103 FERC ¶ 61,276

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 Nos. GT02-38-004
GT02-38-005

# ORDER ON COMPLIANCE AND REHEARING

(Issued June 4, 2003)

1. On February 10, 2003, Northern Natural Gas Company (Northern) filed revised tariff sheets in response to our order issued on January 29, 2003.[1] In the January 29 Order, the Commission accepted Northern's proposal to implement more stringent creditworthiness provisions to its tariff, subject to modification. Additionally, Northern and other parties filed timely requests for rehearing of the January 29 Order.

2. In this order, we accept Northern's revised creditworthiness provisions, subject to modification, to be effective February 23, 2003. This order also grants in part, and denies in part, the requests for rehearing. Our determinations benefit customers by clarifying the Commission's policy regarding the establishment of creditworthiness standards for shippers on interstate pipelines.

## I. Background

3. On August 23, 2002, Northern filed proposed tariff sheets to implement more stringent creditworthiness provisions in Sections 46 and 47 of the General Terms and Conditions (GT&C) of its tariff. Numerous parties protested Northern's filing.

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[1] Northern Natural Gas Co., 102 FERC ¶ 61,076 (2003) (January 29 Order).

4. On September 20, 2002, the Commission issued an order finding that the protesting parties raised a number of important issues requiring further consideration.[2] In order to provide parties with a forum to discuss their concerns and gather more information, the Commission directed staff to convene a technical conference. Northern's tariff sheets were accepted and suspended, to become effective, subject to conditions, the earlier of February 23, 2003, or the date the Commission specified in an order issued after the technical conference.

5. On November 12, 2002, the technical conference was held. Northern clarified certain issues and agreed to modify its proposed tariff sheets to reflect concerns that were raised at the conference. On November 22, 2002 Northern filed pro forma tariff sheets reflecting the modifications that were discussed at the technical conference. Numerous parties filed comments and protests in response to Northern's filing.

6. On January 29, 2003, the Commission issued its order accepting Northern's proposed creditworthiness provisions, subject to modification, and denying the requests for rehearing of the September 20 Order. The Commission found that the proposed tariff sheets, as modified, would allow Northern to implement reasonable tariff provisions ensuring that its shippers will have the financial ability to pay for the pipeline services that they use.

## II. Compliance Filing

7. In its compliance filing, Northern made numerous revisions to its proposed creditworthiness provisions. Among the revisions, Northern reduced the amount of collateral required from non-creditworthy shippers from twelve to three months of reservation changes, except where Northern constructs facilities for a shipper, in which case Northern could require security up to the cost of the facilities. Northern also revised the steps it would take after determining a shipper to be non-creditworthy. Northern states that it will adopt the Commission's recommended timeline to provide that: 1) a shipper shall at least five business days from Northern's written request to pay for one month of service in advance; 2) a shipper shall have at least 30 days to provide the next three months of security to continue service; 3) if the shipper fails to provide the security within these time periods, Northern may suspend service immediately; and 4) if the shipper fails to post the required security, Northern will provide at least 30 days written notice to the shipper and the Commission before terminating the shipper's service.

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[2] Northern Natural Gas Co., 100 FERC ¶ 61,278 (2002) (September 20 Order).

8. Northern also replaces its proposal to confiscate gas left on its system by a non-creditworthy shipper with language stating that Northern shall have the right to assert any liens or other interests, consistent with applicable law, against any gas remaining on its system. Additionally, in response to the Commission's finding that Northern's proposal to establish a netting agreement (among Northern, a shipper, and Northern's affiliates) may not be just or reasonable without more support, Northern explains that this netting agreement would permit the affiliate to net or setoff any obligation to the shipper against any obligation that the shipper may have to Northern. Northern explains that such an agreement would not result in any transfer of gas between the parties, and would not impact the imbalance rights that a shipper may have on an affiliated pipeline. Ultimately, Northern believes that this netting proposal will provide its shippers with a tool to transfer purely financial obligations. Northern also stresses that the use of this provision is entirely up to the shipper, stating that if the shipper does not desire to use this option, the shipper simply need not agree to this netting provision.

