

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>Calpine Energy Services, L.P.,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
v.	)	<b>Docket No. RP04-217-000</b>
	)	
<b>Gas Transmission Northwest Corporation)</b>	)	
	)	
<b>Respondent.</b>	)	

**COMPLAINT OF CALPINE ENERGY SERVICES, L.P.**

Pursuant to Sections 4(a), 5(a), and 16 of the Natural Gas Act (“NGA”),<sup>1</sup> and Rule 206 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure,<sup>2</sup> and as directed by the Commission in the March 30, 2004, Order On Compliance And Petition For Clarification,<sup>3</sup> Calpine Energy Services, L.P. (“CES” or “Calpine”) respectfully submits this Complaint regarding recent collateral demands of Gas Transmission Northwest Corporation<sup>4</sup> (“GTN” or the “Pipeline”). With this Complaint CES seeks to enforce the collateral obligation negotiated as part of its Precedent Agreement associated with GTN’s 2002 Capacity Rationalization and Expansion Program (“Expansion Project”). For the reasons set forth herein, CES respectfully requests the Commission to find that (1) Calpine’s collateral obligation associated with GTN’s Expansion Project does not exceed three months’ reservation charges,

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<sup>1</sup> 15 U.S.C. §§ 717c(a), 717d(a) and 717o.

<sup>2</sup> 18 C.F.R. § 385.206.

<sup>3</sup> *Gas Transmission Northwest Corporation*, (“March 30 Order”), 106 FERC ¶ 61,320 (2004).

and (2) GTN cannot retroactively apply provisions approved for the first time in Docket No. RP03-70 to Calpine's Expansion Project capacity.

## I. PARTIES

1. CES' principal place of business is 717 Texas Avenue Suite 1000, Houston, Texas 77002.

CES engages in energy management as well as the marketing of electricity and natural gas.

CES' affiliates develop, own, and operate, natural gas-fired non-utility generating facilities

across the United States. CES is one of the two shippers<sup>5</sup> that participated in the Expansion

Project. CES does not have its own credit rating, and has been deemed "non-creditworthy" by

GTN.<sup>6</sup>

2. GTN's principal place of business is 1400 SW Fifth Avenue Suite 900, Portland, Oregon

97201. GTN is a wholly owned subsidiary of National Energy & Gas Transmission, Inc. GTN

owns and operates a natural gas pipeline transmission system that extends from a point of

interconnection with the pipeline facilities of TransCanada Pipelines Limited at the U.S.-

Canadian border near Kingsgate, British Columbia, through the states of Idaho, Washington and

Oregon to an interconnection with Pacific Gas and Electricity Company at the Oregon-California

border near Malin, Oregon.

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<sup>4</sup> Gas Transmission Northwest Corporation was formerly known as PG&E Gas Transmission, Northwest Corporation.

<sup>5</sup> In addition to CES, GTN executed transportation agreement with Newport Northwest, LLC for Expansion Project capacity.

<sup>6</sup> The senior unsecured obligations of CES' parent, Calpine Corporation were rated BB+ by Standard and Poor's when CES executed its Expansion Project Precedent Agreement. Calpine Corporation also has been deemed "non-creditworthy" by GTN.

3. Communications concerning this proceeding should be addressed as follows, and the following should be included on the official service list in this proceeding:

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## II. BACKGROUND

### A. GTN's Collateral Requirements.

4. The GTN collateral requirements at issue here were first adopted in October 1993. At that time, the Commission approved GTN's proposed elimination of the Pipeline's then-existing tariff requirement that non-creditworthy shippers provide a letter of credit equal to three months of service charges. The Commission allowed GTN to substitute tariff language requiring "other security acceptable to [GTN's] lenders."<sup>7</sup> With this tariff change, GTN's tariff did not specify a particular collateral amount, but stated only that collateral requirements would be determined by its lenders.

5. Subsequent to this tariff change, the Pipeline began requesting at least one year of collateral from all shippers that failed to meet GTN's BBB creditworthiness standard. However, the 1993

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<sup>7</sup> *Pacific Gas Transmission Co.*, 65 FERC ¶ 61,099 (1993)

Loan Agreement, which provided the basis for this twelve-month requirement,<sup>8</sup> was superceded in 1995 when GTN obtained new financing.<sup>9</sup> Consequently, even though GTN's lenders no longer required a twelve-month collateral obligation, the Pipeline continued to require a full year of collateral through 2003.

6. On October 25, 2002, e-prime, Inc. ("e-prime") filed a complaint against GTN alleging, in part, that GTN's creditworthiness standards were not clearly articulated in its tariff ("e-prime Complaint").<sup>10</sup>

7. On November 8, 2002 GTN filed its answer to the e-prime Complaint ("November 8 Answer").<sup>11</sup> In GTN's November 8 Answer, the Pipeline maintained that its "lenders expressly required one year of collateral and GTN has consistently enforced this requirement"<sup>12</sup> and GTN further represented that it had "applied this standard to **all** its shippers on a not unduly discriminatory basis." (emphasis added)<sup>13</sup>

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<sup>8</sup> The twelve-month collateral requirement was predicated upon specific language in a 1993 loan agreement, which precipitated the removal of the three-month requirement. See, *PG&E Gas Transmission, Northwest Corporation*, Docket No. RP03-70-001, Responses to Data Requests, filed January 6, 2003, at No. 14; and Tariff Filing at Pages 2-3.

<sup>9</sup> By order issued January 24, 2003 in Docket No. RP03-41-000, in response to the e prime complaint discussed below, the Commission required GTN to provide supporting documentation that the 1993 Loan Agreement requires non-creditworthy shippers to post collateral for one year of reservation charges. 102 FERC ¶ 61,062 at P 27 (2003).

<sup>10</sup> *E-prime, Inc. V. PG&E Gas Transmission, Northwest Corp.* ("e-prime Complaint"), filed on October 25, 2002 in Docket No. RP03-41.

<sup>11</sup> Answer of PG&E Gas Transmission, Northwest Corporation to Complaint Requesting Fast Track Processing of E prime, Inc., Docket No. RP03-41, filed on November 8, 2002, at page 11.

<sup>12</sup> Id at Page 2.

<sup>13</sup> Id. at Page 11.

8. Also on November 8, 2002, GTN filed proposed revisions, in Docket No. RP03-70, to the creditworthiness provisions in Section 18.3 of its tariff's General Terms and Conditions ("Tariff Filing"). GTN's Tariff Filing proposed requiring non-creditworthy shippers to provide twelve-months of collateral. In addition, and for the first time, the Pipeline sought to establish differing credit standards for pipeline expansion projects and existing capacity.<sup>14</sup>

9. On January 29, 2003, GTN filed a response to the Commission's January 24 Order on the e-prime Complaint<sup>15</sup> in which the Commission requested the Pipeline to submit supporting documentation regarding its shippers' creditworthiness requirements. GTN's response included a copy of the 1993 loan agreement ("1993 Loan Agreement") on which GTN predicated its twelve-month collateral requirement for non-creditworthy shippers.<sup>16</sup>

10. On March 14, 2003, the Commission issued its Order Accepting Compliance Filing and Granting Complaint regarding the e-prime Complaint ("e-prime Order"). The Commission rejected as unauthorized GTN's twelve-month collateral obligation. The Commission concluded that GTN had erroneously demanded that shippers post collateral based on project loan agreements that had been superceded in 1995 by new loans that did not contain a twelve-month collateral requirement. The Commission directed GTN to refund to e-prime collateral in excess of three months' reservation charges, with interest.<sup>17</sup>

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<sup>14</sup> Tariff Filing, at page 12.

<sup>15</sup> *E prime, inc. v. PG&E Gas Transmission, Northwest Corp.*, ("January 24 Order") 102 FERC ¶ 61,062 (2003).

<sup>16</sup> See Attachment B of GTN's Compliance Filing, *e prime, inc. v. PG&E Gas Transmission, Northwest Corp.*, Docket No. RP03-41, filed January 29, 2003.

<sup>17</sup> *E-prime, Inc. V. PG&E Gas Transmission, Northwest Corp.* ("e-prime Order"), 102 FERC ¶ 61,289 (2003).

11. On April 14, 2003, GTN filed a Request for Rehearing and Alternative Request for Clarification (“Request for Clarification”) of the e-prime Order. In its Request for Clarification, GTN sought authority to retain additional collateral for capacity initially contracted as part of a system expansion. Specifically citing its 2002 Expansion Project, GTN argued that the open-season materials required all non-creditworthy expansion shippers to provide one year of collateral, and indicated that such collateral would remain in place at least through the life of the initial contract.

