147 FERC ¶ 61,019
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 7, 2014

In Reply Refer To:
Northwest Pipeline LLC
Docket No. RP14-613-000

Northwest Pipeline LLC
P.O. Box 58900
Salt Lake City, UT 84158-0900

Attention: David J. Madsen
Director, Rates and Tariffs

Dear Mr. Madsen:

1. On March 7, 2014, Northwest Pipeline LLC (Northwest) filed primary and alternate tariff records[1] to limit the rights of a shipper with a Grandfathered Unilateral Termination Right to include that right in a permanent release of its capacity. Northwest proposes to require the replacement shipper in such a release to elect a term of at least ten years in order to obtain the Grandfathered Unilateral Termination Right. The Commission accepts the primary tariff records[2] to be effective April 8, 2014, as discussed below.

2. When Northwest restructured its services pursuant to Order No. 636, it offered to include in the contracts of all its then-existing firm shippers an evergreen clause coupled with a Grandfathered Unilateral Termination Right.[3] These contractual provisions

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[1] The primary and alternate tariff records are listed in the Appendix to this order.

[2] The primary tariff records also reflect tariff revisions which have been subsequently accepted in a Director Letter Order dated March 26, 2014, in Docket Nos. RP14-499-000 and RP14-499-001. Since Northwest stated that it filed alternate tariff records in case the changes proposed in Docket Nos. RP14-499-000 and RP14-499-001 were not accepted by the Commission, the alternate tariff records are moot.

[3] *Northwest Pipeline Corp.*, 63 FERC ¶ 61,124 at 61,812 (1993).

provide that after the primary term of a shipper's contract expires, the contract will remain in effect on a year to year basis at the shipper's sole option. The shipper may terminate all or any portion of the contract either at the expiration of the primary term, or upon each anniversary thereafter, by providing notice of termination at least twelve months prior to the termination date.[4] Northwest's tariff also includes two standard evergreen right options for shippers to exercise in order to terminate and/or continue receiving service on the Northwest pipeline system. The Standard Unilateral Termination Right requires a shipper to provide five years' notice to Northwest in order to terminate its service agreement.[5] Northwest also offers bilateral termination rights, with either Northwest or the shipper having the right to terminate the contract after its primary term.

3. The Grandfathered Unilateral Termination Right at issue here is unique in that it is the only termination right that the tariff specifically permits the shipper to include in a permanent release of its capacity to another shipper.[6] In the instant filing, Northwest proposes to eliminate this right to include a Grandfathered Unilateral Termination Right in a permanent release, unless the replacement shipper elects a term of at least ten years for its replacement contract. Northwest claims that this proposed tariff change is necessary because the Grandfathered Unilateral Termination Right makes it much more difficult for Northwest to predict its capacity turn-back during a given period. Northwest asserts that Commission policy does not require it to allow the transfer of this grandfathered unilateral termination right in a capacity release transaction.

4. Northwest asserts that shippers desiring certainty that they can retain their capacity without having to re-bid for it through a Right-of-First-Refusal process are motivated to enter into long term agreements. However, shippers that hold a Grandfathered Unilateral Termination Right do not have the same incentive to enter into long term agreements because they are not at risk of losing their capacity when it is in evergreen rollover status, and therefore they can simply let their capacity roll from year to year. Northwest states that allowing a releasing shipper to pass the Grandfathered Unilateral Termination to replacement shippers perpetuates this dynamic indefinitely.

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[4] *See* Northwest, FERC Gas Tariff, Rate Schedule TF-1, Section 12.3; Rate Schedule SGS-2F, Section 15.3; Rate Schedule TF-2, Section 14.3.

[5] *See id*. Rate Schedule TF-1, Section 12.1; Rate Schedule SGS-2F, Section 15.1; Rate Schedule TF-2, Section 14.1.

[6] *See id*. Rate Schedule TF-1, Section 12.3; Rate Schedule SGS-2F, Section 15.3; Rate Schedule TF-2, Section 14.3.

5. Northwest states that at present approximately one half of Northwest's maximum rate TF-1 large customer capacity (1.4 MMDth/d out of a total 3.1 MMDth/d) contains an evergreen provision with a Grandfathered Unilateral Termination Right. Northwest expects that by 2016, approximately 250,000 Dth/d of this capacity will be in an evergreen rollover period and will double by 2018, and doubles again by 2020, reaching just over 1.0 MMDth/d of contract demand on Northwest's system.

6. Northwest asserts that Commission policy does not require it to allow the transfer of this grandfathered right. Northwest contends that the Commission recognizes that the replacement shippers may not always stand in the shoes of a releasing shipper with grandfathered rights.