9. Northern's compliance filing also withdraws its earlier proposal to permit the pipeline to terminate a contract with an replacement shipper in the event that the releasing shipper filed for bankruptcy.

## III. Notice of Filing, Responsive Pleadings and Requests for Rehearing

10. Notice of Northern's compliance filing was published in the Federal Register, 68 Fed. Reg. 8,289 (2003), with motions to intervene and protests due on or before February 24, 2003. Calpine Energy Services, L.P. (Calpine); Indicated Shippers; the American Iron and Steel Institute, Alcoa Inc., EVTAC Mining, United States Gypsum Company, and USG Interiors, Inc. (collectively, the Industrials); and Virginia Power Energy Marketing (Virginia Power) filed timely responsive pleadings.

11. Additionally, Northern, along with Calpine; Golden Spread Electric Cooperative, Inc. and GS Electric Generating Cooperative, Inc. (collectively, Golden Spread); the Industrials; the Large Local Distribution Company Coalition (LDC Coalition); and NorthWestern Energy (NorthWestern) filed timely requests for rehearing of the January 29 Order.

## IV. Discussion

12. The Commission finds that Northern has generally complied with the directives in the January 29 Order, subject to certain additional modifications, as discussed below.

**Security Required for New Facilities**

13. In its compliance filing, Northern proposed tariff language stating that "[i]n the event Northern constructs new facilities to accommodate a Shipper, Northern may require Security in an amount up to the cost of the facilities." Calpine and the Industrials argue against Northern's proposal, stating that allowing a pipeline to require security up to the cost of the facilities during both the construction and in-service phase of a project is inconsistent with recent Commission orders. Citing our decision in North Baja, Calpine and the Industrials contend that Commission policy only permits pipelines "to require up to twelve months of security from its initial firm shippers at the time the project is certificated."[3] Moreover, Calpine cites to our decision in Tennessee in support of our recognition that there should be a clear distinction between pre and post-construction collateral requirements.[4] Calpine argues that Northern should add language limiting a non-creditworthy shipper's collateral requirement to three months of charges once construction of the new facilities has been completed and the capacity is in service.

14. In its comments, Virginia Power supports the principle that pipelines constructing new facilities should be allowed to require security from initial non-creditworthy shippers in an amount up to the cost of the facilities prior to construction. However, Virginia Power contends that where facilities are to be constructed to serve multiple shippers, an individual shipper's obligation should be for no more than its proportionate share of the cost of the facilities. Additionally, Virginia Power states that pipelines should be required to mitigate the consequences of a default and the defaulting customer should be responsible only for the difference between what it would have paid and the amount (if any) that the pipeline can recover from another shipper. Virginia Power requests that the Commission require Northern to modify its proposal to reflect these limitations.

15. Northern's tariff proposes that in the event it constructs new facilities to accommodate a shipper, it may require security in an amount up to the cost of the facilities. However, it is unclear as to whether this provision is intended to apply to lateral or mainline expansion facilities.[5] The Commission's policy has been that pipelines are not required to construct lateral facilities and that the shipper must be willing to pay

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[3]North Baja Pipeline, LLC, 102 FERC ¶ 61,239 at P 14 (2003) (North Baja).

[4]Tennessee Gas Pipeline Co., 102 FERC ¶ 61,075 at P 52 (2003) (Tennessee).

