

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Portland Natural Gas Transmission System

Docket No. RP04-171-000

ORDER ACCEPTING TARIFF SHEETS, SUBJECT TO CONDITIONS

(Issued March 25, 2004)

1. On February 17, 2004, Portland Natural Gas Transmission System (Portland) filed tariff sheets which are listed in the Appendix, and which establish a new firm transportation Rate Schedule HRS for Hourly Reserve Service. Several parties filed comments or protests, to which Portland subsequently filed an answer. The details of the comments and protests and Portland's answer are discussed below. The Commission accepts the tariff sheets effective April 1, 2004, as requested, subject to conditions detailed below. This order benefits the public because Portland's proposed new service provides options and flexibility to shippers, which may be particularly useful to electricity generators or those serving electricity generators.

Details of the Filing

2. Portland states that under its new Rate Schedule HRS, an HRS shipper will contract for firm transportation service up to a specified Maximum Hourly Quantity (MHQ), as well as a specified Maximum Daily Quantity (MDQ). Portland asserts that the MHQ allows the shipper to receive delivery of its MDQ at an accelerated rate over a specified number of hours during the gas day. Portland further states that HRS service has a minimum specified delivery pressure of 550 psi at the shipper's primary delivery point. Portland states it is proposing this service to provide additional options and flexibility to shippers, such as electricity generators, or those serving electricity generators, whose intra-day delivery requirements may not be uniform and who may require accelerated flow rates and minimum delivery pressures during particular periods of the gas day. Portland states that notice concerning the availability of HRS service will be posted on Portland's website and electronic bulletin board (EBB). Portland states that qualifying offers to contract for HRS service will be evaluated on a non-discriminatory, first-come, first-served basis.

3. Portland asserts that its provision of HRS service will not degrade the quality of Portland's existing firm services. Portland maintains that it will provide HRS service

from available system capacity; therefore no new facilities construction is required. Portland states that HRS service will be complimentary to Portland's existing FT service and will provide Portland more flexibility to meet the needs of the market. Portland is proposing no changes to its existing tariff provisions for FT service in connection with offering the new HRS service. Additionally, Portland claims that its instant proposal is consistent with its recently approved rate settlement in Docket No. RP02-13-000.¹

4. Portland states that HRS shippers will elect a single Primary Delivery Point for their MHQ. Portland asserts that an HRS shipper will have the right to utilize any other delivery point on a secondary basis, however, such secondary service will be provided on a uniform hourly flow basis (*i.e.*, up to MDQ, but without regard to MHQ), unless Portland can honor the MHQ at a secondary point without interfering with any other service request on the system. Portland states that HRS shippers may contract for one of five (5) different firm hourly flow options, ranging from 4.16% of the shipper's MDQ (which translates into uniform deliveries over a 24-hour gas day) up to 8.33% of the shipper's MDQ, which translates into full daily deliveries over 12 hours. By electing to receive firm higher hourly deliveries during a gas day, Portland states that the HRS shipper will pay a higher reservation rate for the additional firm capacity required to provide the higher hourly deliverability. Portland notes that firm flow rate options available under Rate Schedule HRS, as well as the corresponding rates, are shown on proposed Original Sheet No. 102.

5. Portland notes that, as shown on Sheet No. 102, HRS service has a bifurcated reservation rate consisting of: (1) a capacity reservation rate; and (2) a deliverability reservation rate, both of which are determined as derivatives of Portland's approved Rate Schedule FT reservation rate of \$25.8542. Portland states that the HRS maximum capacity reservation rate, on a per Dth basis, is \$12.9271 per month (*i.e.*, one-half of the existing Rate Schedule FT reservation rate). Portland further states that the HRS deliverability reservation rate will vary based on the firm hourly flow rate elected by the shipper. Portland states that the higher the firm hourly flow rate, the higher the deliverability reservation charge. Portland asserts that the support for and derivation of

¹ Portland states that the October 25, 2002 rate settlement was approved on January 14, 2003. Portland Natural Gas Transmission Sys., 102 FERC ¶ 61,026 (2003). Portland asserts that section 5.1(c) of the settlement states that nothing in the settlement limits Portland's right to make tariff filings for new services and rate schedules, while section 3.5(a) states that the design of Portland's settlement rates reflects an allocation of costs to interruptible and off-peak services.

the HRS rate is provided in the accompanying affidavit of Portland's Vice President of Business Development, Edward J. Martell.

6. Portland notes that, like Portland's FT service, HRS service has a zero usage rate, to which is added the ACA surcharge. Additionally, Portland notes that Rate Schedule HRS has a Usage-2 rate applicable to scheduled overrun service, *i.e.*, volumes in excess of the shipper's MDQ or MHQ, which are scheduled along with interruptible services. Portland maintains that the Usage-2 rate is equal to the sum of the two HRS reservation rate components (*i.e.*, capacity rate and deliverability rate), stated on a 100% load factor basis, for the HRS the service option selected by the shipper.

7. Portland states that firm service under Rate Schedule HRS will have the same scheduling and curtailment priority as Portland's other firm services. Accordingly, Portland asserts that HRS firm service has the same priority as firm FT service and firm FT-Flex service that has already been curtailed the maximum number of times during the month (*i.e.*, is no longer subject to curtailment). Portland further asserts that HRS overrun volumes will have a scheduling and curtailment priority equal to IT service and FT Flex service that has not been curtailed 10 times in the month (*i.e.*, is subject to interruption), which services are scheduled and curtailed based on price.

8. In accordance with Section 154.202(a)(1)(viii), Portland states it has submitted Exhibit A to show the estimated effect of the new service on Portland's revenues. Portland avers that because it has no experience with this new service, and has no existing HRS contracts, the revenue estimate is only for illustrative purposes.

9. Portland asserts its proposed HRS firm service is modeled after similar hourly firm services that the Commission has approved for a number of other pipelines.² Portland claims that in these cases, the Commission acknowledged the benefits offered by hourly services, especially in the electric generating industry where peaking needs can vary dramatically during the day. Portland submits that the Commission's rationale in these earlier cases is equally applicable here.

