

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. RP03-398-012

ORDER ON COMPLIANCE

(Issued March 25, 2005)

1. On January 31, 2005, Northern Natural Gas Company (Northern) filed revised tariff sheets<sup>1</sup> to comply with the Commission's December 30, 2004 Order in this proceeding (December 30 Order).<sup>2</sup> Northern's revised tariff sheets contain changes to its tariff provisions in order to permit it to sell capacity on an interim basis without a right of first refusal (ROFR). This order accepts Northern's revised tariff sheets subject to conditions, effective December 30, 2004, as discussed below. This order benefits the public because it ensures that the subject tariff revisions conform to Commission policy.

**Background**

2. The December 30 Order granted in part and denied in part requests for rehearing of the Commission's May 30, 2003 Order<sup>3</sup> (May 30 Order) addressing Northern's section 4 rate application. There, Northern proposed to increase its rates and revise numerous provisions in its terms and conditions of service. The May 30 Order rejected Northern's proposal to modify its ROFR tariff provisions to deny the ROFR to interim service agreements for capacity that is already under contract for a future period. In the December 30 Order, the Commission noted that it had recently addressed a similar

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<sup>1</sup> Ninth Revised Sheet No. 252, Fourth Revised Sheet No. 253, Second Revised Sheet No. 253A, Sixth Revised Sheet No. 297, and Second Revised Sheet No.309 to FERC Gas Tariff, Fifth Revised Volume No. 1.

<sup>2</sup> *Northern Natural Gas Co.*, 109 FERC ¶ 61,388 (2004).

<sup>3</sup> *Northern Natural Gas Co.*, 103 FERC ¶ 61,266 (2003).

ROFR proposal in an order on remand in *Gas Transmission Northwest Corporation (GTN)*.<sup>4</sup> In *GTN*, the Commission recognized that permitting pipelines to sell 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. Therefore, the Commission modified its policy and approved, subject to conditions, the pipeline's proposal to offer prearranged deals for service to commence in the future, as well as the pipeline's request for authorization to sell the same capacity to interim shippers without a ROFR subject to conditions. Specifically, the Commission required *GTN* to implement posting and bidding procedures that would 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. Consistent with the requirements of *GTN*, the Commission granted rehearing of the December 30 Order and allowed Northern to sell capacity already under contract for a future period to interim shippers without a ROFR, but the Commission imposed posting and bidding requirements on Northern's sale of capacity for future periods.

3. The Commission explained that Northern may revise its tariff in two basic ways consistent with the above requirement. Northern could follow the pipeline's approach in *GTN* and develop some form of "prearranged deal" program or simply formulate an open season capacity bidding process whereby it would permit bids for capacity for service to start immediately or anytime in the future. The Commission noted that under this approach, Northern would evaluate all bids on a net present value basis, and award capacity to the shipper providing the highest net present value bid. After awarding the future capacity, Northern could then sell any interim long-term capacity without a ROFR.

### **Compliance Filing**

4. On January 31, 2005, Northern filed revised tariff sheets to comply with the December 30 Order. Northern proposes to use the open season capacity bidding process and modify the provisions of section 26 of its General Terms and Conditions (GT&C) concerning the posting and awarding of firm capacity. As revised, Northern will post weekly on its website its available capacity. Northern "shall have the right to": (1) post notices for solicitation of bids for particular segments of capacity for service to start immediately or in the future; or (2) conduct open seasons for expansion projects including requests for incremental service at a date later than the in-service date of the expansion facilities. The notice soliciting bids "may include a bid evaluation methodology and/or if the open season includes service to start at some time in the future, the bid methodology will include a net present value analysis." Northern will

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<sup>4</sup> *Gas Transmission Northwest Corporation*, 109 FERC ¶ 61,141 (2004).

hold any open season for at least five, and no more than 60, business days. Northern also proposes to amend section 52 of its GT&C, concerning its ROFR, to provide that the ROFR will not apply to interim service agreements associated with “capacity that is already under contract for a future period.”

