Minnesota Gas' service territories served by the Existing Entitlement for the Term of those volumes.

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15. In conjunction with these two provisions, under the TF and TFX Service agreements, Northern agrees to provide CenterPoint with an option to increase its contract maximum daily quantity (MDQ) and agrees to construct facilities if necessary to provide any increase in CenterPoint's MDQ growth needs for the entire term of the agreement at agreed-upon rates. CenterPoint may exercise this "growth option" during successive two year periods with eighteen months' notice to Northern. Northern states that it will allocate any generally available capacity that could be used to satisfy the growth option MDQ levels in accordance with section 26 of the General Terms and Conditions of its Tariff.¹³ Northern proposes to hold open seasons for any required construction and will provide service to any requesting shipper whose bid meets the economic feasibility requirements for construction of facilities. Northern states that the CenterPoint Energy growth options, as structured, will not adversely affect other shippers on Northern's system.

16. Cornerstone and Indicated Shippers raise concerns regarding Northern's proposed full service requirement provision, arguing the provision is an impermissible negotiated term and condition of service. Cornerstone argues that the Commission rejected a similar provision in *DTI* holding that pipelines cannot require a shipper to designate it as sole supplier, and that the pipeline can only alter the rate charged should the shipper violate a sole supplier commitment.¹⁴ Cornerstone argues that the subject Rate Schedule TF agreement appears to be contrary to the holding in *DTI*, in that although the shipper commits to using Northern for its full service requirement, there appears to be no discussion of the rate charged in the event the shipper violates the commitment.

17. Cornerstone also raises concerns regarding the consequences of permitting pipelines to obtain a service commitment, even when that commitment is tied to a rate. Cornerstone argues that allowing pipelines to secure market commitments in exchange for discounted reservation charges has the effect of creating a market where producers are once again competing on a basis of their respective pipelines' methods of fixed cost recovery.

Northern proposes a similar bypass provision in section 7 of its Rate Schedule TF agreement.

¹³ Section 26 of Northern's tariff sets forth provisions for shippers requesting throughput service from Northern.

¹⁴ *Dominion Transmission, Inc.*, 94 FERC ¶ 61,057 (2001).

18. As stated above, the subject provisions act in conjunction with each other in that they impose reciprocal obligations on Northern and CenterPoint. Under these provisions CenterPoint agrees to take its full requirements from Northern and agrees not to bypass Northern for the term of the agreement.¹⁵ In return, Northern agrees to permit CenterPoint to increase its contract demand at established intervals and to construct new facilities if necessary and to exercise commercially reasonable best efforts to secure any approvals required for such construction. Therefore, because the provisions act in unison, the Commission must examine these provisions together to determine their effect.

19. These interrelated provisions are comprised of impermissible terms and conditions of service. For example, the load growth provision is a condition of service that is not offered to all of Northern's customers. More generally, the Commission has held that a full requirements provision is also an impermissible term and condition of service. For example, in *DTI* the Commission found a contract provision that required the pipeline to be a sole supplier for a customer "constitutes a term and condition of service materially different than as provided under the FT Rate Schedule and does not appear to be a provision that affects only the rate for service."¹⁶

20. Northern's FT and FTX Rate Schedules do not provide for full requirement or load growth provisions in shipper contracts. Therefore, as proposed, the full requirement provision is an impermissible negotiated term and condition of service different from the services offered to other customers. For the same reasons, the bypass provision and the "growth provision", are also impermissible.

21. Accordingly, the Commission finds that Northern may not include these provisions as non-conforming provisions to its agreements with CenterPoint because these interrelated provisions provide a substantial risk of undue discrimination. However, in its Letter Agreement, Northern states that it would agree to place non-conforming terms and conditions which the Commission finds to be impermissible into its tariff so that it would offer such terms and conditions to all customers. The Commission finds that if Northern desires to provide a full requirements service as proposed here, it must mitigate the risk of undue discrimination among its customers by

¹⁵ Section 9 of Northern's discounted Rate Schedule TFX agreement allows a limited exception whereby CenterPoint may serve future growth volumes up to a combined total of 75,000 Dt per day with uncontracted capacity on the existing Minnesota Intrastate Pipeline.