10. Portland concludes that its new Rate Schedule HRS will increase the firm service options available to Portland's shippers, without any degradation to existing firm service. Portland asserts that this enhancement of service options will be achieved without building

² Portland cites Vector Pipeline, L.P. 103 FERC ¶ 61,391 (2003); Gulfstream Natural Gas Sys., L.L.C., 91 FERC ¶ 61,119 (2000); Panhandle Eastern Pipe Line Co., 90 FERC ¶ 61,119, order on reh'g, 91 FERC ¶ 61,174, reh'g granted, 93 FERC ¶ 61,211 (2000).

additional facilities, as the HRS service will be provided through use of available capacity on Portland's system. Portland further asserts that the new firm service will allow Portland greater flexibility in marketing its capacity and meeting the needs of shippers.

Notice and Interventions

11. Public notice of the instant filing was issued on February 19, 2004, with interventions and protests due as provided in Section 154.210 of the Commission's regulations. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2003)). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214. Any motion to intervene out-of-time filed before the date of this order is granted as allowing late intervention at this early stage in the proceeding will not prejudice other parties or delay the proceeding.

12. The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KeySpan Energy NY); KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (KeySpan Energy LI); and Boston Gas Company, Colonial Gas Company, EnergyNorth Natural Gas, Inc., and Essex Gas Company (collectively KeySpan) jointly and severally moved to intervene in the instant proceeding, and further requested that the Commission summarily reject the tariff filing made in this proceeding.

13. Maritimes & Northeast Pipeline, L.L.C. (Maritimes) moved to intervene in the instant proceeding, and also filed comments.

14. The Maine Public Service Commission and Calpine Corporation, Rumford Power Associates, L.P. and Androscoggin Energy, L.L.C. (collectively the Generators), moved out of time to intervene in the instant proceeding, and the Generators also protested Portland's proposal.³

15. Portland filed an answer to the parties' comments and protests.⁴ The details of the comments and protests and Portland's answer are discussed below.

³ Although the Generators' motion to intervene and protest was filed out of time, no delay will be caused by accepting the protest. For completeness of the record, the protest is accepted as part of the record.

⁴ Although answers to protests are not permitted by Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), the Commission finds good cause to waive the rule as Portland's answer may aid in the disposition of the issues raised by its filing.

KeySpan's Comments

16. KeySpan states that it does not, in principle, oppose Portland offering Hourly Reserve Service, and acknowledges that a properly designed and properly substantiated hourly firm service could benefit Portland and its customers. However, KeySpan asserts that Portland's filing has not adequately substantiated that its proposal will not adversely affect existing firm shippers' service or explained how such a service would be provided using Portland's existing facilities. Additionally, KeySpan believes that Portland's proposal must be rejected as its proposed rates are not cost-based in that they fail to recover the full costs of the firm capacity that would be used to provide HRS service.

17. KeySpan submits that the cursory statements in Portland's transmittal letter and the summary assertions in Mr. Martell's Affidavit are insufficient to satisfy Portland's burden of explaining how it will provide HRS service and how that service will affect its firm shippers. KeySpan asserts that while Portland claims that it has modeled its proposed HRS firm service after similar hourly firm service proposals made by other pipelines, it appears that the pipelines in those cases explained in far greater detail how their facilities were capable of providing hourly firm transmission service and how the proposed services would not affect existing firm shippers. KeySpan contends that, unlike the other cases in which the Commission has reviewed hourly firm service filings, Portland's filing nowhere discusses: 1) whether Portland can monitor the amount of service an HRS customer may be taking; 2) whether Portland has electronic monitoring capability; 3) whether Portland is capable of handling more than one HRS customer at any particular delivery point; 4) what the effect of a shipper taking HRS service would be on existing firm shippers during peak usage periods; or 5) where, in the absence of access to storage, Portland will obtain the gas necessary to meet its HRS commitments.

18. KeySpan states it is concerned that Portland's service may have an adverse impact on KeySpan's ability to utilize the service it purchases from Portland to serve an isolated section of KeySpan's New Hampshire service territory. KeySpan notes that under Portland's current tariff, KeySpan is required to limit its takes of gas to ratable hourly quantities to the extent possible. KeySpan asserts that due to the nature of the load that KeySpan relies upon Portland to serve, it is not practicable for KeySpan to limit its takes to ratable hourly levels at all times. Accordingly, KeySpan seeks both confirmation that, and a credible explanation why, Portland's provision of HRS service will not adversely affect KeySpan's ability to utilize the FT service it purchases from Portland in accordance with the terms and conditions of Portland's existing tariff.

19. KeySpan notes that Portland's proposed bifurcated reservation rates for HRS service are derived from Portland's existing Rate Schedule FT rate, which is currently

\$25.8542 per Dth. KeySpan contends that the Commission should reject Portland's proposed Rate Schedule HRS rates because they fail to recover the full fixed costs of the capacity that would be reserved to provide hourly flexibility in excess of 24 hour rateable takes. KeySpan asserts that while both Rate Schedule FT and Rate Schedule HRS shippers would pay the same amount for quantities taken ratably over 24 hours, Rate Schedule HRS shippers with MHQs exceeding 1/24th of the MDQ would pay rates that would not recover the full costs of the capacity that Portland must reserve to provide HRS service. KeySpan offers the following example:

Assume that (1) Portland has a cost-based FT reservation rate of \$25.00 per Dt, (2) there are two shippers - FT Shipper A and HRS Shipper B - each with an MDQ of 24,000 Dt, and (3) HRS Shipper B has an MHQ which allows it to take 1/12th of its MDQ per hour. In order to provide HRS Shipper B's service, it appears that Portland must reserve 48,000 Dt per day of capacity in order to ensure its ability to provide up to 2,000 Dt in any hour. However, under Portland's proposed rates, HRS Shipper B would not pay the cost of reserving 48,000 Dt per day; it would only pay the cost of reserving 36,000 Dt per day. In order to be just and reasonable, HRS Shipper B should be required to pay, at the maximum FT reservation rate, the cost of reserving 48,000 Dt per day to provide the flexibility associated with HRS service.

20. In Footnote 10 of its protest, KeySpan notes that Portland asserts that the proposed rate design for its firm hourly service was drawn from Gulfstream Natural Gas System, L.L.C. (Gulfstream).⁵ KeySpan notes that in Gulfstream, the Commission approved a rate design for firm hourly service using the Equitable Method, which is used to design rates for storage facilities, and which was appropriate in Gulfstream as that pipeline has operational and contractual delivery characteristics similar to a storage field. KeySpan argues that such a method would be inappropriate for Portland as its facilities are not, to KeySpan's knowledge, designed to act as a storage field.

