UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Northern Natural Gas Company Docket No. RP06-456-001

ORDER ON COMPLIANCE

(Issued January 31, 2007)

1. On September 28, 2006, Northern Natural Gas Company (Northern) filed additional information to comply with the Commission's order[1] issued on August 31, 2006, in Docket No. RP06-456-001. In that order, the Commission conditionally accepted and suspended for five months, to become effective February 1, 2007, a tariff sheet[2] setting forth Northern's proposal to change the way it calculates Daily Delivery Variance Charges (DDVC)[3] in situations where a branchline system overrun limitation (SOL) or Critical Day[4] is in effect. In that order, the Commission also directed Northern to file additional information and explanations within 20 days addressing specific operational concerns raised by The Northern Municipal Distributors Group and the Midwest Region Gas Task Force Association (Distributors).

2. For the reasons set forth below, we find that Northern has failed to satisfy its burden of proof in showing that its proposal would not negatively affect certain shippers

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[1] 116 FERC ¶ 61,205 (2006).

[2] Seventh Revised Sheet No. 292 to Northern's FERC Gas Tariff, Fifth Revised Volume No. 1.

[3] Shippers on Northern's system are generally subject to DDVCs when their actual daily volumes vary from their daily scheduled volumes. Northern's DDVC provisions are set forth in section 48 of its General Terms and Conditions (GT&C).

[4] Northern may call an SOL to address system operation problems. When an SOL is in effect, all or part of a shipper's Rate Schedule SMS service may not be available. SMS is a firm no-notice service used as a companion service to Northern's conventional firm services. Northern may call a Critical Day to take more restrictive measures to address system operation problems.

on its system, and therefore has not shown that its proposal is just and reasonable. Accordingly we reject Northern's Seventh Revised Sheet No. 292.

<u>Northern's Proposal and Background</u>

3. Section 48 of Northern's GT&C sets forth provisions for how Northern assesses DDVCs. Shippers are subject to DDVCs when their actual delivery volumes vary from their scheduled volumes, after a tolerance has been considered. Under section 48(G), when Northern has called an SOL or Critical Day at a point level or at the branchline level and the affected shipper has nominated and scheduled volumes at a zone level, Northern calculates the DDVC based on the difference between the individual point maximum daily quantities (MDQ), as set forth on Appendix B of a shipper's service agreement, and the actual deliveries for each point in the affected area.

4. On August 1, 2006, in Docket No. RP06-456-000, Northern filed a Seventh Revised Sheet No. 292 to modify the way it calculates DDVCs when an SOL or Critical Day is in effect on its system. Under its proposal, when Northern calls an SOL or a Critical Day for a branchline, rather than comparing actual deliveries for a shipper at each point on the branchline to the point MDQ, Northern proposed to compare the sum of the actual deliveries at all of the shipper's delivery points on the branchline to the sum of the MDQs at those same delivery points. In other words, under Northern's proposal, a shipper would be able to aggregate its variances across the entire affected area of the branchline for the purposes of assessing DDVCs. To illustrate its proposal, Northern offered as an example Shipper A, which has three delivery points on Branchline Z (Point 1, Point 2, and Point 3) and an MDQ of 10 at each point. Northern stated that if it has called an SOL for the branchline and the shipper schedules volumes of 30 at the zone level and actually takes 5 at Point 1, 10 at point 2 and 15 at Point 3, the shipper would not be subject to DDVCs because the sum of the actual deliveries (30) did not exceed the sum of the MDQs (30). Northern asserted that this change benefits shippers since it would allow them to aggregate variances for the purposes of calculating DDVCs.

5. Distributors filed comments or, in the alternative, a protest with regard to Northern's proposal. In general, Distributors raised concerns that, under Northern's proposal, downstream shippers – particularly small shippers having only one delivery point on a branchline – may experience operational problems as a result of the possible behavior of upstream shippers. Distributors also argued that Northern's proposal may actually exacerbate operational problems during SOLs and Critical Days, when system integrity is already in jeopardy. Distributors requested that the Commission direct Northern to fully address certain issues it raised in its pleading prior to ruling on the proposal. We discuss Distributors' concerns in more detail below.

