

110 FERC ¶ 61,203
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 2, 2005

In Reply Refer To:
Northern Border Pipeline Company
Docket No. RP05-146-000

Northern Plains Natural Gas Company, LLC
P.O. Box 542500
Omaha, NE 68154-8500

Attention: Raymond D. Neppl
Vice President, Regulatory Affairs & Market Services

Reference: Request for Limited Waiver of Rate Schedule PAL Tariff Provision

Ladies and Gentlemen:

1. On January 3, 2005, Northern Border Pipeline Company (Northern Border) filed a request that the Commission grant a limited waiver of subsection 6.1(a)(iii) of Rate Schedule PAL (Park and Loan) in Northern Border's FERC Gas Tariff. This subsection requires that parked quantities of gas become the property of Northern Border at no cost, free and clear of any adverse claims, if the PAL account reflects a balance at the termination date set forth in the associated Exhibit A to an executed PAL Agreement.¹ According to the limited waiver request, Northern Border and Peoples Energy Wholesale Marketing (PEWM) entered into a PAL Agreement which allowed PEWM to park gas on December 17, 2004 and required its removal on or before December 24, 2004. On December 27, 2004, Northern Border notified PEWM that it had failed to remove the parked gas on a timely basis. On December 30, 2004, Northern Border permitted PEWM to remove the parked quantities of gas. Northern Border asserts that PEWM's failure to remove the parked gas resulted from an unintentional oversight which did not harm Northern Border or its customers.

¹ Northern Border Pipeline Company, FERC Gas Tariff, First Revised Volume No. 1, Subsection 6.1(a)(iii) of Rate Schedule PAL.

2. Notice of Northern Border's filing was issued on January 7, 2005. Interventions and protests were due as provided in § 154.210 of the Commission's regulations, 18 C.F.R. § 385.210. Pursuant to Rule 214, 18 C.F.R. § 385.214, all timely filed motions to intervene and any motions 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 this proceeding or place additional burdens on existing parties. No party filed a protest or adverse comments. On January 18, 2005, PEWM filed a motion to intervene supporting Northern Border's filing.

3. The Commission denies, as unnecessary, Northern Border's request that the Commission grant a special waiver of subsection 6.1(a)(iii) of Rate Schedule PAL. As Northern Border notes in its waiver request, section 11 of the General Terms and Conditions of Northern Border's tariff provisions provides, "Company may waive any rights hereunder or any obligations of Shipper on a basis which is not unduly discriminatory. . ."² Thus, Northern Border's tariff gave it authority to waive subsection 6.1(a)(iii) to permit PEWN to remove its parked gas without the need for specific authorization from the Commission.

4. While the waiver at issue here was appropriate, the Commission is concerned that the current language in Northern Border's tariff section 11 is overly broad:

No waiver by either Company or Shipper of any one or more defaults by the other in the performance of any provisions of Shipper's Agreement shall operate or be construed as a waiver of any subsequent or other default or defaults, whether of a like or of a different character.

Company may waive any rights hereunder or any obligations of Shipper on a basis which is not unduly discriminatory; provided that no waiver shall operate or be construed as a waiver of other or future rights or obligations, whether of a like or different character.

The Commission finds that this broad waiver provision has the potential for unreasonable and unjust application. The Commission previously held that pipelines should only use such waiver provisions to waive past occurrences such as PEWN's failure to remove parked gas in a timely manner, not to waive a broad range of tariff provisions for mutual benefit in the context of a transportation agreement. As currently worded, section 11 could be interpreted as giving Northern Border almost unfettered discretion to include non-conforming material terms and conditions into its transportation agreements without seeking Commission approval for those changes or without including language

² Substitute First Revised Sheet No. 260E to Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1.

specifically authorizing such provisions in its tariff. Pursuant to the Commission's authority under Natural Gas Act section 5 and consistent with its action in *CenterPoint*³, the Commission directs Northern Border to revise the second paragraph of section 11 to clarify that this waiver only applies to specific defaults that have already happened.

By direction of the Commission.

Linda Mitry,
Deputy Secretary.

³ *CenterPoint Energy Gas Transmission Company*, 104 FERC ¶ 61,281 at P 48-50 (2003) (*CenterPoint*).