

109FERC ¶ 61,056
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. RP04-103-000

ORDER DISMISSING PROCEEDING

(Issued October 13, 2004)

1. On December 17, 2003, the Commission instituted a show cause proceeding¹ requiring Northern Natural Gas Company (Northern Natural) to show cause why it could no longer transport gas through displacement for shippers on Transwestern Pipeline Company's (Transwestern) system, and whether Northern Natural's actions were unduly discriminatory.² The Commission's initiation of this proceeding stemmed from Transwestern's filing of a report³ notifying the Commission of the deletion of thirty-one receipt points⁴ from the Supply Pooling Points list on its website. The deletion of the receipt points was due largely to Northern Natural's inability to continue operating its facilities in a manner which would enable shippers to use the receipt points as pooling

¹ The Commission acted under its authority pursuant to section 5 of the Natural Gas Act (NGA).

² Northern Natural Gas Company, 105 FERC ¶ 61,291 (2003) (Show Cause order). This order sets forth a detailed description of the background of this case and of the protests in the Transwestern proceeding in Docket No. RP03-546-000 which led to this show cause action.

³ See Transwestern's July 10, 2003 filing, in Docket No. RP03-546-000.

⁴ The thirty-one receipt points that Transwestern eliminates are in either Oklahoma or Texas, as listed in Attachment A to the July 10, 2003 filing.

points on Transwestern. Three parties⁵ protested in the Transwestern case, claiming the deletion of the pooling points would deny them access to western markets served by Transwestern, for reasons unexplained and not justified by Northern Natural.⁶ Upon review of the responses received to the show cause order, the Commission terminates this proceeding for the reasons given below. This action benefits customers because it finds that Northern Natural has not unduly discriminated against the affected shippers and thus, does not violate its tariff or the Commission's policy.

I. Notice and Responsive Pleadings

2. Public notice of our Show Cause order was published in the *Federal Register* (68 Fed. Reg. 70243 (2004)) with interventions; protests; and responses due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2003)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2003)), 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.

3. Responsive pleadings were filed by Northern Natural, Mewbourne, Strat Land, Duke and Transwestern. Mewbourne also seeks consolidation of the instant proceeding with the Transwestern proceeding in Docket No. RP03-546-000.

II. Northern Natural's Response

4. In its response, Northern Natural claims that, as a threshold matter, in the Transwestern proceeding its agreement with Transwestern was mischaracterized as a displacement service. Rather, Northern Natural states the operational conditions on its system which led to its conclusion that it could no longer facilitate the "service" sought by Mewbourne, Duke, and Strat Land stemmed from an Operational Balancing Agreement (OBA) which Northern Natural entered into with Transwestern on

⁵ Mewbourne Oil Company (Mewbourne), Duke Energy Field Services (Duke) and Strat Land Exploration Company (Strat Land). Mewbourne is an independent producer, Duke operates sixteen of the thirty-one subject receipt points, and Strat Land operates an interconnection with Transwestern and delivers gas through another interconnection operated by Duke. Neither Mewbourne, Duke, nor Strat Land are customers of Transwestern.

⁶ The Show Cause order and the Transwestern order in Docket No. RP03-546-000, issued contemporaneously with this order, both include a detailed description of the protests, and thus need not be repeated here.

February 1, 1994. Thus, because there was no “service,” Northern Natural did not receive a fee from Mewbourne, Duke and Strat Land. Rather, the gas passed through Northern Natural’s Beaver Interconnect into Transwestern’s system for free, pursuant to the OBA.

5. Northern Natural states that in June 2003, it experienced operational problems that prohibited it from delivering volumes to Transwestern’s Gray or Halley Interconnect. At that time, Northern Natural reviewed the Transwestern OBA volumes and discovered that the imbalance volumes had substantially increased. Northern Natural subsequently reviewed previous records and discovered that the operational imbalance at the Beaver Interconnect had grown from a 7 percent variance during 1998 to 2000 to a 100 percent variance from 2001 to 2003.

6. Northern Natural states that this dramatic increase in the volume of gas passing through the interconnect led it to conclude that the OBA was no longer functioning as a balancing agreement as contemplated, but rather, that it had morphed into a cost free exchange service for certain shippers. Moreover, Northern Natural states that it has shippers who have scheduled gas at this exchange pursuant to a transportation agreement for which they have paid a fee. Northern Natural believes it would be unduly discriminatory for it to continue allowing Transwestern to use the OBA as a cost free displacement service while its shippers pay a fee for displacement service at the Beaver interconnect. Further, Northern Natural states that its tariff does not provide for a cost free gas exchange, nor is Northern Natural authorized to provide a cost free gas exchange.

7. Northern Natural states it intends to continue the OBA with Transwestern at the Beaver Interconnect for balancing purposes, but not for permitting shippers to avoid transportation fees. Northern Natural states that if shippers wish to use the Beaver Interconnect for displacement service, there is capacity available for such service. A shipper desiring to avail itself of this service can enter into a transportation agreement with Northern Natural. In accordance with such agreements, shippers can then schedule volumes for receipt and subsequent delivery off of Northern Natural’s system.

