102 FERC ¶ 61, 044
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

PG&E Gas Transmission, Northwest Corporation Docket Nos. RP02-362-001
and RP02-362-002

ORDER ACCEPTING COMPLIANCE FILING, SUBJECT TO CONDITIONS

(Issued January 16, 2003)

1. On July 24, 2002 (July 24 Filing), PG&E Gas Transmission, Northwest Corporation (GTN) filed tariff sheets[1] to comply with a July 5, 2002 Commission Order.[2] The July 5 Order directed GTN to file revised tariff sheets clearly stating that a pre-arranged deal will not be entered into after GTN posts the subject capacity as available, or during the bidding process in an open season. The Commission further directed GTN to explain when and in what circumstances GTN would enter into pre-arranged deals. Subsequently, on October 15, 2002, GTN amended its tariff filing in response to protests of its July 24 Filing.[3] The tariff sheets listed in Footnote No. 3 are accepted effective November 14, 2002, subject to conditions. The tariff sheets listed in Footnote No. 1 are rejected as moot. This decision benefits customers because it allows flexibility to meet the needs of the customer and the pipeline, while ensuring this occurs without undue discrimination.

July 24, 2002 Filing

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[1]First Revised Sheet No. 127, First Revised Sheet No. 128, and First Revised Sheet No.129 to FERC Gas Tariff, Second Revised Volume No. 1-A.

[2]100 FERC ¶ 61,040 (2002) (July 5 Order).

[3]Second Revised Sheet No. 127, Second Revised Sheet No. 128, Second Revised Sheet No. 129, Original Sheet No. 129A, and First Revised Sheet No. 213 to FERC Gas Tariff, Second Revised Volume No. 1-A.

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2. GTN's July 24 Filing adds language to Paragraph 18.1(b) of GTN's Transportation General Terms and Conditions (GT&C) providing that GTN will post on its website, one year prior to the commencement date of a pre-arranged deal, a notice that the capacity associated with the pre-arranged deal will be subject to GTN's open season bidding process, and that the open bidding will commence no later than three months prior to the in-service date of the pre-arranged deal. Additionally, GTN proposes to add language to Paragraph 18.1(b) to state that if there is an ongoing open season for capacity, GTN will not enter into a pre-arranged deal for that capacity during the open season.

3. The July 24 Filing also provides a narrative explanation stating that GTN anticipates using this tariff provision to sell capacity that is expected to become available at some future date, prior to when it would typically be subject to an open season posting, or to sell capacity on a prospective basis that is currently posted and has previously been subject to an open season process. GTN explains that the proposed tariff mechanism will allow it to enter into pre-arranged deals for unsubscribed capacity that has already been offered in an open-season, as well as for capacity that is expected to become available. Lastly, GTN would be able to make prospective capacity sales, provided that other parties will have an opportunity to bid on the capacity through a subsequent open season process.

October 15, 2002 Filing

4. GTN's October 15 Filing modifies Paragraph 18.1 of its GT&C so that in addition to posting all currently available capacity, GTN will separately identify on its Internet website all capacity that is anticipated to become available within the next thirty-six months. The modified language will require GTN's pre-arranged agreements to have a minimum term of five years or more, and would prohibit GTN from entering into pre-arranged deals with commencement dates more than thirty-six months in the future. GTN must also make available the reserved pre-arranged capacity on an interim basis up to the commencement date of the pre-arranged service agreement. New Paragraph 33.7 provides that a shipper who enters into an interim service agreement for pre-arranged capacity will not have a right of first refusal (ROFR) option, unless GTN and shipper expressly agree otherwise in the shipper's interim service agreement.

Notice of Filing and Interventions

5. The Commission issued public notice of the July 24 and October 15 filings providing for interventions and protests to be filed by August 5, 2002 and October 29, 2002, respectively. Notices of intervention and unopposed timely motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of

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Practice and Procedure (18 C.F.R. § 385.214). Any opposed or untimely motion to intervene is governed by the provisions of Rule 214. The Public Utilities Commission of the State of California (CPUC) filed a notice of intervention and protest to both the July 24 and October 15 filings. Puget Sound Energy, Inc. (Puget) filed a protest to the July 24 filing. On August 16, 2002, GTN filed an answer to the Puget and CPUC protests of GTN's July 24 filing. On September 6, 2002, Puget filed a reply to GTN's answer. The protests and answer are discussed below.

Protests

6. Puget and the CPUC protested GTN's July 24 Filing on several grounds. Both argued that GTN's proposal will allow GTN to make pre-arranged deals prior to an open season for the capacity, and make prospective (speculative) capacity sales. The CPUC also asserted that GTN had not satisfactorily explained when pre-arranged capacity sales would be available for capacity that has been offered in an open-season.

7. In its protest of GTN's October 15 Filing, the CPUC argues that GTN's proposal is not consistent with Commission precedent,[4] with respect to GTN seeking to negotiate sales of capacity before the capacity is posted for all shippers and subject to an open season, and still allows for prospective contracts. CPUC asserts that GTN should be precluded from entering into contracts for prospectively available capacity unless it can assure that such contracts will not become the subject of speculative transactions; that the pipeline's recourse rates, and not market rates, will be used; that inequities will not result if expansion capacity is involved; and that the contracts adhere to all other applicable regulations and FERC policies.

