

172 FERC ¶ 63,007  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Northern Natural Gas Company

Docket Nos. RP19-1353-000  
RP19-1353-009  
RP19-59-000

CERTIFICATION OF UNCONTESTED SETTLEMENT

(Issued July 21, 2020)

TO THE COMMISSION:

**I. Introduction**

1. On June 19, 2020, Northern Natural Gas Company (Northern) submitted a transmittal letter including an explanatory statement, and a Stipulation and Agreement of Settlement (Settlement), including Appendices A through G. The Settlement includes *pro forma* tariff sheets. Of even date, the undersigned received a FERC interdepartmental communication that this Settlement was assigned new Docket No. RP19-1353-009 to reflect that it was filed in the eTariff format.
2. The rates established by the Settlement will become effective as of January 1, 2020. For any party to the Settlement, the standard of review to be applied by the Commission in considering any change to any then effective provision is the “public interest” standard. However, for the Commission and any non-party to the Settlement, the standard of review is the ordinary just and reasonable standard.
3. On May 20, 2020, Northern filed an unopposed motion to place settlement rates into effect on an interim basis. By order issued May 27, 2020 in Docket No. RP19-1353-007, the Chief Administrative Law Judge (Chief Judge) granted the motion and authorized interim settlement rates as of May 1, 2020.
4. The Settlement will resolve all pending issues in Docket Nos. RP19-1353 and RP19-59. The Settlement provides for refunds to be made.
5. Pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure, initial comments on the Settlement were due on July 9, 2020. On July 9, 2020, Commission

Trial Staff (Trial Staff) and CenterPoint Energy Resources Corporation (CenterPoint) submitted initial comments in support of the Settlement. Of even date, POET Ethanol Products (POET), acting as an agent of POET Biorefining, filed a comment stating that it does not oppose the Settlement. On July 13, 2020, Northern filed reply comments noting that no party had filed comments in opposition. Therefore, the Settlement is uncontested.

## II. Background

6. Northern is a natural gas pipeline that provides natural gas services to markets from Texas to Michigan.<sup>1</sup>

7. On July 18, 2018, the Commission issued Order No. 849,<sup>2</sup> a final rule adopting procedures for determining whether natural gas pipelines may be collecting unjust and unreasonable rates in light of the 2017 tax changes and the Commission's revised policy and precedent concerning tax allowances to address the double recovery issue relating to master limited partnerships. In compliance with Order No. 849 and 18 C.F.R. § 206.402,<sup>3</sup> Northern filed a FERC Form No. 501-G.<sup>4</sup>

8. With its Form No. 501-G, Northern filed a statement explaining why no rate adjustment is needed, as permitted by Option 3 of Order No. 849. After reviewing the material Northern provided, comments provided by the public, and other publicly available information on file with the Commission, the Commission became concerned that Northern's level of earnings may substantially exceed its actual cost of service, including a reasonable ROE.<sup>5</sup> Accordingly, the Commission initiated a section 5 proceeding.

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<sup>1</sup> *No. Nat. Gas Co.*, 166 FERC ¶ 61,033, at P 2 (2019).

<sup>2</sup> *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, 164 FERC ¶ 61,031 (2018).

<sup>3</sup> 18 C.F.R. § 260.402 (2020).

<sup>4</sup> Northern Natural Gas Company October 11, 2018 Form No. 501-G.

<sup>5</sup> *No. Nat Gas Co.*, 166 FERC ¶ 61,033, at P 9 (2019).

9. The Commission directed the Chief Judge to designate a Presiding Administrative Law Judge (Presiding Judge) to conduct a hearing and prepare an initial decision to be issued within 47 weeks of the date Northern submits its cost and revenue study.<sup>6</sup>

10. The Chief Judge designated the undersigned as Presiding Judge on February 5, 2019, to conduct the hearing in Docket No. RP19-59-000. Of even date, she designated Judge David H. Coffman as Settlement Judge, to oversee settlement procedures concurrently with the hearing proceeding. Judge Coffman recommended the termination of settlement procedures on May 17, 2019.