[5]See 18 C.F.R. § 154.109(b) (2003) ("the tariff must contain a statement of the company's policy with respect to the financing or construction of laterals including when the pipeline will pay or contribute to the construction cost").

the full cost of such construction.[6] Thus, when pipelines agree to construct lateral facilities for the shipper, the Commission has found it appropriate for the pipeline to receive collateral up to the full cost of the facilities.[7] Collateral requirements for mainline system expansions should not be in a pipeline's tariff.[8] Specific risk sharing arrangements are more appropriately negotiated and agreed to in the context of precedent agreements that may be reviewed in a certificate proceeding. Northern is therefore directed to revise its tariff language to clarify that its collateral requirement applies only to lateral facilities.[9]

16. Calpine and the Industrials have misinterpreted our decisions in North Baja and Tennessee with regard to the issue of how much security a pipeline can require from non-creditworthy shippers that request the construction of new facilities. In North Baja, the pipeline requested 12 months of collateral, and the Commission found that "requiring twelve months of security may be acceptable in the precedent agreements leading up to the issuance of a certificate."[10] While our language may have been unclear, we did not intend to establish a policy that security for pipeline expansions cannot exceed 12 months of service charges.

17. With respect to our decision in Tennessee, Calpine confuses initial subscribers for which the new mainline facilities are constructed with shippers that subscribe to take service once the facilities are in service. Commission policy provides that the amount of

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[6]Panhandle Eastern Pipe Line Co., 91 FERC ¶ 61,037 at 61,141-42 (2000).

[7]See Natural Gas Pipeline Co. of America, 102 FERC ¶ 61,355 at P 80-85 (2003) (where the Commission accepted a proposal allowing a pipeline to request security in an amount up to the cost of the new facilities from its customers prior to commencing construction of new interconnecting facilities).

[8]North Baja at P 15. In a contemporaneously issued order, the Commission addresses a complaint regarding the level of collateral that a pipeline can require from a non-creditworthy shipper that requests the construction of mainline system expansion facilities. One consideration in determining the level of collateral would be the amount of time that the pipeline would reasonably need to remarket the capacity. See Calpine Energy Services, L.P. v. Southern Natural Gas Co., 103 FERC ¶ 61,273 (2003) (Docket No. RP03-312-000).

[9]A lateral would include facilities as defined in 18 C.F.R. § 154.109(b) and 18 C.F.R. § 157.202 (2003).

[10]North Baja at P 15.

collateral a particular shipper is required to provide will depend on whether the shipper is an initial subscriber or a new shipper that takes service after the facilities are placed in service. These differences reflect the relative risks faced by a company proposing to construct new facilities versus an existing pipeline. Once pipeline facilities are constructed, the major risk to the pipeline is the potential loss of reservation charges associated with the contract termination process. The Commission's established three-month collateral requirement provides the pipeline with sufficient protection against this risk. Accordingly, initial subscribers will not have their collateral automatically reduced to three months worth of charges once the facilities enter service. Such a limited amount of collateral would not generally serve to secure the financial commitment made by the pipeline on behalf of the initial subscribers that requested construction of new mainline facilities.

18. Finally, the Commission agrees with Virginia Power's contention that where lateral line facilities are to be constructed to serve multiple shippers, an individual shipper's obligation should be for no more than its proportionate share of the cost of the facilities. The Commission also agrees with Virginia Power that pipelines should be required to mitigate the consequences of a shipper's default. In the event of default and termination, the pipeline will be required to reduce the collateral it retains by mitigating damages.[11] Northern is directed to revise its tariff to include such language.

**Credit Rating Variations**

19. In the January 29 Order, the Commission found that to the extent a shipper is rated by more than one acceptable credit rating agency, it is reasonable for Northern to use the lowest rating in determining a shipper's creditworthiness. In their requests for rehearing, Calpine and NorthWestern assert that the Commission erred in accepting this provision, and LDC Coalition requests clarification on this issue.

20. Calpine suggests that when a shipper is rated by three rating agencies, the shipper should have its creditworthiness established by the rating determined by the majority of the credit rating agencies. That is, if one agency rates the shipper below Northern's creditworthiness standards but two other rating agencies do not, the creditworthy rating

[11]Pipelines are required to post capacity for sale after a termination. One method of mitigation would be for the pipeline to determine its damages by taking the difference between the highest net present value bid for the capacity and the net present value of the remaining terms of the shipper's contract. The pipeline could then retain as much of the collateral as necessary to cover the damages. Pipelines could also develop alternative measures for determining mitigation.

prevails. NorthWestern argues that a shipper with a solid past payment history should be considered creditworthy even if one rating agency reduces a shipper's rating below Northern's standards. Additionally, LDC Coalition requests clarification that a shipper is relieved of its obligation to post collateral as soon as a single acceptable credit rating agency increases the shipper's rating to a creditworthy level.

