

128 FERC ¶ 61,236  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Gas Transmission Northwest Corporation

Docket No. RP09-903-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued September 11, 2009)

1. On August 14, 2009, Gas Transmission Northwest Corporation (GTN) filed a revised tariff sheet<sup>1</sup> to implement the Commission's policy on refunds as it relates to short-term capacity releases. As discussed below, the Commission accepts the revised tariff sheet listed in footnote one, effective September 13, 2009, as proposed.

**I. Instant Filing**

2. GTN proposes to revise section 28.10(e) of the General Terms and Conditions (GT&C) of its tariff to state:

For capacity release transactions that are not subject to a rate cap, as described in Section 28.2 of these General Terms and Conditions, the prevailing rate for the transaction shall be considered just and reasonable and the Replacement shipper(s) shall not be entitled to receive the refunds referenced herein.

3. GTN asserts that its proposed tariff revision is consistent with the Commission's policy set forth in the *Tennessee Gas*<sup>2</sup> and *Texas Eastern*<sup>3</sup> cases. GTN states that in

---

<sup>1</sup> First Revised Sheet No. 196 to FERC Gas Tariff, Third Revised Volume No. 1-A.

<sup>2</sup> *Tennessee Gas Pipeline Company*, 127 FERC ¶ 61,150 (2009) (*Tennessee Gas*).

<sup>3</sup> *Texas Eastern Transmission LP*, 125 FERC ¶ 61,396 (2008), *reh'g*, 128 FERC ¶ 61,145 (2009) (*Texas Eastern*).

*Tennessee Gas* and *Texas Eastern*, the Commission determined that shippers paying short-term capacity release rates in excess of the recourse rate are not eligible for refunds when the Commission finds that the maximum rate proposed by the pipeline in a section 4 rate case is too high.<sup>4</sup>

## II. Notice

4. Notice of GTN's filing was issued on August 17, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2009), 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 this proceeding or place additional burdens on existing parties. The Indicated Shippers<sup>5</sup> filed a protest.

5. The Indicated Shippers request the Commission require GTN to revise its proposed tariff language to include the phrase "unless the releasing and replacement shippers otherwise agree," in order to permit these parties to determine how refunds will be distributed between them. The Indicated Shippers state that the Commission's regulations provide that firm shippers are permitted to release their capacity, in whole or in part, on a permanent or short-term basis, without restriction on the terms or conditions of the release.<sup>6</sup> The Indicated Shippers further assert that the Commission found in both the *Tennessee* and *Texas Eastern* cases that nothing in Order No. 712 prevents a releasing shipper from agreeing with a replacement shipper that the rate for a short-term release will be equal to the pipeline's maximum rate or some percentage of that rate.<sup>7</sup> The Indicated Shippers also contend the Commission has stated that the conditions of a release may address the issue of who ultimately receives the refund amounts.<sup>8</sup>

6. The Indicated Shippers argue that Commission precedent and policy clearly supports the right of a releasing shipper to dictate the terms and conditions of release,

---

<sup>4</sup> *Texas Eastern*, 125 FERC ¶ 61,396 at 13; *Tennessee Gas*, 127 FERC ¶ 61,150 at 15.

<sup>5</sup> The Indicated Shippers include Conoco Phillips Company and Shell Energy North America (US), L.P.

<sup>6</sup> Citing 18 C.F.R. § 284.8(b)(1) (2009).

<sup>7</sup> Citing *Texas Eastern*, 128 FERC ¶ 61,145 at n.12; *Tennessee Gas*, 127 FERC ¶ 61,150 at n.11.

<sup>8</sup> Citing *Southern Natural Gas Company*, 127 FERC ¶ 61,012, at P16 (2009).

including how refunds may be distributed. The Indicated Shippers state that GTN's proposed language could be read to limit the rights of a releasing shipper to make such a determination. The Indicated Shippers request the Commission clarify that GTN's proposed tariff language in this filing may not be interpreted to deny the releasing shipper's right to receive any refunds to which it is entitled.

### III. Discussion

7. In Order No. 712, the Commission eliminated the price ceiling for short-term capacity release transactions of one year or less in order to allow the prices for these transactions to reflect short-term variations in the market value of the capacity.<sup>9</sup> As a result, capacity release transactions of one year or less are not subject to the pipeline's maximum rate. In *Tennessee Gas* and *Texas Eastern*, the Commission stated that because a pipeline's maximum rates do not apply to short-term capacity release transactions, replacement shippers are not entitled to refunds when the Commission finds that the maximum rates proposed by a pipeline in a section 4 rate case are too high.<sup>10</sup>

8. Here, GTN proposes to modify its tariff to implement the Commission's policy on refunds as it relates to short-term capacity releases. GTN proposes that for capacity release transactions not subject to a rate ceiling, the prevailing rate for the transaction will be considered just and reasonable and the replacement shipper will not be entitled to receive any refunds from the pipeline. The Indicated Shippers argue that GTN's proposed tariff language limits a releasing shipper's right to determine how refunds related to short-term capacity release may be distributed. We disagree.

---

<sup>9</sup> *Promotion of a More Efficient Capacity Release Market*, Order No. 712, FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g*, Order No. 712-A, 73 Fed. Reg. 72,692 (Dec. 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008), *order on reh'g*, Order No. 712-B, 127 FERC ¶ 61,051 (2009).

<sup>10</sup> For example, in *Texas Eastern* the Commission stated that:

Because the pipeline's maximum rates do not apply to short-term capacity release transactions, replacement shippers are not entitled to any refunds when the Commission finds that the maximum rates proposed by a pipeline in a section 4 rate case are too high. As Order No. 712 stated, short-term capacity release rates will be presumed just and reasonable, and treated similarly, to how the Commission treats market-based or negotiated rates. Therefore, Texas Eastern's proposal to deem rates paid by replacement shippers for terms of one year or less to be final and not subject to refund is consistent with Order No. 712. *Texas Eastern*, 128 FERC ¶ 61,145 at P 15 (footnotes omitted).

9. The Commission has fully explained its policy on refunds with regard to short-term capacity releases in *Texas Eastern* and *Tennessee Gas*. In *Tennessee*, for example, the Commission noted that disposition of the refunds may be set forth in the conditions of the release between the releasing shipper and the replacement shipper and the Commission did not require the pipeline to note this fact in its tariff language.<sup>11</sup> The Commission finds that the discussion in these cases provides sufficient guidance on this issue without the need for GTN to revise its tariff in the manner requested by the Indicated Shippers.

10. The Commission finds that GTN's proposed revisions to section 28.10(e) of its GT&C are consistent with the Commission's policies in *Tennessee Gas* and *Texas Eastern*. Accordingly, the Commission accepts GTN's filing effective September 13, 2009, as proposed.

The Commission orders:

The revised tariff sheet listed in footnote one is accepted, effective September 13, 2009, as proposed.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

---

<sup>11</sup> *Tennessee Gas*, 127 FERC ¶ 61,150 at P 17, *citing* 18 CFR § 284.8(b) (2009).