

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
102 FERC ¶ 61,062

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

e prime, inc. v. PG&E Transmission,
Northwest Corp.

Docket No. RP03-41-000

ORDER ON COMPLAINT

(Issued January 24, 2003)

1. On October 25, 2002, e prime, inc. (Eprime) filed a complaint against PG&E Transmission, Northwest Corporation (PG&E-GTN), alleging that PG&E-GTN unlawfully demanded 12 months of collateral to insure payment of future reservation charges or a letter of credit guaranteeing payment of demand charges; otherwise, PG&E-GTN would suspend natural gas transportation service to Eprime. In the face of PG&E-GTN's demands, Eprime made a cash deposit of \$1,554,730 equal to 12-months of future reservation charges. Eprime asserts that PG&E-GTN's actions were unauthorized and without authority of PG&E-GTN's FERC Gas Tariff. Eprime requests a remedial order and refund of its deposit with interest. As discussed in this order, we find that PG&E-GTN was correct in determining Eprime was not creditworthy pursuant to its tariff. However, we defer ruling on the prepayment requirement pending PG&E-GTN's submittal of support for its position. This action is in the public interest as it maintains the integrity of PG&E-GTN's currently effective FERC tariff approved by the Commission.

Eprime Complaint

2. Eprime asserts that the demand for collateral is in violation of PG&E-GTN's tariff, Commission policy and Section 7(b) of the Natural Gas Act. Eprime demands return of its deposit with interest as computed under 18 C.F.R. § 35.19(a)(2) of the Commission's regulations.

3. Eprime is a firm shipper on PG&E-GTN's pipeline under Rate Schedule FTS-1. Its service agreement has an MDQ of 20,000 Dth per day. Eprime is wholly-owned subsidiary of Xcel Energy Inc. (Xcel). Eprime indicates that Xcel's current credit rating

is BBB by Standard and Poors (S&P) as of August 7, 2002. Eprime does not have its own credit rating since it does not issue debt. The guarantee issued by Xcel was in accordance with PG&E-GTN's tariff Transportation General Terms and Conditions Section 18.3(A)(2) and was accepted by PG&E-GTN as satisfactory assurance to initiate service under the contract with Eprime on April 1, 2002. Eprime's contract is scheduled to terminate on October 31, 2003, if not extended. Eprime has been timely in making its payments of all amounts due PG&E-GTN under the service agreement.

4. Eprime asserts that on September 16, 2002, PG&E-GTN informed Eprime that its creditworthiness no longer met the requirements of PG&E-GTN's tariff as Xcel, a guarantor of Eprime, no longer had a sufficient credit rating. Eprime responded that Xcel was creditworthy based on Xcel's BBB Issuer Credit rating by S&P. PG&E-GTN took the position that Xcel's senior unsecured debt issuances (SUD) must have BBB credit rating by S&P.¹

5. In the course of communications, PG&E-GTN rejected Eprime's positions and demanded a cash deposit or acceptable letter of credit for 12 months of service. Eprime states that PG&E-GTN indicated it would suspend service unless the deposit of \$1,554,730 was paid by October 3, 2002. Because of a lack of alternative means of transporting its gas, Eprime was compelled to pay the deposit to maintain service. On September 17, 2002, PG&E-GTN requested that Eprime provide collateral support no later than close of business on September 23, 2002. On October 1, 2002, PG&E-GTN stated "we understand Eprime has agreed to provide collateral to PG&E-GTN by close of business October 3, 2002."²

6. Eprime asserts that as long as the issuer of debt has a BBB rating, it meets the requirements of PG&E-GTN's tariff, whereas PG&E-GTN took the position that the debt rating of Xcel's SUD must meet S&P's BBB rating.

7. Eprime also asserts that a demand for 12 months of prepayment of transportation charges is contrary to Commission policy and not authorized by PG&E-GTN's tariff. Eprime refers to Commission statements that prepayments in excess of three months are

¹While other credit rating agencies' reports were considered by PG&E-GTN and Eprime in their correspondence and pleadings, we deal here only with the S&P ratings for the sake of simplicity in reviewing this set of circumstances.

²Attachments A & B to the Complaint.

excessive.³ Eprime states that PG&E-GTN's only support for a demand of 12 months prepayment is by reference to postings on PG&E-GTN's website. Eprime argues that an interstate natural gas pipeline may not unilaterally establish creditworthiness criteria that are contrary to Commission policy or outside the bounds of PG&E-GTN's FERC tariff.

