114 FERC ¶61,144
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Northwest Pipeline Corporation Docket Nos. RP05-286-001
RP05-286-002

ORDER ON CLARIFICATION AND ACCEPTING COMPLIANCE FILING, SUBJECT TO CONDITION

(Issued February 16, 2006)

1. This order addresses a request for clarification filed by Duke Energy Trading and Marketing, L.L.C. (DETM) and Duke Energy Marketing America, LLC (DEMA) of the Commission's May 20, 2005 Order which accepted Northwest Pipeline Corporation's (Northwest) proposal to revise its permanent capacity release provisions contained in Northwest's tariff, subject to conditions.[1] This order also addresses Northwest's filing to comply with the May 20 Order.

I. Background

2. Our May 20 Order accepted, among other things, Northwest's proposal to revise its permanent capacity release exit fee provisions contained in section 22 of Northwest's General Terms and Conditions.[2] Northwest's proposal included a new exit fee option in section 22.5(a)(v) which would enable a releasing shipper to permanently release capacity for which it is paying a higher rate than potential replacement shippers may be willing to pay. Northwest's proposed new exit fee option included a "reverse auction" process to determine the level of a lump-sum exit fee that the releasing shipper would pay directly to the replacement shipper as consideration for the replacement shipper agreeing to acquire the permanently released capacity from Northwest at a rate equal to or greater than the releasing shipper's rate. Section 22.5(a)(v) provided that if the Releasing Shipper's capacity

[1] *Northwest Pipeline Corporation*, 111 FERC ¶ 61,231 (2005) (May 20 Order).

[2] Northwest's proposals were included in its tariff filing made on April 22, 2005.

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release offer included an exit fee payment commitment, any bids for the capacity must state the term of the bid (which term may be longer than Releasing Shipper's contract term, limited only by the availability of capacity), the rate the Bidder offers to pay Transporter for the released capacity and the associated exit fee payment.

3. Northwest also proposed to revise the eligibility criteria for its permanent capacity releases.[3] In addition, Northwest proposed a new provision in section 22.5(a)(iii) to establish that a prearranged permanent release at maximum rate for the remainder of the releasing shipper's term will not be exempt from competitive bidding.

4. The Commission accepted Northwest's tariff provisions outlined above, subject to Northwest filing to eliminate certain term bidding language from its proposed section 22.5(a)(iii) that related to prearranged releases at the maximum rate. The objectionable language would have subjected pre-arranged permanent capacity releases at the maximum rate to competitive bidding based on term, contrary to the Commission's capacity release regulations.[4] In rejecting Northwest's term-bidding requirement, we agreed with the protestants that Northwest agreed to the original firm contract, including the contract term with evergreen rights, and Northwest should be held to its end of the bargain. We also stated that in subjecting the permanent release to competitive bidding based on term, Northwest was attempting to bootstrap contract extensions into a process designed to allow shippers to release their capacity.

5. DETM and DEMA filed a request for clarification, or in the alternative, a request for reconsideration of our May 20 Order. On May 31, 2005, Northwest filed tariff sheets[5] to comply with the May 20 Order. DETM and DEMA filed a protest to Northwest's compliance filing.

II. <u>Request for Clarification</u>

6. DETM and DEMA request that the Commission clarify its May 20 Order or in the alternative reconsider its ruling as it relates to Northwest's term-bidding proposal. They state that the May 20 Order clearly invalidated Northwest's term bidding proposal that appeared in section 22.5(a)(iii) concerning prearranged releases at the

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[3] New section 22.5(a)(iv) requires all bids for a permanent capacity release to be equal to or greater than the releasing shipper's contract rate for the remainder of the releasing shipper's contract.

[4] 18 C.F.R. § 284.8(h)(i) (2005).

[5] Substitute Third Revised Sheet No. 271-A and Substitute Original Sheet No. 271-B to FERC Gas Tariff, Third Revised Volume No. 1.

