

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northwest Pipeline Corporation

Docket No. RP04-575-001

Duke Energy Trading and Marketing, L.L.C.

ORDER DENYING CLARIFICATION

(Issued August 16, 2005)

1. On June 30, 2005, Duke Energy Trading and Marketing, L.L.C. (DETM) filed a petition requesting clarification of the Commission's October 8, 2004 Order in the above captioned docket.¹ The Commission's October 8 Order granted several waivers to permit DETM to effect a permanent release of its Northwest Pipeline Corporation (Northwest) contracts in one package so that it might exit the natural gas market in an orderly fashion. For reasons stated below, the Commission denies DETM's request for clarification.

Background

2. On September 1, 2004, DETM and Northwest filed a joint petition seeking (i) several limited waivers of Northwest's capacity release tariff provisions and (ii) waiver of the Commission's Order No. 636-A policy regarding the "tying" of gas delivery contracts to released transportation capacity. The waivers were requested by DETM to enable DETM's prearranged "portfolio release" to be posted for competitive bidding under the Commission's capacity release regulations.

3. On October 8, 2004, the Commission granted the proposed waivers stating that the "waivers [were] necessary to permit DETM to effect a permanent release of its collection of Northwest contracts in one package."² The Commission took specific notice of the temporary release contracts held by DETM, stating that "[w]hile DETM can permanently release its own primary firm capacity, it cannot release capacity for

¹ *Northwest Pipeline Corp. and Duke Energy Trading and Marketing, L.L.C.*, 109 FERC ¶ 61,044 (2004).

² *Id.* at P 9.

which another shipper holds the primary capacity contract.”³ The Commission stated that DETM was free to re-release such contracts on a temporary basis, provided that the contracts did not prohibit such re-releases by their own terms.

4. DETM states that it currently holds eight contracts for temporary release capacity for which other shippers hold the primary capacity contracts. DETM states that it held an auction for the revenues from these contracts and the assets from these contracts were awarded to Occidental Energy Marketing, Inc. (OEMI) effective February 1, 2005. DETM states that currently DETM acts as a conduit for the sub-release revenue in that DETM retains the contract and remits 100 percent of the net revenues it receives from the sub-releases to OEMI. DETM states these contracts have varying expiration dates ranging from October 2005 to March 2010.

Request for Clarification

5. DETM requests that the Commission clarify that the October 8, 2004 Order allows Northwest to “change the name” from “Duke Energy Trading and Marketing, L.L.C.” to “Occidental Energy Marketing, Inc.” on eight temporary release contracts currently held by DETM. DETM argues that this change will have the effect of extinguishing DETM’s contractual obligations on the eight contracts while simultaneously permitting OEMI to directly assume the contracts for their remaining terms, without disrupting any of the sub-releases emanating from those temporary releases. DETM states that it and OEMI desire that DETM be removed entirely from the chain of releases, and that OEMI be substituted in DETM’s place.

6. DETM argues that the scope of the waivers granted by the Commission’s October 8 Order are sufficiently broad to permit this result, but seeks clarification that the October 8 Order permits this change it has proposed.

Discussion

7. The Commission’s October 8 Order granted several waivers in order to permit DETM to effect a permanent release of its collection of Northwest contracts in one package. However the October 8 Order specifically states that, “while DETM can permanently release its own primary firm capacity, it cannot release capacity for which another shipper holds the primary contract.”⁴ DETM argues that DETM should be permitted to remove itself from the temporary release contracts and substitute OEMI. As stated above this action was not permitted by the Commission in its October 8 Order.

³ *Id.* at P 15.

⁴ *Id.*

8. The Commission realizes that this action would help effectuate DETM's exit from its gas marketing business. However, the Commission lacks the information necessary in order to consider modifying the October 8 Order as requested here. DETM has failed to inform the Commission of the terms and conditions of the contracts which they seek to modify, nor have they provided to the Commission the identity of the contracting parties or information concerning whether such parties have assented to the transfer of the contracts. Therefore, the Commission denies the instant motion.

9. If DETM desires to resubmit the instant motion properly supported, the Commission would consider the motion based upon the unique circumstances of this proceeding where an entity is attempting to exit the gas trading business. However, such a request must provide the contracts in question, name the holders of the contracts and the current sub-releasers of the capacity. DETM must also inform the Commission whether the holders of the primary capacity were served with the request and whether such primary holders of capacity have acquiesced in the proposal.

The Commission orders:

The request for clarification is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.