146 FERC ¶ 61,243
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Portland Natural Gas Transmission System — Docket No. RP14-556-000

ORDER ACCEPTING AND SUSPENDING TARIFF FILING,
SUBJECT TO CONDITIONS

(Issued March 31, 2014)

1. On February 28, 2014, Portland Natural Gas Transmission System (Portland) filed revised tariff records to update and restructure the creditworthiness provisions located in sections 6.3.4 through 6.3.7 of the General Terms and Conditions (GT&C) of its tariff.[1] The Commission accepts and suspends the referenced tariff records, subject to refund, and subject to conditions to be effective the earlier of September 1, 2014 or the date specified in a further order of the Commission.

**Background**

2. Portland previously made a similar filing to revise its credit worthiness provisions in Docket No. RP13-874-000, a filing which the Commission rejected on two grounds. First, the Commission found unjust and unreasonable Portland's proposed use of different present value calculations for different purposes. Second, the Commission found that Portland's tariff could not contain an incomplete valuation of a guarantee and that the determination of the value of a guarantee was more appropriately considered in judicial proceedings in the event the guarantor defaulted on its obligation.[2]

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[1] The revised tariff records are listed in the Appendix to this order.

[2] *Portland Natural Gas Transmission System*, 146 FERC ¶ 61,026 (2014).

3. In this filing, Portland has sought to address the issues leading to the rejection of its prior tariff filing. It states that its creditworthiness provisions have not been updated since the inception of its tariff in 1999.[3]

4. Portland proposes to update and restructure the creditworthiness provisions of its tariff by: (1) lowering the creditworthiness standard to an unenhanced senior unsecured debt rating of either BBB- by Standard & Poor's Financial Services LLC (S&P) or Baa3 by Moody's Investors Services, Inc. (Moody's) and incorporate a tangible net worth factor; (2) modifying, restructuring and streamlining the current credit evaluation section for application to any requested service and incorporate flexibility into the evaluation of creditworthiness to allow Portland to consider other information in making its creditworthiness determination; (3) updating financial assurance descriptions and requirements and present such requirements for all services in an organized table format; (4) clarifying the amount of credit support required for interruptible services under Rate Schedule IT and Park and Loan under rate schedule PAL; and (5) relocating, clarifying and/or modifying certain other provisions and references affected by the creditworthiness proposal.

## Public Notice and Comment

5. Public notice of the filing was issued on March 4, 2014. Interventions and protests were due as provided by section 154.210 (18 C.F.R. § 154.210 (2013)). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2013), all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the 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 existing parties. Comments were filed by DTE Energy Trading, Inc. (DTE). On March 18, 2014, Portland filed an answer to the concerns raised by DTE Energy. Pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,[4] we will reject Portland's answer.

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[3] Portland Transmittal Letter at p. 2 (citing *Policy Statement on Creditworthiness Issues for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, 111 FERC ¶ 61,412 (2005) (*Creditworthiness Policy Statement*)).

[4] 18 C.F.R. § 385.213(a)(2) (2013).

6. DTE raises several concerns regarding Portland's proposed guarantee requirement. DTE states that Portland proposes that a firm shipper that does not meet Portland's creditworthiness requirements may provide alternative credit in the form of a guarantee to cover the shipper's contractual obligation under its firm agreement with Portland. DTE states that section 6.3.4.2 of Portland's proposal states that in such cases a firm shipper's Guarantee Requirement to establish creditworthiness will be a "Shipper's contractual obligation under its firm service agreements with Transporter."

7. First, DTE requests that the Commission require Portland to clarify that the scope of its guarantee provision should not be unlimited but should be subject to Portland taking actions to mitigate the impact of a shipper default. DTE states that in *Texas Gas*, the Commission recognized that it is appropriate to limit the scope of a parental guarantee to an amount based upon the reservation charges the customer is obligated to pay under the customer's agreements and pipeline's ability to remarket the capacity in the event of a customer default.[5] DTE states that such a tariff clarification would be appropriate in this case.

8. Second, DTE asserts that Portland's proposed Financial Assurance Requirement Table (FAR Table) holds a guarantor responsible for the shipper's contractual obligation under its firm service agreement with Portland. DTE states that the term "contractual obligation" is vague. DTE asserts that Portland's definition of a contractual obligation could include future reservation and usage charges or penalties. DTE states that in *Portland* the Commission stated that, a guarantor is liable for each reservation charge payment as it becomes due and that in providing a guarantee, a guarantor provides no funds to the pipeline; it merely undertakes the obligation to continue the same stream of payments owed by the original shipper.[6] Therefore, DTE requests that Portland be directed to clarify that a guarantor's obligation is limited solely to the reservation charge payments as they become due.