11. On July 1, 2019, Northern filed a Section 4 rate case in Docket No. RP19-1353-000 to increase its transportation and storage rates. On July 31, 2019, the Commission issued an order accepting and suspending certain tariff records, subject to refund, and established a hearing and technical conference.<sup>7</sup> In that order, the Commission directed the Chief Judge to designate a Presiding Judge and granted the Chief Judge the discretion to decide whether to consolidate the proceeding with the Section 5.<sup>8</sup>

12. The Chief Judge designated the undersigned as Presiding Judge on August 5, 2019 in the Section 4 proceeding in Docket No. RP19-1353-000. At the time, the Chief Judge did not consolidate the two proceedings. On August 7, 2019, the Chief Judge designated Judge Philip C. Baten as Settlement Judge. Judge Baten recommended the termination of settlement procedures on December 6, 2019.

13. On September 12, 2019, in response to a joint motion submitted by Trial Staff, the Chief Judge consolidated the Section 4 and Section 5 proceedings.

14. On May 18, 2020, Trial Staff submitted a motion to the Chief Judge requesting that the Chief Judge suspend the procedural schedule of the consolidated proceeding and waive the answer period on its motion. Trial Staff represented that the participants had reached a settlement in principle and granting the motion would allow the participants the time to finalize and file their settlement.

15. On May 19, 2020, the Chief Judge waived the answer period and granted Trial Staff's motion. The Chief Judge order participants to file a status report by June 19, 2020 and another sixty days after the initial status report. If that period concluded without a

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<sup>6</sup> *Id.* at ord. para. (B)-(D).

<sup>7</sup> *See No. Nat. Gas Co.*, 168 FERC ¶ 61,069 (2019).

<sup>8</sup> *Id.* at P 33, ord. para. (A)-(F).

settlement being filed, the Chief Judge and the Presiding Judge would re-establish the procedural schedule.

16. On June 19, 2020, Northern filed the Settlement. The Settlement represents the joint efforts of the scores of parties to the proceeding.

### III. Settlement

17. Article I sets forth the procedural history.

18. Article II contains the definitions of the terms, as used in the Settlement.

19. Article III relates the settlement rates and rate design.

- a. Section A provides that the settlement rates in Appendix A become effective beginning January 1, 2020.
- b. Section B states that the market-based storage service established in Docket No. CP07-108<sup>9</sup> is rolled-in to Northern's FDD storage rates described in Appendix A. Northern will no longer make a distinction between cost-based storage and the currently existing market-based storage for cost of service purposes in any future section 4 or section 5 rate case.
  - i. Furthermore, in any future section 4 or section 5 rate case filed for rates effective on or before May 31, 2028, for the purpose of calculating the reservation and commodity rates for Northern's underground storage services, the revenue from such existing market-based storage contracts shall be treated as a revenue credit to the cost of service and the billing determinants from such contracts shall be excluded. After that date, the cost of service and billing determinants related to the now-existing market-based storage shall be rolled-in for purposes of calculating future rates.
  - ii. As of the Effective Date, the requirement to "separately account for all costs and revenues associated with the incremental facilities used to provide market-based services" from the Commission's order in Docket No. CP07-108 shall terminate.<sup>10</sup>

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<sup>9</sup> *No. Nat. Gas Co.*, 122 FERC ¶ 61,227 (2008).

<sup>10</sup> *Id.* at P 26.