7. Public notice of the filing was issued on March 10, 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. A protest was filed by the Indicated Shippers.[7]

8. The Indicated Shippers argue that the Commission should deny the proposed tariff changes because Northwest has not shown that its proposal to eliminate the right to include in a permanent release the Grandfathered Unilateral Termination Right (except for replacement shippers with contract terms of 10 years or greater) is just and reasonable. The Indicated Shippers argue that the Commission precedent Northwest cites in its transmittal letter does not support the proposed changes in this proceeding. Moreover, the Indicated Shippers argue that Northwest's proposal would harm shippers that hold Grandfathered Unilateral Termination Rights by limiting the marketability of their capacity through a permanent capacity release. The Indicated Shippers state that the unilateral right to terminate a contract on one year's notice is significant, and the Commission should not allow Northwest to eliminate it.

9. The Indicated Shippers maintain that Northwest memorialized the right of shippers to confer Grandfathered Unilateral Termination Rights through a permanent capacity release in Docket No. RP04-176-000, when it filed the tariff language that is at issue in this proceeding. The Indicated Shippers note that, in its order approving the tariff language, the Commission specifically addressed the Grandfathered Unilateral Termination Right tariff language in Rate Schedules TF-1, SGS-2F, and TF-2, and found

[7] For this proceeding, the Indicated Shippers are: Cross Timbers Energy Services Inc., Occidental Energy Marketing, Inc., and Shell Energy North America (US), L.P.

that the proposed tariff changes conformed to the Commission's regulations.[8] Thus, the Indicated Shippers believe that the ability of shippers to permanently release the Grandfathered Unilateral Termination Rights is a contract right, which Northwest agreed to in its restructuring settlement, memorialized in tariff sheets, and which the Commission approved. Accordingly, the Indicated Shippers aver that the Commission should deny Northwest's proposal to limit Grandfathered Unilateral Termination Rights to the existing holder, unless the acquiring shipper in a capacity release transaction agrees to a term of ten years or more.

10. Based on our review of the filing, we will accept Northwest's proposal to limit the Grandfathered Unilateral Right from being transferred to permanent replacement shippers except under long term contracts of ten or more years. The Commission does not require pipelines to permit a permanent release unless they are financially indifferent to the release.[9] As the Commission explained in *Texas Eastern*, a permanent release entails the pipeline agreeing to discharge the releasing shipper from continued obligations and liability under its contract and a pipeline may reasonably consider all relevant factors, such as financial indifference, in considering whether to agree to the permanent release. Northwest has explained how it is not financially indifferent to the perpetuation of the grandfathered unilateral termination right ad infinitum through permanent capacity release transactions. It has made a reasonable case that it is not financially indifferent to allowing replacement shippers to take over unilateral evergreen rights without committing to taking capacity for a longer term, since it makes efficient planning of its operations difficult in the current market.

11. Further, Commission policy does not require Northwest to offer unilateral evergreen rights at all. This was a special grandfathered right given to its existing shippers during Northwest's restructuring proceeding at Docket No. RS92-69.[10] The natural gas markets have changed significantly since the initial pipeline restructuring period, with new sources of natural gas creating decontracting issues on many pipeline systems. Moreover, the option of capacity release is separate from the unilateral termination right granted then-existing shippers in the restructuring proceeding. No settlement or contract with those shippers requires Northwest to continue to allow those shippers to permanently release those contracts to replacement shippers, without imposing a reasonable condition to ensure the financial indifference of the pipeline, such

[8] *Northwest Pipeline Corp.*, 107 FERC ¶ 61,307, at P 15 (2004).

[9] *El Paso Natural Gas Co.*, 61 FERC ¶ 61,333, at 62,311-12 (1992), *Texas Eastern Transmission Corp*., 83 FERC ¶ 61,092, at 61,447-48 (1998) (*Texas Eastern*).

[10] *Northwest Pipeline Corp.*, 63 FERC ¶ 61,124 (1993).

as the ten-year primary term requirement proposed by Northwest here. Therefore, we will deny the protest filed by the Indicated Shippers.

12. Accordingly, the primary tariff records referenced in the Appendix are accepted to be effective April 8, 2014 and the alternate tariff records are rejected as moot.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Northwest Pipeline LLC
FERC NGA Gas Tariff
Fifth Revised Volume No. 1

Tariff Records Accepted Effective April 8, 2014

Sheet No. 26, Rate Schedule TF-1 - Contract Term Extensions, 2.0.0
Sheet No. 57, Rate Schedule SGS-2F - Evergreen Provision, 2.0.0
Sheet No. 111, Rate Schedule TF-2 - Evergreen Provision, 2.0.0
Sheet No. 271-A, GT&C - Capacity Release, 5.0.0
Sheet No. 271-B, GT&C - Capacity Release, 2.0.0

Tariff Records Rejected as Moot

Sheet No. 26, Rate Schedule TF-1 - Contract Term Extensions, 2.1.0
Sheet No. 57, Rate Schedule SGS-2F - Evergreen Provision, 2.1.0
Sheet No. 111, Rate Schedule TF-2 - Evergreen Provision, 2.1.0
Sheet No. 271-A, GT&C - Capacity Release, 5.1.0
Sheet No. 271-B, GT&C - Capacity Release, 2.1.0