

UNITED STATES OF AMERICA 107 FERC ¶ 61,253
FEDERAL ENERGY REGULATORY COMMISSION

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

:

Gas Transmission Northwest Corporation

Docket No. RP04-292-000

ORDER ACCEPTING TARIFF SHEETS
SUBJECT TO CONDITIONS

(Issued June 3, 2004)

1. On May 4, 2004, Gas Transmission Northwest Corporation (GTN) submitted revised tariff sheets¹ to clarify the right of first refusal (ROFR) provisions in its General Terms and Conditions (GT&C). The tariff sheets listed in footnote no. 1 are accepted, and waiver of the 30-day notice requirement is granted to permit them to become effective June 3, 2004, subject to GTN further defining “acceptable” or “accepted” bid as contained in section 33.2 of its GT&C. This order benefits customers because it ensures that the subject tariff provisions conform to Commission requirements and policy.

Description of Filing

2. GTN proposes to add additional language to its GT&C to clarify that shippers that elect to terminate their service agreements, no longer hold a ROFR to that capacity. GTN also proposes to change the amount of time a shipper has to match the accepted bids from two weeks to ten business days. GTN states this change is intended to keep the match period consistent within GTN’s current tariff and to avoid having match periods end on a weekend or holiday. Additionally, GTN proposes to replace the term “highest bid” with “acceptable bid.” GTN states this is necessary to clarify that it may consider and award on the basis of net present values when approving competing bids.

3. GTN proposes to revise its GT&C to provide for a 20 business day time limit for the original capacity holder to agree to continue service, and if no mutual agreement is reached, the original capacity holder’s ROFR expires. If, however, the original capacity holder offers the maximum authorized rate, it may determine the term, as long as that term exceeds one year.

¹ First Revised Sheet Nos. 211 and 212 and Second Revised Sheet No. 213 to FERC Gas Tariff, Third Revised Volume No. 1-A.

4. GTN also proposes to replace “bona fide bid” with “valid bids” and states that parties may submit bids for all or only a part of the ROFR capacity as long as the original contract path is maintained. Finally, GTN adds a new section clarifying that if there is no award of capacity following the ROFR process, then section 18.1(c), which governs the sale of generally available capacity, will control.

Notice, Interventions and Protests

5. Public notice of the filing was published in the Federal Register, 69 Fed Reg. 26,569 (2004), with comments, interventions and protests as provided in section 154.210 of the commission’s regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214(2003)), all timely filed motions to intervene and any motions to intervene out of time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on the existing parties.

6. Duke Energy Trading and Marketing, LLC, (DETM) and Duke Energy Marketing America, LLC, (DEMA) filed a limited protest.

7. DEMA and DETM protest GTN’s replacing the term “highest bid” with “acceptable bid” in section 33.2 of the GT&C. Protesters assert that GTN has not sufficiently supported why it needs to make this change, and that the changed terms create ambiguity. Specifically, DEMA and DETM state this new wording would leave ROFR shippers vulnerable to being asked to match any bid accepted by GTN regardless of whether the bid was the best bid under GTN’s tariff’s net present value calculation. DEMA and DETM state that in order to ensure that a shipper’s matching bid obligation is clear, GTN should revise section 33.2 to state that ROFR shippers must match the bid that is accepted by GTN based on the “greatest economic value as determined by GTN under the net present value methodology provided in section 18.1 of the GT&C.”²

Discussion

8. GTN’s proposed amendment to section 33.1 clarifies that when a shipper elects termination, that shipper loses its ROFR protection. This is consistent with Commission policy. The Commission has stated that if a shipper is certain it has no further interest in renewing its contract and chooses to forego its ROFR protection, the pipeline is free to market the capacity.³ Furthermore, section 33.2 of GTN’s tariff still provides a shipper with ROFR protection if it does not elect to terminate its contract.

² DEMA and DETM protest, at 2.

³ Texas Eastern Transmission, LP, 101 FERC ¶ 61,215 (2002).

9. GTN's proposal for a 20 business day time limit to reach an agreement when no competing bids are received is also consistent with other cases where a 20 business day time period was found reasonable.⁴ The other proposed changes, with one exception discussed below, are also reasonable and are accepted.

10. Finally, we find that GTN's proposed amendment to section 33.2 to replace "highest bid" with "acceptable" or "accepted" bid does not sufficiently specify which of the bids will fit that definition based on the net present value evaluation in GTN's tariff. Accordingly, the Commission directs GTN to further define and clarify the term "acceptable" or "accepted" bid to ensure that it unambiguously defines the particular bid that must be matched.

The Commission orders:

(A) GTN's revised tariff sheets listed in footnote no. 1 of this order are accepted to become effective June 3, 2004, subject to the conditions set forth in the body of this order and the ordering paragraph below.

(B) GTN is directed, within 15 days of the date this order issues, to file revised tariff sheets consistent with the discussion in the body of this order.

(C) Waiver of the 30-day notice requirement is granted to permit the June 3, 2004 effective date.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

⁴ Columbia Gas Transmission Corp., 107 FERC ¶ 61,078 (2004) citing Pan-Alberta (U.S.) Inc. v. Northern Border Pipeline Co., 101 FERC ¶ 61,249 (2002), order on compliance filing, Northern Border Pipeline Co., 102 FERC ¶ 61,158 (2003).