¹⁶ *Dominion Transmission, Inc.*, 94 FERC ¶ 61,059 (2001); *See also, Dominion Transmission, Inc.*, 93 FERC ¶ 61,228 (2000).

filing to place such a service into its tariff so that it may be generally available to all customers.

22. Such action will permit all customers to choose whether to avail themselves of a full requirements option. In this way, any anticompetitive or discriminatory aspects of a full requirement obligation is substantially mitigated. Moreover, as long as all customers have a choice to avail themselves of an alternative service such as standard firm service or interruptible service, the obligations imposed by a full requirements service are not anticompetitive.¹⁷ This is because a shipper can weigh whether the advantages of obtaining a full requirements service are worth the restrictions imposed by such service. This is the type of decision that consumers constantly make in a competitive marketplace. The Commission concludes that, as long as the customer has a choice whether to so commit itself, this type of service does not unduly limit a customer's competitive alternatives.

23. Several parties assert that Northern did not post the subject capacity to allow other shippers to bid on it. VPEM contends this contravenes the Commission's policy that pipeline capacity should be awarded to the shipper that values it the most. Cornerstone adds that since two of Northern's proposed agreements are discounted price agreements, Northern proposes to give a shipper access to capacity in the future at a discounted price. VPEM and Cornerstone argue that this is contrary to the Commission's recent decision in *GTN*.¹⁸ VPEM asserts that in *GTN*, the pipeline was permitted to reserve capacity beginning at a future date; but only after posting to permit other parties to offer a higher net present value for the capacity.¹⁹ VPEM argues that, in this way, the Commission ensured that a pipeline awarding capacity would do so without undue preference or discrimination. VPEM asserts that the Commission reiterated this policy in *Northern*.²⁰ Cornerstone also adds that, due to the nature of the subject deal, there is no way to establish whether the award of a discount was required by the market. VPEM and Cornerstone request the Commission to only go forward with the subject deal after a proper capacity auction.

¹⁷ See, *Transcontinental Gas Pipe Line Corp.*, 76 FERC ¶ 61,021 at pp. 61,061 - 61,063 (1996).

¹⁸ *Gas Transmission Northwest Corp.*, 109 FERC ¶ 61,141 (2004). (*GTN*)

¹⁹ *Id.*, at P 17.

²⁰ *Northern Natural Gas Co.*, 109 FERC ¶ 61,388 (2004).

24. The Commission's order on remand in *GTN* addressed the issue of the pipeline's ability to reserve currently available, unsubscribed capacity for a service to a customer that will not commence until a future date and to sell the capacity to others during the interim without a ROFR. The Commission recognized that permitting pipelines to sell existing capacity for service to commence in the future has efficiency benefits and will benefit customers with long lead times who do not need capacity immediately, but need assurance that they can get capacity in the future.²¹ Accordingly, the Commission approved, subject to certain modifications and conditions, both a "prearranged deal" program proposed by the pipeline that would allow shippers to reserve available, unsubscribed capacity beginning at a future date, and the pipeline's related request to sell the same capacity to shippers in the interim period without a ROFR. The Commission permits pipelines to sell capacity to interim shippers without a ROFR as long as the pipeline implements posting and bidding procedures that will ensure that the shipper obtaining currently available capacity for a future period is the shipper that currently places the highest net present value on the capacity.

