

125 FERC ¶ 61,041  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Northwest Pipeline GP

Docket No. RP08-623-000

ORDER ACCEPTING AND REJECTING TARIFF REVISIONS

(Issued October 15, 2008)

1. On September 16, 2008, Northwest Pipeline GP (Northwest) filed tariff revisions to modify section 6 (Regulation) and section 11 (Service Agreement and Service Conditions) of the General Terms and Conditions (GT&C) of its tariff.<sup>1</sup> As discussed below, First Revised Sheet No. 213 is accepted for filing to be effective October 16, 2008, as requested, and First Revised Sheet No. 219 and Original Sheet No. 219-A are rejected.

**Description of the Filing**

2. Northwest states that it proposes four revisions to its tariff that will establish governing law and certain aspects of enforceability applicable to agreements executed pursuant to the terms and conditions in its tariff. Northwest contends that the Commission has accepted such revisions for other interstate pipelines.<sup>2</sup>

3. First, Northwest submits First Revised Sheet No. 213 to revise section 6.1, Regulation, of its GT&C to describe more accurately its ability to propose and/or revise the rate schedules in its tariff.

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<sup>1</sup> First Revised Sheet Nos. 213 and 219, and Original Sheet No. 219-A, to Northwest's FERC Gas Tariff, Fourth Revised Volume No. 1.

<sup>2</sup> Citing *Questar Southern Trails Pipeline Co.*, 108 FERC ¶ 61,172 (2004) (*Questar*); *Gulf South Pipeline Co.*, 101 FERC ¶ 61,119 (2002); *California Power Exchange Corp.*, 87 FERC ¶ 61,203 (1999); *Kern River Gas Transmission Co.*, 75 FERC ¶ 61,228 (1996).

4. Northwest also proposes to add section 11.7, Applicable Law, to its GT&C, which specifies that any agreement executed pursuant to the terms and conditions of its tariff shall be interpreted and executed pursuant to the laws of the State of Utah. Northwest points out that proposed section 11.7 provides two exceptions to that provision: (1) unless the agreement is subject to the exclusive jurisdiction of the Commission, or (2) unless, prior to the execution of an agreement, Northwest receives written notice from a shipper that application of Utah law would be expressly prohibited by the laws, rules, or regulations of another governmental body having jurisdiction over such agreement.

5. Additionally, Northwest proposes to add section 11.8, Applicable Venue, to its GT&C. Northwest states that this provision establishes the venue for resolving disputes that are not subject to the exclusive jurisdiction of the Commission. Section 11.8 states that disputes “shall be brought only in the District Court of Salt Lake County, Third Judicial District, State of Utah, or the United States District Court for Utah, in Salt Lake County, Utah, as applicable.” Northwest also proposes to add section 11.9, Severability, which establishes the enforceability of various components within an agreement in the event any term, provision, covenant, or condition of such agreement is held invalid, unlawful, imprudent, or unenforceable by law.

6. Finally, Northwest asks the Commission to grant any waivers necessary to permit the tariff sheets to become effective October 16, 2008.

### **Public Notice, Interventions, and Comments**

7. Public notice of Northwest’s filing was issued September 18, 2008. Interventions and protests were due as provided in section 154.210 of the Commission’s regulations.<sup>3</sup> Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,<sup>4</sup> all timely motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. On September 29, 2008, United States Gypsum Company and B-R Pipeline Company (jointly, USGC) filed a timely motion to intervene and a protest. On October 3, 2008, Northwest Natural Gas Company (Northwest Natural) filed a motion to intervene and protest out-of-time. The Commission grants Northwest Natural’s late-filed motion to intervene and protest, as doing so does not delay or disrupt the proceeding or create additional burdens on the other parties.

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<sup>3</sup> 18 C.F.R. § 154.210 (2008).

<sup>4</sup> 18 C.F.R. § 385.214 (2008).

8. USGC states that Northwest's proposed section 11.7 is overly broad. USGC points out that this section applies not only to service agreements subject to the tariff, but also to any "other agreement related to Transportation executed pursuant to the terms and conditions of the tariff." While it recognizes that agreements that conform to a pro forma service agreement can be identified readily, USGC contends that the phrase referring to "other agreements" is unclear. USGC asserts that this provision, if accepted, should be limited to transportation service agreements that are subject to the tariff. Further, USGC maintains that the Commission should expressly limit the application of this provision to new customers and new service agreements.

9. USGC asserts that Northwest's proposed exceptions in section 11.7 are unduly narrow and meaningless. USGC states that Northwest proposes to exempt agreements that are subject to the "exclusive jurisdiction" of the Commission from its proposed requirement that agreements be interpreted according to the laws of the State of Utah. USGC argues that it is not clear what agreements are subject to the "exclusive jurisdiction" of the Commission, and it also suggests that Northwest may attempt to argue that no agreement is subject to the "exclusive jurisdiction" of the Commission.

10. USGC argues that Northwest's other proposed exception creates the opportunity for confusion and litigation. That provision would require the shipper to provide, prior to contracting, "written notice that the application of Utah law would be expressly prohibited by the laws, rules or regulations of another governmental body having jurisdiction over such agreement." USGC contends that it is unreasonable for a customer to give legal pronouncements about future disputes and future laws that have not yet materialized.

11. According to USGC, its concern with proposed section 11.7 could be remedied with the addition of the following phrase: "provided that nothing herein shall limit the scope of the Commission's authority or override the authority of applicable laws or regulations of any other federal or state governing body having jurisdiction over an issue."

