

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Northern Natural Gas Company

Docket No. RP03-343-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO REFUND
AND CONDITIONS AND FURTHER REVIEW

(Issued May 14, 2003)

1. On April 14, 2003, Northern Natural Gas Company (Northern) filed revised tariff sheets¹ to establish a new provision regarding the reservation of capacity for future expansion projects proposed to be effective May 14, 2003. For the reasons discussed below, we accept and suspend Northern's revised tariff sheets to become effective October 14, 2003, or a date specified by further order of the Commission, subject to refund and conditions and further review. This order benefits the public because it will assist in ensuring that the subject tariff revision conforms to Commission requirements and policy.

The Instant Filing

2. Northern proposes changes to Section 26 (Request for Throughput Service) and Section 52 (Right of First Refusal) of its General Terms and Conditions (GT&C) to establish a new provision regarding the reservation of capacity for future expansion projects. Northern asserts the proposal promotes the efficient use and allocation of capacity on Northern's system, while preserving the rights of expansion shippers. Northern further states that the Commission rejected a previous proposal regarding the reservation for capacity in Docket No. RP02-573-000, in its October 30, 2002 order, Northern Natural Gas Co., 101 FERC ¶ 61,090 (2002) (Northern). In Northern, the Commission found that parties in that proceeding raised issues that Northern should address if it refiled tariff revisions to address reservation of capacity in conjunction with system expansion

¹Seventh Revised Sheet No. 252, Third Revised Sheet No. 253, First Sheet No. 253A, and Fourth Revised Sheet No. 297 to its FERC Gas Tariff, Fifth Revised Volume No. 1.

projects.² Northern states here that it believes it has properly addressed the issues and concerns previously raised in Northern.

3. Northern proposes to add a provision to Section 26 that would permit it, under certain conditions, to reserve capacity. Northern asserts that its proposal is consistent with recent Commission orders, citing Tennessee Gas Pipeline Co., 86 FERC ¶ 61,066 (1999); Columbia Gulf Transmission Co., 100 FERC ¶ 61,133 (2002) (Columbia Gulf); Columbia Gas Transmission Corp., 100 FERC ¶ 61,136 (2002) (Columbia Gas); and Crossroads Pipeline Co., 100 FERC ¶ 61,131 (2002) (Crossroads). Northern proposes a provision permitting it to reserve, for future expansion projects, any unsubscribed capacity or capacity under expiring or terminating service agreements where such agreements do not have a right of first refusal or the shipper does not exercise its right of first refusal. Northern will only reserve such capacity for a future expansion project for the 12-month period prior to filing for NGA Section 7(c) certificate approval and thereafter until the expansion facilities are placed in service. Northern intends to post a notice on its website when it reserves capacity for a future expansion and include the details about the reserved capacity (e.g., description of the project, quantity, location, etc.). Northern commits to include in its reservation posting or open season, a non-binding solicitation for turnback capacity from its existing shippers to serve the expansion project.

4. Northern's proposal specifies that it will repost any capacity reserved for a future expansion project that does not go forward as generally available capacity within 30 days of the date that the capacity becomes available. However, Northern will not post capacity committed to in written agreement(s) entered into as a result of an open season for an anticipated expansion that does not go forward, where Northern can fulfill the subject capacity under such agreement either with no construction and/or with construction automatically authorized pursuant to its blanket certificate. Northern states that it needs this provision to assure that any shipper who executes a precedent agreement as a result of an open season will retain its rights to capacity reserved for an anticipated expansion project that does not ultimately require Northern to file a certificate application. Northern further states that it would abide by its agreement to provide service to the shipper who has executed a precedent agreement for incremental service during the open season where it can fulfill such agreement either with no construction and/or with construction automatically authorized pursuant to Northern's blanket certificate. Northern asserts that shippers that respond to an open season for which capacity has been reserved require assurance that capacity will be available to provide service when a shipper executes a written agreement. Northern further asserts that such shipper(s) should not be penalized simply because the anticipated expansion project does not require Northern to file a

²101 FERC ¶ 61,090 at P 15.

certificate application for the construction of expansion facilities. Northern contends that its proposed tariff language is consistent with language previously approved by the Commission in Columbia Gulf Transmission Company's (Columbia Gulf) tariff:³

Any capacity reserved pursuant to this Section 4.2(i) for an expansion project that does not go forward because Transporter does not file any required application with the Commission within one year from such reservation dates, or because Transporter ultimately does not receive authorization, shall be posted as generally available within 30 days of the date the capacity becomes available subject to then existing commitments for the capacity. [Emphasis added.]

