

141 FERC ¶ 61,085  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

November 1, 2012

In Reply Refer To:  
Northwest Pipeline GP  
Docket No. RP13-125-000

Northwest Pipeline GP  
PO Box 58900  
Salt Lake City, Utah 84158-0900

Attention: Pam Barnes  
Manager, Certificates and Tariffs

Reference: Non-Conforming Agreements

Ladies and Gentlemen:

1. On October 2, 2012 Northwest Pipeline GP (Northwest) submitted for filing tariff records<sup>1</sup> updating the list of non-conforming agreements in its tariff and submitting two existing service agreements, with Avista Corporation, (Avista) Contract Nos. 100010 and 1000314, that contain new proposed non-conforming provisions designed to reflect a recent settlement agreement between them (the Parties). The Commission accepts the tariff records listed in footnote one, effective November 2, 2012, subject to Northwest removing a non-conforming provision from Contract No. 100010.

2. Northwest states that in 1998 the Parties agreed that Northwest would construct certain facilities to meet Avista's then current needs, and to delay the addition of certain other facilities that were needed to support Avista's total contracted primary firm delivery rights on Northwest's Moscow Lateral. However, the details concerning the future

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<sup>1</sup> Northwest Pipeline GP, FERC NGA Gas Tariff, Fifth Revised Volume No. 1, [Sheet No. 395, Non-conforming Service Agreements, 4.0.0](#); [Tariff Record 10, Non-Conforming Service Agreements Index, 6.0.0](#); [Tariff Record 10.A, A, 0.0.0](#); [Tariff Record 10.A.1, Avista Corporation, 0.0.0](#); [Tariff Record 10.A.1.1, Contract No. 100010, 0.0.0](#); [Tariff Record 10.A.1.2, Contract No. 100314, 0.0.0](#).

construction of those delayed facilities had not been finalized and/or agreed upon at that time. Northwest states the recent settlement agreement resolves all issues related to the capacity deficit on the Moscow Lateral (capacity deficit meaning the portion of primary firm delivery rights that are provided by the facilities to be constructed by Northwest). The agreement provides for Northwest to construct the needed facilities on or before October 31, 2017, and in the interim provide for certain temporary contractual arrangements to reduce Northwest's delivery point obligations down to the physical capabilities of Northwest's system, thereby eliminating the capacity deficit.

3. Northwest states the revised agreements include several non-conforming provisions to implement the settlement between the parties. These provisions include interim and permanent solutions for resolving the capacity deficit on the Moscow Lateral; a provision to address the rate treatment for potential turnback of any Spokane-area capacity; an extension of the primary term end date for one of the agreements; and a provision to address what will happen in the event the Commission does not accept or conditionally accept the non-conforming provisions.

4. Northwest states these provisions do not represent a substantial risk of undue discrimination, but simply represent a settlement between the Parties relating to a capacity deficit that is unique between the Parties. Northwest states it is not giving Avista preferential treatment by agreeing to the capacity deficit solutions that are part of the agreement.

5. Notice of Northwest's Filing was issued on October 3, 2012. Interventions and protests were due October 15, 2012, as provided in section 154.210 of the Commission's regulations.<sup>2</sup> Pursuant to Rule 214,<sup>3</sup> 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 the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

6. Under the "Rate Treatment of Potential Turnback Capacity" non-conforming provision, Avista has agreed that if it turns back any Spokane-area capacity under Contract Nos. 136948 and 136950, it will not protest or otherwise oppose Northwest's rate treatment of such turned-back capacity in Northwest's next Natural Gas Act section 4 or section 5 general rate proceeding immediately following the turn-back of the capacity. Northwest states this provision does not present a substantial risk of undue discrimination. It notes that in the settlement discussions Northwest sought extensions of some of Avista's contracts in the Spokane market area given the capital expenditure

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<sup>2</sup> 18 C.F.R. § 154.210 (2012).

<sup>3</sup> 18 C.F.R. § 385.214 (2012).

commitments required by the permanent solution to the capacity deficit. Northwest states Avista was unwilling to extend all of its contracts, but agreed as part of the settlement to provide Northwest some protection against the risk of turn-back by means of this non-conforming provision. Northwest states this provision is limited in scope in that it only applies to the specific capacity that Avista currently holds and could potentially turn back to Northwest at some future date. Northwest emphasizes that the capacity subject to this non-conforming provision amounts to only 10,330 Dth/d of contract demand out of Avista's total contract demand of over 290,000 Dth/d.

7. We find this non-conforming provision contrary to the Commission's policy prohibiting non-conforming provisions that restrict shippers' rights to challenge rates or the rate treatment of capacity beyond the specific rate at issue.<sup>4</sup> The Commission has held that the parties to negotiated rate and discounted rate agreements may include a provision under which the shipper waives its rights as to future challenges to the rate for the particular transaction in question, without risk of undue discrimination. However, the Commission has not permitted broader waivers, such as the type included here, because they present a risk of undue discrimination. Here the shipper is waiving its rights to challenge the future rate treatment of turned-back capacity from two separate agreements (Contract Nos. 136948 and 136950) not filed in this proceeding. We find this non-conforming provision to be an impermissible deviation from the standard form of agreement, and direct Northwest to remove the provision from the service agreement. The Commission therefore accepts the service agreements reflected in the tariff records listed in footnote one, subject to Northwest Filing, within 30 days of this order, revised tariff records consistent with this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>4</sup> *Northwest Pipeline GP*, 135 FERC ¶ 61,231 (2011); *Columbia Gulf Transmission Corp.*, 109 FERC ¶ 61,152 (2004), *reh'g denied*, 111 FERC ¶ 61,338 (2005), *aff'd*, *Columbia Gas Transmission Corp. v. FERC*, 477 F.3d 739 (D.C. Cir. 2007).