

143 FERC ¶ 61,186
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 30, 2013

In Reply Refer To:
Gas Transmission Northwest LLC
Suncor Energy (U.S.A.) Holdings Inc.
Suncor Energy Marketing Inc.
Docket No. RP13-885-000

Gas Transmission Northwest LLC
Attention: Eva N. Neufeld
717 Texas Street, Suite 2400
Houston, TX 77002-2761

Dear Ms. Neufeld:

1. On May 1, 2013, Gas Transmission Northwest LLC (GTN), Suncor Energy (U.S.A.) Holdings Inc. (Suncor Energy) and Suncor Energy Marketing Inc. (SEMI) (Petitioners) filed a joint petition requesting that the Commission authorize them to conduct up to two reverse auctions to solicit one or more offers to acquire capacity currently held by Suncor Energy and SEMI on GTN. In the alternative, Petitioners seek a temporary and limited waiver of one of GTN's capacity release provisions found in Section 6.28.2 of the tariff's General Terms and Conditions (GT&C), in order to effectuate the permanent release of certain capacity on GTN's system through a reverse auction process. Petitioners request that the authorization or waiver be granted within 30 days after the filing of the petition and be effective for a period of 120 days from the date of the order. Petitioners submit that prompt action by the Commission will enable them to implement the transactions in a timely and efficient manner. For the reasons discussed below, the Commission will grant the Petitioners a waiver of Section 6.28.2 of GTN's tariff for the purposes of conducting a reverse auction for the designated capacity.

2. Both Suncor Energy and SEMI have firm transportation contracts with GTN expiring on October 31, 2023. Suncor Energy wants to permanently release its capacity to SEMI. SEMI would then take the capacity acquired from Suncor Energy as well as its own capacity and permanently release all of the capacity to a pre-arranged third party shipper. As part of the permanent release, a lump sum would be paid to the pre-arranged replacement shipper. Suncor Energy and SEMI state the lump sum payment is required by current market conditions, which likely would not support the release of the capacity at maximum rates. The lump sum that will be paid to the replacement shipper makes the

capacity release transaction one that is at less than the maximum rate and therefore requires bidding. The pertinent provision of Section 6.28.2 states as follows:

Unless capacity is released pursuant to either an asset management agreement or a state-approved retail access program, releases with terms greater than one year at a rate that is less than the maximum applicable tariff rate require bidding up to the maximum applicable tariff rate. This type of release allows a right of first refusal for the prearranged bidder. Bidding is pursuant to the methodology selected by the Releasing Shipper.

3. Suncor Energy and SEMI propose a reverse auction process in which the shipper that is willing to pay GTN's maximum rate for the capacity and accept a lower lump sum payment will be awarded the capacity. Suncor Energy and SEMI assert that under the reverse auction process the capacity will be transferred in an open and transparent manner to the shipper that values it most, whether the pre-arranged shipper or a third party.¹ Petitioners submit that because the GTN tariff does not expressly provide for reverse auction procedures, it is not clear that the transactions contemplated by the petition are authorized under the tariff. Petitioners contend that although the transactions are consistent with the intent of the GTN tariff and with the Commission's capacity release regulations, precedents, and policies, they request that the Commission provide an authorization or waiver for the proposed reverse auction transactions to the extent the transactions may not be authorized by the GTN tariff. Petitioners assert that the Commission has granted waiver and approved similar reverse auction procedures in other cases.²

4. The reverse auction process would occur in two phases. In the first phase Suncor Energy's capacity would be released to SEMI subject to competitive bidding. If a third party bidder is willing to pay GTN's maximum tariff rate and accept a lower lump sum payment, SEMI would have the right to match the bid pursuant to the right of first refusal provision in Section 6.28.2 of GTN's tariff. If SEMI matches the bid it would receive the capacity otherwise it would be awarded to the third party bidder, subject to the third party bidder meeting GTN's tariff requirements such as creditworthiness. In the event SEMI is awarded the capacity, it will then release the acquired Suncor Energy capacity and its own capacity to a pre-arranged shipper subject to competitive bidding using the reverse auction process. The pre-arranged shipper would have the right to match any third party bid. If SEMI is not awarded the Suncor Energy capacity, it will still release its own capacity pursuant to the previously described reverse auction process.

¹ (Citing *Columbia Gas Transmission LLC*, 138 FERC ¶ 61,209, at P 13 (2012)).

² (Citing *Duke Energy Mkt. Am. LLC*, 114 FERC ¶ 61,198 (2006); *Northwest Pipeline Corp.*, 109 FERC ¶ 61,044 (2004)).

5. Public notice of the Petitioners' filing was issued on May 1, 2013. Interventions and protests were due on May 13, 2013. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), 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 late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No comments or protests were filed.

6. In the petition, Suncor Energy and SEMI indicate that they wish to release their firm capacity at the maximum rate with a lump sum payment to the replacement shipper due to market conditions. The capacity would be awarded to either a pre-arranged shipper or a third party bidder who wins a reverse auction. The Commission finds that a waiver of Section 6.28.2 of GTN's capacity release provisions is required because the tariff does not contemplate a reverse auction procedure for awarding capacity. However, the requirements of GTN's tariff for posting and bidding of capacity and the right of first refusal for prearranged shippers combined with the reverse auction process proposed in the petition "provides a transparent manner in which the value of the transportation capacity to a replacement shipper may be ascertained."³ In addition, the open and transparent auction process eliminates the possibility that preferential access is being granted to the pre-arranged shipper. Accordingly, for good cause shown, the Petitioners' request for waiver of Section 6.28.2 of GTN's tariff is granted in order to permit the described reverse auctions, and the waiver will be effective for 120 days from the date of this order, in order to allow the transactions to be completed.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

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³ *Northwest Pipeline Corp.*, 109 FERC ¶ 61,044, at P 14 (2004).