

104 FERC ¶ 61, 026
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

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

Docket No. RP03-41-003

ORDER ON REHEARING AND CLARIFYING PRIOR ORDER

(Issued July 2, 2003)

1. On April 14, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) filed a request for clarification or rehearing of the order issued in this proceeding on March 14, 2003, which accepted GTN's compliance filing and granted the complaint.¹ GTN asserts that the Commission erred in finding that three months of prepayments by non-creditworthy shippers was appropriate or a proper application of Commission policy. In the alternative, GTN requests clarification that the finding regarding three months collateral does not apply to contracts where the pipeline has expanded its capacity for new shippers.

2. The Commission reaffirms its prior decision in the March 14, 2003 order in this proceeding finding that three months of prepayments by non-creditworthy shippers is appropriate. Therefore, the Commission denies GTN's rehearing request. The Commission clarifies, however, that this proceeding does not make a determination as to the prepayment obligation of non-creditworthy expansion shippers on GTN's pipeline. This order is in the public interest since it affirms the Commission's policy of requiring no more than three months prepayment of service from non-creditworthy shippers.

¹102 FERC ¶ 61,289 (2003).

Background

3. On October 25, 2002, e prime, inc. (Eprime) filed a complaint against GTN, alleging that 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, GTN would suspend natural gas transportation service to Eprime. In the face of GTN's demands, Eprime made a cash deposit of \$1,554,730 equal to 12-months of future reservation charges. Eprime asserted that GTN's actions were unauthorized and without authority of GTN's FERC Gas Tariff.

4. The Commission issued an order on January 24, 2003, finding that GTN was correct in determining Eprime was not creditworthy, pursuant to the tariff.² Therefore, the Commission rejected Eprime's request that GTN refund the 12-month prepayment paid by Eprime on October 4, 2002, but required GTN to submit supporting documentation. Based upon the provision of GTN's tariff that non-creditworthy shippers must provide security acceptable to GTN's lenders, the Commission could not determine whether GTN had the authority to require 12-months prepayment of service³ until the necessary supporting documentation was filed by GTN. GTN stated⁴ 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 stated it would, in a subsequent order, determine the appropriateness of the 12-month prepayment requirement imposed on Eprime.

²102 FERC ¶ 61,062 (2003).

³In Docket No. RP03-70-000, GTN filed on November 8, 2002, to clarify its creditworthiness provisions to explicitly require 12-months prepayment of demand charges from non-creditworthy shippers. Those proposed revisions were suspended pending further Commission review and have now been decided based on the record in that docket. 103 FERC ¶ 61,137 (2003).

⁴GTN's November 8, 2002 Answer at 13.

5. On January 29, 2003, GTN filed its 1993 Loan Agreement in compliance with the Commission's January 24, 2003 order.⁵ By order issued March 14, 2003, the Commission accepted GTN's compliance filing and granted Eprime's complaint.⁶

6. The Commission found that GTN's 1993 loan agreement was superseded by a new loan agreement in 1995 that removed the requirement of 12-months prepayment of service for non-creditworthy shippers. Accordingly, the Commission determined that GTN lacked authority in its tariff as a result of the lack of support to impose 12-months prepayment of service. The Commission's policy during the time collateral was demanded from Eprime on September 14, 2002, required non-creditworthy shippers to provide up to three-months prepayment of service.⁷ This Commission policy was relied upon herein. The Commission directed GTN to refund the remaining portion of Eprime's cash deposit that exceeded three months of reservation charges, including interest calculated pursuant to Section 154.501 of the Commission's regulations.

Request for Clarification or Rehearing

7. GTN argues that the Commission should clarify that GTN may continue to require 12-months prepayment from non-creditworthy shippers holding capacity as part of a system expansion, and the Commission erred in finding GTN did not have authority to require 12-months collateral from Eprime.

8. PPM Energy, Inc.(PPM), an intervener in this proceeding, filed an answer to GTN's request for clarification. PPM urges the Commission to reject any request for more than three months prepayment from non-creditworthy shippers contracting for 2002 expansion capacity. PPM asserts it has acquired capacity on GTN.⁸

⁵102 FERC ¶ 61,062 (2003).

⁶102 FERC ¶ 61,289 (2003).

⁷See, Kern River Gas Transmission Co., 98 FERC ¶ 61,079 at 61,241 (2002); see also, Florida Gas Transmission Co., 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 an industry standard was reiterated in a second order, 66 FERC ¶ 61,376 at 62,257 (1994).

⁸PPM asserts that capacity rights of Newport Northwest, LLC, a 2002 expansion shipper, have been terminated, and some of that capacity has been contracted for by

Discussion

1. Request for Clarification

9. The Commission clarifies that the order in this proceeding does not affect or determine the prepayment obligations of non-creditworthy shippers that are expansion capacity shippers. Commission policy distinguishing collateral requirements of non-creditworthy on-going capacity shippers, as contrasted with expansion capacity shippers, has been set forth as follows: "Once pipeline facilities are constructed, the major risk to the pipeline is the potential loss of reservation charges associated with the contract termination process. The Commission's established three-month collateral requirement provides the pipeline with sufficient protection against this risk."⁹ Our reference to North Baja in our March 14, 2003 order was limited to the statement that:

the Commission has also issued a recent order in North Baja Pipeline, LLC,¹⁰ stating that requiring security equal to 12-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 (emphasis added).¹¹

A determination of the prepayment obligations of non-creditworthy expansion shippers was never the subject of Eprime's complaint. It would not have been appropriate to make such determinations on these issues in the absence of notice to interested parties. The prepayment obligations of expansion shippers are under consideration in other proceedings, most notably, GTN's Docket No. RP03-70-000, where the whole range of

⁸(...continued)

PPM.

