

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
102 FERC ¶ 61,289

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

e prime, inc. v. PG&E Gas Transmission,
Northwest Corporation

Docket No. RP03-41-001

ORDER ACCEPTING COMPLIANCE FILING AND GRANTING COMPLAINT

(Issued March 14, 2003)

1. On January 29, 2003, PG&E Gas Transmission, Northwest Corporation (PG&E-GTN) filed its 1993 Loan Agreement as support for requiring 12-months prepayment of service from e prime, inc. (e prime) in compliance with the Commission's January 24, 2003 Order on Complaint (January 24 Order) in this proceeding.¹
2. PG&E-GTN's 1993 loan agreement was superseded by a new loan agreement in 1995 that reflects the removal of the provision requiring 12-months prepayment of service for non-creditworthy shippers. Accordingly, the Commission has determined that PG&E-GTN lacks authority in its tariff to impose 12-months prepayment of service, as discussed further below. The Commission's policy during the time collateral was demanded from e prime on September 14, 2002, requires non-creditworthy shippers to provide three-months prepayment of service.² This policy will be relied on here. Therefore, the Commission directs PG&E-GTN to refund the remaining portion of e prime's cash deposit that exceeds three months of reservation charges, including interest calculated pursuant to Section 154.501 of the Commission's regulations, for the reasons discussed below. This order is in the public interest since it prevents practices unduly restricting open access to pipeline services.
3. The Commission found in its January 24 Order that PG&E-GTN was correct in determining that e prime was not creditworthy pursuant to Paragraph 18.3(A)(1)(a) of the

¹102 FERC ¶ 61,062 (2003).

²See Kern River Gas Transmission Co., 98 FERC ¶ 61,079 at 61,241 (2002).

General Terms and Conditions (GT&C) of its tariff. However, the Commission deferred ruling on the 12-month prepayment requirement pending PG&E-GTN's submittal of support for its position.

4. PG&E-GTN claims that Paragraph 18.3(A)(2) of the GT&C in its tariff allows it to impose a 12-month prepayment obligation on the shipper where it is no longer creditworthy. Paragraph 18.3(A)(2) of the GT&C for which PG&E-GTN relies upon states that if a shipper does not establish or maintain credit-worthiness, the shipper has the option of receiving transportation service by providing "other security acceptable to PG&E-GTN's lenders." PG&E has provided in its compliance filing in this proceeding the 1993 loan agreement as further support for its claim to require 12-months prepayment of service.

5. However, PG&E-GTN makes the following acknowledgment in Attachment A to its compliance filing. PG&E-GTN states that its "currently effective tariff sheets allow shippers that otherwise could not meet GTN's credit requirements to receive service on GTN's system subject to specific, individual approval by GTN's lenders. Although such lender approval may have been appropriate in the past, it is no longer a reasonable or efficient mechanism for approving shipper credit. The language in GTN's tariff was filed and approved in 1993. At that time, GTN's loan agreement provided specific criteria for lender approval: any shipper with a debt rating below investment grade was required to post alternative security in the form of a suitable guarantee, or post an acceptable letter of credit or cash in an amount equal to 12 months of demand charges." PG&E-GTN further states in Attachment A to its compliance filing that it subsequently has refinanced its loan and that its current loan agreements do not contain specific standards to apply.

6. E prime and Calpine each filed a protest arguing that the 1993 loan agreement, which is PG&E-GTN's sole documentary evidence for the 12-month prepayment requirement, has not been in effect since 1995. E prime and Calpine further contend that PG&E-GTN has not applied the 12-month prepayment requirement in a non-discriminatory manner since 1993. Calpine states that in response to a Staff data request in Docket No. RP03-70-000, PG&E-GTN conceded that five of its long-term firm shippers that do not meet the pipeline's creditworthiness standards have been allowed to continue to receive service even though they provided only three months prepayment of service. Calpine further states that one of the shippers receiving preferential service included Pacific Gas and Electric Company, an affiliate of PG&E-GTN. E prime concludes that the Commission should require PG&E-GTN to return the portion of e prime's cash deposit that exceeds three months of reservation charges, inclusive of interest, consistent with the Commission's current policy of requiring three-months

prepayment of service.³ Calpine requests that the Commission immediately order PG&E-GTN to reduce its collateral demands to no more than three-months of collateral assurance in accordance with existing policy and to fine PG&E-GTN to the maximum extent allowed by law for its blatant practice of affiliate abuse.