9. Third, DTE asserts that Portland's proposed FAR Table appears to obligate the guarantor for the life of a firm shipper's contract in the event the shipper defaults. DTE states that to the extent that this obligation is not mitigated, it could be more onerous than the present value requirement the Commission rejected in *Portland*[7] because the

[5] DTE Protest at p. 5 (citing *Texas Gas Transmission, LLC*, 135 FERC ¶ 61,132, at P 35 (2011)).

[6] *Id.* (citing *Portland Natural Gas System*, 146 FERC ¶ 61,026, at P 25 (2014)).

[7] *Id*. P 27.

guarantee is not discounted to take into account its present value. DTE states that, Portland's proposal requires a guarantee larger than needed by Portland and therefore it should be rejected by the Commission.

10. Fourth, DTE asserts that a firm shipper effectively loses the ability to use a guarantee, because the guarantee amount would be so large if a longer-term contract is involved. DTE points out that the sum of the reservation charges that it has contracted to pay under the remainder of its contract term with Portland totals $72,442,080. DTE states that the longer the term of the firm contract the greater the difference between the amounts required for a guarantee and the letters of credit or cash. DTE states that if the term of a contract is short enough, a company may choose the guarantee as an option, but if the contract's term is longer the guarantee is no longer a viable option. DTE argues that the financial burden for shippers is increased if shippers seeking long-term capacity are forced to rely on cash or letters of credit as collateral instead of a guarantee.

11. DTE requests that the Commission clarify that shippers seeking to establish creditworthiness using guarantees would not be subject to greater costs than shippers establishing creditworthiness using collateral. In addition, DTE states that requiring a firm shipper to provide a guarantee for the duration of a long-term contract will discourage shippers from entering into long-term firm contracts. Therefore, DTE requests clarification whether it is appropriate for a guarantee to obligate a guarantor to provide coverage to Portland for the life of the contract in the event the shipper defaults and whether or not the requirements should be considered discriminatory.

12. Fifth, DTE requests that the Commission clarify whether it is appropriate for a guarantee to obligate a grantor to provide coverage for the life of a contract in the event the shipper defaults and whether or not the requirements should be considered discriminatory and potentially harmful to the pipeline and ratepayers.

## Discussion

13. The Commission accepts and suspends the filing, subject to refund and to conditions, to become effective the earlier of September 1, 2014, or the date specified in a further order of the Commission.

### A. Tangible Net Worth

14. In the instant filing Portland proposes a creditworthiness standard that would require that "*the contractual obligation derived from the sum of reservation charges for the contract term, plus applicable commodity charges and any other associated fees and charges, plus the value of any loaned or imbalance gas, is no greater than 10% of*

*Shipper's Tangible Net Worth*."[8] Portland asserts the Commission previously has accepted such a tangible net worth factor for other pipeline tariffs.[9]

15. In the Docket No. RP13-874-000 proceeding, Portland made a virtually identical filing regarding tangible net worth with the only difference that it proposed to calculate the present value of the stream of reservation charges: "the contractual obligation derived from the sum of reservation charges for the contract term, on a net present value basis, plus applicable commodity charges and any other associated fees and charges, plus the value of any loaned or imbalance gas, is no greater than 10% of Shipper's Tangible Net Worth."[10]

16. The Commission finds that the tariff provision filed in this proceeding is unjust and unreasonable because it fails to include a present value calculation when summing the reservation charges to compare with the shipper's current tangible net worth. The purpose of using tangible net worth as part of a creditworthiness determination is to determine whether the shipper's current net worth is sufficient to cover the value of its contractual obligation to the pipeline. The current value of that contractual obligation is best represented by the present value of the stream of future reservation charges, not the

[8] FERC Gas Tariff § 6.3.4.1(2)(a), PNGTS Tariffs, Part 6.3 GT&C, Requests for Service/Creditworthiness, 3.0.0, *available at* http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=2233&sid=160068 (emphasis added).