12. On May 7, 2003, the Commission found that GTN had not justified a twelve-month collateral requirement for existing capacity. (“May 7 Order”).<sup>18</sup> The Commission directed GTN to revise the creditworthiness provisions of its tariff to reflect, among other things, (1) a three-month collateral requirement for existing capacity, and (2) a collateral requirement up to the cost of the facilities for expansion capacity.

13. On May 19, 2003, GTN filed revised tariff sheets (“Compliance Filing”) in purported compliance with the May 7 Order.

14. On June 2, 2003, CES, PPM Energy, Inc. (“PPM”), and United States Gypsum Company (“USG”) protested the Compliance Filing (“June 2 Protests”). On June 17, GTN filed an answer and (“June 17 Answer”) to the June 2 Protests.<sup>19</sup>

15. On June 6, 2003, CES filed a Request for Rehearing (“CES Rehearing Request”) of the May 7 Order. The CES Rehearing Request contended that the Commission erred by not clarifying the

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<sup>18</sup> *PG&E Gas Transmission, Northwest Corp.* (“May 7 Order”), 103 FERC ¶ 61,137 (2003).

<sup>19</sup> Motion For Leave To File Answer Of PG&E Gas Transmission, Northwest Corporation, Docket No. RP03-70, filed June 17, 2003 (“June 17 Answer”).

prospective nature of the new policy allowing GTN to require collateral up to the full cost of expansion facilities. CES noted that based on the Commission's e-prime Order, GTN did not have the authority to require more than three months' collateral on expansion capacity at the time CES contracted for its Expansion Project capacity.

16. On July 2, 2003, the Commission responded to GTN's Request for Clarification. The Commission clarified that the e-prime Order did not determine the collateral obligation for non-creditworthy expansion shippers on GTN's pipeline. In making this clarification, the Commission noted that collateral obligations for non-creditworthy expansion shippers were not addressed by the e-prime Complaint, and that it was not appropriate to make the determination requested by GTN absent notice to interested parties. The Commission also observed that the obligations of expansion shippers were under consideration in other proceedings, including GTN's Tariff Filing.

17. On December 24, 2003, the Commission issued its Order on Compliance and Rehearing on GTN's Tariff Filing.<sup>20</sup> Regarding the CES Rehearing Request, the Commission accepted the representation contained in GTN's June 17 Answer that the pipeline would "not retroactively impose credit requirements for previous expansions beyond the credit requirements applicable when GTN initially executed contracts for expansions." In light of this representation, the Commission deemed CES Rehearing Request satisfied.

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<sup>20</sup> *PG&E Gas Transmission, Northwest Corporation*, ("Compliance and Rehearing Order"), 105 FERC ¶ 61,382 (2003).

18. On January 22, 2004, GTN requested that CES post additional collateral of \$2.8 million, representing an increase from CES's current three-month collateral obligation to a full twelve months' reservation charges.<sup>21</sup>

19. On February 3, 2004, CES filed a Petition for Clarification<sup>22</sup> ("February 3 Petition"). Specifically, Calpine requested that the Commission clarify and affirm that (1) GTN may not demand collateral in excess of three months' reservation charges for Calpine's 2002 Expansion Project capacity, and (2) GTN could apply the Commission's new creditworthiness policies concerning expansion capacity only on a prospective basis.

20. On February 11, 2004, GTN filed an answer<sup>23</sup> to the February 3 Petition. GTN requested authority to require up to twelve months' reservation charges as collateral from Calpine based upon explicit collateral requirements purportedly applicable to the Expansion Project. GTN pointed to the Commission's decision in *Sonat*,<sup>24</sup> as well as and the e-prime Order, as supporting a twelve-month collateral obligation for CES. In addition, GTN stated that Calpine's collateral requirement would not automatically step down from twelve months' to three months' of reservation charges upon commencement of service through Expansion Project capacity.

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<sup>21</sup> See, Complaint Exhibit A.

<sup>22</sup> Petition for Clarification of Calpine Energy Services, L.P. ("February 3 Petition") filed in Docket No. RP03-70-005, on February 3, 2004.

<sup>23</sup> Answer of Gas Transmission Northwest Corporation To Petition For Clarification, ("Answer to Petition") in Docket No. RP03-70-005, filed on February 11, 2004.

<sup>24</sup> *Calpine Energy Services, LP v. Southern Natural Gas Co.*, ("Sonat"), 103 FERC ¶ 61,273 (2003), reh'g denied, 105 FERC ¶61,033 (2003).

21. On March 30, 2004, the Commission issued an Order on Compliance and Petition For Clarification.<sup>25</sup> In this order, the Commission declared itself unable to resolve the issues raised by the CES Request for Clarification due to incomplete facts and arguments. Therefore, the Commission established this docket, RP04-217-000, and directed CES to file a formal complaint within thirty days that fully complies with the requirements of Commission Rule 206.

**B. GTN Capacity held by Calpine .**

22. Prior to Calpine's acquisition of capacity in the Expansion Project, Calpine held approximately 40,000 dth per day of capacity on GTN's system.

23. GTN initiated an Open Season on January 2, 2001 for shippers desiring additional firm transportation service and for exiting shippers desiring to relinquish capacity. GTN's proposal would expand its system by approximately 200 MDth per day through construction of facilities to meet the demand for additional capacity for service commencing November 1, 2002.<sup>26</sup>

24. On February 15, 2001 CES entered into a Precedent Agreement for Firm Natural Gas Transportation Service with GTN.<sup>27</sup>

25. That Precedent Agreement required CES to post the collateral obligation required by the Pipeline's tariff. As noted earlier, the GTN tariff did not specify a collateral amount, but instead required collateral satisfactory to GTN's lenders. GTN represented to Calpine that Pipeline's lenders required a full twelve months collateral, and that GTN had no discretion in this matter. Therefore, CES posted the full twelve months of collateral. At that time, GTN's tariff made no

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<sup>25</sup> See, March 30 Order.

<sup>26</sup> See, Firm Transportation Precedent Agreement, (Complaint Exhibit B) at page 1.

<sup>27</sup> See, Complaint Exhibit B

distinction between collateral requirements for existing capacity, (e.g. capacity obtained through system rationalization) or expansion capacity. GTN's open season notice concerning the Expansion Project and the Precedent Agreement executed by CES similarly failed to specify differing collateral requirements for existing and expansion capacity.

### C. The Precedent Agreement.

26. The Precedent Agreement for CES' Expansion Project capacity did not establish collateral requirements for non-creditworthy shippers that varied from the requirements contained in GTN's tariff. Instead the Precedent Agreement stated simply:

Whereas, Transporter intends to expand its system by approximately 200 MDth per day, by constructing the necessary facilities to meet the demand for additional capacity for service commencing November 1, 2002 (2002 Expansion or 2002 Expansion Facilities, as applicable), specifically subject to the conditions set forth in Paragraph 6 of this Precedent Agreement and the rest of the terms and conditions of this Precedent Agreement:

27. Paragraph 6 of the Precedent Agreement,<sup>28</sup> in turn, explicitly incorporated GTN's tariff by reference:

**6. Transporter's Conditions Precedent.** Notwithstanding the Parties' execution of this Precedent Agreement, Transporter's obligations to continue to develop and to construct and operate the 2002 Expansion Facilities and/or to provide transportation service for Shipper are expressly made subject to ...; **(iii) ongoing satisfaction by Shipper of the creditworthiness provisions and other requirements for service set forth in Transporter's pro forma Tariff ...** (emphasis added).<sup>29</sup>

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<sup>28</sup> See, Complaint Exhibit B, paragraph 6.

<sup>29</sup> A twelve-month collateral requirement was identified in Attachment E to GTN's Open Season Procedures. Like the subsequently executed Precedent Agreement, however, this document merely reflects a reference back to the creditworthiness provisions of Section 18.3 of the GTN's tariff, and makes no distinction between existing versus expansion capacity.

#### **D. Collateral Provided By CES.**

28. CES contracted for existing pipeline capacity on GTN prior to acquisition of capacity in the Expansion Project. As CES was considered non-creditworthy by GTN, the Pipeline demanded that CES post twelve months' reservation charges as collateral support for these contracts.

29. Calpine also bid on capacity in GTN's Expansion Project. Consistent with the Open Season documents, Calpine posted the same level of collateral (twelve months) to support the its Expansion Project Bid as it was required to do for the existing capacity. In conducting this bidding GTN made no distinction between existing or expansion capacity for purposes of collateral obligations. Indeed, neither the Pipeline nor the bidding shippers in the Expansion Project knew if they would receive "rationalized" (i.e. existing capacity) or "expansion" capacity.

30. In light of the e-prime Order issued in March 2003, GTN promptly returned all collateral in excess of three months' reservation charges to Calpine. This included collateral being held for both Expansion Project and existing capacity. As a result, CES currently has posted \$3,954,266 in collateral to cover three months' reservation charges for its GTN capacity.