21. The Commission recognizes that positive or negative determinations regarding a shipper's rating by a single credit rating agency does not always lead to identical action by another rating agency. As we stated in the January 29 Order, if a credit rating agency downgrades the rating of a shipper, then Northern would have reasonable cause to suspect that a problem with a shipper's financial health may exist, irrespective of whether other credit rating agencies respond in a timely manner.[12] As such, the Commission finds that it is not unreasonable to use the lowest credit rating in determining a shipper's creditworthiness, regardless of whether other credit rating agencies offer more optimistic predictions. Accordingly, the requests to rehear this matter are denied.

**Material Adverse Changes**

22. In the January 29 Order, the Commission approved proposed tariff language permitting Northern to determine that a shipper is no longer creditworthy if, in Northern’s reasonable opinion, a shipper suffers a material adverse change in its financial condition such that the shipper’s ability to perform its obligations to Northern is materially impaired. Northern's tariff states that "default on indebtedness," a "restatement of financials" and "non-payment" are instances of material adverse changes.

23. In their requests for rehearing, NorthWestern and LDC Coalition argue that the Commission erred in accepting Northern’s standards for determining when shipper is no longer creditworthy based upon a material adverse change. LDC Coalition argues that these standards are overly broad and arbitrary, giving Northern excessive discretion in determining an individual shipper’s creditworthiness. Similarly, NorthWestern contends that this provision is unduly discriminatory since it will be difficult to determine if Northern is selectively imposing its determination since it is based on Northern’s “reasonable opinion.”

24. The Commission does not find these arguments to be persuasive since the instances of material adverse changes that Northern has provided in its tariff are reasonably narrow and objective. In the event that a shipper suffers a material adverse change, as described in the tariff, Northern will have little, if any, discretion to make

[12] January 29 Order at P 29.

subjective determinations regarding whether or not a material adverse change has occurred. Accordingly, rehearing of this issue is denied.

**Past Payment History**

25. In the January 29 Order, the Commission accepted Northern's proposal to cease relying on a shipper's payment history as the sole determinant of its creditworthiness; however, Small Customers would continue have their creditworthiness determined on the sole basis of their payment history. Id. at P 68. Northern stated that since its Small Customers do not pose the same financial risks as its larger customers, this provision would not provide Small Customers with preferential treatment. The Commission found these arguments to be reasonable, especially since Northern explained that it would continue to consider the payment history of all shippers when determining their creditworthiness.

26. LDC Coalition, NorthWestern, and Golden Spread request rehearing of this issue, arguing that the Commission erred in accepting this provision. LDC Coalition and NorthWestern contend that eliminating a shipper's payment history as the sole determinant of creditworthiness is not well-reasoned and unduly discriminatory, claiming that Northern has not demonstrated that its proposal is warranted. LDC Coalition and NorthWestern also argue that the Commission granted unduly preferential treatment to Small Customers by allowing them to establish their creditworthiness on the sole basis of payment history. LDC Coalition states that Northern has not provided evidence to demonstrate that Small Customers are, as a class, more creditworthy than other shippers.

27. NorthWestern also argues that the fact that Northern's revenues from Small Customers are minimal is both unrelated to credit risk and does not explain why some customers were preferentially excluded over others. NorthWestern therefore contends that there is no reasonable basis for Small Customers to receive preferential treatment over others, including local distribution company (LDC) shippers that also present a low credit risk to Northern.