Discussion

8. The Commission is not persuaded that GTN should be precluded from entering into pre-arranged deals prior to an open season. Paragraph 18.1(b) of GTN's tariff provides that GTN may enter into a pre-arranged deal for capacity prior to holding an open season provided that GTN will post the terms of the pre-arranged deal and other parties will have an opportunity to bid on the capacity. The Commission has allowed pipelines to enter into pre-arranged deals for capacity before it has been offered in an open season, provided that other parties will have an opportunity to bid on the capacity

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[4]Tennessee Gas Pipeline Co., 91 FERC ¶ 61,292 (2000), reh'g denied, 94 FERC ¶ 61,315 (2001) (Tennessee).

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prior to the commencement of the pre-arranged agreement.[5] Therefore, GTN's proposal is consistent with Commission policy.

9. Revised Paragraph 18.1(b) of its GT&C would require that GTN will provide notice, one year prior to the commencement date of a pre-arranged deal, stating that the pre-arranged deal capacity will be subject to GTN's open-season bidding process and that the open season bidding will commence no later than three months prior to the in-service date of the pre-arranged deal. Because GTN's tariff does not permit it to *award* capacity prior to the conclusion of the open season, the Commission is unclear as to the intent of GTN's proposal. Consistent with Commission policy,[6] and pursuant to Section 284.13 (d)(1) of the Commission's regulations, capacity must be posted as it becomes available. GTN is therefore directed to clarify its tariff to provide that before it enters into a pre-arranged deal for capacity becoming available in the future, GTN will post the availability of such capacity to afford similarly situated shippers the same opportunities.

10. GTN also proposes to add language to Paragraph 18.1(b) to state that if there is an ongoing open season for capacity, GTN will not enter into a pre-arranged deal for that capacity during the open season. The Commission will accept this proposed tariff revision.

11. The Commission directs GTN to remove the language which requires that all pre-arranged service agreements have a minimum contract term of five years. The Commission finds that requiring a minimum contract term of five years is contrary to Section 284.7(4)(b) of the Commission's regulations requiring pipelines to provide service without undue discrimination or preference in quality of service provided including duration of service. It is the Commission's policy to rely on market forces to the greatest extent practical in allocating available capacity. GTN's proposal to restrict pre-arranged deals to a minimum of five years is unduly discriminatory. Therefore, GTN is directed to remove the minimum contract requirement.

12. Because prearranged capacity deals may be entered into as many as 36 months in advance, GTN proposes making the same capacity available to other shippers on an interim basis. GTN proposes a new Paragraph 33.7 to its GT&C providing that a shipper who enters into an interim service agreement will not have a ROFR option, unless GTN and the shipper expressly agree otherwise in the shipper's interim service agreement, pursuant to Paragraph 18.1(b). While the Commission has granted waiver of ROFR

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[5] See, e.g., Southern Natural Gas Co., 100 FERC ¶ 61,089 at 61,375 (2002).

[6] See, e.g., Tennessee at 62,007.

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requirements in cases where a pipeline reserves capacity for use in a specified system-expansion project, it has not allowed pipelines to unilaterally waive the requirement or negotiate a ROFR when they enter into service agreements at maximum tariff rates. GTN argues that its desire to sell capacity into the future is akin to cases where a pipeline reserves capacity for an expansion project. The Commission disagrees. With respect to expansion projects, Commission policy allows limited waiver of ROFR requirements in conjunction with reserved capacity so that a general system expansion may be optimally sized. To do otherwise may create stranded capacity/costs that could burden other shippers on the system. Here, as in Williams Gas Pipelines Central Inc.,[7] the pipeline is seeking to insulate itself from its decision to enter into a pre-arranged agreement for future service, at the expense of shippers who enter into service agreements in the interim. A shipper that desires capacity only at a future date can insulate itself from the risk that capacity may not be available at that time or from the risk of marketing such capacity by purchasing capacity and releasing it until it has a use for it. The Commission finds GTN's arguments unpersuasive. Therefore, the Commission directs GTN to remove the proposed language in Paragraph 18.1(b) corresponding to Paragraph 33.7, and rejects First Revised Sheet No. 213 to FERC Gas Tariff, Second Revised Volume No. 1-A.

The Commission orders:

(A) GTN's Second Revised Sheet No. 127, Second Revised Sheet No. 128, Second Revised Sheet No. 129, and Original Sheet No. 129A are accepted, effective November 14, 2002, subject to the conditions set forth in the body of this order.

(B) GTN's First Revised Sheet No. 127, First Revised Sheet No. 128, and First Revised Sheet No.129 to FERC Gas Tariff, Second Revised Volume No. 1-A are rejected as moot.

(C) GTN's First Revised Sheet No. 213 to FERC Gas Tariff, Second Revised Volume No. 1-A is rejected.

(D) Within 20 days of the date of this order, GTN is directed to file revised tariff sheets that satisfy the conditions set forth in this order.

By the Commission.

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[7] 97 FERC ¶ 61,249 (2001).

(S E A L)

Magalie R. Salas,
Secretary.