

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 28, 2004

In Reply Refer To:
Northern Natural Gas Company
Docket No. RP04-281-000

Northern Natural Gas Company
P. O. Box 3330
Omaha, NE 68103-0330

Attention: Mary Kay Miller
Vice President, Regulatory and Customer Service

Reference: Tariff Sheets Modifying Form of Service Agreements

Ladies and Gentlemen:

1. On April 30, 2004, Northern Natural Gas Company (Northern) filed revised tariff sheets¹ to establish streamlined activation of Rate Schedule TFX and LFT service agreements and the associated SMS service with terms of one month and less. The Commission conditionally accepts Northern's tariff sheets to become effective June 1, 2004, subject to the condition discussed below. Our acceptance benefits the public because it ensures that Northern's proposed enhancements to speed up service agreement activation conform to the Commission's regulations and policies.

2. Northern proposes to enhance its Rate Schedule TFX, LFT and SMS form of service agreements to reduce the activation time required for service agreements having a term of one month or less. Specifically, Northern proposes to allow the activation of the contracts without waiting to receive a signed shipper agreement. Such enhancement recognizes the dynamics and timing associated with short-term market activity while assuring that shippers do not reserve capacity without the concomitant financial obligation. Under the proposal, Northern will consider the service agreement as executed and binding for all purposes if (1) the shipper nominates under the service agreement, or (2) the shipper fails to notify Northern in writing that it declines the service agreement within two (2) business days of the date of the service agreement.

¹ First Revised Sheet No. 400A and Second Revised Sheet Nos. 403A and 453 to Northern's FERC Gas Tariff, Fifth Revised Volume No. 1.

3. Public notice of this filing was issued on May 5, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2003)), all timely unopposed filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted.² Granting late interventions at this stage of the proceeding will not disrupt the proceeding or place additional burden on existing parties. United Energy Trading, LLC filed a motion to intervene out-of-time on May 17, 2004. The Northern Municipal Distributors Group (NMDG) and the Midwest Region Gas Task Force Association (MRGTF) filed, jointly, a motion to intervene and protest, and Virginia Power Energy Marketing, Inc. (VPEM) filed a motion to intervene and limited protest, both on May 12, 2004.

4. Both the NMDG/MRGTF and VPEM protest that Northern will deem a service agreement executed if a shipper fails to notify Northern in writing within two business days of the date of the service agreement that it declines the service agreement. Under this proposal, NMDG/MRGTF and VPEM believe that a shipper could be bound to an agreement without having seen and studied it. This could lead to unnecessary confusion and litigation. NMDG/MRGTF and VPEM both submit that the Commission should direct Northern to revise the proposed language as follows:

This Service Agreement shall be deemed to be executed and shall be binding for all purposes if Shipper nominates under this Service Agreement. If a Shipper has not notified Northern in writing that it accepts this Service Agreement within two (2) business days of the date of the Service Agreement, the Agreement will be considered void.

This language would encourage a timely response to any offer and, if the offer is then rejected, would permit Northern an opportunity to resell the capacity, while not binding any party to a contract which it has no intention to execute.

5. On May 20, 2004, Northern filed an answer to the protests filed by intervening parties. While the Commission's Rules of Practice and Procedure³ generally prohibit answers to protests, the Commission will accept the answer to provide a better understanding of the issues in this proceeding.

² Motions to intervene were filed by: the American Iron and Steel Institute, Alcoa Inc., United States Gypsum Company, and USG Interiors, Inc.; Aquila, Inc. d/b/a Aquila Networks; CenterPoint Energy Minnegasco; Duke Energy Trading and Marketing, LLC and Duke Energy Marketing America LLC (collectively Duke); Metropolitan Utilities District of Omaha; Nicor Gas; Northern States Power Company and Northern States Power Company (Wisconsin); Semco Energy Gas Company; and Wisconsin Electric Power Company and Wisconsin Gas Company.

³ 18 C.F.R. § 385.213(a)(2) (2003).

6. In its answer, Northern claims its provision that silence is execution is consistent with industry practice, citing the North American Energy Standards Board Base Contract for Sale and Purchase of Natural Gas which contains a similar provision whereby failure to object to a confirmation within a particular time period constitutes acceptance of the provisions of the confirmation. Northern further points out that since it tenders a service agreement only after it transacts a deal orally or via instant messaging, and that a shipper must ask for service prior to receiving a service agreement, the protesters' concerns about the short period to respond are without merit. Northern also states that because it must simultaneously track multiple contracts while shippers must track only their own, its provision that silence is execution provides shippers with the flexibility they need to quickly consummate a deal.

7. Based on a review of the filing, the Commission concurs with the protesters. We believe that acceptance of a contract requires an act of affirmation from the shipper, such as submitting a nomination, rather than an acceptance by default as Northern proposes here. We are unpersuaded by Northern's response, and would point out that the similar NAESB provision raised in the answer concerns the nomination, scheduling and confirmation of volumes under an already executed service contract. Moreover, the shipper has taken the proactive action we require here by scheduling its daily gas flow. Accordingly, we direct Northern to revise its tariff to require only proactive actions by the shipper before Northern considers a service contract as binding.

8. The Commission directs Northern to file, within fifteen days of the date this order issues, tariff sheets revising its proposed provision consistent with the above discussion.

By direction of the Commission.

Magalie R. Salas,
Secretary.

cc: All Parties

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