173 FERC ¶ 61,291
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James P. Danly, Chairman;
Neil Chatterjee and Richard Glick.

Northern Natural Gas Company | Docket No. RP21-265-000

ORDER ACCEPTING TARIFF RECORDS

(Issued December 31, 2020)

1. On November 30, 2020, Northern Natural Gas Company (Northern) filed revised tariff records[1] proposing changes to its Rate Schedule SMS (System Management Service)[2] availability and to the structure of its Daily Delivery Variance Charges.[3] In addition, Northern requests a waiver of section 154.207 of the Commission's regulations[4] to permit the proposed tariff records listed in appendix A related to Rate Schedule SMS availability to become effective on November 1, 2021. For the reasons discussed below, we accept the tariff records listed in appendix A effective on November 1, 2021 and grant a prospective waiver of section 154.207 of the Commission's regulations. In addition, we accept the tariff records listed in appendix B related to Daily Delivery Variance Charges to become effective on January 1, 2021.

I. **Background**

2. On September 28, 2020, the Commission issued an order approving Northern's settlement resolving all issues concerning its October 11, 2018 FERC Form No. 501-G filing submitted in Docket No. RP19-59-000 and its Natural Gas Act (NGA) section 4 general rate case filing submitted in Docket No. RP19-1353-000.[5] Article X of the settlement established a Tariff Working Group for discussion of mutually agreeable tariff

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[1] *See* appendix A.

[2] Rate Schedule SMS is an optional service that permits shippers to deliver actual volumes at points that differ from scheduled volumes by amounts that exceed the safe harbor tolerances in their primary firm service without incurring a Daily Delivery Variance Charge, Northern's term for a scheduling penalty.

[3] *See* appendix B.

[4] 18 C.F.R. § 154.207 (2020).

[5] *N. Nat. Gas Co.*, 172 FERC ¶ 61,287 (2020).

changes related to, among other things, Rate Schedule SMS, Daily Delivery Variance Charges, and the Carlton Resolution.[6]

3. On October 1, 2020, in Docket No. RP21-26-000, Northern submitted its tariff filing that resulted from the Tariff Working Group's discussions. On October 30, 2020, the Commission issued an order in that proceeding which accepted Northern's proposed tariff records permitting it to waive penalties related to the Carlton Resolution, but rejected without prejudice proposed tariff records which would have further limited the availability of Rate Schedule SMS and would have increased the Daily Delivery Variance Charges.[7] Northern had requested waiver of the notice requirements of section 154.207 of the Commission's regulations to permit the rejected records to become effective on future dates after the 30- to 60-day prior notice filing window. The Commission did not find good cause to grant the waiver in that proceeding.[8] The Commission stated that Northern must provide more detailed support to show good cause, particularly when some of the proposed tariff records would not have been effective until the passage of a full year.[9] The Commission did not address whether the rejected tariff records were just and reasonable and instead encouraged Northern to work with its shippers to develop mutually agreeable tariff changes before re-filing.[10]

II. Proposal

4. Northern proposes substantially the same tariff revisions as proposed and rejected in Docket No. RP21-26-000. These include structural changes that increase Daily

[6] "The Carlton Resolution" generally refers to a settlement memorialized in Northern's tariff under which certain shippers with receipt point entitlements in Northern's Market Area agree to flow volumes as required by Northern's operational flow orders through Northern's interconnection with Great Lakes Gas Transmission Company at Carlton, Minnesota, in order to meet firm Market Area requirements. *See N. Nat. Gas Co.*, 77 FERC ¶ 61,201 (1996).

[7] *N. Nat. Gas Co.*, 173 FERC ¶ 61,115 (2020).

[8] *Id.* P 11.

[9] *Id.*

[10] *Id.*

Delivery Variance Charges on days when Northern has posted a System Overrun Limitation,[11] System Underrun Limitation,[12] or Critical Day notice.[13]

5. Northern states that its current Daily Delivery Variance Charges are fixed dollar amounts that were established many years ago and do not reflect volatile pricing that currently occurs during SOL, SUL, and Critical Days for the next day's trading block or subsequent intraday trading blocks. Therefore, Northern proposes to modify the tariff's existing Daily Delivery Variance Charges to be the higher of the existing fixed levels or multiples of the highest published Platts Gas Daily Midpoint commodity prices at various locations. The index multipliers would depend on the severity of the daily delivery variance on the applicable day of the applicable index point.[14] Northern asserts that such modifications will provide market-relevant penalties intended to incent the proper physical supplies on SOL, SUL, and Critical Days when shippers' supply decisions result in operational challenges on the pipeline. Finally, Northern points out that the use of multiples of index-based penalties are common in the natural gas industry.[15]

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[11] General Terms and Conditions (GT&C) section 48.E provides in part: "System Overrun Limitation (SOL). In the event that the pipeline system operating integrity is in jeopardy, an SOL may be called for all or part of the SMS entitlement above MDQ. When an SOL is in effect SMS may not be available above the MDQ."