5. Public notice of the compliance filing was issued on February 3, 2005. Protests were due as provided in section 154.210 of the Commission’s regulations, 18 C.F.R. 154.210 (2004). Cornerstone Energy, Inc. (Cornerstone) filed a protest. Northern filed an answer to the protest.<sup>5</sup>

### **Cornerstone’s Protest**

6. In its protest, Cornerstone argues that Northern fails to meet two conditions of the December 30 Order: (1) that the pipeline must hold an open season to permit bidding for capacity for service that might start immediately or at any time in the future; and (2) that Northern must evaluate all bids on a net present value basis. Cornerstone argues that Northern proposes to permit itself the discretion as to whether to hold an open season, since its proposal states it “shall have the right” to post a notice of solicitation of bids “for service to start immediately or in the future”, rather than requiring such a posting. Cornerstone further points out that the proposed tariff provides that any notice of the open season “may include a bid evaluation methodology and/or if the open season includes service to start at some time in the future, the bid methodology will include a net present value analysis.” Cornerstone contends that, at worst, Northern reserves the decision whether to use the net present value approach for itself and, at best, the cited language is hopelessly vague. Cornerstone requests the Commission direct Northern to incorporate tariff language that Northern must hold an open season and evaluate bids on the basis of net present value.

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<sup>5</sup> The Commission’s Rules of Practice and Procedure do not permit answers to protests (18 C.F.R. § 385.213(a)(2) (2004)). However, the Commission finds good cause to admit the answer by Northern since it will not delay the proceeding, will assist the Commission in understanding the issues raised and will ensure a complete record on which the Commission may act.

### **Northern's Answer**

7. Northern responds that its posting procedures comply with the December 30 Order. Northern asserts that it added language to its existing posting process, which provides that it will post available capacity weekly, and also post notices for solicitation of bids for capacity to start immediately or in the future. Northern further asserts that it does not award any long-term capacity until the capacity remains posted for at least five business days. Northern contends that its only discretion is whether to post a specific solicitation for the capacity or post it for a minimum of five days as generally available capacity. Northern avers that Cornerstone is incorrect in its belief that Northern has any discretion on whether to hold an open season. Northern concludes that its tariff requires it to post all capacity for at least five business days.

8. Northern argues that its proposed tariff language provides that the bid evaluation methodology for future service will include a net present value analysis. Further, continues Northern, its existing tariff provides that the notice of solicitation can include a different bid evaluation methodology than the default methodology, which is the highest total net present value. Northern argues that its proposed modifications merely added that if the open season includes a solicitation for future service, the bid methodology will include a net present value analysis, consistent with the December 30 Order. Finally, Northern argues that Cornerstone is incorrect that Northern reserves for itself the decision whether to use the net present value approach to bid evaluation. Northern contends that the proposed tariff language is not vague because it clearly states that it will use a net present value analysis for future service.

### **Discussion**

9. The Commission finds that Northern generally complies with the December 30 Order. However, the Commission will require Northern to clarify its proposed changes to section 52 of the GT&C concerning the ROFR. Therefore, the revised tariff sheets are accepted subject to conditions.

10. Northern's proposed changes to section 26 concerning the posting of firm capacity are consistent with Commission policy. As revised, section 26 requires Northern to post all available capacity on its website, consistent with Commission policy. As Cornerstone points out, section 26 does give Northern discretion whether to also post a notice to solicit bids or conduct open seasons, since section 26 only provides that Northern "shall have the right to" do either of these things. However, the Commission has not required pipelines to sell capacity solely through open seasons. Rather, so long as the pipeline posts all available firm capacity, it may sell that capacity on a first come, first served

basis. However, the December 30 Order requires that in order for Northern to sell interim capacity to shippers without a ROFR: (1) it must have sold the future capacity through an open season bidding process permitting bids for capacity for service to start immediately or anytime in the future; (2) the bids must have been evaluated on a net present value basis; and (3) Northern must have awarded the future capacity to the shipper providing the highest net present value bid. Only when those conditions are met could Northern then sell capacity to shippers in the interim without a ROFR. Northern's proposed change to section 52 does not clearly require it to meet these conditions in order for the ROFR not to be applicable for long-term capacity that is already under contract for a future period.

11. Northern must submit revised tariff sheets consistent with the Commission's discussion above within thirty days of the date this order issues. Accordingly, the revised tariff sheets are accepted, effective December 30, 2004, subject to the conditions discussed in the body of this order and the ordering paragraphs below.

The Commission orders:

(A) The revised tariff sheets listed in footnote No. 1 of this order are accepted subject to conditions as set forth in the body of this order and the ordering paragraph below, effective December 30, 2004, as in compliance with the December 30 Order.

(B) Northern is directed to submit revised tariff sheets consistent with the Commission's discussion in the body of this order within thirty days of the date this order issues.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.