21. Accordingly, KeySpan concludes that the Commission should reject Portland's proposed HRS rate design and require Portland to use a rate design methodology which would require HRS shippers to pay the cost of the capacity Portland would need to reserve to provide HRS service.

Portland's Answer to KeySpan

⁵ Gulfstream Natural Gas System, L.L.C., 91 FERC ¶ 61,119 (2000).

22. Portland asserts that KeySpan's request for summary rejection of Portland's HRS filing is not, as a matter of law, appropriate, even assuming the facts as alleged in the KeySpan motion. Portland asserts that KeySpan properly cites to the controlling precedent of Municipal Light Bds. v. FPC,⁶ which holds that tariff rejection is appropriate only where the filing is "patently deficient" or a "substantive nullity." Portland argues that nowhere does KeySpan claim, much less demonstrate, that the Portland filing is either "patently deficient" or a "substantive nullity."

23. Portland asserts that the filing deficiencies alleged by KeySpan essentially fault Portland for either neglecting to confirm an obvious operational fact or for failing to "prove a negative." For example, Portland notes that KeySpan complains the HRS filing is deficient given Portland's failure to demonstrate an ability to monitor the amount of service an HRS customer may be taking. Portland answers that its existing tariff already includes detailed provisions governing measurement and delivery of gas by Portland.⁷ Moreover, Portland asserts that its state of the art, electronic remote flow control capabilities enable Portland to monitor receipts and deliveries at every point on the system in real-time. Portland affirms that its system is fully capable of ensuring that existing FT shippers get the full rights of their existing service.

24. In response to KeySpan's question whether HRS service would be available to multiple customers at a single delivery point, Portland answers that it anticipates the most likely HRS shippers will be electric generators and/or customers who provide direct service to electric generators. However, Portland asserts that HRS service is limited to one HRS contract per delivery point and one HRS delivery point per contract.⁸

25. Portland notes that KeySpan seeks a credible explanation why Portland's provision of HRS service will not adversely affect KeySpan's ability to utilize the FT service it

⁶ 450 F.2d 1341, 1345 (D.C. Cir. 1971), cert. denied, 405 U.S. 989 (1972); see also Transcontinental Gas Pipe Line Corp. v. FERC, 866 F.2d 477, 480 (D.C. Cir. 1989), quoting, Papago Indian Util. Auth. v. FERC, 628 F.2d 235, 239 (D.C. Cir. 1980)

⁷ Portland cites sections 6.1-6.8 of the General Terms and Conditions of its FERC Gas Tariff.

⁸ To the extent deemed necessary or appropriate, Portland states that it will also reflect this clarification in its tariff.

purchases from Portland. In its answer, Portland maintains that in its instant filing, it has already provided unambiguous, empirical support confirming that the proposed HRS service would not impact existing firm services. Portland re-affirms that because HRS reflected merely a repackaging of unsubscribed capacity, Firm shippers will still be able to take ratable flows, consistent with the terms of Portland's tariff. Portland emphasizes that this is true during peak and non-peak periods.

26. Portland notes that KeySpan's MDQ is only 1000 dekatherms per day (Dth/d), and accordingly, Portland asserts that KeySpan's alleged concerns regarding service degradation are therefore especially transparent. Portland states that it has roughly 24,000 Dth/d of unsubscribed capacity available for HRS services on the northern portion of its system where KeySpan takes service.

27. Portland further notes that under section 7.10 of Portland's currently effective tariff, firm shippers are required to deliver and receive gas in uniform hourly quantities as "nearly as possible."⁹ Portland states that, in practice, KeySpan and other firm shippers have routinely deviated from ratable takes to suit their individual load requirements and Portland has generally accommodated these variances on a best-efforts basis. Portland contends that, notwithstanding its tariff's specific terms, these shippers have in effect enjoyed the benefits of accelerated hourly flows without any corresponding rate consequences. However, Portland argues that FT shippers do not have a contractual or tariff entitlement to accelerated flows at no additional cost. Portland asserts that KeySpan's rights and obligations relative to its currently contracted FT service will be absolutely unchanged upon implementation of HRS service.

28. In response to KeySpan's concern whether Portland will be able to meet HRS commitments because Portland does not have access to storage facilities, Portland again asserts that it will implement HRS service by utilizing unsubscribed capacity in conjunction with Portland's daily management of system line pack. Portland states that line pack management is a standard operational tool to accommodate flow variations, and that its use as part of HRS services should surprise no one.

29. In reply to KeySpan's challenge to Portland's proposed design of HRS rates, Portland asserts that KeySpan's attempt to distinguish Gulfstream is not credible. Portland states that the storage analogy discussed in the Gulfstream Order was used to draw parallels between Gulfstream's use of line pack to support its proposed hourly service and the comparable use of storage capacity to provide flexible deliverability.

⁹ Portland asserts that KeySpan has misquoted the provisions of section 7.10 by claiming that ratable hourly takes are required only "to the extent possible."

Portland maintains that that analogy is equally apt with respect to Portland's proposed HRS service. Portland argues that, like Gulfstream, its proposed HRS service is similarly dependant upon line pack management and unsubscribed system capacity. Portland further notes that Gulfstream, like Portland, did not have access to storage capacity as a means of supporting its proposed hourly service. Additionally, Portland affirms that, like the rates designed for hourly service in Gulfstream, Portland has derived its proposed HRS rates from its currently effective, Commission-approved FT rate.

Maritimes' Comments

30. Maritimes states that the HRS service proposed by Portland may be acceptable to Maritimes, but that it simply does not have sufficient information to make that assessment.