- c. Section C identifies the Tariff sheets the transportation commodity rates are stated in, and confirms that those rates are based on Straight-Fixed Variable cost allocation and rate design.
20. Article IV contains the Settlement's terms on rolled-in rate treatment.
  - a. Section A provides that all costs incurred by Northern for capital projects certified under section 7(c) of the NGA and completed prior to December 31, 2019, shall be granted rolled-in rate treatment. The costs to which this Article IV(a) applies are the costs of capital projects completed prior to December 31, 2019 for which Northern was granted the presumption of or predetermined rolled-in treatment, the costs of the Northern Lights Expansion Project, and the costs of the West Leg 2014 Expansion Project.
  - b. Additionally, section B states that the "at-risk" provision for the Dodge City Project shall be eliminated and its costs shall be granted rolled-in rate treatment.
21. Article V relates to accounting items.
  - a. Section A states that beginning January 1, 2020, the book depreciation and negative salvage rates shall be as set forth in Appendix B.
  - b. Section B provides that Northern's offshore Decommissioning Allowance shall be \$775,935 per year.
  - c. Section C explains that the Settlement takes no position on the appropriate date to start EDIT amortization. Northern's regulatory liability attributable to EDIT from the 2017 federal income tax rate change shall be amortized using the Reverse South Georgia Method. Starting January 1, 2020, over a 28.7-year estimated remaining life, the amortization shall run as follows: for January 1, 2020 through December 31, 2022, an amount of \$15,767,282 per year, including income tax gross up; for January 1, 2023 through December 31, 2024, an amount of \$13,979,174 per year, including income tax gross-up; for January 1, 2025 through December 31, 2047, an amount of \$13,293,472 per year, including income tax gross-up; and for January 1, 2048 through the end of the 28.7-year amortization period, an amount of \$9,068,541 per year, including income tax gross-up. Furthermore, subsequent to a Final Order, to the extent that Northern receives guidance or directive from the IRS for a potential normalization violation as a result of the amortization of EDIT, any difference between the Reverse South

Georgia Method that has been previously recorded by Northern and the ultimate method or calculation directed by the IRS will be recorded as a regulatory asset or regulatory liability for disposition in the next rate proceeding. The Settlement adds that the current treatment and ultimate disposition of the EDIT is intended to comply with all IRS normalization rules.

- d. Section D explains that Northern will cease recording negative salvage for offshore assets as of January 1, 2020, and transfer the final balances of negative salvage and accumulated depreciation reserves for retired offshore assets to Account No. 108. Table 1 identifies specific figures.

22. Article VI details the Settlement's Moratorium.

- a. Section A provides that unless a Triggering Event occurs, Northern will not file to increase the Settlement Rates or to modify any of the terms specified in this Settlement prior to the later of June 30, 2022 or the date on which it has cumulative Maintenance Capital expenditures of at least \$525.0 million, beginning January 1, 2020. Without a Triggering Event, no Settling Party, prior to June 30, 2022, may file to decrease the Settlement Rates or modify any of the specified terms in the Settlement.
- b. Section B identifies and lists the Triggering Events applicable to Article VI, Section A above.
- c. Section C clarifies that if some Triggering Events occur, a party must act within a certain period, otherwise the moratorium remains in effect.
- d. Section D provides that by mutual written agreement, and filing with and acceptance by the Commission, the moratorium may be extended.
- e. Section E requires that Northern, each year and no later than five business days after its FERC Form 2 is filed, post and file as an informational filing the Form 2 Calculated Factor and Maintenance Capital Spending, in the form of Appendix C. Based upon comments received on the informational filing, Northern may hold a meeting to discuss comments and answer questions.
- f. Section F explains that the Settlement does not impair Northern's rights to file a request for new services, any new rate schedule, negotiated or incremental rate agreements, non-conforming agreements, updates to previously-agreed trackers, a filing pursuant to the requirements set forth in

the Tariff for the Carlton Resolution, or any mutually-agreed charge for newly constructed facilities.

23. Article VII sets forth the terms of the Maintenance Capital Plan (included as Appendix D to the Settlement).
  - a. Section A provides that, except as stated in Article VIII, the Maintenance Capital Plan will not serve as a minimum or maximum capital spending commitment by Northern. This section also relates an annual meeting requirement, a semi-annual update requirement, a reconciliation of the actual Maintenance Capital compared to the planned Maintenance Capital requirement, and an information-providing requirement of the Maintenance Capital Plan.
  - b. Section B states that once the moratorium expires, Northern's obligations under Article VII terminate.
  - c. Section C states that to the extent Northern also has a Capital Spending Obligation for a calendar year, the Maintenance Capital Plan shall include projects to satisfy the Capital Spending Obligation, but the Capital Spending Obligation will not be included in the Maintenance Capital amounts used to determine if a Triggering Event has occurred.
24. Article VIII concerns Northern's Capital Spending Obligation.
  - a. Section A provides that Northern will meet its Capital Spending Obligation during the term of the moratorium, beginning in calendar year 2020 and ending as described in Article VIII(B).
  - b. Section B says that upon termination of the moratorium, Northern's obligations under Article VIII shall cease, except in the case that Northern has a Capital Spending Obligation for the calendar year, in which case Northern will satisfy the Capital Spending Obligation by December 31<sup>st</sup> of the calendar year the moratorium ended.
  - c. Section C reiterates Article VII(C), stating that Capital Spending Obligation will not be added to the Maintenance Capital amounts for the purpose of determining whether a Triggering Event has occurred.
25. Article IX relates to the Tariff revisions.