31. GTN has requested that CES provide an additional \$2,829,482 in collateral, a more than 70% increase in the collateral CES currently has posted with the Pipeline. GTN claims that this requested amount represents the portion of the collateral returned to Calpine in 2003, associated with CES' Expansion Project capacity and, therefore, is subject to a different collateral requirement than the "existing" capacity held by CES.

### **III. COMPLAINT**

**A. CES and GTN Agreed to Incorporate the GTN Tariff's Creditworthiness Provisions into the Precedent Agreement.**

32. Paragraphs 1 through 31 are incorporated herein by reference.

33. CES' construction period collateral obligation regarding the Expansion Project is set forth in the Precedent Agreement it signed with GTN. The Precedent Agreement shows that the parties agreed to apply the collateral requirement in GTN's tariff to CES' Expansion Project capacity.

34. The tariff-based collateral obligation imposed by the Precedent Agreement is consistent with GTN's historical practice of requiring the same level of collateral for both expansions and existing capacity. GTN has admitted that it required twelve months of collateral from all non-creditworthy shippers – whether for existing or expansion capacity – since 1993.<sup>30</sup> In fact, the 1993 Loan Agreement on which GTN predicated its actions and purported tariff authority required existing and expansion shippers to post the same level of collateral.<sup>31</sup>

35. As discussed in the attached affidavit of Mr. Colin Coe,<sup>32</sup> during Expansion Project negotiations, GTN represented that it lacked discretion to deviate from the twelve-month collateral requirement for non-creditworthy shippers because the Pipeline's tariff mandated that obligation.

36. GTN's intent to apply its tariff's credit requirements to the Expansion Project is further demonstrated by its handling in 2002 of a subsequent system expansion proposed for 2003. As in the Expansion Project, GTN continued to require twelve months' reservation charges as

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<sup>30</sup> See, November 8 Answer.

<sup>31</sup> The 1993 Loan Agreement was entered into in part to finance an expansion and contemplated future expansions. Excerpts from the 1993 Loan Agreement are attached as Complaint Exhibit C. See GTN's Compliance Filing, Exhibit B for 1993 Loan Agreement in its entirety.

collateral for the 2003 expansion from non-creditworthy shippers in accordance with GTN's interpretation of its tariff. In a footnote to a Collateral Analysis Report regarding Calpine's 2003 expansion bid, GTN stated:

There is no transportation service agreement as yet. Calpine is not obligated to sign until later. However, there is a binding precedent agreement for the capacity. Further, Calpine was required to meet the credit requirements **of the tariff** in order to participate in the open season which resulted in their acquisition of the capacity.<sup>33</sup>

37. This Collateral Analysis Report provides further evidence of GTN's intent to incorporate the requirements of its tariff in establishing collateral requirements for non-creditworthy expansion shippers. Recent Commission orders<sup>34</sup> have permitted pipelines to negotiate collateral requirements with potential shippers desiring to participate in mainline capacity expansion projects. If such collateral requirements differ from those stated in the tariff, however, they must be entered into as part of a precedent agreement. Here, the Expansion Project Precedent Agreement between GTN and Calpine clearly incorporated the credit requirements found in GTN's tariff. Thus, the question becomes what collateral obligation could GTN lawfully impose under its tariff at the time the Precedent Agreement was executed.

**B. The Commission Has Determined That GTN Lacked Tariff Authority to Require Twelve Months of Collateral Since 1995.**

38. Paragraphs 1 through 37 are incorporated herein by reference.

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<sup>32</sup> Complaint Exhibit D.

<sup>33</sup> Emphasis added. See, Complaint Exhibit E, footnote (3).

<sup>34</sup> See, *Natural Gas Pipeline Company*, P39, 103 FERC ¶ 61,175 (2004); *PG&E Gas Transmission, Northwest Corp.*, P54, 105 FERC ¶ 61,382 (2003).

39. In its order regarding the e-prime Complaint, the Commission concluded that GTN lacked the requisite tariff authority to require twelve months' reservations charges as collateral from non-creditworthy shippers since 1995. The Commission's March 14, 2003 e-prime Order found:

PG&E-GTN lacks the 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 shipper to provide three-months prepayment of service. This policy will be relied on here.<sup>35</sup>

40. More specifically, the Commission found that GTN's lenders had not required a full twelve months' reservation charges as collateral for firm service since 1995. Therefore, GTN's representation to CES in 2001 that the Pipeline's tariff required twelve months of collateral was inaccurate. Indeed, in its e-prime Order, the Commission concluded that the only lawful collateral obligation that GTN could impose on e-prime equaled three months' reservation charges.

41. Thus, when GTN executed its Expansion Project Precedent Agreement with CES, the Pipeline's tariff did not authorize a collateral obligation equal to twelve months' reservation charges. Because the Precedent Agreement did not specify a collateral amount, but rather deferred to the tariff, it is clear that the Pipeline can only apply to CES' Expansion Project capacity the collateral requirement authorized by the GTN's tariff as of February 15, 2001. The Commission's finding that, as of September 14, 2002, GTN could only assess e-prime collateral set at the three months' reservation charges, coupled with GTN's own policy of applying its tariff in identical fashion to existing and expansion shippers, leads to the inescapable conclusion

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<sup>35</sup> e-prime Order, at p. 2.

that GTN may impose no more than a three month collateral obligation on CES' Expansion Project capacity.

**C. GTN'S Actions After the e-Prime Order Tacitly Admit It Cannot Require Twelve Months' Collateral Under the CES Precedent Agreement.**

42. Paragraphs 1 through 41 are incorporated herein by reference.

43. Shortly after issuance of the Commission's e-prime Order, GTN returned to CES all collateral held in excess of three months' reservation charges. Consistent with its historic policy of not distinguishing between existing and expansion capacity for collateral purposes, GTN returned excess collateral related to CES' Expansion Project capacity as well as other, existing capacity.

44. GTN's actions demonstrate its understanding that, in light of the e-prime Order, the tariff collateral requirements "applicable when GTN initially executed"<sup>36</sup> its expansion contract with CES in 2001 could not exceed three months' reservation charges. Only after the Commission's subsequent orders allowing GTN to require more than three months' reservation charges for expansion capacity on a prospective basis did GTN request that Calpine post twelve-months' reservation charges for the Expansion Project capacity.

**D. The Commission Should Reject Retroactive Application of GTN's New Collateral Policy for Expansion Capacity.**

45. Paragraphs 1 through 44 are incorporated herein by reference.

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<sup>36</sup> See, June 17 Answer at page 2.

46. GTN's recent request that CES post additional collateral of \$2.8 million represents a retroactive application of a new collateral requirement that is inconsistent with the Compliance and Rehearing Order, and, therefore, should be denied.

47. CES previously had sought rehearing regarding Paragraph 39 of the Commission's May 7 Order.<sup>37</sup> Paragraph 39 had granted GTN the right to require security amounts up to the cost of facilities constructed for non-creditworthy shippers involved in mainline expansions. CES argued, in part, that allowing GTN to require collateral in excess of three months was a change in policy that the Pipeline should not be allowed to apply on a retroactive basis. Consequently, CES requested that the Commission permit only prospective application of any such new policy to a prospective basis.<sup>38</sup> PPM similarly contested GTN's retroactive application of excess collateral for expansions.<sup>39</sup> In its Answer to PPM's protest, GTN clarified "that it will not retroactively impose credit requirements for previous expansions beyond the credit requirements applicable when GTN initially executed contracts for the expansion."<sup>40</sup>

48. The Commission's Compliance and Rehearing Order addressed CES's and PPM's concerns regarding retroactive application of collateral obligations. The Commission reiterated its previously expressed view that "specific risk sharing arrangements are more appropriately negotiated and agreed to in the context of precedent agreements that may be reviewed in a

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<sup>37</sup> Request for Rehearing of Calpine Energy Services, L.P., Docket No. RP03-70, filed June 6, 2003. ("Calpine Rehearing Request").

<sup>38</sup> Calpine Rehearing Request, Subpart B.

<sup>39</sup> Protest And Comments of PPM Energy, Inc. On Compliance Filing, Docket No. RP03-70, filed June 2, 2003.

<sup>40</sup> Answer at page 2.

certificate proceeding.”<sup>41</sup> The Commission concluded that in light of GTN’s Answer to CES’s and PPM’s requests for clarification, CES’s concern over retroactive application of an increased collateral requirement for expansions had been satisfied.<sup>42</sup>

49. Now, however, GTN has requested that CES post twelve months’ reservation charges in support of a firm transportation contract entered into in 2001 for mainline expansion capacity that became available in 2002. CES previously posted twelve-months’ collateral pursuant to GTN’s representation that this requirement was authorized by GTN’s tariff.<sup>43</sup> CES and GTN subsequently executed a Precedent Agreement which did not provide for collateral in excess of GTN’s tariff.<sup>44</sup> In fact, Precedent Agreement Section 6, Transporter’s Conditions Precedent (iii), required only “ongoing satisfaction by the Shipper of the creditworthiness provisions and other requirements for services **set forth in Transporter’s pro-forma Tariff**” (emphasis added).