25. The Commission's findings in *GTN* are not applicable to the subject filing as asserted by the parties. *GTN* sets forth Commission policy concerning the future reservation of currently available, unsubscribed capacity. In the subject filing, Northern is not proposing to reserve unsubscribed capacity for a future date while attempting to waive the ROFR right, but rather, the proposal concerns the continued use of subscribed capacity. Accordingly, the issue of Northern's ability to sell such capacity for future use without a ROFR does not arise. To the extent that issues are raised concerning the fact that by this agreement CenterPoint extends the term of its existing capacity without the participation of third parties that might place a higher value on the capacity, such action is not prohibited by Commission policy. Specifically, in *TransColorado*, the Commission held that pipelines are permitted to rollover existing contracts at maximum or discounted rates without offering the subject capacity to other shippers.²² Moreover, to the extent that Northern's proposal requires it to build new capacity for Centerpoint, Northern has agreed to hold an open season for such capacity and to provide service to other shippers that bid at an economic level for such capacity.²³

²¹ *Gas Transmission Northwest Corp.*, 109 FERC ¶ 61,141 (2004).

²² See *TransColorado Gas Transmission Co.*, 109 FERC ¶ 61,117 at P 9-10 (2004).

²³ Northern states that it "will allocate any generally available capacity in accordance with Section 26 of the General Terms and Conditions of its Tariff and, to the extent necessary, will construct facilities to meet the growth requirements. Northern will

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Load Growth Promotion Payment

26. Section 3 of Northern's Letter Agreement provides that Northern will supply market support dollars for CenterPoint to use in promoting load growth served by Northern. The provision requires Northern to pay CenterPoint \$250,000 annually through November 1, 2011; \$275,000 annually through November 1, 2019; and, \$300,000 annually through the agreement's termination, or no later than October 31, 2022.

27. NMDG/MRGTF expresses concerns that Northern will attempt to recover these costs through from its remaining customers. As a part of the overall agreement between Northern and CenterPoint such payments are not prohibited by Commission policy. However, the Commission does not view these payments as a discount from the price that CenterPoint pays for transportation on Northern's system. Rather, such payments are remuneration to CenterPoint for the service of promoting load growth and, therefore, are not eligible to factor into any future discount adjustment sought by Northern. However, this finding does not preclude Northern from seeking to recover this type of cost in a future rate case if it can show that this payment to one customer is sufficiently connected to service provided to other customers to justify requiring all customers to bear the cost.

Most Favored Nation Provision

28. Northern's proposed Rate Schedule TFX Service Agreement and Rate Schedule TF Service Agreement contain a provision stating that if Northern ever provides a Most Favored Nation (MFN) provision to another shipper, Northern will provide that MFN provision to CenterPoint.²⁴ Northern states that it has never granted a MFN provision to

hold open seasons for any construction required and will provide service to any requesting shipper whose bid meets the economic feasibility requirements for construction of facilities." Transmittal Letter at 3.

²⁴ For example, paragraph 6 of Northern's proposed TFX Service Agreement states:

[t]o the extent Northern provides a Most Favored Nation provision in the future to any Shipper in the Market Area during the term of this TFX Service Agreement, the TF Full Rate Agreement, the Trailblazer Agreement and the Letter Agreement (not including any extension as a result of the ROFR process), Northern will provide a similar provision to CenterPoint Energy Minnesota Gas.

any shipper, but if it does, the provision would be non-conforming and Northern would file it with the Commission (unless it files to include MFN provisions as part of its generally applicable tariff). Northern asserts that the Commission previously allowed MFN provisions concerning rates.²⁵

29. The Commission's policy concerning the inclusion of MFN clauses is that such clauses must relate only to rates and not result in the MFN customer receiving a different quality of service from other shippers or adversely affect other shippers.²⁶ The Commission reasoned that the MFN must apply only to rates because otherwise one might construe the MFN clause as permitting the pipeline to negotiate terms and conditions of service with some shippers that are different from those offered other shippers contrary to the dictates of Order No. 637. The Commission found that if the pipeline desired to offer specific terms and conditions not found in the current form of service agreement or its tariff to a shipper, it must propose a tariff provision that is generally applicable and offer such rights to all shippers on a nondiscriminatory basis.