[12] GT&C section 48.H provides in part: "System Underrun Limitation (SUL). In the event that the pipeline system operating integrity is in jeopardy, an SUL may be called."

[13] GT&C section 48.F provides in part:

> Critical Day. Northern shall have the right to post a Critical Day notice in order (i) to alleviate conditions which threaten the integrity of its pipeline system, (ii) to maintain pipeline operations at the pressures required to provide an efficient and reliable firm transportation service to Shippers, and (iii) to maintain its pipeline system in balance for the foregoing purposes.

[14] Northern proposes a range of index multipliers, from 1.25 times to 3.0 times the highest published Platts "Gas Daily" index price on the applicable day at the applicable points, depending on whether the penalty is incurred on an SOL day, SUL day, or Critical Day. *See* Application at 5.

[15] *Id.* at 5-6 (referring to, *e.g.*, the tariffs of ANR Pipeline Company, Natural Gas Pipeline Company of America LLC, Northern Border Pipeline Company, and Viking Gas Transmission Company).

6. Regarding its tariff proposals to further limit the availability of Rate Schedule SMS, Northern states its tariff currently provides a tolerance of five percent prior to the application of Rate Schedule SMS or Daily Delivery Variance Charges if shippers have scheduled volumes below their Maximum Daily Quantity (MDQ). Northern's proposal in the instant filing will modify the tolerance allowed below a shipper's MDQ to four percent on SOL days and three percent on Critical Days but delay the effective date of these proposed changes to November 1, 2021, which Northern states was agreed to by a substantial number of the Tariff Working Group participants. Northern states that customers have requested a delay in the effective date of the Rate Schedule SMS tariff proposal because they have already made their supply decisions for this winter's heating season, and a delay will provide the time to make any necessary changes in their supply portfolios for the 2021-2022 heating season. Northern states that this delay also allows Northern the time to implement system changes that are estimated at a minimum to take four months to develop and cost approximately $100,000. For these reasons, Northern requests a prospective waiver of section 154.207 of the Commission's regulations so that the daily Rate Schedule SMS tolerance proposals can become effective on November 1, 2021.

7. Northern further states that if customers do not provide adequate gas supplies on SOL and Critical Days, Northern risks an unsustainable situation where there are more deliveries off the system than receipts into the system. Northern states that the first negative impacts to deliveries in such a situation occur to deliveries off branch lines made to customers such as municipalities and local distribution companies and to high-pressure deliveries such as electric generation and large end users.

8. Finally, Northern points out that the proposed changes to the daily tolerances and Daily Delivery Variance Charge apply only to key operating days when Northern calls SOL, SUL, and Critical Days. Northern emphasizes that these days represent an average of eleven percent of days during a year, including an average of only two Critical Days per year, and are days when Northern's system is most impacted by customers' collective daily imbalances that create operational risks for the pipeline system. Northern anticipates that the proposed tariff changes are expected to improve system operational reliability on SOL, SUL, and Critical Days to the benefit of all customers and therefore are just and reasonable.

III. Notice and Responsive Pleadings

9. Public notice of the filing was issued on December 1, 2020. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[16] Pursuant to Rule 214,[17] all timely filed motions to intervene and any

[16] 18 C.F.R. § 154.210 (2020).

[17] 18 C.F.R. § 385.214 (2020).

unopposed motion 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. On December 10, 2020, the Northern Municipal Distributors Group[18] and the Midwest Region Gas Task Force Association[19] filed comments in support of Northern's proposed tariff changes. On December 14, 2020, Exelon Generation Company, LLC (Exelon)[20] filed a protest. On December 15, 2020, Northern filed a motion for leave to answer and answer. On December 21, 2020, Exelon filed a motion for leave to file a reply and reply to Northern's answer. On December 22, 2020, Northern filed a motion for leave to file a surreply and surreply. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2020), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Northern's answer and will, therefore, reject it; likewise, we reject Exelon's reply to Northern's answer and Northern's surreply.

10. Exelon explains that it participated in all Tariff Working Group discussions and notes that with respect to the Daily Delivery Variance Charges tariff changes, Northern did not change its initial proposal but instead refiled the same proposed tariff records that were included in Docket No. RP21-26-000. Exelon states that its position on Northern's Daily Delivery Variance Charges proposal has not changed and argues that Northern has still failed to justify an excessive increase in its penalty charges. Exelon states that Northern's use of a multiplier would allow Northern to significantly increase the Daily

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[18] Northern Municipal Distributors Group is composed of the following Iowa municipal-distributor customers of Northern: Alton, Cascade, Cedar Falls, Coon Rapids, Emmetsburg, Everly, Gilmore, Graettinger, Guthrie Center, Harlan, Hartley, Hawarden, Lake Park, Manilla, Manning, Orange City, Osage, Preston, Remsen, Rock Rapids, Rolfe, Sabula, Sac City, Sanborn, Sioux Center, Tipton, Waukee, West Bend, Whittemore, and Woodbine.