50. GTN’s attempt to retroactively apply a twelve-month collateral requirement to CES’s Expansion Project capacity appears to disregard both the Commission’s Compliance and Rehearing Order as well as the e-prime Order. GTN’s Answer represented that it would seek collateral consistent with applicable tariff requirements when CES executed its expansion contract in 2001. The Commission’s e-prime Order together with GTN’s then applicable policy of treating all shippers identically for collateral purposes, makes clear that the applicable requirement at that time equaled a maximum three-month collateral obligation. The e-prime

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<sup>41</sup> Compliance and Rehearing Order, at p. 55; see also *Tennessee Gas Pipeline Company* (“Tennessee”), 103 FERC ¶ 61,275 at p. 26.

<sup>42</sup> Compliance and Rehearing Order, at p. 56.

<sup>43</sup> See, Affidavit of Mr. Colin Coe, Complaint Exhibit D.

<sup>44</sup> See, Complaint Exhibit B.

Order makes clear that, at the time CES executed its Expansion Project Precedent Agreement, GTN lacked tariff authority to impose a twelve-month collateral obligation.

**E. The Commission’s Sonat and e-prime Orders Do Not Support GTN’s Demand for Additional Collateral.**

51. Paragraphs 1 through 50 are incorporated herein by reference.

52. GTN previously has argued that the Commission’s decision in *Sonat* controls this matter because the challenge brought by CES here is “virtually identical to that posed in the present proceeding regarding the appropriate amount of collateral a pipeline could require in connection with an expansion project.”<sup>45</sup> As explained below, the circumstances underlying the Commission’s Sonat Order bear no resemblance to the facts surrounding CES’ Expansion Project capacity.

53. In *Sonat*, the Commission found that Calpine and Sonat had agreed, as part of contract discussions, to collateral obligations substantially different than those imposed by the Sonat tariff.<sup>46</sup>

54. The Commission also determined that, while the Sonat tariff governed capacity in service, it did not control collateral obligations associated with the construction of new capacity. The Commission emphasized in *Sonat* that construction–period collateral obligations were a matter for negotiation between the pipeline and the expansion shipper.<sup>47</sup> Here, unlike *Sonat*, CES and GTN negotiated a construction-period Precedent Agreement that explicitly incorporated the

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<sup>45</sup> Answer to Petition, at Page 2.

<sup>46</sup> *Calpine Energy Services, L.P.. v. Southern Natural Gas Company*, Order Denying Complaint, 103 FERC ¶ 61,273 P 37 (2003).

<sup>47</sup> *Id.* P 32.

requirements found in GTN's tariff. As noted in Mr. Colin Coe's affidavit, GTN's tariff provided the basis for the collateral requirement incorporated into the Precedent Agreement.<sup>48</sup>

55. Unlike *Sonat*, GTN cannot credibly claim to have applied differing collateral requirements to existing and expansion capacity at the time it executed CES' Expansion Project Precedent Agreement. As discussed earlier, GTN's policy, in fact, was to make no distinction between existing and expansion capacity for collateral purposes. Indeed, as Mr. Colin Coe's affidavit relates, GTN felt itself obligated by the terms of its lending agreements and tariff to demand the same collateral obligation of both existing and expansion shippers at the time it executed the CES Precedent Agreement.

56. Moreover, in *Sonat*, the Commission concluded that Calpine was seeking to undo an agreement it no longer found convenient.<sup>49</sup> Here, in contrast, CES is attempting to enforce the Precedent Agreement it executed with GTN. That agreement incorporated by reference the collateral obligation contained in the pipeline's tariff. The Commission, in turn, has found that the GTN tariff authorized only a three-month collateral obligation at the time CES executed its Precedent Agreement. Thus, the terms of the Precedent Agreement, as well as GTN's then-existing policy of treating existing and expansion shippers identically, require application of this three-month collateral requirement to CES' Expansion Project capacity. Unlike *Sonat*, it is the pipeline that here seeks to modify the Precedent Agreement through retroactive application of orders and policies formulated long after execution of that agreement.

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<sup>48</sup> See, Complaint Exhibit D.

<sup>49</sup> Order Denying Complaint, P 37.

57. In addition, in *Sonat* the Commission expressed concern over the apparent delay in Calpine bringing its collateral complaint to light. Here, CES had no reason to demand a collateral reduction prior to the e-prime Order and, in fact, received one from GTN shortly after that order issued. It was only after GTN sought to re-impose the higher collateral obligation that CES sought prompt relief from the Commission, first through its Petition for Clarification and now through this Complaint. Unlike *Sonat*, there can be no question that CES has acted with dispatch to bring this collateral dispute to the Commission's attention.

58. Finally, the Commission's *Sonat* ruling did not endorse the retroactive application of newly minted Commission orders or pipeline policies regarding collateral requirements. Instead, the Commission viewed itself as holding the parties to the bargain originally struck in their transportation agreement. Properly understood, *Sonat* provides no support for the retroactive modifications of the CES Precedent Agreement sought by GTN, but rather supports CES' effort to enforce the terms of that Precedent Agreement.

59. GTN's argument that the e-prime Order "likewise supports GTN's demand for collateral equal to 12 months of reservation charges"<sup>50</sup> is also without merit. Previously, the Pipeline has maintained that:

Calpine overlooks the important distinction for collateral purposes between itself, an expansion shipper, and e prime, which is an existing shipper. As discussed above, the Commission's clear policy at the time Calpine participated in the open season and ultimately executed its 2002 Expansion contract, as set for in *Calpine Energy Services* and other cases, was that pipelines could require 12 months or more of reservation charges from otherwise non-creditworthy expansion shippers.<sup>51</sup>

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<sup>50</sup> Answer to Petition at page 5.

<sup>51</sup> Answer to Petition at page 6.

60. GTN's argument is flawed in several respects. First, it ignores that fact that GTN itself made no distinction, for collateral purposes, between existing and expansion shippers at the time it executed the CES Precedent Agreement. Second, the Precedent Agreement expressly incorporates the GTN tariff's collateral provisions. When CES signed the Precedent Agreement, GTN interpreted its tariff as requiring twelve-months of collateral. Indeed, GTN demanded, and CES posted, twelve months' collateral on all contracted capacity, both existing and expansion. The e-prime Order, however, declared this twelve-month collateral obligation unlawful, and found that GTN possessed tariff authority to require collateral equal to only three months' reservation charges. Clearly, CES' collateral obligations under the Expansion Project Precedent Agreement changed when the tariff provision underlying that obligation was modified by Commission order.

61. In sum, regardless of what a pipeline "could require," in February 2001 by way of collateral obligations, CES and GTN negotiated a Precedent Agreement that incorporated GTN's tariff requirement. The Commission's e prime Order has now found that the only collateral requirement authorized by GTN's tariff in February 2001 was a maximum of three months' reservation charges. Therefore, by the terms of its Precedent Agreement, CES is entitled to a reduced collateral requirement for its Expansion Project capacity, a fact conceded by GTN when, in light of the e prime Order, it returned the portion of CES' collateral that exceeded three months' reservation charges.

#### **IV. RELIEF REQUESTED**

62. Paragraphs 1 through 61 are incorporated herein by reference.

63. For the reasons stated herein, CES respectfully requests the Commission find that GTN may not impose a collateral requirement in excess of three-months' reservation charges for CES' Expansion Project capacity.

## **V. PROCEDURAL MATTERS**

64. The issues presented by this Complaint concerning the collateral requirements authorized by GTN's tariff originated with the e-prime Complaint filed in October, 2002. The docket under which this Complaint is filed was established by the Commission on March 30, 2004 in response to CES's Petition for Clarification. Because this Complaint resulted from a directive contained in a Commission Order, CES elected not to contact the FERC Enforcement Hotline concerning these matters. At this point, the parties have actively contested the issues at hand in litigation before the Commission, first in Docket No. RP03-70 and now in Docket No. RP04-217.

65. Since the March 30 Order, CES has attempted to find a commercial resolution to this dispute with GTN. Based on discussion to date, CES believes there is no immediate negotiated resolution of these matters on the horizon, whether through bilateral negotiations or some form of Alternative Dispute Resolution. Therefore, CES reluctantly files this Complaint to seek Commission resolution of these matters.

66. To CES' knowledge, the issues set forth herein are not pending in an existing Commission proceeding or in any other forum in which CES is a party.