5. Northern also states that it has clarified that the effective date of any service agreement may be contingent upon the completion of the construction of any facilities needed to provide such service. Northern submits that it is also revising Section 52 to provide that the Right of First Refusal (ROFR) will not apply to interim service agreements for capacity reserved for expansion projects, consistent with the reservation of capacity provision set forth in Section 26.

6. Northern contends that the instant tariff revisions address the issues parties raised with respect to its proposal filed in Docket No. RP02-573-000. In response to concerns that Northern could indefinitely reserve capacity, Northern asserts that this proposal limits the time that it can reserve capacity to up to one year prior to filing for certificate approval and thereafter until the expansion facilities are placed into service, consistent with Commission policy. Northern further asserts that it also limits its ability to suspend ROFR rights associated with expansion projects on a basis consistent with Commission policy which allows limited waiver of ROFR rights in conjunction with reserved capacity so that a system expansion may be optimally sized. Northern submits that it has clarified that capacity would be made available for bidding by all shippers before any capacity would be reserved for a future expansion. Northern further submits that its filing also provides that Northern will report as generally available any capacity reserved for an expansion project that does not go forward as originally contemplated (e.g., due to a change in the size or scope of an expansion), within 30 days of the date the capacity becomes available subject to existing commitments for the capacity. In addition, Northern clarifies that the reference in the proposed revisions to Section 26 to "reasonable efforts" means that it will update the reservation posting to reflect any material changes in the scope of the expansion project as soon as such changes become available.

³Citing Columbia Gulf Transmission Co., 101 FERC ¶ 61,355 (2002). Northern asserts that similar tariff language has also been approved in Columbia Gas and Crossroads.

7. In response to its filing in Docket No. RP02-573-000, Aquila, Inc. d/b/a Aquila Networks (Aquila) requested Northern to post the impact of reserving capacity on existing shippers in the affected area, including the alternative of having to build facilities that could serve the reserved capacity. Northern asserts that there is no need for such a requirement since no reservation of capacity by Northern will adversely affect its existing shippers and that it will post and make that capacity available to all shippers, new and existing, before reserving that capacity for an expansion shipper. Northern further asserts that, if an existing shipper, however, does not request capacity when it is posted and made available, there is no requirement that Northern hold the capacity for such existing shipper. Northern contends that all shippers have the same right to capacity it posts on its system. Northern further contends that, in other pipeline proceedings, the Commission has not required pipelines to post the impact of their reservation of capacity on existing shippers.⁴

8. In addition, Northern states that Aquila suggested that Northern's proposal to include a non-binding solicitation for turnback capacity in its reservation of capacity should only apply to the shipper turning back capacity or, in other words, if a shipper is willing to turn back capacity in the zone where an expansion is to occur, then the Commission should require Northern to accept such turnback capacity. Northern contends that this suggestion is inconsistent with Commission policy, which provides that the turnback capacity must correspond to the capacity desired by the market.⁵ Northern further contends that it is only required to accept turnback capacity in the zone it plans to expand if it can use the turnback capacity to fulfill the specific requests of an expansion shipper(s), and the expansion project being served by the turnback capacity provides Northern with at least the same economic value, *i.e.*, term and rate, as the capacity turned back by an existing shipper. Northern asserts that, therefore, the term "non-binding" in the proposed revision to Section 26 appropriately applies to both the shipper and Northern. Northern further asserts that this provision should not be narrowly construed to only apply to the shipper turning back capacity.

9. Regarding the issue of cost subsidies, Virginia Power Energy Marketing, Inc. requested Northern include language in its tariff to provide that its existing customers will not bear any of the costs of the reserved capacity to which they did not subscribe. Northern states that it has not included such language in this filing because it is not required by the Commission, citing the order on rehearing of Columbia Gas, Columbia Gas Transmission Corp., 101 FERC ¶ 61,380 (2002).

⁴Citing Columbia Gas and Columbia Gulf.

⁵Citing Transwestern Pipeline Co., 90 FERC ¶ 61,032 (2000).

Notice, Interventions, Comments, and Protests

10. Public notice of the filing was issued on April 16, 2003. Interventions and protests were due as provided in Section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2002). Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2002)). In addition, all motions to intervene out of time filed before the issuance of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on the parties. The Northern Municipal Distributors Group and the Midwest Region Gas Task Force Association (NMDG and MRGTF) and Indicated Shippers filed protests. The Large Local Distribution Company Coalition (Coalition) filed comments. The American Iron and Steel Institute, Alcoa Inc., EVTAC Mining, United States Gypsum Company, and USG Interiors, Inc. (Industrials) filed comments and a request for technical conference.