31. Maritimes notes that it and Portland jointly own certain pipeline facilities (Joint Facilities), and that the construction, ownership and operation of the Joint Facilities are governed by several agreements between Maritimes and Portland, including the Operating Agreement, the Ownership Agreement and the Engineering and Construction Management Agreement (collectively, the Definitive Agreements). Maritimes asserts that it and Portland filed the Definitive Agreements with the Commission to satisfy a condition on the

certificate authorizing the construction and operation of the Joint Facilities.¹⁰ Maritimes states that by order dated November 4, 1997, the Commission approved the Definitive Agreements, finding that the agreements are comprehensive and sufficiently detailed to enable the parties to construct, operate and maintain the joint pipeline facilities in a manner consistent with the Commission's requirements, as reflected in the terms and conditions of the certificate authorizing the joint pipeline and the Commission's regulations.¹¹

¹⁰ Maritimes cites Maritimes & Northeast Pipeline, L.L.C. and Portland Natural Gas Transmission Sys., 80 FERC ¶ 61,136 at 61,477 (1997) (conditioning the certificates issued to Maritimes and Portland on filing the Definitive Agreements and stating that "[t]he Definitive Agreements, when filed, will be reviewed by the Commission, and the parties may not begin construction until the Commission approves them"). See Order of the Chief Judge Certifying Definitive Agreements, Docket No. CP97-238-000 (October 9, 1997).

¹¹ Maritimes cites 81 FERC ¶ 61,166, at 61,724-25 (1997).

32. Maritimes contends that implementation of Portland's HRS proposal would violate the express provisions of the Operating Agreement. Specifically, Maritimes states that section 2.07(b) of the Operating Agreement provides that "[e]ach Owner shall deliver, or cause to be delivered, Gas into the Joint Facilities at hourly rates that are as uniform as practicable; provided, however, that to the extent operating flexibility exists from time to time within the Joint Facilities to provide deliveries in excess of uniform hourly rates, the Operator shall use reasonable efforts to meet an Owner's request to utilize such flexibility." Maritimes contends that Portland's HRS proposal does not propose to amend this provision of the Operating Agreement or explain how Portland can implement the HRS service on the Joint Facilities without violating the provision. Further, Maritimes states that Portland has not offered any such proposal or explanation to Maritimes or M&N Operating Company (MNOC), the Operator of the Joint Facilities.¹² Maritimes contends that the Commission should require Portland to explain how it intends to implement the HRS proposal and, at the same time, comply with its obligations under the Operating Agreement.

33. Maritimes notes that Portland claims that "HRS service will not degrade the quality of [Portland's] existing firm services" and that "[Portland] will provide HRS service from available system capacity." However, Maritimes also notes that Portland did not include any engineering flow data or other evidence to support these contentions. Moreover, Maritimes states that Portland has provided no engineering flow data or other evidence demonstrating that the implementation of HRS service to points on the Joint Facilities would not degrade firm service to Maritimes' shippers or impact Maritimes' capacity rights on the Joint Facilities. Maritimes concludes that the Commission should not permit Portland to implement the HRS service prior to providing engineering flow data and other necessary evidentiary support demonstrating that the HRS service, in fact, will not degrade the quality of firm service to Portland's shippers and/or to Maritimes' shippers and that it will not impact Maritimes' capacity rights on the Joint Facilities.

34. Maritimes notes that the proposed Rate Schedule HRS and the HRS form of service agreement permit Portland and an HRS shipper to negotiate any minimum pressure requirement at the shipper's primary delivery point, provided that the minimum pressure requirement is at least 550 psi. But Maritimes also asserts that pursuant to section 102 of the Ownership Agreement, neither Maritimes nor Portland is required to

¹² Maritimes claims that it contacted MNOC after seeing the Commission's Notice of the February 17 Filing to determine whether Portland had discussed its HRS proposal with MNOC. Maritimes states that it understands that at that time Portland had not contacted MNOC about the HRS proposal.

meet an inlet pressure requirement to deliver into the Joint Facilities mainline at Westbrook that is in excess of 1110 psi. Maritimes contends that the Commission should require Portland to explain what safeguards Portland will employ and include in proposed Rate Schedule HRS to ensure that Portland does not commit to a minimum delivery pressure requirement that is inconsistent with the pressure requirements set forth in the Ownership Agreement.

35. Finally, Maritimes asserts that the accelerated deliveries required to provide HRS service to points on the Joint Facilities will require Portland to utilize Portland's available line pack in the Joint Facilities mainline. Maritimes further asserts that Portland is already utilizing a portion of Portland's available line pack to provide parking and lending service to various customers. Maritimes maintains that Portland's instant filing provides no engineering data or factual support of any kind that shows how the HRS service will draw on Portland's available line pack or how the service will interact with Portland's existing parking and lending service.

Portland's Answer to Maritimes

36. Contrary to Maritimes' suggestion, Portland asserts that HRS can be implemented in accordance with the existing Operating Agreement. Portland notes that Maritimes and Portland jointly own capacity in the Joint Facilities, including line pack. Portland states it currently has approximately 140,000 Mcf/d of unsubscribed summer capacity and 50,000 Mcf/d of unsubscribed winter capacity on the Joint Facilities. By utilizing line pack, in conjunction with existing capacity, Portland asserts that each pipeline can flexibly respond to daily (and hourly) delivery requirements.

37. Portland contends that Maritimes is not disadvantaged by Portland's proposed HRS service. Portland asserts that it cannot and will not enter into any service agreement for HRS that it cannot perform in accordance with its existing obligations. Portland affirms that if capacity is not available at a point on the Joint Facilities, an HRS contract will not be rendered.

38. Moreover, Portland notes that the FERC tariffs of both Maritimes and Portland incorporate GISB/NAESB intra-day nomination and scheduling standards that provide for flow rate changes throughout the day. Portland maintains that the GISB/NAESB guidelines are compatible with the flow rates proposed under Rate Schedule HRS, and that it is within the parameters of these standards and the terms of the Operating Agreement that HRS service will be provided.

39. In response to Maritimes' argument that Portland's filing is deficient due to its lack of engineering flow data, Portland asserts that the Commission should reject

Maritimes's data deficiency challenge. Portland repeats that the proposed HRS service will be provided through, and only to the extent of, Portland's existing, unsubscribed capacity. Portland contends that because no new facility construction is involved, there is no engineering data associated with the new service. Portland asserts that in this regard, it is similar to Portland's Park and Loan (PAL) and FT-Flex services previously approved by the Commission. Portland notes that both services were approved by the Commission without detailed engineering flow data.¹³

40. In response to Maritimes' concern about system pressure specifications, Portland asserts that HRS pressure specifications are not inconsistent with the Portland-Maritimes Joint Ownership Agreement. Portland states that Maritimes has not identified any inconsistency between the pressure specifications under Rate Schedule HRS and the Ownership Agreement. Portland states that the 1110 psi limit represents the inlet pressure level which Portland (and Maritimes) are expected to meet, but not obligated to exceed, for tenders into the Joint Facilities. Portland asserts that a 550 psi delivery pressure floor, as proposed in the instant filing for HRS, is not inconsistent with this provision.