[9] Portland Transmittal letter at p. 3 6, (citing *Columbia Gulf Transmission Co.*, 117 FERC ¶ 61,073 (2006) (approving 3% tangible net worth limit); *Texas Gas Transmission, LLC*, 135 FERC ¶ 61,132 (2011) (approving 5% tangible net worth limit); *Gulf South Pipeline Company, LP*, Docket No. RP11-2375-000 (September 7, 2011) (unpublished Director's letter order) (approving 5% tangible net worth limit); *PG&E Gas Transmission, Northwest Corp.*, 103 FERC ¶ 61,137 (2003) (approving 10% tangible net worth limit); *Great Lakes Transmission Limited Partnership*, 108 FERC ¶ 61,308 (2004) (approving 15% tangible net worth limit); *Natural Gas Pipeline Co. of America*, 106 FERC ¶ 61,175 (2004) (approving 15% tangible net worth limit); *Tennessee Gas Pipeline Co.*, 103 FERC ¶ 61,275 (2003) (approving 15% tangible net worth limit)).

[10] §6.3.4.1(2)(a), PNGTS Tariffs, Part 6.3 GT&C, Requests for Service/Creditworthiness, 1.0.0, *available at* http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=2233&sid=138925 (emphasis added).

simple summation of those values.[11] The current value of a stream of future earnings from reservation charges is worth far less than a simple summation of those values, as proposed by Portland.[12]

17. Portland recognized the need to discount the stream of contract values in its prior filing in Docket No. RP13-874-000, and has offered no explanation for excluding present value in filing the identical provision (sans present value) in this filing. While Portland is correct that the Commission has permitted other pipelines to use tangible net worth as a factor in creditworthiness standards, in those cases, the pipelines recognized the need to apply a present value formula to the stream of reservation charges.[13] The cases cited by

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[11] *See Portland Natural Gas Transmission System*, 146 FERC ¶ 61,026 (2014) ("The purpose of using a present value formula, with a specific discount rate, is to determine the amount that a future stream of reservation payments is worth to the pipeline today."). Portland's approach is the equivalent of requiring that the shipper pre-pay the full value of the contract in the first year. Comparing the absolute sum of a stream of values with a single value for net worth is an apples to oranges comparison.

[12] For example, a simple sum of the values of a 20-year contract for 100 dth at Portland's current firm service monthly reservation charge of $40.2456/dth (Part 4.1, PNGTS Tariffs, Part 4.1- Statement of Rates, Recourse Reservation and Usage Rates, 4.0.0), *available at* http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=2233&sid=143923) totals $965,894.40. However, the present value of that stream of payments using the present value calculation in Portland's tariff is $472,329.80, less than 50% of the simple sum. §6.2.33, PNGTS Tariffs, Part 6.2 GT&C, Definitions, 5.0.0, *available at* http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=2233&sid=160067) (using Wall Street Journal Prime Interest Rate, currently 3.25%, plus 5%).

[13] *See Gas Transmission Northwest* LLC, §6.18.4.1 (2)(a)), GTN Tariffs, 6.18.4.1 - GT&C, Creditworthiness Evaluation, 3.0.0, *available at* http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=897&sid=125699 (the contractual obligation derived from the sum of reservation charges for the contract term, **on a net present value basis**, plus applicable commodity charges and any other associated fees and charges, plus the value of any loaned or imbalance gas, is no greater than 10% of Shipper's Tangible Net Worth); Columbia Gulf Transmission, LLC, §9.5 (b)(3)(iii)), Columbia Gulf Tariffs, Gen. Terms and Conditions, Operating Conditions, 7.0.0, *available at* http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=721&sid=136424 (**the net present value of the sum of reservation charge fees**, utilization fees, and any other

(continued…)

Portland do not support its exclusion of net worth from the tangible net worth calculations. Accordingly, the Commission will accept this aspect of Portland's filing subject to the condition that it utilize its current net present value methodology to value the contracts of a shipper to determine its tangible net worth consistent with the cases Portland has cited in support of its proposal.

## B. Guarantee

18. We find just and reasonable, and consistent with Commission precedent, Portland's proposal that a guarantee cover "the term of the agreement."[14] Under Commission policy, providing a guarantee covering payment of all applicable contract charges, when they become due, is an alternative to providing collateral.[15] DTE raises several concerns regarding Portland's proposed guarantee requirement.

19. First, DTE requests that the Commission require Portland to clarify that the scope of its guarantee provision should not be unlimited but should be subject to Portland taking actions to mitigate the impact of a shipper default. The Commission sees no need to include any such provision in the tariff. While the Commission has indicated that pipelines ordinarily would be obligated to mitigate damages, the Commission found, in Portland's prior filing, that these are issues best left to the courts to determine in the event of contract breach.[16]

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associated fees for the contract term is less than 3% of Shipper's tangible net worth); Tennessee Gas Pipeline §XXVI §4.3, L.L.C./TGP Tariffs, Sheet No. 375, 1.0.0, *available at* http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=585&sid=111321 (**the net present value** of the sum of reservation fees, utilization fees and any other associated fees, for the contract term is less than 15% of Shipper's tangible net worth) (emphasis added).

