

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. GT02-38-007

ORDER ON COMPLIANCE AND CLARIFICATION

(Issued November 18, 2003)

1. On July 7, 2003, Northern Natural Gas Company (Northern) filed revised tariff sheets,¹ to comply with the Commission's June 4, 2003 Order.² The revised tariff sheets clarify the amount of security required from shippers for the construction of new facilities. They address Northern's use of past payment history when determining the creditworthiness of its shippers and explain the notification procedures that Northern will use for creditworthiness determinations. The revised tariff sheets also contain clarifications regarding security requirements for transportation service and suspension procedures. Finally, revisions were made to Northern's proposed netting agreement.
2. In this order, we accept Northern's revised creditworthiness provisions, subject to modification, to be effective February 23, 2003. This order also grants the Industrials' request for clarification. 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.

¹See Appendix for the list of tariff sheets.

²Northern Natural Gas Co., 103 FERC ¶ 61,276 (2003) (June 4 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.³ 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.⁴ 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.
7. On June 4, 2003, the Commission issued an order accepting Northern's revised creditworthiness provisions, subject to modification, and accepting in part and denying in part the requests for rehearing of the January 29 Order. Among its findings, the Commission conditionally accepted Northern's proposal to net or setoff amounts owed by its affiliates to a defaulting shipper, subject to Northern providing further explanation regarding several aspects of its proposal.⁵

II. Notice and Comments

8. Public notice of this filing was issued on July 9, 2003. No adverse comments or protests were filed in these proceedings. 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 (2003)). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

³Northern Natural Gas Co., 100 FERC & 61,278 (2002) (September 20 Order).

⁴Northern Natural Gas Co., 102 FERC & 61,076 (2003) (January 29 Order).

⁵June 4 Order at P 37.

9. A request for clarification was filed by the American Iron and Steel Institute, Alcoa Inc., EVTAC Mining, United States Gypsum Company, and USG Interiors, Inc. (collectively the “Industrials”). The Industrials seek clarification that Northern will state the reasons a shipper was determined to be non-creditworthy at the same time it notifies a shipper that it is non-creditworthy. The Industrials state that Northern’s current tariff language does not specify the timing of these two notifications. In response, Northern filed an answer to the Industrials’ request, stating that it intends to provide a shipper simultaneous notice of the reasons it has been deemed non-creditworthy.

III. Discussion

10. The Commission finds that Northern has generally complied with the directives in the June 4 Order. In addition, Northern’s answer stating that it intends to provide a shipper with simultaneous notice of non-creditworthiness and the reasons for that determination adequately addresses the Industrials’ concerns. Northern is required to file revised tariff language to incorporate its answer.

11. The June 4 Order conditionally accepted Northern’s proposal to permit a shipper, Northern, and Northern’s affiliates to enter into a netting agreement, which would only apply in the event of a default by the shipper. We directed Northern to file revised tariff sheets to explain more clearly how this mechanism would be applied.

12. To comply with that Order, Northern submitted a revised netting proposal in Section 46 of its General Terms and Conditions. The revised tariff language states that if any of Northern’s affiliates owe the shipper money under a separate agreement, the affiliate may setoff those obligations to the shipper against any obligation the shipper may have to Northern. Northern states that such netting will be in the form of an inter-company balance transfer and may impact a shipper’s default status and security requirements, i.e., if netted amounts offset a shipper’s defaulted amount, the shipper would no longer be considered to be in default. In its transmittal letter, Northern explains that, as a component of signing the netting agreement, Northern and a shipper may agree to security or collateral reductions.

13. The Commission rejects Northern’s proposal to net obligations among a shipper, Northern, and Northern’s affiliates. On the basis of all the information provided in this proceeding regarding the netting provision, we find that this proposal is potentially discriminatory. We are not convinced that an arrangement which ties credit requirements on Northern’s system to contractual agreements with Northern’s affiliates should be permitted, as this provides an incentive for shippers to sign contracts with more than one Northern-affiliated entity. Open access service, along with Commission regulations (18 C.F.R. Parts 161 and 284) are intended to ensure that shippers have the ability to buy gas

and transportation service on a non-discriminatory basis. Northern has failed to demonstrate that its proposal conforms to these requirements, since it could result in benefits to shippers that deal with both the regulated and unregulated affiliates of Northern that are not generally available.

14. In addition, the Commission is concerned that this provision fails to meet the requirement that pipelines' tariffs include clear and objective standards for determining creditworthiness.⁶ Northern states that participation in this netting agreement may impact a shipper's security requirements and default status, but does not explain how the security requirements will be affected, nor how it will determine whether to reduce a shipper's collateral based on signing the agreement. In the absence of objective standards, the Commission finds that this provision could be applied in a discriminatory manner.

15. Accordingly, the Commission finds that Northern has failed to demonstrate that this proposed netting arrangement is just and reasonable, as required by Section 4 of the Natural Gas Act. For all of the above reasons, the proposed netting agreement is rejected and Northern is directed to remove this provision from its tariff.

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.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁶See *Tennessee Gas Pipeline Co.*, 101 FERC ¶ 61,311 at P 41 (2002) and 103 FERC ¶ 61,275 at P 36 (2003).

Appendix

Northern Natural Gas Company
FERC Gas Tariff, Fifth Revised Volume No. 1
Tariff Sheets Accepted, Subject to Condition, Effective February 23, 2003

Second Substitute Third Revised Sheet No. 285

Second Substitute Original Sheet No. 285A

Substitute Original Sheet No. 285B

Substitute Sixth Revised Sheet No. 289

Substitute Seventh Revised Sheet No. 289