

136 FERC ¶ 61,022
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 8, 2011

In Reply Refer To:
Gas Transmission Northwest LLC
Docket No. RP11-2183-000

Gas Transmission Northwest LLC
717 Texas Street, Suite 2400
Houston, TX 77002-2761

Attention: John A. Roscher, Director, Rates & Tariffs

Reference: Amended Non-Conforming Agreement

Dear Mr. Roscher:

1. On June 9, 2011, Gas Transmission Northwest LLC (GTN) filed certain tariff sections and a tariff record¹ to reflect the addition of a Rate Schedule PS-1 service agreement (Agreement No. 11084) between GTN and Powerex Corp. to GTN's tariff listing of non-conforming service agreements and the simultaneous removal of that Agreement from GTN's tariff listing of negotiated rate agreements. GTN states that it has agreed with Powerex Corp. to amend the original agreement between the two parties, approved by the Commission on May 4, 2011, in Docket No. RP11-1987-000 by unpublished Director's Letter Order. GTN requests that the proposed tariff sections and tariff record be accepted effective April 11, 2011, the effective date of the original agreement. The Commission accepts GTN's tariff sections and tariff record effective April 11, 2011, subject to the conditions set forth below.

¹ PART 1, TABLE OF CONTENTS, 2.0.1, 4.8 - Statement of Rates, Negotiated Rate Agreements - ITS-1, PS-1 and AIS-1, 4.0.0, 4.9 - Statement of Rates, Footnotes for Negotiated Rates - ITS-1, PS-1 and AIS-1, 4.0.0, 4.10 - Statement of Rates, Non-Conforming Service Agreements, 2.0.0, PART 8, NON-CONFORMING AGREEMENTS, 0.0.0, 8.1 - Non-Conforming Agreements, Powerex Corp. PS-1 Agmt (#11084), 0.0.0 to GTN Tariffs, FERC NGA Gas Tariff.

2. The amended Agreement between GTN and Powerex Corp. contains an amended Exhibit B, which deletes and replaces in its entirety the original Exhibit B. The amended Exhibit B sets forth the discounted rate at which service under the Agreement will be provided, comprised of three separately stated rate components charged on a per dekatherm (Dth) basis. GTN states that the amended Exhibit B does not otherwise change the term, contract quantity, expected overall revenue for this service, or the underlying intent of the other provisions from the original Exhibit B.

3. GTN further states that it is treating the amended Agreement as non-conforming because, while amended Exhibit B includes provisions which are wholly consistent with Rate Schedule PS-1 and the General Terms and Conditions of the tariff, the provisions are not specifically set forth in GTN's tariff. GTN states that, out of an abundance of caution, it is treating these provisions as non-conforming, but the provisions are not material in nature and do not confer any special rights or privileges on Powerex Corp.

4. The three rate components consist of an Initial Parking Rate of \$0.20 per Dth applicable to each Dth parked during the Allowable Period to Park Quantities (April 11, 2011 through April 30, 2011), a Daily Parking Rate of \$0.00073051 per day per Dth parked for the period April 11, 2011, through January 31, 2012, and a Final Day Parking Rate of \$0.20 per Dth applicable to each Dth withdrawn during the Allowable Period to Withdraw Parked Quantities (January 1, 2012, through January 31, 2012).

5. Amended Exhibit B of the Agreement contains a provision which states that Powerex Corp. shall park gas on a ratable basis, up to the Maximum Allowable Daily Quantity to be Parked, or as otherwise mutually agreed. Additionally, the provision states that Powerex Corp. will withdraw all gas parked on a ratable basis, plus or minus 20 percent, or as otherwise mutually agreed between GTN and Powerex Corp. GTN's *pro forma* service agreement does not address Initial Parking Rates or Withdrawal Rates.

6. Public notice of GTN's filing was issued on June 13, 2011, with interventions and protests due as provided in section 154.210 of the Commission's regulations.² Pursuant to Rule 214,³ all timely filed motions to intervene and any motions to intervene out-of-time 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. No protests or adverse comments were filed.

7. In general, when reviewing any provision that differs from a *pro forma* service agreement, the Commission first determines whether it is a material deviation. If a

² 18 C.F.R. § 154.210 (2011).

³ 18 C.F.R. § 385.214 (2011).

pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.⁴ In *Columbia Gas Transmission Corporation*,⁵ the Commission clarified that a material deviation is any provision in a Transportation Service Agreement that: (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (2) affects the substantive rights of the parties.⁶ The Commission prohibits negotiated terms and conditions of service that result in a customer receiving a different quality of service than that offered to other customers under the pipeline's generally applicable tariff,⁷ or that affect the quality of service received by others.⁸ Finally, the Commission need not accept non-conforming provisions for which the filer has failed to provide "a detailed narrative outlining the terms of its negotiated contract, the manner in which such terms differ from its form of service agreement, the effect of such terms on the rights of the parties, and why such deviation does not present a risk of undue discrimination."⁹

8. GTN's Rate Schedule PS-1 Form of Service Agreement does not appear to address the issue of ratable takes or deliveries, nor does it address whether GTN and a shipper may "otherwise mutually agree" to ratable takes or deliveries. GTN has provided no explanation of the impact of the provisions that require Powerex Corp. to park gas on a ratable basis and withdraw gas on a ratable basis, plus or minus 20 percent, or as "otherwise mutually agreed." Nor has GTN explained why these provisions are required and whether these provisions result in Powerex Corp. receiving a different quality of service than that received by others.

⁴ 18 C.F.R. § 154.1(d) (2011).

⁵ 97 FERC ¶ 61,221 (2001).

⁶ In *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, at P 27 (2003), the Commission stated "[s]ince there would appear to be no reason for the parties to use language different from that in the form of service agreement other than to affect the substantive right of the parties, this effectively means that all language that is different from the form of service agreement should be filed with the Commission." *Id.* P 32.

⁷ *Texas Eastern Transmission, LP*, 123 FERC ¶ 61,095, at P 14 n.6 (2008).

⁸ *See Dominion Transmission, Inc.*, 93 FERC ¶ 61,177 (2000).

⁹ *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, at P 33 (2003). *See also East Tennessee Natural Gas Co.*, 107 FERC ¶ 61,197, at P 10 (2004).

9. In the instant case, it appears that the ratable parking and withdrawal provisions (including the “otherwise mutually agreed” language) in the Amended Exhibit B provide Powerex Corp. with a *different level of service than that provided to other similarly situated shippers that obtain service pursuant to GTN’s tariff*. Therefore, the provision is an impermissible deviation from the Form of Service Agreement, and GTN is directed either to: (1) provide additional information to support inclusion of the provision; (2) revise the provision to conform to the existing *pro forma* service agreement; or (3) revise its generally applicable tariff or *pro forma* service agreement to offer the provision to all similarly-situated shippers.¹⁰ GTN is directed to comply with the direction of this order within 45 days from the date of this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹⁰ See *ANR Pipeline Co.*, 97 FERC ¶ 61,252, at 62,118 (2001).