

143 FERC ¶ 61,189
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 31, 2013

In Reply Refer To:
Portland Natural Gas
Transmission System
Docket No. RP13-874-000

Portland Natural Gas Transmission System
717 Texas Street
Suite 2400
Houston, TX 77002-2761

Attention: John A. Roscher
Director, Rates & Tariffs

Dear Mr. Roscher:

1. On May 1, 2013, Portland Natural Gas Transmission System (Portland) filed revised tariff records¹ 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. The Commission accepts the referenced tariff records effective June 1, 2013, as generally consistent with Commission policy, subject to the conditions set forth below.
2. Portland states that its creditworthiness provisions have not been updated since the inception of its tariff in 1999. Portland also points out that it did not previously propose changes to its credit provisions in response to the Commission's 2005 Creditworthiness Policy Statement.²
3. Portland proposes to update and restructure the creditworthiness provisions of its Tariff by: (1) lowering the creditworthiness standard and incorporating a tangible net

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

² Portland Transmittal Letter at p. 1 (citing *Policy Statement on Creditworthiness Issues for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, 111 FERC ¶ 61,412 (2005) (Creditworthiness Policy Statement)).

worth factor; (2) modifying the current credit evaluation section to allow Portland to consider other information in making its creditworthiness determination; (3) updating financial assurance requirements and descriptions and present financial assurance dollar amount requirements for all services; (4) clarifying the amount of credit support required for interruptible and Park and Loan (PAL) rate schedules; and (5) relocating, clarifying and modifying certain other provisions and references affected by the creditworthiness proposal.

4. Portland states that its proposal attempts to correct its current tariff which provides for a guarantee to secure payment of an amount equal to the sum of reservation and usage charges applicable to the proposed service “for a three month period” which is currently equal to its collateral requirement. Portland states that the Commission’s general policy is to permit pipelines to require shippers that fail to meet the pipeline’s creditworthiness requirements for pipeline service to provide collateral equal to three months of reservation charges.³ However, Portland argues that the Commission considers that a guarantee by a parent or third party of the contractual obligation of a shipper is an alternative to the provision of collateral and that the pipeline can require that the guarantee cover the full extent of the shipper’s obligation.⁴ Therefore, Portland proposed to increase its guarantee amount equal to the contractual obligation derived from the sum of reservation charges on a net present value basis.

5. Public notice of the filing was issued on May 2, 2013. Interventions and protests were due as provided by section 154.210 (18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2012), 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 Energy). On May 16, 2013, Portland filed an answer to the concerns raised by DTE Energy. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure prohibits answers to protests or answers unless otherwise permitted by the decisional authority.⁵ We will accept Portland’s answer because it provides information that will assist us in our decision-making process.

6. The Commission finds that the proposed tariff records are generally consistent with Commission precedent and, as discussed below, are just and reasonable with one

³ Transmittal Letter at p. 7 (citing Creditworthiness Policy Statement at P 11).

⁴ Transmittal Letter at p. 8 (citing *PG&E Gas Transmission, Northwest Corp.*, 105 FERC ¶ 61,382, at P 80 (2003)).

⁵ 18 C.F.R. § 385.213(a)(2) (2012).

exception as discussed below. Accordingly the Commission accepts the subject tariff records, subject to condition, to be effective June 1, 2013.

7. DTE Energy objects to Portland's proposal to increase the amount of the guarantee requirement to an amount equal to the net present value of the reservation charges to be paid for the term of the shipper's contract. DTE Energy asserts that increasing the amount would be unfair to those shippers that signed up for long-term contracts. DTE Energy argues that increasing this guarantee requirement to the present value of the contracted-for reservation charges, when years remain on their contracts, arguably imposes an unforeseen and unfair hardship and increases contractual risk and costs on shippers.⁶

8. In its answer, Portland argues that its proposal comports with Commission policy and precedent. First, Portland states that under Section 6.3.4.2 of its Tariff, Portland proposes to require that a shipper that fails to establish or maintain creditworthiness shall provide a form of financial assurance in an amount consistent with the Financial Assurances Requirement Table in Section 6.3.4.2(3). Under the instant proposal, Portland maintains that the proposed secured collateral (i.e., cash or an irrevocable letter of credit) requirement for firm transportation is up to the value of three (3) months of reservation charges. Portland asserts that this requirement is consistent with Commission policy.⁷

9. Portland argues that as an alternative to providing a form of secured collateral, a shipper may provide a guarantee from a creditworthy parent or third party that is equal to the contractual obligation derived from the sum of reservation charges on a net present value basis. Portland argues that, while the guarantee amount required in its proposal is an increase over the current three months of reservation charges Portland requires for firm shippers, the Commission has established that, "a guarantee by a parent or third party of the contractual obligation of a shipper is an alternative to the provision of collateral," and that a pipeline can require that "the guarantee cover the full extent of the shipper's obligation."⁸

⁶ DTE Energy Comments at p. 4 (citing *Equitrans, L.P.*, 143 FERC ¶ 61,108, at P 19 (2013)).

⁷ Portland Answer at p. 3 (citing Creditworthiness Policy Statement at P 11).

⁸ Portland Answer at p. 3 (citing *PG&E Gas Trans. Northwest Corp.*, 105 FERC ¶ 61,382, at P 80 (2003); *Texas Eastern Gas Trans., LLC*, 135 FERC ¶ 61,132, at P 35 (2011)).