11. NMDG and MRGTF argue that the Commission should direct Northern to include tariff language which requires that Northern's existing customers will not bear any of the costs of the reserved capacity to which they did not subscribe as the Commission originally held in Columbia Gas and Columbia Gulf. NMDG and MRGTF argue that this finding protected existing customers from the abuse of market power by pipelines by ensuring that such customers would not bear the costs of capacity that was neither used nor useful in providing service. NMDG and MRGTF assert that, however, the Commission granted rehearing and stated that the cost issue could arise in a general Section 4 rate case filed while the capacity is being reserved but before the expansion begins service or a Section 4 rate case filed after service begins to include the costs of the expansion in the pipeline's rates.⁶

12. NMDG and MRGTF contend that this filing presents a third context which differs significantly from the two discussed by the Commission. NMDG and MRGTF argue that, if the Commission's rationale in those rehearing orders is that issues concerning whether existing customers are bearing the costs of reserved capacity to which they did not subscribe can be addressed in an upcoming base rate case, that rationale is inapplicable here, because Northern filed the instant proposal on April 14, 2003, and will make a base rate filing on or about May 1, 2003. NMDG and MRGTF further assert that if the Commission approves the instant filing soon after the filing of the base rate case, Northern will, for the foreseeable future, avoid the review of its actions discussed by the Commission in the rehearings because most likely, Northern will not make a new base rate filing in the foreseeable future. NMDG and MRGTF state that they assume that Northern

⁶Citing 101 FERC ¶ 61,355 at P 26.

has made no adjustment to the capacity or revenues reflected in its upcoming base rate filing to reflect capacity it may reserve in the future or sell on an interim basis because, unless and until the instant filing has been acted upon by the Commission, Northern has no authority to reserve such capacity or to engage in such interim sales.

13. NMDG and MRGTF conclude that, therefore, in the May 1, 2003 base rate filing, existing customers may be asked to bear the costs associated with soon-to-be unsubscribed capacity and may be denied the benefit of any incremental revenue from interim sales of such reserved capacity. NMDG and MRGTF assert that while existing shippers arguably could file a complaint, that process is difficult, expensive, and time consuming. NMDG and MRGTF contend that, in these circumstances and given the Commission's mandate to protect consumers from the market power of pipelines, if it does not reject the instant filing, the Commission should require Northern to include language in its tariff which provides that existing customers should not be required to bear any of the costs associated with the reserved capacity. In the alternative, NMDG and MRGTF argue that the Commission should consolidate this docket with the base rate proceedings in order to provide existing customers with the opportunity to further explore these issues and to recommend adjustments to throughput and revenues in the base rate proceeding to account for any future reservation of capacity by Northern, as well as any sales of that capacity on an interim basis. NMDG and MRGTF further argue that without such protections, it may literally be years before Northern decides or is required to file another base rate proceeding, thereby depriving these customers of a means for obtaining relief from an improper subsidization of costs and/or preventing a windfall to Northern.

14. In addition, NMDG and MRGTF argue that Northern must clarify its tariff regarding the posting of capacity prior to reservation. NMDG and MRGTF assert that the proposed language appears in Section 26 of the GT&C, which is entitled "Requests for Throughput Service" and that section states that Northern shall post available capacity on its website on a weekly basis and that notice of such capacity "may include a bid evaluation methodology." NMDG and MRGTF contend that this language lacks the degree of specificity set forth by the Commission in the order on rehearing of Columbia Gulf for posting of capacity that Northern intends to reserve prior to such reservation and requires a remedy.⁷ NMDG and MRGTF also argue that the Commission should direct Northern to specifically state that it will post the capacity without any of the conditions from the anticipated capacity expansion imposed upon that capacity or, in other words, only the generally applicable tariff terms should apply to such capacity.

⁷Citing, 101 FERC ¶ 61,355 at P 23.

15. Finally, NMDG and MRGTF argue that the Commission should reject or revise Northern's proposal to provide capacity to a shipper where no construction has occurred. NMDG and MRGTF argue that Columbia Gulf's tariff, relied upon by Northern, simply states that the capacity shall be posted within thirty days "subject to then existing commitments for the capacity." NMDG and MRGTF contend that, in contrast, Northern wants permission to award capacity which it committed to in written agreements as a result of an open season for an anticipated expansion. NMDG and MRGTF also argue that Northern may not have enough capacity to meet all of the requirements of the customers that actually did sign an agreement as part of the open season and that its proposal does not say how Northern would award capacity in such circumstances (pro rata, first come, first served, etc.), which could lead to discrimination between those shippers that signed agreements.