41. In response to Maritimes concern regarding the potential impact of HRS service on Portland's existing PAL services, Portland contends that PAL is an interruptible, best-efforts service, while HRS is a firm service. Portland asserts that the Commission has consistently refused to recognize speculative service-degradation claims as grounds for rejecting proposed firm services. Portland states that in the Commission's view, if capacity is available and not fully subscribed, marketing such capacity in the form of a new firm service does not unduly diminish the rights of existing shippers who have no right to expect a pipeline to maintain unsubscribed capacity.¹⁴ By demonstrating that HRS service will be provided through available capacity and will not adversely impact existing firm services, Portland contends that it has met its burden for approval of Rate Schedule HRS.

The Generators' Protest

¹³ Portland cites Portland Natural Gas Transportation Sys., 102 FERC ¶ 61,082 (2003) (approving PAL service); and Letter Order dated May 29, 2003 in Docket No. RP03-353 (approving Rate Schedule FT-Flex).

¹⁴ Portland cites Northern Natural Gas Co., 105 FERC ¶ 61,172 at P 25 (2003), quoting, Transwestern Pipeline Co., 90 FERC ¶ 61,044 at 61,201 (2000).

42. Like KeySpan, the Generators state the rates proposed by Portland would under-allocate costs to HRS Service.

43. But also like KeySpan, the Generators state they do not oppose the concept of an hourly service. However, the Generators assert that Portland's current HRS proposal has not been shown to be just and reasonable, and additionally, has the potential of adversely affecting existing firm shippers' services. The Generators note that Portland states its proposed HRS firm service is modeled after similar hourly firm services that the Commission has approved for a number of other pipelines, including Vector Pipeline. But the Generators contend that the Portland HRS proposal differs from Vector's FT-H service in several important respects. First, the Generators note that Vector made its FT-H service proposal as part of a general Section 4 rate case, not as a piece-meal stand-alone filing. The Generators contend that this allowed shippers and the Commission to consider the rates and terms of service for the new rate schedule as part of an overall assessment of the level and allocation of the pipeline's cost of service, and in the context of the other services offered by the pipeline.

44. Secondly, the Generators note that the rate design that Portland has proposed for its HRS service is not the same as the rate design approved for the Vector FT-H service. The result is an under-allocation of costs to the Portland HRS service relative to both the Portland FT service and the methodology used by Vector.

45. Third, in contrast to Vector's straightforward hourly service proposal, the Generators maintain that Portland's proposal includes ancillary elements that have nothing to do with an hourly service, but which, if accepted, would negatively affect the quality of service provided to existing shippers. Additionally, the Generators contend that Portland has also proposed terms of service that would unduly discriminate between shippers using the new HRS service and shippers taking service under other Portland rate schedules.

46. The Generators state that service flexibility on the Portland system is governed by OBAs between Portland and delivery point operators, and other operating arrangements that have been established between Portland and shippers. With the OBAs, the Generators further state that shippers under the existing FT and IT rate schedules have daily and hourly flexibility at delivery points as long as Portland's ability to meet its service obligations to other shippers is not affected. To allow Portland to anticipate intra-day variations in deliveries, the Generators assert that Portland has also agreed to accept schedules of expected hourly delivery quantities to supplement the information provided in the daily nomination. By contrast, the Generators contend that Portland's proposal appears to reduce or eliminate the flexibility it currently provides to shippers under the existing rate schedules. In particular, the Generators assert that the proposed changes to

General Terms & Conditions sections 7.4(1) and 7.4(2) of Portland's tariff impose uniform hourly flow requirements on existing services that do not exist today, and could prevent the operational scheduling of hourly quantities that Portland currently allows.

47. The Generators also assert that Portland's proposal to allow overrun under Rate Schedule HRS is inconsistent with the current operation of the Portland system, since the Portland tariff does not provide for overrun under any of the existing rate schedules. The Generators state that Shippers currently depend on the flexibility allowed under the delivery point OBAs, including the ability to schedule make up quantities. The Generators protest Portland's proposal to assign make up quantities a lower scheduling priority than would be given to overrun under Rate Schedule HRS, which would put shippers under existing firm rate schedules at a disadvantage relative to shippers under Rate Schedule HRS.

48. The Generators contend that Portland's proposed implementation of the HRS overrun service is seriously flawed. Although Portland states that HRS overrun would have a scheduling and curtailment priority equal to interruptible service, the Generators assert that the proposed changes to GT&C section 7.4(3) would give overrun service under rate schedule HRS a higher priority than IT service paying the maximum rate because the daily rate for undiscounted HRS service would be above the maximum IT rate.

49. Finally, the Generators contend that the proposed minimum delivery pressure for HRS Service is unduly discriminatory. The Generators note that under Portland's current proposal, shippers receiving HRS-24 service would pay the same rate as FT shippers, but have a different service. The Generators maintain that if Portland is able to provide a minimum delivery pressure of 550 psi at all delivery points, this same pressure should apply under all rate schedules.

50. The Generators conclude that, as currently written, Portland's HRS proposal should be rejected. If, however the Commission accepts Portland's proposed HRS service proposal, the Generators request the Commission require the following amendments to the HRS service proposal:

- Recourse rates under Rate Schedule HRS should recover the same revenue from available pipeline capacity as service under Rate Schedule FT.
- Portland's proposal to include an overrun provision in Rate Schedule HRS should be rejected. If an overrun provision is implemented, scheduling priority should be equal to Portland's existing interruptible service, not superior.
- Proposed GT&C section 7.4 of Portland's tariff should be corrected to remove

reference to equal hourly flows under rate schedules other than HRS.

- The minimum delivery pressure should be increased to 550 psi under all firm rate schedules.