10. The Commission agrees with Portland that a guarantee is for the full amount remaining under the contract. Under Portland's proposal, a shipper that fails to maintain creditworthiness may either provide secured collateral in the amount of three month's reservation charges or, in the alternative, may provide a guarantee by a parent corporation or third party.

11. The Commission has previously discussed the use of collateral and the use of a guarantee to secure payments under a contract and the Commission reasoned that under a guarantee, the pipeline receives no collateral because the guarantee is in lieu of providing the collateral. In such case, the guarantor pays the applicable remaining charges, in the case of a default. The Commission reasoned that the guarantee may cover the full extent of the shipper's obligation.⁹ Accordingly, the Commission accepts Portland's proposal to increase its guarantee amount as consistent with Commission precedent.

12. DTE Energy argues that in the event that the Commission finds Portland's proposal acceptable, that the Commission should direct Portland to include objective standards in its tariff for calculating the net present value of the guarantee amount a shipper would be required to provide. DTE Energy asserts that the calculation should be pre-specified, along with the interest rate to be used in calculating the net present value of the contracted-for reservation charges, and the methodology should be transparent.

13. In its answer, Portland states that DTE Energy's argument that Portland should be required to include standards relating to the calculation of net present value in determining the guarantee amount a shipper would be required to provide is not consistent with Commission precedent. Portland provides the following argument to defend its position that it not be required to include standards relating to the calculation of net present value:

While [Portland] does not argue that the Creditworthiness Policy requires objective criteria for the evaluation of creditworthiness, nowhere does it state that pipelines must

⁹ In *PG&E Gas Transmission, Northwest Corp.*, 105 FERC ¶ 61,382, at P 80 (2003) the Commission stated:

A guarantee by a parent or third party of the contractual obligation of a shipper is an alternative to the provision of collateral. In the case of 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 charges, not just the collateral. In the case of a guarantee, the pipeline receives no collateral; the guarantee is in lieu of providing the collateral. Thus, GTN is correct that it can require that the guarantee cover the full extent of the shipper's obligation.

specify the net present value methodology for the calculation of contractual obligations for purposes of providing a guarantee. In fact, [Portland's] proposal is similar to language in other FERC approved tariffs. In a 2012 [Gas Transmission Northwest LLC] proceeding, that proposed a net present value contractual obligation calculation, the Commission did not impose a requirement on [Gas Transmission Northwest LLC] such as what has been requested by DTE in the instant proceeding. It is also worth noting that many pipeline tariffs provide for a net present value calculation (within the creditworthiness evaluation section) for purposes of a tangible net worth test, but to [Portland's] knowledge, no such net present value methodology standard is or has ever been required for such calculations.¹⁰

14. A review of Portland's GT&C reveals that in Section 6.2 Definitions, the tariff states that "Except where another meaning is expressly stated, the following terms shall have the following meanings when used in this tariff and in any Gas Transportation Contract incorporating this Tariff." This is followed by Section 6.2.33 entitled Present Value. Section 6.2.33 provides a complete formula for deriving present value including a term stating the interest rate to be used in such calculation must be the monthly equivalent of the prime rate, as Published in the Wall Street Journal, plus five percent (5%).

15. Accordingly, Portland's tariff specifically defines how present value is to be calculated under any Portland tariff provision or transportation contract. However, given Portland's Answer, wherein it argues that it need not provide a specific net present value methodology for the calculation of contractual obligations, we will accept the filing on condition that Portland make a compliance filing, within 15 days of this order, either informing the Commission whether Portland intends that the current tariff definition of present value applies to its proposed determination of creditworthiness methodology or explaining why the tariff definition of present value is inapplicable to its instant proposal, and proposing a revised definition and/or applicable tariff modification.

16. Finally, DTE Energy argues that in the event the Commission accepts Portland's proposal, the Commission should consider addressing whether the guarantee amount should be adjusted monthly as the contract term diminishes and a lower amount of reservation charges would be owed. DTE Energy states that this is not addressed in Portland's filing.

¹⁰ Portland's Answer at pp. 4-5 (footnotes omitted).

17. Portland argues that this request is inconsistent with Commission policy. Portland argues that the Commission has found the reduction of a financial assurance is required only in the case where secured collateral has been provided for expansion or lateral line construction projects and not in the instance of an unsecured guarantee.

18. The Commission will not require Portland to reduce the guarantee amount on a monthly basis. Section 6.3.4.2(3) provides that for firm service the guarantee amount will be a contractual obligation derived from the sum of reservation charges, on a net present value basis. Accordingly, as each month passes the need for the amount guaranteed is lowered by the amount of reservation charges paid by the shipper. The party providing the guarantee obviously is not liable for amounts that have already been paid by the shipper, but only the amounts that have not yet been paid under the contract. Portland's guarantee proposal as set forth proposed in Section 6.3.4.2 is consistent with the Commission's position on guarantees.

19. Accordingly, the tariff records referenced in the appendix to are accepted, subject to condition as discussed above, to be effective June 1, 2013.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

Appendix

Portland Natural Gas Transmission System FERC NGA Gas Tariff PNGTS Tariffs

Tariff Records Accepted Effective June 1, 2013

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<u>Part 6.17 GT&C, Cost Reimbursements, 1.0.0</u>
<u>Part 7.6 Pro Forma - RFS, Request for Service, 1.0.0</u>