16. NMDG and MRGTF contend that Northern fails to discuss why shippers that signed agreements in anticipation of construction that does not occur should be given any preference over other shippers that desire such capacity a year or more after the initial posting of capacity occurred and may be willing to bid more for it than the rate agreed to in the previously-signed agreement. NMDG and MRGTF further contend that denying these shippers the opportunity to bid on the capacity discriminates against them and deprives other shippers of potential additional revenues to offset the costs associated with the capacity. NMDG and MRGTF argue that Northern fails to explain why the shipper that signed an agreement simply did not bid on the capacity when Northern posted it prior to reserving it and why the shipper would be part of the construction certificate filing if the shipper's needs could be met without construction or with construction automatically authorized pursuant to Northern's blanket certificate. NMDG and MRGTF contend that Northern has not demonstrated that this proposal is fair to all shippers and that the Commission should reject it.

17. In their protest, Indicated Shippers argue that, under Commission precedent, pipelines are required to place in their tariffs how long the capacity would be posted prior to it being reserved for a future expansion project⁸ and, therefore, the Commission should require Northern to post the capacity for bid at least 30 days prior to reserving it. Indicated Shippers contend that this 30-day period gives shippers some time to determine their commercial needs and enable shippers to decide whether to bid on the available capacity. Indicated Shippers assert that Northern stated that it would post the location of the proposed reserved capacity on the pipeline system; however, Northern did not address how it would reserve the capacity, i.e., by delivery point, receipt point, path, segment, or a

⁸Citing 101 FERC ¶ 61,380.

combination of the above. Indicated Shippers contend that, if the Commission permits Northern to define and reserve a receipt point for an expansion market, Northern could choose to reserve an economically desirable receipt point for the benefit of an expansion shipper, which would potentially discriminate against the use of that point by existing firm shippers. Indicated Shippers contend that the Commission should not permit this discrimination.

18. Finally, Indicated Shippers argue that Northern did not adequately address Aquila's claim, in Docket No. RP02-573-000, that the Commission should require Northern to post the impact on existing shippers of reserving capacity for expansion. Indicated Shippers assert that Northern simply stated that reservation of capacity would not adversely affect existing shippers. Indicated Shippers argue that the reservation of capacity could very well have an adverse impact on existing shippers, as the Commission explicitly acknowledged in the Certificate Policy Statement.⁹ Indicated Shippers assert that Northern's reservation of capacity could prevent a shipper from using that portion of capacity, for up to 13 months from the open season for the expansion, even if that shipper were willing to pay maximum-firm (non-LFT) rates for the capacity. Indicated Shippers argue that, similar to the principles of the Certificate Policy Statement, the Commission should require Northern to file a report with the Commission explaining why there would not be adverse impacts on existing shippers.

19. In their comments, the Coalition argues that the Commission should make clear that Northern may reserve capacity for no more than 12 months prior to filing a related certificate application. The Coalition asserts that Northern's proposed language could be construed as giving Northern one 12-month period to hold an open season and another 12-month period to file a certificate application. The Coalition also argues that the Commission should make clear that the open season that Northern must hold prior to reserving the capacity will, to the extent possible, accommodate requests for changes in primary receipt and delivery points. The Coalition asserts that Section 26 of Northern's GT&C clearly obligates Northern to accommodate requests for changes in primary points to the extent that Northern has available capacity. Finally, the Coalition argues that the Commission should direct Northern to file revised tariff language that specifies a sufficient amount of time that capacity will be posted for bidding before it can be reserved.

20. The Industrials state that they do not object to the reservation of unwanted capacity for use in future expansion projects and acknowledge that the Commission previously approved tariff provisions which allow for the reservation of system capacity for future expansion projects. However, the Industrials assert that these proposals were carefully

⁹88 FERC ¶ 61,227 (1999).

evaluated by the Commission to assure that the pipeline would not withhold capacity inappropriately.

21. The Industrials raise several concerns regarding the impact of Northern's proposal on the Northern system and existing shippers and request further information. First, the Industrials question whether Northern has demonstrated a legitimate need for incorporating the proposed tariff language. The Industrials assert that Northern's filing did not show much justification other than the Commission has previously approved this type of proposal. Therefore, the Industrials request that the Commission require Northern to articulate what system conditions exist on its system to necessitate this type of proposal.