6. On August 31, 2006, the Commission issued an order conditionally accepting and suspending Northern's Seventh Revised Sheet No. 292 for five months, to become

effective February 1, 2007. In that order, the Commission directed Northern to file, within 20 days of the date the order issued, additional information and explanations fully addressing the operational concerns that Distributors raised in their comments. The Commission gave parties ten days to respond to Northern's informational filing.

Northern's Compliance Filing

7. Northern made its informational filing on September 28, 2006. In its filing, Northern addresses four specific concerns raised by Distributors.

Operational Problems

8. In its original comments, Distributors expressed concerns that Northern's proposal could lead to operational problems for certain shippers, particularly small shippers at the downstream end of a branchline. Distributors offered a hypothetical example to illustrate their concerns. Suppose Shipper A has three delivery points on Branchline Z with an MDQ of 10 at each point, with the first point being close to the mainline. Suppose Shipper B has a single delivery point at the downstream end of Branchline Z. Distributors argue that, under Northern's proposal, Shipper A can now take all 30 of its overall MDQ at its first delivery point closest to the mainline, as opposed to having to be limited to its point-specific MDQs of 10 at each of its three delivery points. Distributors assert that should this happen, Shipper B may experience operational problems at its delivery point, such as a loss of pressure, resulting from Shipper A's behavior. Distributors argue that, if such a result should occur, not only would it be detrimental to Shipper B, but also Shipper A would not be penalized for causing the problem.

9. In its informational filing, Northern states that Distributors overlook the fact that Northern has not proposed to change the manner in which it calls SOLs or Critical Days on a branchline or at individual points along a branchline. Northern states that if it determines that a branchline may have operational problems because of shipper actions at one or more individual points, it will call the SOL or Critical Day at those individual points. Northern contends that accordingly, downstream shippers would not be affected by Northern's proposal since Northern would have the ability to call an SOL or a Critical Day at the individual point in order to prevent any operational problems.

10. Northern also addresses in its informational filing Distributors' hypothetical example, where Shipper A takes all of its MDQ at the point closest to the mainline, resulting in possible operational problems to Shipper B, which has a delivery point downstream. Northern states that more information would be needed to adequately address the hypothetical (such as shipper MDQs, etc.). Northern adds, however, that since Shipper A has multiple delivery points along the branchline, taking all of its MDQ would not have much impact on branchline operations, and even if it did, it would address the issue by calling a branchline SOL or Critical Day. Northern adds that if

Shipper B was experiencing operational concerns, it would not call a branchline SOL but would call an individual delivery point SOL at Shipper B's delivery point instead.

Calling an SOL or Critical Day to Resolve Operational Problems

11. In its original pleading, Northern stated that should it experience any operational concerns as a result of its proposal, it could resolve the problem by calling an SOL or a Critical Day at a specific delivery point. Distributors argued that calling an SOL would not necessarily resolve operational problems in all situations because section 48(E) of Northern's GT&C requires Northern to call any SOL by 3:00 pm C.S.T. of the gas day. Distributors argued that if the operational problems occur after this time, Northern would not be able to respond to the problems. Distributors similarly argued that calling a Critical Day would not necessarily resolve operational problems in all situations because section 48(F)(1) of Northern's GT&C requires Northern to post any Critical Day notice on its website no later than two and one half hours prior to the NAESB Grid Cycle nominations for the Critical Day gas day. Distributors argued that if the operational problems occur after this time, Northern would not be able to respond to the problems.

12. In its informational filing, Northern reiterates that it has the ability to call an SOL up to 3:00 pm C.S.T. of the gas day, which is six hours into the gas day and more than 27 hours after the shipper has nominated for the gas day. Northern contends that this timing gives it ample opportunity to address any significant changes in operating conditions along its branchline or at a particular point. Northern notes, however, that it would not have called a branchline SOL under the circumstances where only Shipper B on the downstream end of the branchline is experiencing operational problems as a result of upstream shipper behavior.

13. In its informational filing, Northern also asserts that it has ample opportunity to call a Critical Day during the gas day to address any possible operational problems, because two of the four NAESB Grid Cycle nomination deadlines occur during the gas day. Northern states that the last Grid Cycle nomination deadline is 5:00 pm, meaning that Northern could call the Critical Day up to 2:30 pm of the gas day, which Northern states gives it plenty of time to address any significant operational changes along the branchline.