## **VI. CONCLUSION**

For the reasons set forth above, CES respectfully urges the Commission to grant the relief requested by this Complaint.

Respectfully submitted,

/s/ Keith McCrea  
/s/ Paul Forshay  
Keith McCrea  
Paul Forshay  
Sutherland Asbill & Brennan LLP  
1275 Pennsylvania Ave NW  
Washington, DC 20004-2415  
Tel: (202) 383-0100  
Fax: (202) 637-3593  
Email: [KeithMcCrea@sablaw.com](mailto:KeithMcCrea@sablaw.com)  
Email: [Paul.Forshay@sablaw.com](mailto:Paul.Forshay@sablaw.com)

/s/ Craig Chancellor  
Craig Chancellor  
National Director – Gas Regulatory  
Calpine Energy Services, L.P.  
717 Texas Avenue  
Suite 1000  
Houston, TX 77002  
Tel: (713) 335-4071  
Fax: (713) 335-4136  
Email: [craigc@calpine.com](mailto:craigc@calpine.com)

**COMPLAINT OF CALPINE ENERGY SERVICES, L.P.**

**LIST OF EXHIBITS**

**Complaint  
Exhibits**

**Document**

- |   |   |
|---|---|
| A | Correspondence from Mr. Jim Schoene (GTN) |
| B | Precedent Agreement                       |
| C | Excerpts from 1993 Loan Agreement         |
| D | Affidavit of Mr. Colin Coe (Calpine)      |
| E | Collateral Analysis Report                |

**CERTIFICATE OF SERVICE**

Pursuant to the requirements of Rule 206(c), I hereby certify that I have this day served the foregoing document by electronic media or facsimile upon each of the following:

Lee A. Alexander, Esquire  
Dickstein Shapiro Morin & Oshinsky LLP  
2101 L Street NW  
Washington, DC 20037-1594

Carl M. Fink  
Assistant General Counsel  
Gas Transmission Northwest Corporation  
1400 SW Fifth Avenue, Suite 900  
Portland, OR 97201-5537

Dennis Kluksdahl  
Scott Hannigan  
PacifiCorp Power Marketing, Inc.  
830 N.E. Holladay, Suite 250  
Portland, OR 97232

Robert A. Nelson, Jr., Esq.  
3543 North Dinwiddie St.  
Arlington, VA 22207-2843

John A. Roscher  
Director  
Gas Transmission, Northwest Corporation  
1400 SW 5th Ave Ste 900  
Portland, OR 97201-5537

Dated at Houston, Texas, this 29th day of April, 2004.

---

Jay D. Dibble  
Calpine Corporation  
717 Texas Avenue  
Suite 1000  
Houston, TX 77002

---

From: Schoene, Jim [Jim.Schoene@negt.com]  
Sent: Thursday, January 22, 2004 2:26 PM  
To: Colin Coe (E-mail); Craig Chancellor (E-mail)  
Subject: Latest Calpine Collateral Sheet



calpine credit  
012004.xls

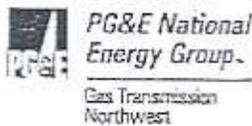
I think we have arrived at the end, finally. FERC has clearly authorized collateral in the amount of 1 year's worth of reservation charges for the '02 expansion capacity. This sheet reflects that. I believe Michael will be separately contacted. If you need help breaking the code on this sheet or otherwise have questions or comments, please let me know. The additional amount of collateral is about \$2.8 mm.

<<calpine credit 012004.xls>>

PLEASE NOTE THE E-MAIL ADDRESS CHANGE: neg.pge has become negt.

Jim Schoene  
Gas Transmission Northwest Corporation  
1100 Louisiana, Suite 1650  
Houston, TX 77002

Office: 713-371-6524  
Cell: 713-419-2216  
E-mail: jim.schoene@negt.com



## PG&E Gas Transmission-Northwest 2002 Capacity Rationalization and Expansion Program

### FIRM TRANSPORTATION PRECEDENT AGREEMENT (for service commencing November 1, 2002)

This Agreement, to be called a "Precedent Agreement for Firm Natural Gas Transportation Service," ("Precedent Agreement") is made as of February 15, 2001, by and between PG&E Gas Transmission, Northwest Corporation, a California Corporation ("Transporter") and Calpine Energy Services, L.P., a Delaware Limited Partnership ("Shipper") (collectively, the "Parties") pursuant to the following terms and representations:

#### WITNESSETH:

WHEREAS, Transporter owns and operates a natural gas pipeline transmission system which extends from a point of interconnection with the pipeline facilities of TransCanada Pipelines Limited at the International Boundary near Kingsgate, British Columbia, through the states of Idaho, Washington and Oregon to a point of interconnection with Pacific Gas and Electric Company at the Oregon-California border near Malin, Oregon;

WHEREAS, Transporter initiated an Open Season on January 2, 2001 for Shippers desiring additional firm transportation service and for existing shippers desiring to relinquish capacity;

WHEREAS, Transporter intends to expand its system by approximately 200 MDth per day, by constructing the necessary facilities to meet the demand for additional capacity for service commencing November 1, 2002 ("2002 Expansion" or "2002 Expansion Facilities," as applicable), specifically subject to the conditions set forth in Paragraph 6 of this Precedent Agreement and the rest of the terms and conditions of this Precedent Agreement;

WHEREAS, Shipper is requesting firm natural gas transportation service for the transportation of natural gas on Transporter's system based on the Annual Maximum Daily Quantity, Delivery Point, Receipt Point, and Contract Term and Rate set forth on the Open Season Request Form included as Attachment A hereto and to be made available by Transporter as part of its 2002 Expansion; and

WHEREAS, Shipper is requesting firm natural gas transportation service to commence on or after November 1, 2002, as more specifically provided for in Paragraph 4 of this Precedent Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein assumed, Transporter and Shipper agree as follows:

1. Effective Date. This Precedent Agreement shall become effective as of the date of execution and shall continue in effect until (i) the commencement of service under the Firm Transportation Service Agreement, in which case the rights and obligations of the Parties related to the natural gas transportation service contemplated herein shall thereafter be determined pursuant to the terms

PG&E National Energy Group and any other company referenced herein which uses the PG&E name or logo are not the same company as Pacific Gas and Electric Company, the California utility. These companies are not regulated by the California Public Utilities Commission, and customers do not have to buy products from these companies in order to continue to receive quality regulated services from the utility.



and conditions of the Firm Transportation Service Agreement and of Transporter's Tariff, in effect from time to time, or (ii) the date that this Precedent Agreement is terminated pursuant to Paragraphs 6 or 7.

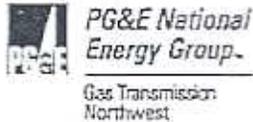
2. Regulatory Approvals. Subject to the terms and conditions of this Precedent Agreement, Transporter shall proceed with due diligence to obtain from all governmental and regulatory authorities having jurisdiction such authorizations and/or exemptions, and any necessary amendments or supplements thereto, including without limitation authorizations from the Federal Energy Regulatory Commission of the United States or any successor agency ("FERC"), which Transporter determines are necessary to construct, own and operate the 2002 Expansion Facilities and to provide transportation service for Shipper pursuant to the Firm Transportation Service Agreement substantially in the form set forth in Transporter's FERC Gas Tariff for service provided pursuant to Rate Schedule FTS-1 (the "Regulatory Approvals") in a timeframe designed to commence service by November 1, 2002. Transporter reserves the right to file and prosecute any and all applications for such Regulatory Approvals (including the right at any time to withdraw any such application and/or to reject any Regulatory Approval) and, if necessary, any court review, in such manner as it deems to be in its best interest. Shipper expressly agrees to support and cooperate, and not to oppose, obstruct or otherwise interfere with in any manner whatsoever the efforts of Transporter to obtain the Regulatory Approvals as contemplated in this Precedent Agreement, including but not limited to (i) the timely filing by Shipper of an intervention in support of Transporter's application for a FERC Certificate of Public Convenience and Necessity ("FERC Certificate") and (ii) the provision of any information reasonably requested by Transporter in preparing applications for Regulatory Approvals or any information required by FERC or any other governmental or regulatory body to be submitted during review of such applications. To facilitate Transporter's ability to develop the 2002 Expansion, Shipper agrees not to make any commitments for transportation service from other persons which service would be in lieu of all or a part of the transportation service contemplated by this Precedent Agreement, provided, however, that Shipper may make commitments to facilitate capacity rationalization as set forth in Section 7.a. hereto.