22. Second, the Industrials assert that the Commission should compel Northern to explain, in further detail, the relationship between its proposed tariff language and its existing tariff language, and practices regarding posting, bidding and awards of pipeline capacity, especially for long-term capacity. The Industrials state that they are concerned that Northern not be allowed to bypass its Commission-approved capacity auction and award process or be allowed to withhold capacity. The Industrials assert that it is of paramount importance that Northern's language be clear that any interested shipper will be given the opportunity to bid on and receive the capacity and that capacity cannot be set aside or withheld for expansions if any other shipper is willing to take the capacity under a long-term contract.

23. Third, the Industrials state that they believe that Northern's proposal is unclear regarding its use of turnback capacity and may be contrary to Commission policy. The Industrials further state that, since Northern proposes a non-binding solicitation for turnback capacity, Northern states that it is not required to accept turnback capacity prior to a reservation of capacity for a future expansion. The Industrials urge the Commission to require Northern to consider and accept turnback capacity before it reserves any existing pipeline capacity for future expansions.

24. Fourth, the Industrials state that Northern proposed that, in the event a project does not go forward and a shipper has executed a precedent agreement, that shipper will retain its rights to the capacity reserved when Northern can fulfill the service either with no construction and/or with construction automatically authorized. The Industrials argue that the expansion shipper should not be allowed to bypass Northern's tariff and retain the capacity without another posting and bidding process.

25. Fifth, the Industrials assert that the Commission requires the annual posting of reserved capacity and that Northern does not incorporate that requirement in this filing. Finally, the Industrials state that although Northern does set forth a detailed list of what information it will provide on the website regarding reserved capacity, it fails to list a

reporting of how much of the reserved capacity has been awarded on an interim basis. The Industrials request that the Commission require Northern to include this type of information. The Industrials also request that the Commission convene a technical conference to address all the issues of the proposal. The Industrials contend that a technical conference will give all interested parties an opportunity to explore fully the matters of concern with Northern and gain a better understanding of the impetus for this filing and its practical implications on existing and expansion shippers. In addition, the Industrials assert that since Northern is required to file a general Section 4 rate case on May 1, 2003, and the instant filing raises related issues, it may be appropriate to defer discussion of the proposed changes until Northern files its rate case and then to consolidate the proceedings, but that, at a minimum, further clarification by Northern is necessary.

Discussion

26. The Commission accepts and suspends Northern's proposal until the earlier of October 14, 2003, or a further order of the Commission. The protests and comments have raised numerous concerns about Northern's filing. The Commission believes that Northern should provide further information and explanation with adequate support responding to the issues raised in protests and comments. More information regarding these matters is necessary and will allow the protestors and other parties to more fully understand and thoroughly analyze Northern's filing. Therefore, within twenty days of the date this order issues, we direct Northern to file information and explanations with adequate support and addressing the issues raised in the protests and comments. Parties will be permitted ten days from the filing date of Northern's filing required by this order to file reply comments. Accordingly, a technical conference is not warranted at this time. Therefore, we deny the request for a technical conference.

Suspension

27. Based upon a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission accepts the tariff sheets for filing, subject to refund, and suspends their effectiveness for the period set forth below, subject to the conditions set forth in this order.

28. It is the Commission's policy generally to suspend rate filings for the maximum period permitted by statute if preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards. See Great Lakes Gas Transmission Co., 12 FERC ¶ 61,293 (1980) (five-month suspension). It is also recognized however, that shorter suspensions may be warranted

under circumstances in which suspension for the maximum period may lead to harsh and inequitable results. See Valley Gas Transmission, Inc., 12 FERC ¶ 61,197 (1980) (one-day suspension). Such circumstances do not exist here. Therefore, the Commission will accept and suspend the proposed tariff sheets, to be effective on the earlier of October 14, 2003, or a date specified in a further order of the Commission, subject to refund and conditions set forth 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 and suspended to be effective on the earlier of October 14, 2003, or a date specified in a further order of the Commission, subject to refund and conditions and further review, as discussed in the body of this order and the ordering paragraphs below.

(B) Within twenty days of the date this order issues, Northern is directed to file information and explanations with adequate support and addressing the issues raised in the protests and comments, as discussed in the body of this order.

(C) Parties may file comments on Northern's filing required by ordering paragraph (B) above within ten days from the filing date of that filing.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.