⁹Tennessee Gas Pipeline Co., 103 FERC ¶ 61,275 at P 28; see also, Calpine Energy Services, L.P. v. Southern Natural Gas Co., 103 FERC ¶ 61,273 at P 31 n. 19 (2003); Northern Natural Gas Co., 103 FERC ¶ 61,276 at P 17 (2003).

¹⁰102 FERC ¶ 61,239 (2003).

¹¹102 FERC ¶ 61,289 at P 7.

creditworthiness issues is under review.¹² As noted above, our reference to North Baja was limited to the policy of a prepayment obligation for non-creditworthy shippers, such as Eprime, that utilize existing capacity. Accordingly, clarification is granted to make clear that this proceeding has not determined the prepayment obligations of non-creditworthy expansion shippers on GTN's pipeline.

2. Tariff Application Issues

10. GTN asserts the Commission erred in setting Eprime's prepayment obligation at three months rather than 12-months. The Commission determined that GTN did not have authorization in its tariff to require 12-months collateral.¹³ We reject GTN's continued assertion that it had the authority to require 12-months collateral based on its 1993 loan agreement. GTN acknowledged in Attachment A to its compliance filing 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.

GTN further stated in Attachment A to its compliance filing that it subsequently refinanced its loan and that its current loan agreements do not contain specific creditworthiness standards to apply. Accordingly, the Commission found GTN's contract with Eprime 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, would not apply. Rather, the contract at issue would rely upon the currently effective 1995 loan agreement, which did not require 12-months

¹²On May 7, 2003, the Commission issued an order, which held, inter alia, that GTN must revise its tariff to provide for a reduction in collateral requirements as the shipper pays off the facilities; 103 FERC ¶ 61,137 at P 39 (2003). Requests for rehearing are pending in that proceeding.

¹³See also, Tennessee Gas Pipeline Co., 95 FERC ¶ 61,272 at 61,959-60 (2001).

prepayment of service. The Commission's policy in effect at the time the contract was disputed permits pipelines to require non-creditworthy shippers to prepay for up to three months of service.¹⁴ We therefore deny the request for rehearing of this issue.

3. Company Policy on 12-Months Prepayment

11. GTN argues that it is entitled to enforce its existing practice of requiring 12-months prepayment for non-creditworthy shippers unless there was a finding that it is unjust and unreasonable. GTN asserts it has applied this policy to all of its shippers and posted the requirement on its website as a clear indication of its policy. We reject these suggestions that the Commission erred. First, the 12-month prepayment policy was not set forth in GTN's FERC tariff in September 2002 when it made its demand on Eprime. Rather, the claim for 12-months collateral was based on the expired 1993 loan agreement requirements that were removed in the superseding 1995 loan agreement. GTN concedes that its tariff is unclear on prepayment of service for non-creditworthy shippers. As a result, GTN proposed to modify its tariff on November 8, 2002 in Docket No. RP03-70-000 to make explicit a 12-month prepayment requirement for non-creditworthy shippers. However, our evaluation of the complaint centers on existing tariff provisions in effect on September 17, 2002. Accordingly, we reject GTN's argument that its tariff required 12-months prepayment of service at the time GTN demanded and obtained from Eprime 12-months collateral on September 17, 2002.

4. GTN's Unique Circumstances

12. GTN argues that the Commission erred by not addressing the facts and circumstances of GTN's system before applying the three month prepayment policy to this complaint. GTN states that credit policies should be based on individual circumstances facing the pipeline and its shippers. However, nothing in GTN's request for rehearing specifies any operating circumstances or financial facts which would distinguish it from any other pipeline. Nor did it set out any facts, with regard to Eprime, which would compel consideration of a greater prepayment obligation on Eprime.

13. GTN also argues that other pipelines have in their tariffs creditworthiness provisions which deviate from the policy expressed in Kern River and in some instances

¹⁴See, Kern River Gas Transmission Co., 98 FERC ¶ 61,079 at 61,241 (2002), where the Commission reiterated 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.

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appear to permit the pipeline discretion to set prepayment requirements. GTN misconstrues our decision in this complaint proceeding. The Commission's narrow task here was to examine the circumstances on September 17, 2002, when GTN demanded and obtained from Eprime 12-months of prepayment collateral, or risk being denied access to its capacity. The matter was decided on the basis of GTN's tariff in effect at that time. Accordingly, we reject GTN's request for rehearing on this issue.

The Commission orders:

GTN's request for rehearing filed on April 14, 2003 is denied. The request for clarification, as described above, is granted to make clear that the orders in this proceeding do not affect or determine the prepayment obligation of those non-creditworthy shippers that are expansion capacity shippers on GTN's pipeline.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.