3. Execution of Firm Transportation Service Agreement. Within thirty (30) days after Transporter's receipt and acceptance of a FERC Certificate in form and substance satisfactory to Transporter in Transporter's sole discretion, and provided that this Precedent Agreement shall not have been earlier terminated in accordance with Paragraph 6 or 7, Transporter and Shipper shall execute a Firm Transportation Service Agreement, incorporating all material terms contained on the Open Season Request Form and providing for the transportation of the Daily Quantity from the Receipt Point to the Delivery Point. Notwithstanding any other provision of this Precedent Agreement, Transporter shall have the right to pursue any legal and/or equitable remedies available in respect of Shipper's breach of its obligation to execute a Firm Transportation Service Agreement.

4. Commencement of Service. Subject to satisfaction or waiver of the conditions set forth in Paragraphs 6 and 7, service under the Firm Transportation Service Agreement will commence on the later of (i) November 1, 2002 or (ii) the date on which Transporter constructs and places into service the 2002 Expansion Facilities. Service shall continue from the date on which service commences for the Contract Term.

As of the date for commencement of service, Transporter shall stand ready to provide transportation service to Shipper and Shipper shall be liable to Transporter for all charges associated with the provision of such service.

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## 5. Rates

a. Recourse Rates. Shipper shall pay the maximum recourse rate for service utilizing the 2002 Expansion Facilities under Transporter's Rate Schedule FTS-1 (or superseding rate schedule) as approved by FERC, plus all applicable commodity charges, surcharges (including the CES surcharge) and fuel charges applicable to the provision of firm transportation service by Transporter under Transporter's Rate Schedule FTS-1. Transporter's current maximum recourse rate is based on a straight fixed variable rate design. Shipper hereby agrees with the rate design methodology set forth herein, to support such rate design methodology before FERC and to pay the initial rates and any subsequent changes to those rates as included in Transporter's FERC Tariff.

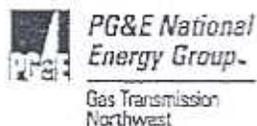
b. Negotiated Rates. Notwithstanding Section 5(a) above, Transporter and Shipper may agree on a negotiated rate as specified in the Open Season Request Form.

c. Intended Rate Treatment. Transporter will request rolled-in rate treatment for service utilizing the 2002 Expansion Facilities in its certificate application before the FERC.

6. Transporter's Conditions Precedent. Notwithstanding the Parties' execution of this Precedent Agreement, Transporter's obligations to continue to develop and to construct and operate the 2002 Expansion Facilities and/or to provide transportation service for Shipper are expressly made subject to (i) Transporter's receipt and acceptance of all Regulatory Approvals, including without limitation regulatory approvals to be issued by the FERC or any other regulatory authorities, and procurement of all necessary rights of way, easements or other property or contract rights necessary to the construction, ownership and operation of the 2002 Expansion Facilities and the provision of transportation service for Shipper, all in form and substance satisfactory to Transporter in Transporter's sole discretion; (ii) the execution by other shippers of Firm Transportation Service Agreements providing for transportation service of daily quantities sufficient to support the construction and operation of the 2002 Expansion Facilities on an economic basis acceptable to Transporter in Transporter's sole discretion, including utilization of a rolled-in rate design; (iii) ongoing satisfaction by Shipper of the creditworthiness provisions and other requirements for service set forth in Transporter's pro forma Tariff; (iv) the determination of the Board of Directors of Transporter to commit to construction of the 2002 Expansion Facilities; and (v) the completion of construction and the placing into service of the 2002 Expansion Facilities.

All Regulatory Approvals required by this Precedent Agreement must be duly granted by the governmental agency or authority having jurisdiction and must be final and no longer subject to rehearing or appeal, provided, however, that Transporter may waive the requirement that any such regulatory approval be final and no longer subject to rehearing or appeal.

If by March 1, 2003, any of the conditions set forth in this Paragraph 6 have not been met, then Transporter shall have the right to terminate this Precedent Agreement on thirty (30) days written notice to Shipper and this Precedent Agreement shall terminate effective upon expiration of such thirty (30) day period and shall thereafter be of no further force and effect.



7. Shipper's Termination Rights

a. Capacity Rationalization. Shipper may terminate this Agreement by providing Transporter with a written notice by March 15, 2001; provided, however, that if Shipper has executed a Precedent Agreement(s) with Transporter for capacity on the 2002 Expansion Facilities with the same receipt and delivery points set forth at Attachment A ("Additional Agreement(s)"), then Shipper may not terminate this Precedent Agreement pursuant to this Paragraph unless Shipper also has terminated all such Additional Agreement(s) that have a lower net present value as calculated in accordance with Transporter's Tariff.

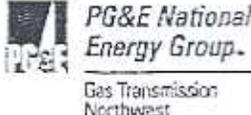
b. Project Development Payment. On or before December 1, 2001, a Shipper that has elected the Project Development Payment ("PDP") option on the Open Season Request Form set forth at Attachment A may reduce its Maximum Daily Quantity ("MDQ") in increments of MDth up to the quantity set forth in the "PDP Option" box on the Open Season Request Form ("PDP Option Quantity"). If Shipper elects to reduce its MDQ by all or a portion of the PDP Option Quantity, such reduction shall be effective upon payment in full by Shipper of the "Development Payment" amount as set forth in the table below as of the corresponding payment date. To the extent Shipper elects to reduce its MDQ pursuant to this provision, the MDQ set forth at Attachment A shall be amended to reflect such reduction. If Shipper's MDQ equals Shipper's PDP Option Quantity and Shipper elects to reduce its MDQ to zero, then this Agreement shall terminate on the date Shipper remits full payment to Transporter in accordance with the table below. After November 30, 2001, or upon Shipper's execution of a Firm Transportation Service Agreement, Shipper's rights pursuant to this Paragraph shall terminate.

Schedule of Project Development Payments

Payment Date	Development Payment (\$/MDth)
On or before May 1, 2001	\$3,750
May 2, 2001 to June 30, 2001	\$32,250
July 1, 2001 to August 31, 2001	\$62,650
September 1, 2001 to December 1, 2001	\$119,750

8. Assignment. Any company, which shall succeed by purchase, merger or consolidation to the properties, substantially as an entirety, of either Transporter or Shipper, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Precedent Agreement. Either party may, without relieving itself of its obligations under this Precedent Agreement, assign any of its rights hereunder to a company with which it is affiliated (provided that in the case of such an assignment by Shipper, the assignee meets the creditworthiness requirements of Transporter's Tariff), but otherwise no assignment of this Precedent Agreement or

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any rights or obligations hereunder shall be made unless there first shall have been obtained the written consent of the other party. It is agreed, however, that the restrictions on assignment contained in this Paragraph 8 shall not in any way prevent either party to this Precedent Agreement from pledging or mortgaging its rights hereunder as security for its indebtedness, and Shipper hereby agrees, in connection with any collateral assignment made by Transporter for the financing of Transporter's System, to (i) execute and deliver as soon as reasonably practicable a consent and agreement and opinion of counsel satisfactory to Transporter and in conformance with the terms of Transporter's financing commitments and (ii) to provide any other information reasonably required by financial institutions providing financing for Transporter's System.

9. Notices. Notices under this Precedent Agreement shall be sent to:

Transporter: PG&E Gas Transmission, Northwest Corporation  
1400 SW Fifth Avenue, Suite 900  
Portland, Oregon 97201  
Attention: Director, Gas Control and Transportation Services  
Fax No.: (503) 833-4395

And a copy to:

PG&E Gas Transmission, Northwest Corporation  
1400 SW Fifth Avenue, Suite 900  
Portland, Oregon 97201  
Attention: Legal Department  
Fax No.: (503) 402-4004

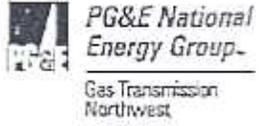
Shipper: Calpine Energy Services, L.P.  
6700 Koll Center Parkway, Suite 200  
Pleasanton, CA 94566  
Attention: Colin Coe  
Fax No. (925) 600-8925

Either party may change its address by written notice to that effect to the other party. Notices given hereunder shall be deemed to have been effectively given upon the third day following the day when the notice properly addressed and postpaid had been placed in the mail. It is expressly understood and agreed, however, that any notices referred to hereunder shall first be delivered by facsimile or other similar means, in accordance with the dates and time provided therein, and shall be mailed as soon as practicable thereafter.

10. Miscellaneous.

a. This Precedent Agreement sets forth all understandings and agreements between the Parties respecting the subject matter hereof, and all prior agreements, understandings and representations, whether written or oral, respecting the subject matter hereof are merged into and superseded by this Precedent Agreement. This Precedent Agreement may only be amended by an

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instrument in writing executed by both Parties.

b. This Precedent Agreement, and any actions, claims, demands or settlements hereunder shall be governed by and construed in accordance with the laws of the State of California, without reference to any conflicts of law principles which might require the application of the laws of any other jurisdiction.

c. This Precedent Agreement and the obligations of the Parties hereunder are subject to all applicable laws, regulations, rules, and orders of all governmental and regulatory bodies having jurisdiction.

d. Any provision of this Precedent Agreement that is prohibited or unenforceable under the laws of the State of California shall be ineffective to the extent of the prohibition or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof.

e. A waiver by either party of any one or more defaults by the other hereunder shall not operate as a waiver of any future default or defaults, whether of a like or of a different character.