Curtailment

14. In its original pleading, Distributors expressed concerns that Northern's proposal could lead to a potential increase in curtailments. Distributors argued that curtailment is a last resort remedy and proposals that increase the probability of curtailment should be considered carefully.

15. In its informational filing, Northern contends that curtailment is a viable option when system integrity is at question. It states that curtailments could immediately address operational problems by limiting shippers to their MDQs at individual delivery points and by imposing punitive DDVCs for any takes above the MDQs. Northern adds, however, that since it is highly unlikely that it would have to call a branchline SOL or Critical Day when the potential operational problems dictate that a delivery point SOL or Critical Day is needed, Distributors' assertion that the proposal would increase the probability of curtailment is highly speculative. Northern states that curtailment will remain a last resort option under its proposal.

Notice

16. Northern's informational filing in the instant proceeding was noticed on October 3, 2006, allowing for protests to be filed as provided by section 154.210 of the Commission's regulations. Distributors filed adverse comments, which we discuss below.

Distributors' Comments

17. Distributors filed comments addressing Northern's informational filing on October 10, 2006. In general, Distributors assert that Northern failed to comply with the directive of the Commission's August 31, 2006, order by not providing further information and explanation with adequate support. Distributors argue that, instead, Northern merely reiterated its previously held positions and assertions that are not helpful to the Commission or the parties. Distributors add that Northern bears the burden of proof to justify its proposal, but did not meet this burden in this case. Distributors continue to assert that Northern's proposal could both exacerbate existing operational problems and cause new operational problems for shippers along a branchline. Distributors add that since Northern has not shown that its proposal would not negatively affect shippers on the downstream end of its branchlines, Northern's proposal is not in the public interest.

18. In its comments, Distributors also address the four specific issues that Northern raises in its informational filing. With regard to system operational problems, Distributors assert that Northern fails to show that its proposal would not negatively affect downstream shippers on a branchline, and provides little in the way of additional information or explanation and nothing in the way of adequate support for its proposal. Distributors express concerns over Northern's assertion that if it experiences any operational problems brought on by its proposal, it will call an SOL or a Critical Day at the individual point to alleviate the problems. According to Distributors, this remark ignores one key fact: Northern's proposal only applies to situations where a branchline is already under an SOL or Critical Day. According to Distributors, the questions that remain unanswered relative to this issue include: (1) whether the addition of this tariff

provision would cause operational problems and/or the need for Northern to call additional branchline or point-specific SOLs or Critical Days; (2) whether the proposal would cause shippers to engage in behavior which would exacerbate the operational problems that already exist; and, (3) whether putting into place measures that could encourage shippers to exceed their confirmed nominations at specific delivery points is consistent with the calling of SOLs or Critical Days in the first place.

19. Distributors assert that Northern fails to address the hypothetical example it set forth in its original comments (i.e., what would happen to downstream shippers if Shipper A takes all of its overall MDQ at its first delivery point closest to the mainline, even though its MDQ at that point is only 10). Distributors also question whether it is appropriate for Northern to reduce DDVCs to certain shippers in a situation where shippers are already operating under an SOL or Critical Day due to system operational problems. They also question Northern's statement in its informational filing that "more information would have to be known about Shipper B [the downstream shipper with a single delivery point in the example] before the outcome could be determined." Distributors argue that this was precisely the point of the informational filing: Northern was supposed to address all possible outcomes of its proposal on downstream shippers, which it failed to do.

20. In its reply comments, Distributors also respond to Northern's assertion that it can adequately address any operational problems brought about by its proposal by calling an SOL or Critical Day at affected individual delivery points. Distributors continue to express concerns that Northern cannot call an SOL past 3:00 pm C.S.T. of the gas day, and cannot call a Critical Day past 2:30 pm C.S.T. of the gas day. Distributors assert that Northern still fails to show that it can adequately use SOLs and Critical Days to address possible operational problems that occur later in the gas day.