28. Similarly, Golden Spread maintains that payment history should continue to be relied upon as the sole means of assessing the creditworthiness of interruptible customers, arguing that interruptible shippers pose no greater financial risk than Small Customers, as the percentage of revenues these groups represent are comparable. Thus, Golden Spread requests that the Commission grant rehearing and require Northern to modify its tariff to reestablish payment history as the sole creditworthiness criteria for its interruptible shippers.

29. The Commission does not find that Northern's treatment of Small Customers is either unduly preferential or discriminatory. Under Northern's tariff, Small Customers are required to have a daily firm entitlement of 5,500 Mcf or less.[13] Therefore, Northern's credit exposure is limited in the event of a default. The protestors, however, ignore the amount of risk that Northern faces when granting credit to other shippers that are not Small Customers. Further, Northern's class of Small Customers is open to any shipper that meets the definition of "Small Customer." Our decision in this case is distinguishable from our recent decision in Gulf South where the pipeline did not allow every shipper to qualify for the "rebuttable presumption" of creditworthiness.[14] In Gulf South, the Commission found that the pipeline had no basis for treating certain classes of shippers in a different, and potentially discriminatory manner, from other shippers that were similarly situated from a credit standpoint. Here, the Commission finds that Northern's treatment of Small Customers is not unduly discriminatory or preferential, and is reasonable in light of the potential risks that they pose.

30. The Commission also finds that Northern's decision to limit its reliance on a shipper's past payment history for large customers is adequately supported. Recent events in the energy industry have shown that a shipper's payment history may not be indicative of its overall financial health. In light of such industry events, Northern cannot be faulted for seeking to consider additional factors, aside from the shipper's payment history, that may be indicative of a shipper's creditworthiness.

31. While a shipper may have never missed a payment, Northern should not be obliged to ignore a credit rating downgrade or a material adverse change that is experienced by a shipper. Although credit ratings do not purport to be an indication of immediate default or bankruptcy, they are an indication of an entity's overall financial condition. It would therefore be reasonable for Northern to conclude that a below investment grade rating is indicative of a shipper's increased risk of default or bankruptcy. Accordingly, we find it reasonable that Northern would look beyond a shipper's payment history in order to determine its creditworthiness.

32. Finally, LDC Coalition states that although Northern has suggested that it would continue to consider a shipper's payment history when determining creditworthiness, this agreement is not reflected in any of its proposed tariff language. The Commission

[13]Fifth Revised Volume No. 1, First Revised Sheet No. 126.

[14]Gulf South Pipeline Co., LP, 103 FERC ¶ 61,129 at P 31 (2003) (Gulf South).

recognizes that Northern has made these statements in earlier filings in this proceeding.[15] Northern is therefore directed to revise its tariff to clarify that a shipper's payment history will continue to be a factor, albeit not the sole factor, in determining a shipper's creditworthiness.

**Netting Agreement Among Shipper, Northern, and Northern's Affiliates**

33. In the January 29 Order, the Commission rejected Northern's proposal to provide that, in the event of a shipper's default, Northern could negotiate an agreement with the shipper to permit the termination, liquidation, netting and setoff across all of the shipper's agreements and all of the agreements of Northern and its affiliates. The Commission held that Northern failed to adequately justify the impact of this provision, and found that without more support, the provision could be unjust and unreasonable.

34. In its compliance filing, Northern explained that this provision would not result in the transfer of gas between parties, nor would this provision impact a shipper's imbalance rights. Moreover, Northern states that it has revised its netting proposal to limit its applicability to purely financial situations. Northern states that its revised proposal allowing the netting of obligations among its shippers, itself, and its affiliates is reasonable and should be accepted.