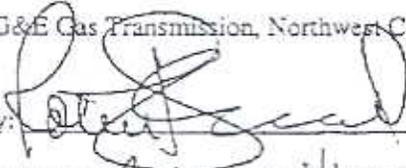
f. Shipper agrees to execute and deliver all such other and additional instruments and documents and to do such other acts as may be reasonably necessary to effectuate the terms and provisions of this Precedent Agreement.

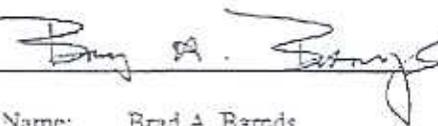
g. The terms, conditions and provisions of this Precedent Agreement shall be considered to have been prepared through the joint efforts of both Parties and shall not be construed against either party as a result of the preparation or drafting thereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Precedent Agreement to be duly executed in counterparts by their proper officers duly authorized as of the first date hereinabove written.

PG&E Gas Transmission, Northwest Corporation

Calpine Energy Services, L.P.

By: 

By: 

Print Name: Robert T. Howard

Print Name: Brad A. Barnds

Title: Vice President GM

Title: Vice President - Fuels

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**EXECUTION COPY**

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**LOAN AGREEMENT**

among

Pacific Gas Transmission Company

and

The Banks Parties Hereto

and

Barclays Bank PLC, CIEC Inc.,  
The First National Bank of Chicago and  
Swiss Bank Corporation, New York Branch,  
as Co-Arrangers

and

Bank of Montreal, The Bank of New York, The Bank of Nova Scotia,  
Banque Paribas, Credit Suisse, The First National Bank of Boston,  
The Industrial Bank of Japan, Limited, National Westminster Bank Plc,  
The Sanwa Bank Limited, Societe Generale, Southwest Agency,  
The Sumitomo Bank, Limited, San Francisco Branch, and Union Bank,  
as Co-Agents

and

Canadian Imperial Bank of Commerce,  
New York Agency,  
as Administrative Agent

Dated as of April 30, 1993

---

FILED  
OFFICE OF THE SECRETARY  
03 JAN 29 AM 9:55  
FEDERAL ENERGY  
REGULATORY COMMISSION

LOAN AGREEMENT, dated as of April 30, 1993, among PACIFIC GAS TRANSMISSION COMPANY, a California corporation (the "Borrower" or "PGT"), the several banks from time to time parties to this Agreement (the "Banks"), BARCLAYS BANK PLC, CIBC INC., THE FIRST NATIONAL BANK OF CHICAGO and SWISS BANK CORPORATION, NEW YORK BRANCH, as co-arrangers for the Banks hereunder (in such capacity, the "Co-Arrangers"), BANK OF MONTREAL, THE BANK OF NEW YORK, THE BANK OF NOVA SCOTIA, BANQUE PARIBAS, CREDIT SUISSE, THE FIRST NATIONAL BANK OF BOSTON, THE INDUSTRIAL BANK OF JAPAN, LIMITED, NATIONAL WESTMINSTER BANK PLC, THE SANWA BANK LIMITED, SOCIETE GENERALE, SOUTHWEST AGENCY, THE SUMITOMO BANK, LIMITED, SAN FRANCISCO BRANCH, AND UNION BANK, as co-agents for the Banks hereunder (in such capacity, the "Co-Agents"), and CANADIAN IMPERIAL BANK OF COMMERCE, NEW YORK AGENCY, as administrative agent for the Banks hereunder (in such capacity, together with its successors in such capacity, the "Administrative Agent").

W I T N E S S E T H :

WHEREAS, the Borrower owns and operates the Existing Facilities (as hereinafter defined), and is constructing and will own and operate the Expansion Facilities (as hereinafter defined), for the transmission of natural gas from a point of interconnection with pipeline facilities of Alberta Natural Gas Company Ltd. and Foothills Pipe Lines (South B.C.) Ltd. near Kingsgate, British Columbia, Canada, across the States of Idaho, Washington and Oregon to points of interconnection with pipeline facilities of Northwest Pipeline Corporation near Stanfield, Oregon and of Pacific Gas and Electric Company near Malin, Oregon; and

WHEREAS, pursuant to the Interim Credit Agreement (as hereinafter defined) the Interim Banks (as hereinafter defined) have made loans (the "Interim Existing Facilities Loans") to the Borrower on an interim basis to refinance the Existing Facilities and to finance capital improvements thereto; and

WHEREAS, pursuant to the Interim Credit Agreement the Interim Banks have made loans (the "Interim Expansion Facilities Loans") to the Borrower on an interim basis to finance a portion of the Project Costs (as hereinafter defined) of the Expansion Facilities; and

WHEREAS, the Borrower has requested the Banks to make, and the Banks are willing to make, subject to the terms and conditions hereof, Loans (as hereinafter defined) to the Borrower to enable the Borrower (i) to refinance the Existing Facilities and finance capital improvements thereto on a long-term basis by paying in full the Interim Existing Facilities Loans, and (ii) to finance on a long-term basis a portion of the Project Costs of the Expansion Facilities (including repayment in full of the Interim Expansion Facilities Loans);

Calpine Collateral Analysis Report  
As of June 1, 2002

5/22/2002 13:56

Collateral Provided \$ 21,550,000  
Collateral requirement (\$16,912,545)  
Residual Collateral \$ 4,637,455

Contract	Exhibit Path	Start / End	Rate Schedule (6)	Dth sum/win	Counterparty	1-year of demand charges	6/1/2002	Collateral	Dollar Limit on Collateral	Gross PV of Contract
1	8096	KI-MA 11/1/2002	11/30/2042 FTS-1	\$0.2548	35,800 56,180	\$ 4,277,162	14,640	Surety Bond (2)	\$ 9,700,000	\$ 65,894,629
2	7357	R-7357 KI-MA 11/1/2008	10/31/2023 FTS-1-T3	\$0.2844	15,000 15,000	\$ 1,557,137	5,478	Surety Bond (2)	\$ 9,700,000	\$ 10,886,105
3	2003 Open Season (3)	KI-St 11/1/2003	10/31/2004 FTS-1/03 X	\$0.1982	50,000 50,000	\$ 3,616,949	366	L/C (1)	\$ 3,850,000	\$ 3,166,883
4	8210 (6)	R-8210 KI-MA 11/1/2002	10/31/2002 CES Firm	\$0.3172	5,000 5,000	\$ 242,626	153	L/C (4)	\$ 8,000,000	\$ 97,810
5	7352	R-8158 KI-MA 12/1/2001	10/31/2023 FTS-1-T3	\$0.2844	21,348 21,348	\$ 2,216,118	8,005	L/C (4)	\$ 8,000,000	\$ 27,170,072
6	7352	R-8115 KI-MA 11/1/2001	10/31/2023 FTS-1-T3	\$0.2844	19,438 19,438	\$ 2,017,842	8,035	L/C (4)	\$ 8,000,000	\$ 24,750,000
7	8155	KI-MA 11/1/2003	10/31/2023 FTS-1-T3	\$0.2844	10,000 10,000	\$ 1,038,091	7,305	L/C (4)	\$ 8,000,000	\$ 11,340,000
8	8194	R-8194 KI-MA 11/1/2003	10/31/2015 FTS-1	\$0.2548	10,000 10,000	\$ 930,020	4,303	L/C (4)	\$ 8,000,000	\$ 7,358,830
9	8281	R KI-St 4/1/2002	3/31/2003 FTS-1 CES	\$0.1677	8,500 8,500	\$ 520,289	365	L/C (4)	\$ 8,000,000	\$ 412,071
10	Sub-total for firm contracts						\$ 16,416,235		\$ 21,550,000	\$ 151,071,423
11										
12	I-8256			\$0.2721	20,000 20,000	\$ 496,310				
13										
14										
15	Total for all contracts						\$ 16,912,545			

Notes:

- (1) L/C S054/81695/00 for \$3.85mm w/ Bank of Nova Scotia. The transactions ostensibly covered by the L/C require credit support for \$3,494,946, leaving \$619,730 of residual collateral.
- (2) Provided by Firemen's Fund. The 3 transactions covered by the surety bond require credit support for \$9,475,854, leaving \$224,146 of residual collateral.
- (3) There is no transportation service agreement as yet. Calpine is not obligated to sign until later. However, there is a binding precedent agreement for the capacity. Further, Calpine was required to meet the credit requirements of the tariff in order to participate in the open season which resulted in their acquisition of this capacity. JS 2/15/02
- (4) L/C S067/81695/01 w/ Bank of Nova Scotia for \$8.0mm. The transactions ostensibly covered by the L/C require credit support for \$7,286,586, leaving \$713,144 of residual collateral.
- (5) The start date for this contract was mistakenly reported as 11/1/2001 in the 2/15/02 report.
- (6) These rates are blended to reflect current T3 rate, effective 4/1/02, and reduced T3 rate, effective 11/1/02, on a month weighted basis. For King-Matin these are \$0.3172 and \$0.2610 respectively. For Stan-Matin these are \$0.1896 and \$0.1567 respectively.