21. Distributors also express confusion over a specific statement Northern made in its informational filing. In a hypothetical example where a downstream shipper is experiencing operational problems due to the behavior of upstream shippers, Northern states that "it would not have called a branchline SOL under these circumstances." Distributors assert that this cryptic statement is made without further explanation and once again demonstrates the inadequacy of Northern's response.

22. With regard to curtailment, Distributors reiterate their concerns that Northern should not be attempting to reduce penalties at a time when system operation is in jeopardy, and then relying on curtailment if problems continue.

Discussion

23. The proponent of a tariff change has the burden of proving that the proposed change is just and reasonable. Although sections 4 and 5 of the Natural Gas Act (NGA)[5] explicitly refer to rate changes, the burden of proof and the just and reasonable standard associated with those two provisions is applied to parties proposing a tariff change that does not involve an increase or decrease in rates.[6] Because Northern seeks to modify section 48(G) of its GT&C, it bears the burden of proof with respect to any such change and must meet the just and reasonable standard of Section 4. The Commission has held that "[w]here a tariff change proposal is contested . . . it is then reasonable to require the pipeline to come forward with persuasive support for its proposed tariff change in order to meet its burden of proof under section 4 of the NGA."[7]

24. In this case, for the reasons set forth below, we find that Northern has not met its burden of proof in showing that its proposal is just and reasonable and in the public interest. Accordingly, we reject Northern's Seventh Revised Sheet No. 292. First, Northern fails to show that implementing its proposal would not have deleterious effects on downstream shippers. Distributors represent a consortium of small municipal distributors and local distributing companies on Northern's system. Distributors raise valid concerns regarding the ability of small downstream shippers to take their MDQs should upstream shippers use the flexibility provided by Northern's proposal to exceed their MDQ at an upstream delivery point without penalty, as long as their deliveries do not exceed their total MDQs at all delivery points. Although Northern asserts that Distributors' operational concerns are misplaced, it fails to justify its assertion with detailed explanations or operational data. In its compliance filing, Northern generally reiterates assertions it made in its underlying pleadings without providing additional support.

25. Second, Northern asserts that it can alleviate any operational problem brought on by its proposal to downstream shippers by merely calling a SOL or Critical Day at a specific affected delivery point. The Commission, however, finds this assertion confusing. Distributors are concerned that, under Northern's proposal, shippers with MDQs at multiple points on the branchline would have no incentive to abide by their point-specific MDQs in situations where Northern has called an SOL or Critical Day on

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[5] 15 U.S.C. §§ 717c and 717d (2006).

[6] *See Gulf South Pipeline Co.*, LP, 104 FERC ¶ 61,160 (2003) (proposed capacity segmentation plan); *Williams Natural Gas Co.*, 78 FERC ¶61,342 (1997) (proposed amendments regarding periods of daily balancing).

[7] *Williston Basin Interstate Pipeline Co.*, 71 FERC ¶ 61,372 at 62,461 (1995).

the branchline. As a result, those shippers could continue to take, or start taking, excess deliveries at their upstream delivery points after the calling of the branchline SOL or Critical Day. This problem would only become apparent after the branchline SOL or Critical Day had been called, and shippers with multiple delivery points had failed to conform their deliveries to their point-specific MDQs. Northern fails to explain and reconcile how there would then be sufficient time to address this problem by calling of a point-specific SOL or Critical Day in addition to the previously called branchline SOL or Critical Day. Under its tariff, Northern must call a SOL no later than 3:00 pm C.S.T. of each gas day and a Critical Day by no later than 2:30 pm C.S.T. of each gas day. Northern fails to adequately address Distributors' concerns regarding how it would address any operational problems should the problems occur later in the gas day, after these deadlines. Moreover, the SOL and Critical Day provisions in Northern's tariff do not appear to authorize the calling of a point-specific SOL and Critical Day with respect to individual points on a branchline which is already subject to a branchline SOL or Critical Day.

26. Finally, under Northern's proposal, certain shippers would have the benefit of being able to increase their operational flexibility at times when the system is operating under a SOL or Critical Day. Northern fails to justify why it should offer certain shippers greater flexibility to move their MDQs between delivery points at a time when system operation is in jeopardy.

<u>The Commission orders:</u>

Northern's Seventh Revised Sheet No. 292 is rejected.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.