- a. Section A states that Appendix E contains the revised Tariff Sheets, and lists the Tariff Sheets revised to address the Settlement Rates, the URR, and the FDD Revisions.
  - b. Section B provides that Technical Conference items will be governed by the Commission orders issued on December 31, 2019,<sup>11</sup> and on May 27, 2020.<sup>12</sup>
  - c. Section C lists prospective case proposals that are to be deemed withdrawn upon the issuance of a Final Order. They shall not be refiled so long as the moratorium is in effect.
  - d. Section D provides that Northern, should Northern file to implement any of the changes listed under Article IX(C), may only do so in a general section 4 rate proceeding and for prospective implementation only.
26. Article X relates to the establishment of a Tariff Working Group.
- a. Section A states that a Tariff Working Group will be convened to address the Carlton Operational Flow Order, and daily SMS, DDVC, and imbalance management.
  - b. Section B sets forth the composition of the Tariff Working Group.
  - c. Section C describes the meeting schedule of the Tariff Working Group.
  - d. Section D explains that the Tariff Working Group will try to achieve final resolution of the issues from Section B by September 30, 2020. It describes how a filing to make changes will only be made with significant support from participating customers. There are additional details regarding deadlines for any such filing and other timeline extensions.
  - e. Section E explains that Tariff changes resulting from the Tariff Working Group for the items described in Article X(A) will not violate the moratorium.

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<sup>11</sup> *No. Nat. Gas Co.*, 169 FERC ¶ 61,268 (2019).

<sup>12</sup> *No. Nat. Gas Co.*, 171 FERC ¶ 61,168 (2020).

- f. Section F provides that nothing in the Settlement impairs the rights of the participants to file comments, support, or oppose any proposal filed by Northern as a result of the Tariff Working Group.
27. Article XI provides that the Settlement will become effective upon the issuance of a Final Order.
28. Article XII states that within sixty calendar days after the Effective Date of the Settlement, Northern will make refunds with interest at the applicable FERC rate. The refunds will be on a net basis by legal entity. Northern will, however, upon a customer's request, pay the refund in cash if the customer is current on invoice amounts owed to Northern. Northern will file a refund report with the Commission within thirty days of the payment of the refunds.
29. Article XIII explains that, except as described in Article XVIII(E), nothing in the Settlement modifies any party's rights or obligations under section 4 or 5 of the NGA, including, but not limited to, those arising under any order or opinion of the Commission.
30. Article XIV provides for the treatment of any Contesting Parties.
31. Article XV states that the Settlement represents a number of compromises between Northern and the Participants. Accordingly, the Settlement's provisions may not be severed or modified without disturbing the negotiated balance of interests.
32. Article XVI states that Appendix E to the Settlement includes a marked version of the applicable portions of Northern's Tariff showing all changes required to implement the terms of the Settlement, and an unmarked version. After the issuance of a Final Order, Northern will file to implement the Tariff records in Appendix E.
33. Article XVII outlines the terms relating to the Final Order, the withdrawal rights of the parties if the Commission modifies the Settlement in a way that is unacceptable to that party, and the privileged status of the Settlement.
34. Article XVIII contains various miscellaneous provisions typically found in settlement agreements.
35. Article XIX states that the Settlement resolves all issues in Docket Nos. RP19-1353 and RP19-59 and upon issuance of a Final Order those proceedings shall be terminated.
36. Article XX requests that the Commission approve the Settlement as filed.