8. Eprime also objects to PG&E-GTN's position that Eprime must continue to pay its demand charges even if its service were to be suspended or terminated. Eprime also asserts that PG&E-GTN must give notice to the Commission and seek NGA Section 7(b) abandonment authority prior to termination of service to Eprime.

9. Eprime also asserts that PG&E-GTN must provide 30 days notice of impending termination of service on creditworthiness grounds, and in the event of non-payment, must provide 15 days notice of termination of service, which may then be effected 30 days thereafter.⁴ Eprime asserts these provisions were violated by PG&E-GTN in its threatened termination of service on October 4, 2002.

10. Eprime asserts that PG&E-GTN's actions would disrupt Eprime's business relations with its California customers and suppliers, impair Eprime's financial circumstances, affect Eprime's ability to compete in natural gas markets, and is contrary to Commission policy as expressed in Order No. 636, which states that the goal is to ensure that all shippers have meaningful access to pipeline transportation so that willing buyers and sellers can meet in a competitive, national market to transact the most efficient deals possible.

11. Eprime requested fastrack consideration of the complaint because of the violations of the tariff and the effect of such demands by PG&E-GTN on the competitive markets, and other injuries to Eprime.

³Eprime cites Kern River Gas Transmission Co., 98 FERC ¶ 61,079 at 61,241 (2002) as an example of Commission decisions on prepayments.

⁴PG&E-GTN recently revised its notice provisions where the shipper defaults on payment of bills. Docket No. GT02-37-000, order issued September 30, 2002, 100 FERC ¶ 61,378 (2002).

PG&E-GTN Answer to Complaint

12. PG&E-GTN⁵ argues that Xcel's BBB credit rating does not meet the requirements of its tariff, which states in Paragraph 18.3(A)(1)(a) of the Transportation General Terms and Conditions:⁶

Credit-worthiness must be evidenced by at least a long term bond (or other senior debt) rating of BBB or an equivalent rating. Such rating may be obtained in one of three ways: (I) the rating determined by Standard and Poors or another recognized U.S. or Canadian debt rating service. . . .

13. At the inception of the contract, Eprime provided the guarantee of its parent, whose senior unsecured debt was rated by S&P at BBB+, and was accepted as sufficient to meet PG&E-GTN's creditworthiness standards. On June 24, 2002, S&P downgraded Xcel's individual bond ratings from BBB+ to BBB-, which PG&E-GTN asserts is one notch below PG&E-GTN's required BBB rating. PG&E-GTN argues that Xcel's issuer rating⁷ of BBB does not fall within the express language of the tariff, which requires a BBB rating on a long term bond or other senior unsecured debt instruments.

14. PG&E-GTN also claims that its tariff allows it to impose a 12-month prepayment obligation on the shipper where it is no longer creditworthy by PG&E-GTN's tariff standards. PG&E-GTN's creditworthy standards date from October 21, 1993,⁸ and can be required to provide a guarantee of the payment for the full term of the contract, or

⁵PG&E-GTN owns and operates a natural gas pipeline that extends approximately 612 miles from the International Boundary at Kingsgate, British Columbia, Canada to the Oregon-California, where it connects with Pacific Gas & Electric Company and Tuscora Gas Transmission Company. PG&E-GTN utilizes this pipeline to provide firm and interruptible transportation service to numerous shippers serving the Pacific Northwest and California markets. Answer at 2.

⁶Second Revised Volume No. 1A, Original Sheet Nos. 132-33.

⁷An issuer credit rating is an amalgamated rating that includes secured and unsecured and senior and subordinated debt.