Portland's Answer to the Generators

51. Portland asserts that the Generators advance claims that are substantively identical to those asserted by Maritimes and/or KeySpan and that, it asserts, as already demonstrated, these claims lack legal and factual support and should be dismissed. Portland asserts that the Generators make certain misrepresentations concerning the terms of Portland's current firm transportation services which Portland would like to address.

52. In response to the Generators' argument that HRS will reduce or eliminate delivery flexibility currently provided to Rate Schedule FT shippers, such as the Generators, Portland asserts that this "flexibility" is not part of Portland's firm service obligations, but has been extended on a best-efforts basis as an accommodation to FT shippers. Portland maintains that it has made clear to the Generators, in written correspondence and otherwise, that this flexibility was provided by Portland as a "courtesy" with the expectation that the Generators would endeavor to adhere to the tariff's uniform take provisions. Portland contends that the problem for certain shippers has been that non-uniform hourly deliveries have become more the rule, than the exception. Portland acknowledges that, if it can attract additional firm service to its system, then the courtesy extended to the Generators and KeySpan, may become less frequent. But Portland affirms that these shippers' firm service rights will not be diminished.

53. In response to the Generators' challenge of Portland's proposed scheduling priorities for HRS overrun service, Portland asserts that there is no provision in the currently effective OBAs or in Portland's tariff that provides for scheduling of Operation Imbalance gas. Although Portland requests that its shippers provide a nomination for OBA, Portland contends that it is scheduled only as courtesy and not pursuant to any tariff or contractual obligation. Portland further asserts that HRS overrun volumes would properly be accorded the same scheduling and curtailment priority as interruptible service.¹⁵ However, Portland continues, because the HRS overrun rate could be higher

¹⁵ Portland cites CNG Transmission Corp., 81 FERC ¶ 61,346 at 62,592 (1997), order on reh'g, 82 FERC ¶ 61,261 (1998) (Commission observes that authorized overrun is an interruptible service that is associated with a firm service contract and should be treated for scheduling and priority purposes as equivalent to IT; Commission rejects pipeline's proposal that would have, under certain circumstances, allowed lower paying

(continued...)

than the maximum IT rate, it would be entirely reasonable, and consistent with FERC's allocative efficiency principles, to accord a higher priority to service that is paying a higher rate.¹⁶ Portland further asserts that, as an adjunct to a firm service, HRS overrun deliveries, at least those priced above the maximum IT rate, should be scheduled ahead of interruptible volumes.

Discussion

54. The Commission recognizes that a firm hourly service provides options and flexibility to shippers, which may be particularly useful and desirable to electricity generators or those serving electricity generators, whose intra-day delivery requirements may not be uniform and who may require accelerated flow rates and minimum delivery pressures during particular periods of the gas day. Accordingly, subject to the conditions discussed below, the Commission will accept the proposed HRS service and rates. However, the Commission finds that Portland's proposed limitations on the rights of existing customers to exceed uniform hourly flows are not supported and, therefore, are rejected.

55. KeySpan's request for summary rejection of Portland's filing is denied. The Commission finds that KeySpan has failed to demonstrate that the Portland filing is either patently deficient or a substantive nullity, as required by the precedent in Municipal Light Bds. v. FPC. The Commission also finds that while the parties have raised serious issues regarding the proposed Rate Schedule HRS, Portland has sufficiently addressed these issues in its answer, with certain exceptions which are discussed below.

56. Based on Portland's factual representation in its filing and answer, which Maritimes does not appear to refute, the Commission disagrees with Maritimes' assertion that implementation of Portland's HRS proposal would violate section 2.07(b) of the Operating Agreement. Maritimes states that the Operating Agreement compels each owner of the Joint Facilities to deliver gas at hourly rates that are as uniform as practicable, but that "to the extent operating flexibility exists from time to time" on the Joint Facilities, each owner can deliver gas "in excess of uniform hourly rates." The Commission finds that because of MNOC's history of providing non-uniform hourly service on the Joint Facilities,

IT service to be scheduled ahead of higher paying overrun service.)

¹⁶ Portland cites Florida Gas Transmission Co., 102 FERC ¶ 61,217 at P 23 (2003); see also Columbia Gulf Transmission Co., 100 FERC ¶ 61,344 at P 41 (2002).

coupled with the claimed availability of Portland's line pack on the Joint Facilities¹⁷ and its large volume of unsubscribed capacity on the Joint Facilities, the "operating flexibility" -- which the Operating Agreement contemplates only "exists from time to time" -- may actually be the norm. Further, it appears this flexibility will continue until such time that Portland's capacity on the Joint Facilities is sufficiently subscribed or other operational conditions exist, so as to render the implementation of HRS service operationally

infeasible.¹⁸ Accordingly, in light of this operational feasibility, the Commission finds that the Operating Agreement permits Portland to deliver gas in excess of uniform hourly rates.

57. The Commission also disagrees with Maritimes' assertion that Portland's proposed Rate Schedule HRS and the HRS pro forma service agreement permit Portland and an HRS shipper to negotiate a minimum pressure. The Commission finds instead that the rate schedule and the pro forma service agreement appear to be in conflict with each other. Section 4.6 of proposed Rate Schedule HRS states:

Transporter shall provide Shipper with a minimum pressure of 550 psi at the Primary Delivery Point. Such pressure shall be set forth in Schedule 2 to the [HRS Service] Agreement.

However, the Commission notes that Schedule 2 of Portland's pro forma HRS service agreement has a blank for the minimum delivery pressure to be filled in. Therefore, although Rate Schedule HRS states that the minimum delivery pressure "shall" be 550

¹⁷ Section 2.15 of the Operating Agreement requires both Portland and Maritimes to supply and own gas needed for line pack on the Joint Facilities in proportion to their overall ownership interest, namely 33.24% for Portland and 66.76% for Maritimes.