35. Virginia Power contends that Northern's netting proposal remains unexplained and unjustified. Virginia Power states that the proposal is only designed to benefit Northern and its affiliates since the shipper would have no right to not to pay Northern for services if one of Northern's affiliates owes money to the shipper. As such, Virginia Power finds it difficult to understand why a shipper would ever enter into such a one-sided netting agreement. However, Virginia Power states that if Northern would be willing to accept less security from a shipper agreeing to its proposed netting arrangement, then Northern should justify its proposal on that basis. Similarly, Calpine states that if Northern reduces the non-payment risk associated with a non-creditworthy shipper by executing a netting agreement with a shipper, then Northern should offset the amount of collateral otherwise required to avoid the possibility that Northern would over-collateralize its non-payment risk.

36. Indicated Shippers state that Northern has not explained how it would account for the netted amounts that it would receive from its affiliates under the proposal. They also request that Northern clarify what kinds of affiliates could be involved in such a netting

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[15] Northern's Initial Comments at 16, and Reply Comments at 32.

arrangement. Finally, Indicated Shippers state that Northern has not explained whether a shipper would no longer be in default to Northern if the shipper fully sets-off its debt to Northern with amounts owed to it from a Northern affiliate.

37. The Commission finds that Northern has sufficiently explained that such an agreement will not impact the imbalance or other positions of shippers on its affiliated systems. Since this proposed netting agreement is intended to have no effect on other shippers, is entirely optional, and may provide shippers with an additional option to satisfy their obligations, the Commission accepts the proposed netting agreement. However, we agree that some aspects of the netting proposal are unclear. Our acceptance, therefore, is conditioned upon Northern filing revised tariff sheets to clearly explain how netted amounts will be accounted for, how Northern will ensure that other shippers will be protected from potential subsidization of defaulting shippers, which affiliates may be involved, what impact the netting agreement would have on a shipper's collateral requirement, and the impact netting will have on a shipper's default status.

**Confirmations**

38. In its request for rehearing, Northern argues that the Commission’s decision to not allow Northern to require its shippers to make certain confirmations regarding their credit status in order to establish creditworthiness is arbitrary and capricious.[16] Northern states that its shippers already provide such confirmations to the credit rating agencies and contends that the purpose of requiring the confirmations is so that Northern is apprised of situations, that the shipper has knowledge of, which could potentially affect a shipper's creditworthiness. Northern also cites examples where the Commission has approved similar language in other pipelines' tariffs. Northern therefore argues that the Commission unreasonably rejected its proposed language in the January 29 Order.

39. The Commission recognizes that it previously accepted similar provisions in other pipeline’s tariffs; however, Northern did not cite to any orders where the Commission specifically addressed this issue. The fact that such provisions have been approved in earlier tariffs in differing circumstances does not prevent the Commission from reconsidering the implications of such a provision in light of current market conditions.

[16]Specifically, Northern proposed that a shipper must confirm that: 1) it is not subject to the uncertainty of pending litigation or regulatory proceedings which could cause a substantial deterioration in its financial condition, insolvency, or inability to exist as an ongoing business entity; and 2) it has no significant collection, lawsuits or judgements outstanding that would adversely impact the shipper's ability to remain solvent.

40. As we previously stated in the January 29 Order, Northern's proposed confirmations do not provide the shipper with sufficient guidance as to what information to provide to Northern. The tariff requires the shipper to make assumptions about what is a significant collection, lawsuit, or judgment and guess what ultimate affect they will have on its solvency. We have required pipelines to have objective standards for such provisions, and we do not find Northern's proposals to be sufficiently objective. Moreover, to the extent that shippers are required to provide such information to credit agencies or the SEC, as Northern alleges, the information will be publicly available and will be reflected in the credit agencies' ratings. Thus, Northern will be able to rely upon this information, without imposing a vague information requirement on its shippers. For these reasons, we conclude that Northern's proposal here is unjust and unreasonable. Accordingly, Northern's request to rehear this matter is denied.

**Notification of Creditworthiness Determination**

41. LDC Coalition requests that the Commission clarify that Northern must provide simultaneous notice to a replacement shipper and the releasing shipper upon a determination by Northern that the replacement shipper is no longer creditworthy. LDC Coalition states that the Commission has previously approved such notification since the releasing shipper is ultimately responsible for any default by the replacement shipper.