[19] Midwest Region Gas Task Force Association is composed of the following municipal-distributor and local distribution customers of Northern: Austin Utilities, Circle Pines, Community Utility Company, Dooley's Natural Gas, Great Plains Natural Gas Company, Greater Minnesota Gas, Hibbing, Hutchinson, New Ulm, Northwest Natural Gas Company, Owatonna, Round Lake, Sheehan's Gas Company, Inc., Two Harbors, Virginia, and Westbrook, Minnesota; Midwest Natural Gas, Inc., and St. Croix Valley Natural Gas, Wisconsin; Watertown, South Dakota; and the cities of Fremont, Lyons, and Stromsburg, and the Village of Pender, Nebraska.

[20] Exelon Corporation filed on behalf of its subsidiary, Exelon.

Delivery Variance Charges and that on a Critical Day, the penalty could be up to three times the highest specified Gas Daily midpoint price.[21]

11. Exelon also states that Northern has not provided evidence of situations impacting its ability to provide reliable service and instead points to Direct Testimony of witness Kent Miller submitted in Northern's NGA section 4 general rate case as support for Northern's changes. However, Exelon argues that the Direct Testimony does not provide evidence to support that Northern is actually experiencing any system issues during an SOL Day or a Critical Day where the current penalty structure is not working adequately.[22] Furthermore, Exelon argues that Northern's proposed multipliers are arbitrary and range from 1.25 times to 3.0 times the highest published midpoint index price among the specified index points.[23] Exelon also states that it reviewed many of the other pipeline tariff provisions cited by Northern with index multipliers and found that those penalties are structured differently from Northern's proposal, so an exact comparison was not appropriate.[24] Exelon specifically cites Natural Gas Pipeline Company of America's and Viking Gas Transmission Company's operational flow order penalty provisions and notes that although they might have multipliers of three or greater, other aspects of these provisions distinguish them from Northern's Daily Delivery Variance Charges.[25]

IV. Discussion

12. We accept the tariff records identified in appendix B that will increase Northern's Daily Delivery Variance Charges when Northern has issued a notice declaring an SOL, SUL, or Critical Day. According to Northern's tariff, SOL, and SUL notices may be issued when the system's operating integrity is in jeopardy,[26] and Critical Day notices may be issued (i) to alleviate conditions which threaten the integrity of its pipeline system, (ii) to maintain pipeline operations at the pressures required to provide an efficient and reliable firm transportation service to shippers, and (iii) to maintain its pipeline system in balance.[27] The proposed tariff records will thus increase Northern's ability to discourage shipper behavior that could exacerbate existing or potential

[21] Exelon Protest at 4.

[22] *Id.*

[23] *Id.* at 5.

[24] *Id.*

[25] *Id.* at 5-6.

[26] GT&C § 48.E (SOL notices); GT&C § 48.H (SUL notices).

[27] GT&C § 48.F.

operational conditions on Northern's system. The Commission's long-standing penalty policy permits proactive implementation of higher penalties that during critical periods are commensurate with the pipeline's heightened need to provide incentives for appropriate shipper behavior.[28] Regarding penalty levels for critical days, the Commission has explained:

> The Commission's primary concern with respect to penalties . . . is that the penalties be high enough to act as an effective deterrent to the harmful conduct. Since such conduct risks harm to other customers, as well as the pipeline, the Commission believes that significant penalties for such conduct [during critical days] are appropriate and consistent with Order No. 637.[29]

13. Although Exelon argues that Northern's proposal is inconsistent with the Commission's regulations at 18 C.F.R. § 284.12(b)(2)(v) (2020),[30] the Commission has expressly held that higher penalties may be imposed during critical periods,[31] and that the level of penalties must be intended to prevent shipper behavior that could threaten the operational integrity of the pipeline.[32] Beyond that requirement, the Commission has held that the penalty level necessary to deter harmful shipper behavior is a matter of the pipeline's judgment.[33] Moreover, we note that Northern lacks the incentive to set

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[28] *See Columbia Gas Transmission Corp.*, 115 FERC ¶ 61,134, at P 12 (2006); *Regul. of Short-Term Nat. Gas Transportation Servs. and Regul. of Interstate Nat. Gas Transp. Servs.*, Order No. 637, FERC Stats. & Regs. ¶ 31,091 (cross-referenced at 90 FERC ¶ 61,109), *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099 (cross-referenced at 91 FERC ¶ 61,169), *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Nat. Gas Ass'n of Am. v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. Am. Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

[29] *Columbia Gas Transmission Corp.*, 115 FERC ¶ 61,134 at P 12.