30. The Commission finds the subject provision to be permissible. Northern's proposal, by itself, does not grant MFN status to CenterPoint. As the Commission interprets Northern's proposal, Northern would grant CenterPoint MFN status if Northern grants such status to another shipper. Therefore, under the proposal, Northern must first propose, and the Commission must grant a MFN clause, as to the third party. If, subsequently, pursuant to the terms of the subject agreements, Northern were to propose to grant MFN status to CenterPoint, Northern must file the provision and the Commission must approve such action by finding the MFN clause as applied to Centerpoint is consistent with Commission policy. Accordingly, in this circumstance, the Commission finds Northern's proposed non-conforming term to be permissible given its attempt to retain the load on its system.

Other Issues

31. NMDG/MRGTF and Indicated Shippers also raise concerns with certain discount provisions Northern proposes to grant Centerpoint, arguing that should the Commission approve the agreements now, Northern will argue in a future rate case that such approval should allow it to pass the cost associated with these discounts on to other customers.

²⁵ *Colorado Interstate Gas Co.*, 101 FERC ¶ 61,268 (2002).

²⁶ *Gulfstream Natural Gas System, L.L.C.*, 100 FERC ¶ 61,036 (2002), *order on reh'g*, 101 FERC ¶ 61,368 (2002).

32. Commission approval of the subject agreements does not represent a determination that the Commission will allow Northern to recover these discounts in any future rate proceeding. Section 154.301(c) of the Commission's regulations requires that "a natural gas company filing for a change in rates or charges must be prepared to go forward at a hearing and sustain, solely on the material submitted with its filing, the burden of proving that the proposed changes are just and reasonable."²⁷ In *KN Interstate*, the Commission held that "its regulations, 18 C.F.R. § 154.301(c), and case law require a pipeline to submit the evidence supporting its case-in-chief at the time it makes its section 4 filing."²⁸ Moreover, Northern acknowledges the Commission's policies in this regard by stating, "Northern is not, however, here requesting any approval in regard to the rate impact, which will be dealt with in the normal course in a subsequent general rate proceeding" in its transmittal letter.²⁹ Accordingly, in any future rate case that Northern may file, it must justify its case for any recovery of discounts, and the Commission will make its determination in that proceeding.

Request for Technical Conference

33. Cornerstone, VPEM, and NMDG/MRGTF request that the Commission suspend Northern's filing for the maximum term and convene a technical conference. Cornerstone asserts that it cannot accomplish a comprehensive review of the filing in such a short time frame, and that the filing implicates numerous policy issues. VPEM asserts that the date Northern provides for final Commission approval is inappropriate if it sacrifices due process. Parties also contend that various aspects of the filing need further exploration including how the parties intend the agreements to function as a whole, how the proposed provisions will affect gas markets, and whether certain non-conforming provisions create a new precedent or contravene Commission policy.

34. Northern and CenterPoint argue the Commission does not need to convene a technical conference to investigate its proposed agreements, since by filing the entire agreements it provides full transparency to all parties. Northern adds that, in its transmittal letter and Appendix A, it provides an explanation of the basis for the agreements, and addressed certain ones in detail. Further, Northern contends that the Commission has recognized that there are instances when the public interest requires it to act promptly in cases requiring a lead time for construction.

²⁷ 18 C.F.R. §301(c) (2004).

²⁸ *KN Interstate Gas Transmission Co.*, 87 FERC ¶ 61,267 at p. 62,085 (1999).

²⁹ Transmittal Letter at 3.

35. The Commission finds that a technical conference is not necessary in this proceeding. Northern has filed the total text of its agreements for review and has delineated its non-conforming provisions and explained its reasons for the implementation of these agreements in its transmittal letter. This is sufficient information for the Commission and other parties to this proceeding to determine whether Northern's agreements are consistent with the Commission's policies.

Tariff Sheet

36. Given the discussion above, the Commission accepts the proposed tariff sheet, subject to the conditions above, to be effective March 25, 2005 as proposed.

The Commission orders:

(A) Ninth Revised Sheet No. 66C is accepted to be effective March 25, 2005, as proposed.

(B) Northern's Service Agreements are accepted subject to the conditions discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.