[14] Part 6.3, PNGTS Tariffs, Part 6.3 GT&C, Requests for Service/Creditworthiness, 3.0.0, *available at* http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=2233&sid=160068.

[15] *PG&E Gas Transmission, Northwest Corp.*, 105 FERC ¶ 61,382, at P 80 (2003) (when executing a guarantee, the parent or third-party is guaranteeing that in the event of a default by the shipper, the guarantor will pay the applicable charge as they become due); *Portland Natural Gas Transmission System*, 146 FERC ¶ 61,026 at P 25.

[16] *Portland Natural Gas Transmission System*, 146 FERC ¶ 61,026 at PP 26-27.

20. Second, DTE asserts that the term "contractual obligation" as used in Portland's Financial Assurance Requirement Table is vague and that this term should be limited to reservation charges only. We find no need to require such a clarification. At the time Portland considers a shipper's financial condition, it is free to include all outstanding contractual obligations, not just reservation charges.[17]

21. Third, DTE asserts that Portland's proposed Financial Assurance Requirement Table appears to obligate the guarantor for the life of a firm shipper's contract in the event the shipper defaults. DTE further argues that the obligation a guarantor undertakes in this case is less than it would have been under the proposal reviewed in the *Portland* order because in the *Portland* proposal the grantor's obligation was subject to a net present value calculation by the pipeline and here no such calculation is proposed.

22. As discussed above, Commission policy permits the guarantee to cover the full contractual obligations of the shipper, as they become due, for the life of the contract. As discussed in the prior Portland filing, in the event that the guarantor itself defaults on its guarantee, any issues relating to valuation of the guarantee and mitigation are more appropriately considered in a judicial proceeding resulting from Portland's collection efforts under the guarantee.[18]

23. Fourth, DTE asserts that a firm shipper effectively loses the ability to use a guarantee, because the guarantee amount would be so large, particularly if a longer-term contract is involved. As discussed above, the Commission has long held that a guarantee covers the payment obligation, as it becomes due, for the full life of the contract, and we find no basis here to change that policy. Under Portland's tariff, and Commission policy, a shipper has the option of choosing whether to use a parental guarantee or to pay the required amount of collateral.

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[17] *See PG&E Gas Transmission*, 105 FERC ¶ 61,382, at P 80 (the guarantor agrees to pay the applicable charges). For example, if a shipper has outstanding, unpaid obligations to the pipeline, we cannot find unjust and unreasonable Portland's consideration of those obligations.

[18] *Portland Natural Gas Transmission System*, 146 FERC ¶ 61,026 at PP 25 and 26 (footnote omitted).

24. Fifth, DTE requests that the Commission clarify whether it is appropriate for a guarantee to obligate a grantor to provide coverage for the life of a contract in the event the shipper defaults and whether or not the requirements should be considered discriminatory and potentially harmful to the pipeline and ratepayers. In providing a guarantee, a guarantor provides no funds to the pipeline; it merely undertakes the obligation to continue the same stream of payments owed by the original shipper in the event the original shipper defaults. In lieu of arranging a guarantee, the shipper has the option of providing the required collateral. This policy applies to all shippers and DTE has not established any basis for finding that Portland will apply it discriminatorily.

### C. Suspension

25. Based upon a review of the filing, the Commission finds that the proposed tariff records set forth in the Appendix have not been shown to be just and reasonable, and may be unjust, unreasonable, and unduly discriminatory or otherwise unlawful. Accordingly, the Commission will accept and suspend the effectiveness of the tariff records in the Appendix for five months, subject to refund, as set forth in this order.

26. The Commission's policy regarding tariff filing suspensions is that filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission Co.*, 12 FERC ¶ 61,197 (1980) (minimum suspension). Such circumstances do not exist here. Therefore, the Commission will exercise its discretion to suspend for the maximum period and conditionally accept and suspend, subject to refund, the proposed tariff records listed in the Appendix to be effective September 1, 2014, subject to conditions and further order of the Commission.

The Commission orders:

(A) The proposed tariff records are accepted subject to the conditions discussed herein and suspended to be effective the earlier of September 1, 2014, or subsequent order of the Commission.

(B) Portland is directed to file revised tariff sheets consistent with the discussion herein within thirty days of the issuance of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.

**Appendix**

**Portland Natural Gas Transmission System**
**FERC NGA Gas Tariff**
**PNGTS Tariffs**

***Tariff Records Accepted and Suspended Effective September 1, 2014***

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