[30] Exelon Protest at 4-5 (citing the regulation's provision that "A pipeline may include in its tariff transportation penalties only to the extent necessary to prevent the impairment of reliable service.").

[31] *Columbia Gas Transmission Corp.*, 115 FERC ¶ 61,134 at P 9; Order No. 637-A, FERC Stats. & Regs. ¶ 31,099 at 31,608-31,609.

[32] *Columbia Gas Transmission Corp.*, 115 FERC ¶ 61,134 at P 22.

[33] *Algonquin Gas Transmission, LLC*, 115 FERC ¶ 61,067, at P 16 (2006).

unreasonably high penalties because it is not permitted to retain the penalties it collects.[34] Regarding Exelon's argument that Northern's penalties are structured differently from other pipelines,[35] we note that the pipeline has discretion to establish a penalty structure for its system and is not required to use the same penalties as other pipelines have established; it is only required to demonstrate that its proposal is just and reasonable.[36]

14. We are not persuaded by Exelon's objection that Northern has failed to provide specific examples of the system issues that justify increased penalties.[37] The Commission has held that it is not necessary for the pipeline to demonstrate actual harm to support proposed scheduling penalties during critical periods.[38] Further, the Commission has determined that it is "entirely appropriate for pipelines to anticipate problems and take action to forestall them, rather than waiting until such problems occur."[39]

15. Finally, while Exelon argues that Northern made no attempt to develop mutually agreeable penalty provisions with shippers,[40] Northern detailed its discussions with shippers in its transmittal letter.[41] As Exelon acknowledges,[42] the issue is whether Northern has demonstrated that the proposed changes are just and reasonable; we find, as discussed herein, that it has. We therefore accept the tariff records listed in appendix B to be effective January 1, 2021, as requested.

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[34] *See* 18 C.F.R. § 284.12(b)(2)(v) ("Pipelines may not retain penalty revenues, but must credit them to shippers in a manner to be prescribed in the pipeline's tariff.").

[35] Exelon Protest at 5.

[36] *Columbia Gas Transmission Corp.*, 115 FERC ¶ 61,134 at P 22.

[37] Exelon Protest at 4.

[38] *E.g.*, *Millennium Pipeline Co. L.L.C.*, 130 FERC ¶ 61,074, at P 20 (2010) (finding "the potential threat of scheduling variances during critical periods to reliable service [to be] self-evident").

[39] *Columbia Gas Transmission Corp.*, 115 FERC ¶ 61,134 at P 15.

[40] Exelon Protest at 6-7.

[41] Application at 3. Further, no other shippers have filed adverse comments on Northern's proposed tariff changes, and two shipper groups (Northern Municipal Distributors Group and Midwest Region Gas Task Force Association) filed comments in support of the proposed changes.

[42] Exelon Protest at 7.

16. We grant Northern's request for a prospective waiver of section 154.207 of the Commission's regulations so that the tariff records listed in appendix A can become effective on November 1, 2021. Northern represents that customers requested a delayed effective date for the more stringent limits on Rate Schedule SMS's availability in order to arrange for supplies for the next heating season. Without such delay, they might not be able to avoid increased Daily Delivery Variance Charges if such limits were implemented during the current heating season. We also find that approving Northern's proposal now with the proposed future effective date will provide the certainty that some shippers may require when making financial decisions related to the procurement of supplies. Therefore, we find good cause for granting Northern's requested prospective waiver of section 154.207 of the Commission's regulations and accept the tariff records in appendix A to become effective on November 1, 2021.

The Commission orders:

(A) Northern's tariff records listed in appendix A are hereby accepted, to be effective November 1, 2021, as discussed in the body of this order.

(B) Northern's request for waiver of section 154.207 of the Commission's regulations is hereby granted, as discussed in the body of this order.

(C) Northern's tariff records listed in appendix B are hereby accepted, to be effective January 1, 2021, as discussed in the body of this order.

By the Commission. Commissioner Clements is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Northern Natural Gas Company
FERC NGA Gas Tariff
Gas Tariffs

Tariff records accepted effective November 1, 2021:

Sheet No. 148, Rate Schedule SMS, 2.0.0
Sheet No. 291, G T and C Daily Delivery Variance Charges, 2.0.0
Sheet No. 291A, G T and C Daily Delivery Variance Charges, 5.0.0.

Appendix B

Northern Natural Gas Company
FERC NGA Gas Tariff
Gas Tariffs

Tariff records accepted effective January 1, 2021:

Sheet No. 53, Currently Effective Rates GS-T and CS-1, 20.0.0
Sheet No. 291A, G T and C Daily Delivery Variance Charges, 4.0.0
Sheet No. 292, G T and C Daily Delivery Variance Charges, 4.0.0.