7. PG&E-GTN's contract at issue was initiated on April 1, 2002, and disputed by the parties on September 17, 2002. As a result, the 1993 loan agreement, which included the 12-month prepayment of service, does not apply. Rather, the contract at issue would rely upon the 1995 loan agreement, which does not include the 12-month prepayment of service requirement, as stated by PG&E-GTN in its compliance filing. The Commission's policy in effect at the time the contract was disputed relies upon three-months prepayment of service. This policy is set forth in Kern River Gas Transmission Company, where the Commission stated that its policy with respect to creditworthiness requires that shippers who cannot demonstrate creditworthiness be allowed to get service by prepaying for up to three months of service.⁴ This issue was recently the subject of inquiry in Northern Natural Gas Company, where the Commission reaffirmed its policy that shippers who cannot demonstrate creditworthiness be allowed to get service by prepaying for up to three months of service. The Commission found that a three-month security requirement will accommodate the concerns of shippers while continuing to adequately protect the pipeline in the event that a firm shipper defaults on its obligations.⁵ The Commission has also issued a recent order in North Baja Pipeline, LLC,⁶ stating that requiring security equal to twelve months of service charges is excessive for shippers subscribing to service after the pipeline is in operation. When undertaking a major system expansion, the transporter and its lenders bear substantial greater risk of cost recovery. The Commission concluded that a prepayment requirement for any period longer than three months for on-going pipeline operations is excessive and should be rejected.⁷

³See Northern Natural Gas Company, 102 FERC ¶ 61,076 (2003).

⁴See Kern River Gas Transmission Company, 98 FERC ¶ 61,079 at 61,241 (2002).

⁵Id.; see also n.3 supra.

⁶ 102 FERC ¶ 61,239 (2003).

⁷Florida Gas Transmission Company, 66 FERC ¶ 61,140 at 61,261 (1994). This order was vacated in 66 FERC ¶ 61,376 (1994), but the Commission's assertion of three months' prepayment as industry standard was reiterated in the second order, 66 FERC

8. The Commission agrees with both e prime and Calpine that PG&E-GTN has failed to support its requirement for 12-months prepayment of service. Further, PG&E-GTN by its own admission acknowledges that its 1993 loan agreement has been superseded by loan agreements that no longer have this specific standard. The Commission also agrees with e prime and Calpine that PG&E-GTN should return the portion of e prime's cash deposit that exceeds three months of reservation charges, inclusive of interest calculated pursuant to Section 154.501 of the Commission's regulations. Interest must be included along with e prime's cash deposit that exceeds three months of service since PG&E-GTN demanded a greater prepayment than the Commission's policy would have permitted. Finally, the Commission will not impose a fine upon PG&E-GTN for what Calpine claims is PG&E-GTN's applying its prepayment of service requirement in an unduly discriminatory manner. This request is not the subject of the complaint filed by e prime herein.

The Commission orders:

(A) PG&E-GTN's compliance filing as required by the order issued herein on January 24, 2003 is accepted.

(B) E prime's complaint is granted to the extent that PG&E-GTN's required prepayment of 12 months of demand charges, as more fully described above, was not authorized by its tariff. PG&E-GTN is directed to refund to e prime the overpayment of demand charges in excess of three months, with interest as specified in the regulations.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁷(...continued)
¶ 61,376 at 62,257 (1994).