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AFFIDAVIT OF  
Mr. COLIN COE  
DIRECTOR OF FUELS - CALPINE ENERGY SERVICES

Q: Please state your name and describe your responsibilities at Calpine Energy Services, L.P. ("Calpine").

A: My name is Colin Coe. I am Director of Fuels for Calpine Energy Services, L.P. My principal responsibilities include management of fuel supply acquisition and pipeline transportation capacity on behalf of affiliated power generating facilities.

Q: Please describe your professional and educational background.

A: I have been involved in the energy business since 1979, the last 17 seventeen in the natural gas sector. I have an undergraduate degree in Commerce and MBA from the University of British Columbia.

**GTN 2002 Capacity**

Q: Please describe your involvement in the acquisition of transportation capacity from Gas Transmission Northwest ("GTN") in their 2002 expansion project.

A: At the time I was Director, Fuels, responsible for the development of the natural gas supply portfolio for our plants in the Pacific Northwest, and Northern California. This included term gas supply, pipeline transportation and natural gas storage capacity. I prepared and submitted Calpine's open season bid and was lead negotiator with GTN.



1 Q: Did Calpine hold any firm capacity on GTN prior to the 2002 Expansion Project ?

2 A: Yes. Calpine acquired two packages of capacity totaling approximately 40,000  
3 DTh/day of firm capacity through the capacity release market, commencing  
4 November 1, 2001.

5

6 Q: Was this capacity acquired through an open season process or as part of an  
7 expansion?

8 A: No. The capacity that Calpine acquired pre-2002 capacity was existing capacity  
9 that was obtained through the capacity release market.

10

11 Q: What collateral amount did GTN require for the available capacity acquired prior  
12 to the 2002 Expansion Project?

13 A: GTN required that Calpine post twelve months of demand charges.

14

15 Q: Did GTN express to you that the credit requirements for the 2002 Expansion  
16 Project were anything beyond the amount required of any other non-creditworthy  
17 shipper for any capacity under contract?

18 A: No. GTN stated that the twelve months of collateral was the amount their tariff  
19 authorized them to require of non-creditworthy shippers. In fact it was relayed to  
20 me by PGT<sup>1</sup> that there had been some discussions within PGT concerning  
21 whether it was appropriate to assess a greater collateral threshold to small  
22 development entities such as Newport Generation, but that this option was  
23 rejected by PGT based on the fact that the tariff language clearly stated that the

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<sup>1</sup> PGT or Pacific Gas Transmission Company was GTN's predecessor.



1 requirement was twelve months. The tariff in effect for capacity in the generic  
2 sense was identified as the determining factor.

3

4 Q: Did GTN at any time seek collateral for Calpine's portion of the 2002 Expansion  
5 Project in excess of its tariff's requirement, either because that capacity was part  
6 of an expansion project or would be built using project financing?

7 A: No. GTN, through its actions and communications, gave me the understanding  
8 that the collateral required for the 2002 Expansion Project was no different than  
9 what was required for the existing capacity Calpine already held. GTN did not  
10 state that they would be seeking project financing for the 2002 Expansion Project  
11 that would require a higher level of collateral than what their tariff authorized.

12

13 Q: Did Calpine receive all the capacity it requested in the open season?

14 A: No, Newport Northwest, LLC ("Newport") bid a longer term than Calpine and, as  
15 a result, Calpine's portion of the capacity was pro-rated downward. Calpine's bid  
16 was for approximately 200,000 MMBtu/day capacity but we were awarded 35,800  
17 MMBtu/day of annual capacity and 20,380 of Winter only capacity.

18

19 Q: Did Calpine discuss the award criteria with GTN?

20 A: Yes. Before GTN awarded the capacity, Calpine questioned how GTN  
21 considered Newport's bid in their NPV analysis given Newport's non-  
22 creditworthy status and the fact that it did not have any downstream demand nor a  
23 permit to construct a generating facility. GTN stated that Newport also posted



1 twelve months of demand reservation charges, that GTN was bound by its tariff,  
2 and that it could neither request additional collateral beyond the twelve months  
3 nor distinguish between non-creditworthy parties to meet this tariff requirement.

4

5 Q: Why did Calpine agree to provide the requested collateral?

6 A: Calpine provide the requested collateral based on the historical demands of GTN  
7 for collateral on capacity we had previously acquired, as well as on the  
8 representations from GTN that its tariff required collateral equal to twelve  
9 months' reservation charges. Calpine had a significant and growing requirement  
10 for natural gas in the Pacific Northwest and Northern California, and as a result,  
11 saw firm pipeline capacity as an important part of our portfolio.

12

13 Q: Did GTN actually have the tariff authority to require twelve months of demand  
14 charges as collateral from non-creditworthy shippers?

15 A: No. Subsequent to Calpine's acquisition of capacity, e-prime, inc. ("e-prime")  
16 filed a complaint with the Commission regarding GTN's determination that e-  
17 prime was non-creditworthy and the amount of collateral GTN required e prime to  
18 post. Calpine intervened and actively participated in that proceeding. During the  
19 course of the complaint it was discovered that GTN had refinanced existing loan  
20 arrangements, and the new lending agreements no longer required twelve months  
21 of collateral from non-creditworthy shippers. In other words, GTN's tariff  
22 requirement for twelve months' collateral predicated on language in 1993 lending  
23 agreements that no longer existed and, in fact, had not existed since 1995. The



1 Commission ordered GTN to reduce its collateral demand from twelve months to  
2 three months of demand charges for e-prime, and to clarify its tariff to reflect the  
3 three months requirement.

4

5 Q: Did GTN reduce the collateral required of Calpine from twelve months to three  
6 months of demand charges?

7 A: Yes. GTN reduced the collateral required on all the capacity under contract with  
8 Calpine including the 2002 Expansion Project.

9

10 Q: How would you summarize your understanding of the agreement between Calpine  
11 and GTN regarding to the collateral to be posted for the 2002 Expansion Project  
12 capacity?

13 A: Calpine and GTN agreed that Calpine would post the collateral required by the  
14 tariff. At that time, Calpine understood from GTN that the tariff required  
15 collateral equal to twelve months of demand charges. GTN made no distinction  
16 between existing or expansion capacity and, in fact, made a point of maintaining  
17 the congruity between both.

18

19 Q: Does this conclude your affidavit?

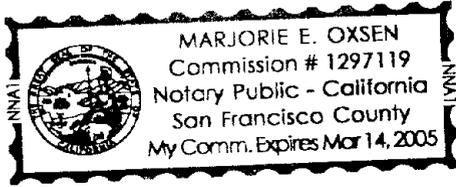
20 A: Yes, it does.

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a series of loops and a horizontal line at the end.

Colin Coe



Subscribed and sworn to before me, a Notary Public in and for the State of  
California, County of Alameda, this 29<sup>th</sup> day of April, 2004.



Marjorie E. Oxsen  
Notary Public



UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Calpine Energy Services, L.P.,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. RP04-217-000
	)	
Gas Transmission Northwest Corporation	)	
	)	
Respondent.	)	

NOTICE OF COMPLAINT OF CALPINE ENERGY SERVICES, L.P.

( \_\_\_\_\_, 2004)

Take notice that on April 29, 2004, Calpine Energy Services, L.P. (“CES”) filed a Complaint against Gas Transmission Northwest Corporation (“GTN”) requesting that the Federal Energy Regulatory Commission (“Commission”) find that (1) Calpine’s collateral obligation associated with GTN’s 2002 Capacity Rationalization and Expansion Program (“Expansion Project”) does not exceed three months’ reservation charges, and (2) GTN can not retroactively apply provisions approved for the first time in Docket No. RP03-70 to Calpine’s Expansion Project capacity.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before \_\_\_\_\_, 2004. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission’s website at <http://www.ferc.gov> using the “FERRIS” link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the internet in lieu of paper; see 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission’s web site under the “e-Filing” link. The Commission strongly encourages electronic filings.

Magalie R. Salas  
Secretary

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