42. In a related issue, the Industrials note that Northern's tariff only provides shippers with a written explanation for the reasons it was determined to be non-creditworthy in the limited instance when the shipper does not have a credit rating and Northern itself performs the rating and creditworthiness analysis. The Industrials state that written notice should be provided to shippers in all situations where the pipeline deems a shipper non-creditworthy.

43. The Commission has previously found that a pipeline must notify the releasing and replacement shippers simultaneously upon determining that the replacement shipper is not creditworthy.[17] Northern is therefore directed to revise its tariff to provide such notice. Additionally, the Commission has found that a pipeline must provide written notice to its shippers explaining the reasons why the shipper was determined to be non-creditworthy, regardless of how the determination was made. Id. at P 46. Northern is directed to revise its tariff accordingly.

**Security Requirements**

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[17] Tennessee at P 78.

44. LDC Coalition requests clarification that security in the amount of three months of demand charges is determined on a rolling basis. Since Northern's monthly demand charges for certain services fluctuate throughout the year, LDC Coalition states that the requested collateral, whether it be a prepayment or a letter of credit, should track the actual rates applicable to those services.

45. The Commission recognizes that Northern has already revised its tariff to require that any prepayments will be calculated on a rolling basis. However, we agree that Northern's tariff is not clear as to whether a letter of credit would also be subject to such treatment. Accordingly, Northern is directed to revise its tariff to clarify that collateral in the form of a letter of credit will also be determined using a rolling basis.

**Prepayments and the Interest-Bearing Escrow Account**

46. LDC Coalition requests that the Commission clarify that a shipper may provide its prepayment to Northern through the interest bearing escrow account, and requests clarification that the escrow account need never exceed three months of demand charges. LDC Coalition also requests that the Commission clarify that a shipper may withdraw interest from any escrow account as interest accrues, without having to first provide notice to Northern. Moreover, the Industrials request clarification that the interest rate to be paid on cash collateral or prepayments held by the pipeline is the FERC interest rate.

47. The Commission clarifies that a shipper may provide its prepayment for each contract, which is not to exceed three months of demand charges, through the use of an interest-bearing escrow account. Additionally, since any interest on collateral is for the benefit of the shipper, the shipper may withdraw any accrued interest, without notice to Northern, at any time. Finally, in response to the Industrials' concern, the interest rate will be determined by the financial institution where the escrow account is held. Since the shipper will be responsible for establishing the escrow account, it will be in the shipper's interest to shop around for the best interest rate.

**Suspension and Termination of Service**

48. LDC Coalition states that Northern's tariff is not clear as to whether it could continue to collect charges after a service is suspended based on reasons related to creditworthiness. Thus, LDC Coalition requests clarification that shippers are not liable for demand charges in the event that the pipeline suspends service.

49. As the Commission stated in Tennessee, when service is suspended, a shipper's service is stopped and that shipper should not be held responsible for future charges.[18] While the shipper must pay Northern for service up to the date service was suspended, it is not responsible for charges after Northern suspends service. Northern is not required to suspend service, and must make an election as to whether to adopt this remedy. Should Northern suspend service, it should not be entitled to repudiate its obligation under the contract while still insisting that it collect demand charges as if the contract were still in effect. Northern is therefore required to revise its tariff to specify that shippers are not responsible for charges after service is suspended. Such a tariff provision only prevents Northern from billing shippers during the period of suspension; it will not prevent Northern from bringing suit in an appropriate forum for damages related to the shipper's contractual breach.

50. In another issue, NorthWestern contends in its request for rehearing that Northern's ability to suspend and terminate service, without prior Commission authorization, is tantamount to the abandonment of jurisdictional facilities under Section 7(b) of the Natural Gas Act (NGA). NorthWestern states that the Commission has permitted pipeline service termination tariff provisions for nonpayment by a shipper, subject to adequate notice and an opportunity to cure, but not for material changes in financial condition, as proposed by Northern. As such, NorthWestern believes that the Commission's approval of the suspension and termination provisions in the January 29 Order violates the statutory requirement of the NGA.