12. Next, USGC challenges Northwest's proposed section 11.8, which would limit the venue for legal actions to a single court in Utah. USGC contends that this proposal is not just and reasonable and would unduly discriminate among customers. In particular, USGC submits that this provision suffers from the same issue as proposed section 11.7 in that it is not limited to disputes concerning service agreements, but instead would apply to "disputes on any matter." USGC points out that Northwest has physical, operational, and legal presences in many states and that many of its customers do not do business in Utah. USGC maintains that this provision gives Northwest an unfair cost advantage in any potential litigation and subjects customers to local rules of procedure that the Commission cannot evaluate.

13. Finally, USGC states that the proposed severability language in section 11.9 is confusing and overly broad. Again, USGC emphasizes that the provision is not limited to the provisions of a service agreement, but instead extends to all agreements “related to Transportation.” Further, USGC observes that the proposed provision provides that any term, condition, etc., that is declared “invalid, unlawful, imprudent, or unenforceable,” shall be “enforced to the maximum extent permitted by law.” USGC suggests that Northwest intends that the agreement will be enforced to the maximum extent permitted by law as opposed to the invalid term or condition, but it states that the provision must be clarified.

14. In its protest, Northwest Natural states that it supports the protest filed by USGC in this proceeding.

### **Commission Determination**

15. The Commission accepts for filing First Revised Sheet No. 213 to be effective October 16, 2008, as requested. No party protested this tariff sheet, and the Commission finds that it is just and reasonable and not unduly discriminatory. However, the Commission rejects First Revised Sheet No. 219 and Original Sheet No. 219-A. USGC raises valid concerns about these provisions, and Northwest has not provided adequate support to demonstrate that proposed sections 11.7, 11.8, and 11.9 on First Revised Sheet No. 219 are just and reasonable and not unduly discriminatory.<sup>5</sup>

16. Proposed section 11.7 states as follows:

11.7 Applicable Law. Any Service Agreement or other agreement related to Transportation executed pursuant to the terms and conditions of this tariff shall be interpreted according to the laws of the State of Utah without regard to any law or principle governing conflict of laws unless such agreement is subject to the exclusive jurisdiction of the Commission or prior to executing such agreement, Shipper provides Transporter with written notice that the application of Utah law would be expressly prohibited by the laws, rules or regulations of another governmental body having jurisdiction over such agreement.

17. The concerns raised by USGC have merit. As written, this provision is overly broad. It does not give current shippers or potential shippers specific notice with regard to the agreements that would be subject to it. Additionally, while the Commission has

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<sup>5</sup> 18 C.F.R. § 154.204

accepted choice of law provisions, it has required them to be limited to future contracts.<sup>6</sup> Moreover, it is not reasonable to require a potential shipper to notify Northwest in advance whether the agreement being negotiated with Northwest is subject to the laws of the State of Utah or another authority. In order for a pipeline's tariff to be just and reasonable and not unduly discriminatory, it must provide clear notice to all current and prospective shippers of the terms and conditions that will be contained in transportation agreements with the pipeline.

18. Proposed section 11.8 states as follows:

11.8 Applicable Venue. Disputes on any matter not subject to the exclusive jurisdiction of the Commission shall be brought only in the District Court of Salt Lake County, Third Judicial District, State of Utah, or the United States District Court for Utah, in Salt Lake County, Utah, as applicable.

19. The Commission finds that Northwest has failed to demonstrate that this proposed tariff provision is just and reasonable and not unduly discriminatory. Northwest appears to have more substantial operations in several other states,<sup>7</sup> so it is unclear why it would be appropriate to limit all judicial actions to these venues. *Questar* does not support Northwest's proposal in that the pipeline amended its filing to remove protested venue restrictions.<sup>8</sup>

20. Proposed section 11.9 states as follows:

11.9 Severability. In the event that any term, provision, covenant or condition of a Service Agreement or other agreement related to Transportation is held invalid, unlawful, imprudent, or unenforceable by any court or governing agency of competent jurisdiction, such term, provision, covenant or condition shall be enforced to the maximum extent permitted by law, and all other terms, provisions, covenants or conditions

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<sup>6</sup> *Kern River Gas Transmission Co.*, 76 FERC ¶ 61,113, at p. 61,591 (1996).

<sup>7</sup> *See*

<http://www.b2i.us/profiles/investor/fullpage.asp?f=1&BzID=1589&to=cp&Nav=0&LangID=1&s=0&ID=7780>

<sup>8</sup> *Questar*, 108 FERC ¶ 61,172 at P 6-9.

shall not be affected and shall continue to be enforced unless the term, provision, covenant or condition is determined by a court or governing agency of competent jurisdiction to be non-severable.

21. The Commission finds that this provision also is insufficiently specific with respect to the agreements subject to it. Further, as USGC has pointed out, it is possible that the wording of the section does not accurately reflect Northwest's intent.

22. Accordingly, First Revised Sheet No. 219 and Original Sheet No. 219-A are rejected. However, the Commission accepts First Revised Sheet No. 213 and grants a waiver of section 154.207 of the Commission's Regulations<sup>9</sup> to permit it to become effective October 16, 2008, as requested.

The Commission orders:

(A) First Revised Sheet No. 213 is accepted for filing to become effective October 16, 2008.

(B) The Commission grants a waiver of section 154.207 of its Regulations to permit First Revised Sheet No. 213 to become effective on less than 30 days notice.

(C) First Revised Sheet No. 219 and Original Sheet No. 219-A are rejected, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>9</sup> 18 C.F.R. § 154.207 (2008).