#### **IV. Comments**

37. On July 9, 2020, CenterPoint filed initial comments in support of the Settlement.<sup>13</sup> CenterPoint states that, following several months of discovery, testimony, and negotiations, the parties arrived at the terms of the present Settlement. CenterPoint represents that the Settlement is fair, reasonable, and in the public interest and respectfully requests that the Commission approve it without modification or condition.

38. On July 9, 2020, POET filed a comment stating that it does not oppose the Settlement.<sup>14</sup>

39. On July 9, 2020, Trial Staff filed comments in support of the Settlement.<sup>15</sup> Trial Staff observes that the Settlement required significant concessions by all participants and is shaped by the singular business conditions produced by the pandemic. Despite those circumstances, the Settlement includes important achievements. Among other things, the Settlement includes large reductions in Northern's as-filed rates in Docket No. RP19-1353, it provides for refunds much sooner than any that would be achieved through litigation, it establishes a section 4 rate filing moratorium through June 30, 2022 (with limited exceptions), and withdraws numerous proposed, and protested, tariff changes. Trial Staff states that the Settlement is a knowing and reasoned compromise that reflects the uncertain business conditions, high litigation costs, and litigation risks. Accordingly, Trial Staff requests that the Commission approves the Settlement without modification or condition as fair and reasonable and in the public interest.

40. On July 13, 2020, Northern filed reply comments. Northern noted that the period for comments on the Settlement had passed, and the comments that had been filed did not express opposition to the Settlement. Northern concluded by stating that the Settlement is therefore uncontested. Northern requested that the undersigned certify the Settlement as uncontested and that the Commission approve the Settlement, without modification or condition, as fair and reasonable and in the public interest. Northern also respectfully requests that the certification and approval take place as soon as possible, ideally in time to permit the implementation of the Settlement before the end of the year and the prompt payment of refunds to customers.

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<sup>13</sup> Initial Settlement Comments of CenterPoint Energy Resources Corporation (July 9, 2020).

<sup>14</sup> Comment of POET on Offer of Settlement (July 9, 2020).

<sup>15</sup> Initial Comments of the Commission Trial Staff on Offer of Settlement (July 9, 2020).

## V. Explanatory Statement

41. In answering the four questions that the explanatory statement of each agreement filed with the Commission must answer,<sup>16</sup> Northern makes the following representations:

**A. Does the settlement affect other pending cases?**

42. Northern and the Settling Parties are not aware of any pending cases that the Settlement would affect.

**B. Does the settlement involve issues of first impression?**

43. The Settlement does not involve any issues of first impression.

**C. Does the Settlement depart from Commission precedent?**

44. The Settlement does not depart from Commission precedent.

**D. Does the settlement seek to impose a standard of review other than the ordinary just and reasonable standard with respect to any changes to the settlement that might be sought by either a third party or the Commission acting *sua sponte*?**

45. The standard of review applicable to the Commission acting *sua sponte* or a third party seeking to change the Settlement is the just and reasonable standard. For parties to the Settlement, the standard of review is the “public interest” standard.

## VI. Discussion

46. The Settlement reasonably resolves all issues set for hearing in this proceeding and presents no issues that are of first impression, or on which the Commission previously reversed its position. In accordance with 18 C.F.R. § 385.602(g)(1), the undersigned certifies that the Settlement is uncontested. In accordance with 18 C.F.R. § 385.602(g)(3), the undersigned finds that the Settlement appears to be fair and reasonable and in the public interest.

## VII. Certification

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<sup>16</sup> Amended Notice to the Public on Information to be Provided with Settlements and Guidance on the Role of Settlement Judges (issued Dec. 15, 2016).

47. Therefore, pursuant to Rule 602(g)(1), the undersigned hereby certifies to the Commission the following documents:

- a. The Settlement and all supporting documents submitted on June 19, 2020;
- b. Initial comments submitted by Trial Staff, CenterPoint, and POET on July 9, 2020, and the reply comments submitted by Northern on July 13, 2020; and
- c. All pleadings, orders, and other documents of record in this proceeding.

Steven L. Sterner  
Presiding Administrative Law Judge