51. Although NorthWestern addressed suspension and termination of service identically, they are distinct issues. Termination is akin to abandonment. In Order Nos. 436 and 636, the Commission moved toward a more contractually-based system for obtaining service, adopting a regulation giving pipelines pre-granted abandonment authority under Section 7(b) of the NGA upon the termination of a shipper's contract.[19] Because termination is in effect abandonment of service, the Commission also adopted a regulation requiring that pipelines notify the shipper and the Commission 30 days prior to termination of service for contract expiration, as well as for other reasons.[20] This notice ensures that the Commission has the opportunity to determine if termination is in the public convenience and necessity, as required by Section 7(b) of the NGA.

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[18] Tennessee at P 32.

[19] 18 C.F.R. § 284.221(d) (2003).

[20] 18 C.F.R. § 154.602 (2003).

52. Service suspension is distinct from termination, because the shipper maintains a contractual right to its capacity and the pipeline will resume service to the shipper once the circumstances causing the suspension have been resolved.[21] The Commission allows pipelines to suspend service on shorter notice than termination, since it allows the pipeline to protect itself against the consequences of a shipper's breach, but at the same time does not impose as severe consequences as termination on the shipper. Thus, suspension of service is not the equivalent of termination, and the Commission has permitted service suspension for material breaches of the shipper's contractual obligation without prior notification to the Commission. Even if a suspension of service constitutes a temporary abandonment, the Commission has the authority in the appropriate circumstances to pre-grant abandonment, and we find those circumstances here, as discussed below.[22]

53. NorthWestern maintains that it violates the NGA to terminate or suspend service for failing to post adequate collateral. NorthWestern, however, does not contest a pipeline's ability to terminate service for failure to pay.[23]

54. The Commission finds no violation of the NGA in its procedures regarding suspension and termination. A shipper's failure to pay a required prepayment to the pipeline should be treated no differently than a shipper's failure to pay for services rendered. Maintenance of adequate collateral is an important aspect of any commercial relationship, and the pipelines should not be required to continue to provide service to non-creditworthy shippers that cannot provide reasonable collateral. Pipelines, therefore, should be able to terminate service when shippers fail to meet their contractual obligation.

55. Moreover, Northern's tariff, and the Commission's policies, provide a non-creditworthy shipper with protections, including a reasonable collateral requirement of only three months of charges for service, written notice of its non-creditworthiness and an opportunity to post security to continue receiving service. Indeed, in this proceeding, the Commission required Northern to provide shippers with an even longer amount of time to provide collateral in the event they become non-creditworthy.

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[21] See Kinder Morgan Interstate Gas Transmission LLC, 102 FERC ¶ 61,230 at P 8 (2003).

[22] See United Distribution Cos. v. FERC, 88 F.3d 1105 at 1139 (D.C. Cir. 1996).

[23] See Tennessee Gas Pipeline Co., 41 FERC ¶ 61,310 at p. 61,815 (1987) (permitting pipeline to terminate service for failure to pay).

56. Finally, if the shipper believes that there are circumstances which militate against suspension or termination, the shipper can file a complaint with the Commission. With respect to termination, the Commission provides the shipper with 30 days to file a complaint with the Commission challenging the proposed abandonment of service. At that time, the Commission can review the termination and determine whether it is in the public convenience and necessity. Accordingly, the Commission finds that Northern's tariff does not violate the NGA's requirements, and NorthWestern's request to rehear this issue is denied.

The Commission orders:

(A) Northern's compliance filing is hereby accepted, subject to modification, to be effective February 23, 2003, as discussed in the body of this order.

(B) Northern is directed to file revised tariff sheets within 30 days of the issuance of this order.

(C) The requests for rehearing are granted, in part, and denied, in part, as discussed above.

By the Commission.

( S E A L )

Magalie R. Salas,
Secretary.