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maximum rate. However, DETM and DEMA state that the same order did not specifically reject identical term bidding language that appeared in section 22.5(a)(v) involving permanent releases with an exit fee provided by the releasing shipper. DETM and DEMA point to the Commission's findings that Northwest's term bidding proposal in section 22.5(a)(iii) impermissibly allowed Northwest to intrude into a wholly-unrelated customer activity. DETM and DEMA submit that the Commission's omission of a reference to section 22.5(a)(v) was simply an oversight, and therefore request that the Commission clarify its May 20 Order to require Northwest to eliminate the term-bidding language from section 22.5(a)(v).

7. DETM and DEMA state that if the Commission did in fact intend Northwest to impose term-bidding for released capacity involving an exit fee, DETM and DEMA request that the Commission reconsider its decision.

8. We grant clarification of this issue. In our May 20 Order, we found that Northwest's proposal, with the exception of its term bidding requirement, was consistent with our capacity release policies, as well as orders that allow a shipper to sell its capacity and exit the gas marketing business in an orderly fashion. We held that Northwest may not inject itself into the permanent release process for the purpose of extracting contract terms that exceed the length of the releasing shipper's contract. We find that this conclusion holds for all permanent releases, whether they are at the maximum rate or at the releasing shipper's contract rate, and whether they involve a shipper-supplied exit fee.[6] This is consistent with our regulations which require that shippers "must be permitted to release capacity . . . on a permanent basis, without restriction on the terms or conditions of the release." 18 C.F.R. § 284.8(b)(2005). Therefore, we direct Northwest to eliminate the term bidding language for reverse auction permanent releases contained in its section 22.5(a)(iv), as DETM and DEMA have requested.

III. <u>Compliance Filing</u>

9. On May 31, 2005, Northwest filed tariff sheets to comply with our May 20 Order. Specifically, Northwest has added a sentence to section 22(a)(i) stating that Northwest will notify the Shipper electronically if the Shipper's request to

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[6] Under a capacity release involving exit fees, the releasing shipper presumably would be unwilling to negotiate an exit fee greater than the net present value of its reservation charge liability over the remaining duration of its contract. If term bids were allowed, it could prevent the releasing shipper's exit fee from being minimized, a result which is contrary to the reverse auction process, where interested parties are submitting bids to accept a lower exit fee payment from the releasing shipper. Thus, such a term bidding requirement would disrupt the shipper-specific bidding process.

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permanently release capacity is denied, and will include in the notification the reasons for such denial. Further, Northwest removed section 22.5(a)(iii) from its tariff and re-numbered the sections on Sheet No. 271-B. As a result, former section 22.5(a)(v) became section 22.5(a)(iv).

10. DETM and DEMA filed a protest, which raises the same substantive issues with respect to renumbered section 22.5(a)(iv) as they raised in their request for clarification of the May 20 Order when the provision was numbered 22.5(a)(v). They explain in the protest that although Northwest eliminated the term-bidding language from the initially proposed section 22.5(a)(iii), Northwest failed to strike the term-bidding language from the newly-renumbered section 22.5(a)(iv) of the May 31 compliance filing.[7] DETM and DEMA contend this is required in view of the Commission's clear directive invalidating Northwest's efforts to intrude upon its shippers' capacity release transactions. DETM's and DEMA's protest is now moot, since as discussed above, we are granting DETM's and DEMA's request for clarification. Accordingly, we direct Northwest to make further revisions to its tariff to eliminate the term bidding language from section 22.5(a)(iv).

The Commission orders:

(A) DETM's and DEMA's request for clarification is granted.

(B) Northwest's tariff sheets listed in footnote no. 5 are accepted, effective May 23, 2005, subject to revision as indicated in the body of this order.

(C) Northwest is required to file revised tariff sheets within 15 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

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[7] Northwest's capacity release provision involving exit fees and the term bidding language was originally included in section 22.5(a)(v). The same inappropriate language concerning "the term of the bid (which term may be longer than Releasing Shipper's contract term, limited only by availability of capacity)," now appears in section 22.5(a)(iv).