¹⁸ Portland states that it will meet HRS delivery obligations by retaining gas in its solely-owned facilities during the hours that it is not required to flow, and provide the flow during hours when HRS gas is scheduled. Portland answer at p. 6, note 8. The Commission also notes that as the operator of the Joint Facilities, MNOC will be in the best position to determine on a daily and even hourly basis whether a nomination under HRS service will be operationally feasible. After each HRS nomination, MNOC will either confirm the nomination, or advise a given shipper that its nomination cannot be accepted.

psi, the pro forma service agreement appears to permit a negotiation of the minimum delivery pressure. If Portland intends to permit the negotiation of minimum pressure requirements,¹⁹ then it must refile to modify section 4.6 of Rate Schedule HRS so that it clearly states the minimum delivery pressure shall be 550 psi unless the parties agree to a different minimum delivery pressure.²⁰ If not, then Portland should revise the pro forma service agreement accordingly.

58. The Commission agrees with Portland's assertion in its answer that there is no inconsistency between the 1110 psi limit on gas entering the Joint Facilities,²¹ and Portland's proposed requirement of a 550 psi minimum delivery pressure to provide HRS service. Stating a minimum pressure requirement below the 1110 psi limit to provide a specific service does not imply the right to agree to exceed the 1110 psi limit. Portland would be barred from negotiating a minimum pressure requirement for HRS service on the Joint Facilities higher than 1110 psi, as that would violate its agreement with Maritimes. The Commission notes that an additional protection exists for Maritimes in that MNOC has instituted a 1110 psi flow restriction on Maritimes' inlet meter at the Westbrook Interconnect at the inlet to the Joint Facilities which prohibits the introduction of gas into the Joint Facilities at pressures greater than 1110 psi.²²

59. The Commission finds that Portland has not adequately addressed the Generators' contention that the proposed minimum delivery pressure of 550 psi for HRS service is unduly discriminatory. Portland is directed to explain whether it is feasible to provide a minimum delivery pressure of 550 psi at all delivery points and under all rate schedules. Portland is further directed to explain whether HRS service can be provided at lower delivery pressures, and if not, why not.

¹⁹ Schedule 1 of the pro forma service agreement regarding receipt points also contains a blank for "minimum pressure."

²⁰ However, as discussed in the next section, the parties may not agree to a minimum delivery pressure on the Joint Facilities greater than 1110 psi.

²¹ Maritimes and Northeast Pipeline, L.L.C., 96 FERC ¶ 61,077 at 61,331 (1997). ("By agreement of the parties, neither [Portland] nor Maritimes may introduce gas into the Joint Facilities at Westbrook at higher than 1110 psig.") The 1110 psi limit is found in section 10.2 (p. 58) of the "Ownership Agreement" of the parties, included as an appendix to the October 9, 1997 certification in Docket No. CP97-238-000.

²² Id.

60. In response to KeySpan's question whether HRS service would be available to multiple customers at a single delivery point, Portland asserts that HRS service is limited to one HRS contract per delivery point and one HRS delivery point per contract. Furthermore, Portland states that to the extent deemed necessary or appropriate, Portland will reflect this clarification in its tariff. Portland is directed to modify its tariff sheets to reflect that HRS service is limited to one HRS contract per delivery point and one HRS delivery point per contract.

61. With regard to KeySpan's concern that Portland may not be allocating sufficient costs to the new HRS service, the Commission finds that the rates for Portland's proposed new HRS service are just and reasonable. The proposed HRS rates are derived from the rates for Portland's current FT service and, further, Portland has used the same method of designing hourly rates that the Commission accepted in Gulfstream, which the Commission finds applies here, contrary to KeySpan's claim at footnote 10 of its protest. In between rate cases, the Commission will accept new services and the initial rates for such services if they are designed properly based on the company's currently-approved cost of service. Issues regarding the levels and allocation of costs underlying the rates may be taken up in the pipeline's next rate case. Portland is advised that if the HRS rates as accepted in this order result in an under recovery of the costs to provide HRS service, Portland will be responsible for such under recovery, and will not be allowed to subsidize the cost of providing HRS service from customers receiving service under other rate schedules by shifting the recovery of HRS costs to other customers.

62. The Commission rejects Portland's proposed revision to section 7.10 of the GT&C of its tariff. Portland's GT&C section 7.10 currently states:

Shipper shall deliver and receive Gas in uniform Daily quantities during any Month and in uniform hourly quantities during any Day as nearly as possible at uniform hourly rates. Any departure from uniform hourly quantities shall be allowed if mutually agreeable.

Portland proposes to revise section 7.10, so that it states:

- (a) FT-Flex, FT, IT and PAL Receipts and Deliveries. Shipper shall deliver and receive Gas in uniform Daily quantities during any Month and in uniform hourly quantities during any Day as nearly as possible at uniform hourly flows.
- (b) HRS Receipts. Unless otherwise agreed, Shipper shall deliver, or cause to be delivered and Transporter shall receive at each Receipt Point, Gas in uniform hourly quantities during any Day.

The currently effective section 7.10 allows for a departure from uniform hourly flow rates, inter alia, “if mutually agreeable” for Rate Schedules FT-Flex, FT, IT and PAL. However, the proposed revisions to section 7.10 do not allow for any mutually agreeable departures from uniform hourly flow rates under those rate schedules. The Commission finds that Portland’s proposed revision to GT&C section 7.10 would degrade customer rights that are currently allowed in Portland’s tariff, and that Portland’s deletion of the possibility for flow rate variations based on mutual agreeable terms, unreasonably detracts from the service FT-Flex, FT, IT and PAL customers currently receive. Portland has not demonstrated why the proposed changes are just and reasonable. It concedes that it has provided deviations from uniform hourly flows on a mutually agreeable basis in the past, and if such deviations are operationally feasible, they are a reasonable accommodation to shippers who temporarily may need to deviate from uniform hourly flows. Furthermore, the proposed revisions to GT&C section 7.10 are unnecessary to implement HRS service, and accordingly, are rejected.

63. Further, the Commission finds that Portland’s proposed changes to sections 7.4(b)(1) and 7.4(b)(2) of its GT&C are unclear, and appear to impose uniform hourly flow requirements on existing services.

