

143 FERC ¶ 61,033  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

Gas Transmission Northwest LLC

Docket No. RP12-1042-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued April 11, 2013)

1. Pursuant to Rule 207(a) (2) of the Commission's Rules of Practice and Procedure,<sup>1</sup> Gas Transmission Northwest LLC (GTN) filed a petition for a declaratory order (Petition) on September 18, 2012, requesting that the Commission adopt its proposed interpretation of the phrase "commercially free" of objectionable substances as used in GTN's tariff.
2. As discussed below, the Commission interprets the subject tariff provision, but does not grant the precise interpretation sought in GTN's Petition.

**Background**

3. GTN's Petition results from a July 16, 2012 Opinion and Order of the United States District Court for the District of Oregon,<sup>2</sup> which dealt with a suit brought by PacifiCorp against GTN for negligence and breach of contract. In that suit, PacifiCorp alleges that GTN was negligent because the natural gas provided by GTN to PacifiCorp's affiliate, Hermiston Generating, contained compressor oil in excess of that permitted under GTN's tariff. Consequently, PacifiCorp contends GTN breached its contract to Hermiston Generating to provide natural gas "commercially free" of objectionable substances.

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<sup>1</sup> 18 C.F.R. § 385.207(a)(2) (2012).

<sup>2</sup> *PacifiCorp v. Northwest Pipeline GP and Gas Transmission Northwest Corporation*, Docket No. 3:10-cv-00099-PK (D. Or. July 16, 2012) (Opinion and Order).

4. Relying on Exhibit B to GTN's Petition, the district court's opinion and order granted GTN's motion for summary judgment on PacifiCorp's negligence claim, but issued a stay with respect to PacifiCorp's breach of contract claim. According to the court, the interpretation and application of the "commercially free" language in GTN's tariff involves words used in a technical sense, and the interpretation should therefore be referred to the Commission, which has primary jurisdiction over such matters.<sup>3</sup>

5. As a result, the court directed the parties to submit this matter to the Commission, along with the court's opinion and order, requesting that the Commission exercise its primary jurisdiction to construe the phrase "commercially free from . . . objectionable substances . . . which may interfere with . . . its commercial utilization" as applied to compressor oil.<sup>4</sup>

6. Prior to the Oregon litigation, PacifiCorp, on September 28, 2007, initiated a FERC hotline complaint concerning contamination of natural gas received at the Hermiston generating plant. Although PacifiCorp withdrew its hotline complaint in February 2008, FERC staff nevertheless continued its investigation.<sup>5</sup>

7. On March 5, 2010, relying on its own gas sampling tests, FERC's Office of Enforcement informed PacifiCorp by letter (included as Exhibit A to GTN's Petition) that it would take no further action regarding PacifiCorp's allegations that the natural gas GTN delivered to Hermiston Generating failed to meet the pipeline tariff's natural gas quality standards. While the Office of Enforcement's position was based on a consideration of the facts submitted and obtained during its investigation, the letter made clear that its conclusions were not final or binding on the Commission.<sup>6</sup>

### **Interventions and Protests**

8. Public notice of GTN's Petition was issued on September 24, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.<sup>7</sup> Pursuant to Rule 214,<sup>8</sup> all timely filed motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting

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<sup>3</sup> Opinion and Order at 59.

<sup>4</sup> *Id.* at 59-60.

<sup>5</sup> *Id.* at 11.

<sup>6</sup> *Id.*

<sup>7</sup> 18 C.F.R. § 154.210 (2012).

<sup>8</sup> 18 C.F.R. § 385.214 (2012).

late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

9. On October 18, 2012, PacifiCorp filed a Motion to Intervene, Protest and Comments (Protest).<sup>9</sup> On November 2, 2012, GTN filed an Answer to PacifiCorp's Protest. On November 19, 2012, PacifiCorp filed a Response to GTN's Answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>10</sup> prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We shall accept GTN's Answer and PacifiCorp's Response because they have provided information that assisted our decision-making process.