III. Pleadings by Mewbourne, Strat Land, Duke and Transwestern

8. Mewbourne claims that the arrangement in question was a cost free exchange between Northern Natural and Transwestern that was mutually beneficial. Mewbourne argues that Northern Natural and Transwestern, who are affiliates, arbitrarily ended the arrangement for their own purposes. Mewbourne states that producers made long-term economic decisions in reliance on this arrangement and argues that the Commission should mandate continuation of this cost free exchange with the economic impact borne

by those who fostered it and caused other parties to rely on it. Mewbourne claims that if the pipelines terminate the purported exchange, it will cost the producers more money to transport their gas to Western markets because of the added layers of transportation costs. Mewbourne points out that while Northern Natural characterized the arrangement as an OBA, Transwestern characterized it as a displacement. Another argument put forth by Mewbourne is that the service has become a “de facto” exchange and, as such, Northern Natural cannot cease providing it without first seeking abandonment authority from the Commission. Mewbourne also requests the Commission consolidate the instant proceeding with the Transwestern proceeding in Docket No. RP03-546-000.

9. Strat Land⁷ states that Northern Natural has provided no explanation why it did not realize earlier that operational imbalances at the Beaver Interconnect had reached 100 percent or more of nominated volumes on a consistent monthly basis for at least two years. Strat Land complains that in other instances on Northern Natural’s system, imbalances of 25 percent or more are currently required to “cashout” their monthly imbalances at a 50 percent penalty, yet Northern Natural apparently did not charge its affiliate, Transwestern, this penalty. Strat Land also claims that the Commission has allowed no fee exchanges where there are mutual benefits to the exchanging parties and the exchanges are not unduly discriminatory.⁸

10. Duke supports the comments of Mewbourne and requests that the Commission: (1) consolidate the proceedings; (2) order Northern Natural and Transwestern to resume their longstanding gas exchange, at no cost to Transwestern’s East End shippers; and (3) require Transwestern to restore the eligibility of all East End receipt points for nomination to Transwestern’s Panhandle Supply Pool. Duke also complains that, just prior to the closing of the block valve, Transwestern failed to notify the operators and shippers of any gas flow changes.

11. Transwestern filed a response, stating that Mewbourne and Strat Land incorrectly asserted that Transwestern provided an unauthorized exchange transaction. Transwestern states that it did nothing wrong by not charging for displacement with Northern Natural because such displacement enabled the pooling of volumes at the Panhandle Supply Pool.

⁷ Strat Land filed both an answer to Mewbourne’s comments and a response to Northern Natural’s response.

⁸ See Policy Statement Providing Guidance with Respect to the Designing of Rates, 47 FERC ¶ 61,295 (1989); *reh’g and clarified*, 48 FERC ¶ 61,122 (1989).

IV. Discussion

12. The Commission is satisfied with Northern Natural's explanation that the service in question was not an exchange service, but rather was the result of an operational balancing agreement between Northern Natural and Transwestern. As Northern Natural explains, capacity is available on its system, but for a fee. Northern Natural provides firm or interruptible service at the receipt points in question, east of the block valve, provided those seeking such service execute a service contract and pay the requisite charges. The Commission agrees with Northern Natural that it would be unduly discriminatory to Northern Natural's customers if they pay a fee for this service, while other customers of Transwestern receive the service for free under the guise of a balancing agreement. Moreover, while the operating practice between the pipelines began as a legitimate balancing agreement, it has become apparent, due to the dramatic increase in volumes, that over time it evolved into a loophole allowing Transwestern's customers the use of Northern Natural's pipeline capacity without proper compensation.

13. The Commission is not persuaded by arguments that it should require Northern Natural to continue to provide service which is beyond the intent and scope of the OBA. The record indicates that such service has become tantamount to free service for certain shippers. In fact, the record reveals these shippers soon became aware that they could use the OBA to transport gas using the deleted receipt points without the benefit of a bono fide service agreement on Northern Natural.

14. At first, the amounts were small enough that they did not arouse suspicion. Over time, however, the amounts of gas transported increased from 7 percent to 100 percent. Northern Natural finally realized that its tariff required it to close this loophole, so to speak, and require those who had availed themselves to begin paying for the capacity. The protestors now argue that since they had come to rely on the past practice, the Commission should not allow Northern Natural to "abandon" its practice now.

15. The fact that Northern Natural may have taken longer than could have been expected to discover the significant increase in the volumes does not mean that it is obliged now to permit the continued advantage inuring to these shippers.

16. Northern Natural states that capacity is available for it to provide firm or interruptible service at the receipt points in question, and that it is willing to do so, provided that those desiring such capacity enter into the appropriate contract with Northern Natural to secure the desired service.

17. Nor is the Commission persuaded to consolidate the instant proceeding with the related Transwestern proceeding in Docket No. RP03-546-000. Contemporaneously with

the instant decision, the Commission is issuing a separate order in that proceeding. For the reasons discussed above, the Commission dismisses this show cause action instituted against Northern Natural by the Commission under its NGA section 5 authority and terminates this proceeding.

The Commission Orders:

The show cause proceeding instituted in Docket No. RP04-103-000 is dismissed and the proceeding is terminated.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.