⁸PG&E-GTN current creditworthiness standards were approved on October 21, 1993 in Docket No. RP93-173. 65 FERC ¶ 61,099 (1993).

security acceptable to its lenders.⁹ PG&E-GTN asserts this requirement is contained in its financing agreements with the lenders. PG&E-GTN states it is making a contemporaneous filing to clarify the 12- month prepayment obligation on non-creditworthy shippers.¹⁰

15. PG&E-GTN claims the 12-months collateral requirement is consistent with Commission policy, referring to approval of the 1993 tariff filing, which states that security acceptable to lenders must be posted by a non-creditworthy shipper, and is included in the tariff language that PG&E-GTN tariff requires "[o]ther security acceptable to PGE GT-NW lenders."¹¹

Notices and Interventions

16. Public notice of the filing was issued on October 29, 2002 with interventions and protests due as provided in Section 154.210 of the Commission regulations.¹² Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted.¹³

Comments on E-Prime's Complaint

17. Calpine Energy Services, L.P. (Calpine) and Mirant Americas Energy Marketing, LP (Mirant) each filed comments in support of Eprime's creditworthiness complaint against PG&E-GTN. Specifically, Calpine states that to the extent PG&E-GTN is requiring collateral support beyond what is required by its tariff, beyond the actual business risk included in its rate of return or on a discriminatory basis, the complaint has merit, and the relief sought by Eprime should be granted with PG&E-GTN.

18. Mirant states that assuming the facts alleged in the complaint have merit, Mirant supports Eprime's request for relief and urges the Commission to clarify the following

⁹PG&E-GTN Answer at 21.

¹⁰Docket No. RP03-70-000, filed November 8, 2002.

¹¹Section 18.3 (A)(2)(b), Original Sheet No. 134.

¹²18 C.F.R. § 385.210 (2002).

¹³18 C.F.R. § 385.214 (2002).

creditworthiness issues for the benefit of all PG&E-GTN shippers. In particular, Mirant suggests the Commission should: 1) reject PG&E-GTN's demand for a 12-month prepayment of service from Eprime and affirm the Commission's long-standing policy of limiting prepayment to three months; 2) clarify that a shipper with a BBB issuer rating satisfies PG&E-GTN's creditworthiness criteria; 3) clarify that PG&E-GTN may not continue to impose service charges when service to a shipper has been suspended; and 4) affirm existing policy and require PG&E-GTN to delineate clear procedures in its tariff and provide sufficient notice prior to suspending service.

19. El Paso Companies¹⁴ believe that the complex and important policy issues concerning creditworthiness raised by Eprime should not be resolved in an expedited manner under the Commission's Fast Track procedures. Instead, the El Paso Companies request that the Commission take the time that is necessary to consider the competing concerns of all interested parties.

20. On November 25, 2002, Eprime filed an answer to PG&E-GTN, asserting that: (1) PG&E-GTN's current tariff does not require a BBB rating for unsecured debt; (2) the tariff does not require a BBB rating for a specific type of debt instrument; (3) S&P standards are the same for issuers as for debt issues; (4) PG&E-GTN's current tariff does not establish a one-year collateral requirement; and (5) Eprime's claims regarding threatened suspension of service should not be dismissed.

DISCUSSION

21. The Commission finds that PG&E-GTN was correct in determining Eprime was not creditworthy pursuant to its tariff. Therefore, the Commission will at this time reject Eprime's request that PG&E-GTN refund the 12-month prepayment paid by Eprime on October 4, 2002, but will require PG&E-GTN to submit supporting documentation, for the reasons discussed below.

1. Creditworthiness of Eprime

22. Eprime asserts that its parent Xcel was creditworthy by PG&E-GTN's existing tariff standards because the current issuer S&P rating of Xcel is BBB. PG&E-GTN disagrees, arguing that the rating of the issuer is not decisive. Instead, PG&E-GTN

¹⁴El Paso Companies include ANR Pipeline Company, Tennessee Gas Pipeline Company, El Paso Natural Gas Company, Colorado Interstate Gas Company, and Southern Natural Gas Company.

argues that Xcel's SUD credit rating in the form of individual bonds was downgraded from BBB+ to BBB- on June 24, 2002. PG&E-GTN asserts that this rating is one notch below PG&E-GTN's required BBB rating as required by its tariff.

23. It appears that the issue revolves around whether PG&E-GTN should accept Xcel's BBB issuer credit rating or has PG&E-GTN correctly relied on the BBB- rating pertaining to unsecured debt for individual bonds. Eprime now alleges that, following the downgrade of its debt rating from BBB+ to BBB- by S&P, Xcel has still retained a BBB overall issuer credit rating that should satisfy PG&E-GTN's creditworthiness standards. An issuer credit rating is an amalgamated rating that includes secured and unsecured, as well as senior and subordinated debt. PG&E-GTN argues that an issuer credit rating is not the same as a long term bond or other senior debt rating as required by its tariff.