### **Discussion**

10. Section 6.3(1) (b) (1) of GTN's tariff, included as Appendix C to GTN's petition, provides that the natural gas a shipper delivers to GTN for transport and the natural gas that GTN then transports for such a shipper:

Shall be commercially free from sand, dust, gums, crude oil, impurities and other objectionable substances which may be injurious to pipelines or which may interfere with its transmission through pipelines or its commercial utilization.<sup>11</sup>

11. In its Petition, GTN requests that the Commission issue a declaratory order interpreting the phrase "commercially free" as used in GTN's tariff to mean:

The natural gas stream supplied by GTN may contain substances, such as compressor oil, in quantities that do not interfere with the ordinary commercial utilization of the natural gas.<sup>12</sup>

12. GTN argues, among other things, that its proposed interpretation of "commercially free" is consistent with the American Gas Association's (AGA) definition:<sup>13</sup>

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<sup>9</sup> GTN's Petition included both a privileged copy and a public copy, and requested privileged treatment of the former pursuant to section 388.112 of the Commission's regulations, 18 C.F.R. § 388.112 (2012). In this order, the Commission has relied solely on GTN's publicly filed Petition.

<sup>10</sup> 18 C.F.R. § 385.213(a)(2) (2012).

<sup>11</sup> Gas Transmission Northwest LLC, Fourth Revised Volume No. 1-A FERC Gas Tariff, § 6.3(1) (b) (1).

<sup>12</sup> GTN Petition at 9.

A contract term used to qualify objectionable material to the extent the gas is reasonably free of contaminants or constituents that otherwise would interfere or cause harm to the pipeline or would preclude utilization of a gas supply in the ordinary course of business.<sup>14</sup>

13. In its Protest filed on October 18, 2012, PacifiCorp proposes instead that the Commission interpret the “commercially free” language in GTN’s tariff to mean:

GTN fails to deliver gas that is “commercially free” of compressor oil when it fails to operate and maintain its compressor and pipeline facilities, or receives gas from upstream sources, such that its deliveries of gas contain compressor oil in amounts that may interfere with the commercial utilization of the gas by an end-user operating in a reasonable manner.<sup>15</sup>

14. Moreover, PacifiCorp states that it endorses the AGA definition and asserts that its proposed interpretation, not GTN’s, is consistent with the AGA’s definition.<sup>16</sup> In this regard, PacifiCorp also states it has no objection to removing the words “by an end-user operating in a reasonable manner” from its proposed interpretation and substituting the AGA’s wording “in the ordinary course of business.”<sup>17</sup>

### **Commission Determination**

15. The breach of contract suit brought by PacifiCorp against GTN is before the court for resolution. The issue in this proceeding is a narrow one, involving an interpretation of the tariff phrase “commercially free from . . . objectionable substances . . . which may interfere with its commercial utilization” as applied to compressor oil.

16. Being qualitative in nature, there is no objective dimension to this phrase – as there is with many other gas quality terms in GTN’s tariff. Its interpretation is ultimately a function of the facts and circumstances of each case. However, the Commission will provide some guidance.

17. According to section 6.3(1) (b) (1) of GTN’s tariff, three conditions must be met for natural gas to be characterized as “commercially free . . . from objectionable

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<sup>13</sup> *Id.* at 7-8.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> PacifiCorp Protest at 35.

<sup>16</sup> *Id.* at 17-18.

<sup>17</sup> PacifiCorp Response at 9.

substances.” Specifically, the objectionable substances may not be of such a quantity as to (1) be injurious to pipelines; (2) interfere with the transmission of gas through pipelines; or (3) interfere with the commercial use of the gas. The controversy between GTN and PacifiCorp, and the issue of interest to the court, is related to the third condition, i.e., whether objectionable substances, the alleged compressor oil in this case, interfered with the commercial utilization of the gas. Upon review, the Commission finds that neither of the interpretations proposed by PacifiCorp and GTN entirely comports with the Commission’s understanding of the provision.