64. Section 7.4 of the GT&C of Portland’s tariff establishes priorities for the allocation of capacity on constrained portions of the system. Portland proposes to add the following underscored language to GT&C sections 7.4(b)(1) and 7.4(b)(2):

7.4(b)(1) First, Transporter shall schedule service under Rate Schedule FT-Flex for Shippers whose nominated volumes Transporter has previously declined to schedule on 10 days during the current Month and whose current nomination is for Primary Receipt and Delivery Point(s), and Rate Schedule FT and Rate Schedule HRS nominated at Primary Receipt and Delivery Point(s) on a pro-rata basis based on Maximum Contract Demand. For purposes of allocating mainline capacity pursuant to this paragraph, any Nomination for service at a Secondary Receipt Point located downstream of a Shipper's Primary Receipt Point, shall be treated as a Nomination for service at Shipper's Primary Receipt Point, up to the Shipper's Maximum Contract Demand at such Primary Receipt Point. For purposes of allocating mainline capacity pursuant to this paragraph, any Nominations for service at a Secondary Delivery Point located upstream of a Shipper's Primary Delivery Point, shall be treated as a Nomination for service at Shipper's Primary Delivery Point, up to the Shipper's Maximum Daily Quantity, on a uniform hourly flow basis, regardless of the contracted flow rate, at such downstream Primary Delivery Point.

7.4(b)(2) Second, Transporter shall schedule service under Rate Schedule FT-FLEX for Shippers whose nominated volumes Transporter has previously declined to schedule on 10 Days during the current Month and whose current nomination is for Secondary Receipt and Delivery Point(s) and Rate Schedule FT and Rate Schedule HRS at Secondary Receipt and Delivery Point(s) on a pro-rata basis based on the highest percentage of the Maximum Demand Rate for the service being provided. Shippers that are paying the same percentage of the Maximum Demand Rate for such service shall be allocated capacity on a pro rata basis. For purposes of allocating mainline capacity pursuant to this paragraph, any nomination for service at a Secondary Delivery Point, up to Shipper's Maximum Daily Quantity, shall be scheduled on a uniform hourly flow basis regardless of the contracted flow rate.

Existing section 7.4(b)(1) provides that allocation of constrained capacity at primary points is on a pro-rata basis “based on Maximum Contract Demand.” The same reference to “Maximum Contract Demand” is made with respect to secondary receipt points located downstream of the shipper’s primary receipt point. With the addition of a reference to Rate Schedule HRS, it is unclear whether “Maximum Contract Demand” means an HRS shipper’s Maximum Daily Quantity (MDQ) or it Hourly Reserve Quantity (HRQ) at such points. Portland must clarify its intent and file revised tariff language reflecting such clarification, with appropriate support and examples for such provision. Further, because both the “First” priority set forth in section 7.4(b)(1) and the “Second” priority set forth in section 7.4(b)(2) relate to secondary receipt and delivery points for FT and HRS service, but scheduling under (b)(1) is based on contract demand whereas scheduling under (b)(2) is based on price, Portland must explain how scheduling at secondary points is accomplished, with examples and support, and whether it intends section 7.4(b)(2) to relate only to out-of-path secondary points.

65. In addition, the Generators assert that the proposed changes reflected in the last sentences of GT&C sections 7.4(b)(1) and 7.4(b)(2) impose uniform hourly flow requirements on existing services that do not exist today, and could prevent the operational scheduling of hourly quantities that Portland currently allows. The Commission agrees with the Generators for the same reasons as discussed above with regard to the proposed revisions to GT&C section 7.10. Accordingly, Portland’s proposed changes to GT&C sections 7.4(b)(1) and (2) to impose uniform hourly flow requirements are rejected.

66. The Commission finds that Portland has not made clear in its tariff what its scheduling priorities are, including whether an HRS customer’s gas would be scheduled

ahead of an FT customer when that FT customer requests hourly flexibility consistent with the flexibility Portland has historically allowed. Although Portland states that scheduling of HRS service will be on the same basis as FT and be governed by GISB/NAESB standards, which Portland asserts “are compatible with the flow rates proposed under rate Schedule HRS,”²³ the Commission notes that NAESB guidelines do not set forth procedures for non-uniform hourly flows. It is, therefore, unclear how Portland will schedule HRS gas. Portland is directed to explain fully and clearly what its scheduling priorities will be once HRS is implemented, and how Portland will implement scheduling and curtailment of HRS service, with accompanying support and examples, including proposed clarifying tariff changes.

67. Finally, with regard to the issue of overrun service and make-up quantities raised by the Generators, the Commission finds that Portland has not adequately responded to the Generators’ protest. In its answer, Portland responds, simply, that “Operation Imbalance gas” is scheduled only as courtesy and not pursuant to any tariff or contractual obligation. Given that Portland has been providing some form of overrun and/or make-up services informally to its existing shippers, Portland is directed to explain why scheduling procedures for these services should not be codified in Portland’s tariff. Further, Portland is directed to explain why it should not accord equal scheduling priority for these other overrun and/or make-up services with HRS overruns.

The Commission orders:

(A) KeySpan’s request for summary rejection of the tariff filing made in this proceeding is denied.

(B) The tariff sheets listed in the Appendix are accepted effective April 1, 2004 as requested, subject to the conditions discussed in the body of this order and the ordering paragraphs below.

(C) Portland is advised that if its HRS rates as accepted in this order result in an under recovery of the costs to provide HRS service, Portland will be responsible for such under recovery, and will not be allowed to subsidize the cost of providing HRS service from customers receiving service under other rate schedules.

²³ Portland answer at p. 6.

(D) Consistent with its answer, Portland is directed to modify the proposed tariff sheets to reflect that HRS service is limited to one HRS contract per delivery point and one HRS delivery point per contract.

(E) Portland is directed to file revised tariff sheets and the requested explanations and other support as directed above within fifteen days of the date of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

APPENDIX

**Portland Natural Gas Transmission System
FERC Gas Tariff
Original Volume No. 1**

**Accepted Effective April 1, 2004
Subject to Conditions:**

First Revised Sheet No. 102
Original Sheet No. 103
First Revised Sheet No. 218
Original Sheet No. 219
Original Sheet No. 220
Original Sheet No. 221
Original Sheet No. 222
Original Sheet No. 223
Original Sheet No. 224
Second Revised Sheet No. 303
Third Revised Sheet No. 326
Second Revised Sheet No. 329
Third Revised Sheet No. 339
First Revised Sheet No. 571
Original Sheet No. 572
Original Sheet No. 573
Original Sheet No. 574
Original Sheet No. 575
Original Sheet No. 576
Original Sheet No. 577
Original Sheet No. 578
Original Sheet No. 579