24. Paragraph 18.3(A)(1)(a) of PG&E-GTN's GT&C provides that credit-worthiness must be evidenced by "at least a long term bond (or other senior debt) rating of BBB" or an equivalent rating as determined by S&P or another recognized U.S. or Canadian debt rating service. Exhibit C of PG&E-GTN's answer shows that Xcel's long-term debt was rated as BBB- as of August 7, 2002, by S&P. Based upon PG&E-GTN's explicit tariff, the Commission finds that Xcel has not met the creditworthiness standards of BBB for long-term debt as required by Paragraph 18.3(A)(1)(a) of PG&E-GTN's tariff.

2. 12-months Prepayment of Service

25. Upon finding that Eprime is no longer creditworthy, the issue remaining is whether PG&E-GTN has correctly required 12-months prepayment of service. Eprime asserts that a demand for 12 months of prepayment of transportation charges is not authorized by PG&E-GTN's tariff. Eprime states that PG&E-GTN's only support for a demand for 12 months prepayment is by reference to postings on PG&E-GTN's website. Eprime argues that an interstate natural gas pipeline may not unilaterally establish creditworthy criteria on a website contrary to Commission policy or outside the bounds of its FERC tariff. PG&E-GTN claims that its tariff allows it to impose a 12 month prepayment obligation on the shipper where it is no longer creditworthy by its tariff standards.¹⁵

¹⁵Section 18.3(A)(1)(b) of PG&E-GTN's tariff provides for "other security acceptable to [PG&E-GTN]'s lenders."

26. Paragraph 18.3(A)(2) of PG&E-GTN's tariff provides that if a shipper does not establish or maintain credit-worthiness, the shipper has the option of receiving transportation service by providing to PG&E-GTN one of the following alternatives: (1) a guarantee of shipper's financial performance in a form satisfactory to PG&E-GTN and for the term of the transportation agreement from a corporate affiliate of the shipper or a third party either of which meets the credit-worthiness standard; or (2) other security acceptable to PG&E-GTN's lenders.

27. Based upon the above provision of PG&E-GTN's tariff that non-creditworthy shippers must provide security acceptable to PG&E-GTN's lenders, the Commission cannot determine whether PG&E-GTN has the authority to require 12-months prepayment of service¹⁶ until the necessary supporting documentation is filed by PG&E-GTN. PG&E-GTN has stated¹⁷ that "the 1993 loan agreement with GTN's lenders explicitly required that non-creditworthy shippers post collateral for one year's worth of demand charges." Upon submittal of these loan agreements and other relevant supporting documentation, the Commission will, in a subsequent order, determine the appropriateness of the 12-month prepayment requirement imposed on Eprime.

3. Notice of Termination of Service

28. EPrime asserts that PG&E-GTN must provide 30 days notice of impending termination of service on creditworthiness grounds, and in the event of non-payment, must provide 15 days notice of termination of service, which may then be effected 30 days thereafter.

29. Section 18.3(A)(1) of PG&E-GTN's tariff provides that PG&E-GTN shall not be required to provide or to continue transportation service on behalf of any shipper who is or has become insolvent or who, after PG&E-GTN's request, fails within a reasonable period to establish or confirm creditworthiness. The Commission has determined that the above tariff provision provides PG&E-GTN with the discretion as to what a reasonable period of time is. PG&E-GTN is not required pursuant to its tariff to provide 15 days notice of termination of service due to creditworthiness. PG&E-GTN is only required to provide advance notice, pursuant to Paragraph 8.3 of PG&E-GTN's tariff, when a

¹⁶We note that in Docket No. RP03-70-000, PG&E-GTN has filed to clarify its creditworthiness provisions to explicitly require 12-months prepayment of demand charges from non-creditworthy shippers. These proposed revisions have been suspended pending further Commission review.

¹⁷Answer at 13.

Docket No. RP03-41-000

- 9 -

shipper fails to pay for service rendered. However, the complaint at issue herein pertains to creditworthiness rather than failure to pay for services rendered. Therefore, this issue raised by Eprime is without merit.

The Commission orders:

(A) PG&E-GTN was correct in determining Eprime was not creditworthy pursuant to its tariff.

(B) PG&E-GTN shall submit supporting documentation regarding its shippers' creditworthiness requirements, as described above, within 5 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.