18. As noted, GTN advocates the Commission interpret the phrase “commercially free” to mean:

The natural gas stream supplied by GTN may contain substances, such as compressor oil, in quantities that do not interfere with the **ordinary** commercial utilization of the natural gas.<sup>18</sup>

The Commission agrees with PacifiCorp that GTN’s insertion of the word “ordinary” prior to the term “commercial utilization” is an improper extension of the tariff language. As PacifiCorp suggests, GTN’s insertion could be interpreted to deny tariff protection to certain end-users, to the extent their uses are considered “non-ordinary.”<sup>19</sup>

19. PacifiCorp proposes an alternative interpretation of “commercially free” as detailed below:

GTN fails to deliver gas that is “commercially free” of compressor oil when it fails to operate and maintain its compressor and pipeline facilities, or receives gas from upstream sources, such that its deliveries of gas contain compressor oil in amounts that may interfere with the commercial utilization of the gas **by an end-user operating in a reasonable manner.**<sup>20</sup>

20. Although it objected to GTN’s interpretation, which would interpose the word “ordinary” before the phrase “commercial utilization,” PacifiCorp subsequently stated it had no objection to removing the words “by an end-user operating in a reasonable manner” from its proposed interpretation and substituting the AGA’s wording “in the ordinary course of business.” With this edit, PacifiCorp’s revised interpretation of GTN’s “commercially free” obligation would read:

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<sup>18</sup> GTN Petition at 9 (emphasis added).

<sup>19</sup> PacifiCorp Protest at 9; *see also* PacifiCorp Response at 2-3.

<sup>20</sup> PacifiCorp Protest at 35 (emphasis added).

GTN fails to deliver gas that is “commercially free” of compressor oil when it fails to operate and maintain its compressor and pipeline facilities, or receives gas from upstream sources, such that its deliveries of gas contain compressor oil in amounts that may interfere with the commercial utilization of the gas **in the ordinary course of business.**<sup>21</sup>

21. PacifiCorp’s revised interpretation reasonably connects “ordinary” to “course of business” without suggesting a subclass of non-ordinary commercial use. However, PacifiCorp’s interpretation goes too far with its references to specific duties or failures, and such construction does more than merely interpret the existing tariff, but begins to re-write it beyond what the Commission is willing to adopt here without taking action under section 5 of the Natural Gas Act to modify GTN’s tariff.

22. The issue in this proceeding involves a straightforward interpretation of the “commercially free” of objectionable substances language in GTN’s tariff, rather than an interpretive explanation that sets out the particulars of how GTN might fail to comply with the current tariff language. Therefore, the Commission’s interpretation of section 6.3(1) (b) (1) of GTN’s tariff draws on both GTN’s and PacifiCorp’s interpretations, without attempting to pre-judge or influence the findings of fact that may be needed to resolve the ongoing litigation.

23. Specifically, the Commission finds that the term “commercially free from . . . objectionable substances . . . which may interfere with its commercial utilization” means that the natural gas supplied by GTN may contain substances, such as compressor oil, so long as these substances are in quantities that do not interfere with the commercial utilization of the natural gas in the ordinary course of business.

24. Admittedly, this interpretation leaves open whether, at the time of the incidents giving rise to the instant litigation, the natural gas GTN transported met this standard, and the Hermiston generating facilities malfunctioned for some other reason, or whether the natural gas did not meet this standard at the time of the incidents, and the compressor oil impurities contributed to or caused the malfunctions. The Commission cannot interpret the tariff as setting any particular quantitative level of compressor oil contamination that is permissible or impermissible.<sup>22</sup> However, the Commission has here interpreted section 6.3(1) (b) (1) of GTN’s tariff to make clear that the natural gas it delivers must be

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<sup>21</sup> PacifiCorp Response at 9 (emphasis added).

<sup>22</sup> Although the Commission’s Enforcement Staff did testing of the GTN gas stream some time after PacifiCorp brought its concerns to their attention, these tests may not be dispositive of the purity of the gas at the time of the incidents, yet may have some relevance. The court will ultimately determine what weight to accord this testing.

sufficiently free of contaminants so as not to interfere with the commercial use of the natural gas in the ordinary course of business.

The Commission orders:

GTN's Petition is granted in part, and denied in part, consistent with the discussion in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.