

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Paiute Pipeline Company

Docket Nos. RP04-51-001
and RP04-51-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued April 20, 2005)

1. On November 3, 2004, the Commission issued an order¹ conditionally accepting tariff sheets filed by Paiute Company (Paiute) that redefined Paiute's operating procedures in emergency situations and provided for capacity segmentation and backhaul transportation. This order addresses requests for clarification and rehearing of that order filed by Paiute and Sierra Pacific Power Company (Sierra). This order also addresses Paiute's November 30, 2004 filing to comply with the conditions in the November 3 Order. The Commission grants in part and denies in part the requests for clarification and/or rehearing, and accepts Paiute's proposed tariff sheets as indicated in the Appendix to this order.

I. Background

2. On November 7, 2003, Paiute filed revised tariff sheets to: (1) more accurately define Paiute's procedures with respect to the operation of its LNG storage facility and the operation of its pipeline system in emergency conditions; (2) add provisions providing for capacity segmentation and backhaul transportation; (3) add and remove receipt points; and (4) clarify, improve and/or update the text in various provisions. Several parties protested Paiute's filing. On December 4, 2003, the Commission accepted and suspended Paiute's proposal to be effective December 7, 2003, and directed staff to conduct a technical conference. The tariff sheets became effective on December 9, 2003, subject to the conditions adopted by our December 4 Order. After the technical conference, Paiute filed *pro forma* tariff sheets reflecting modifications to its segmentation and backhaul proposals discussed at the conference and the parties

¹ *Paiute Pipeline Company*, 109 FERC ¶ 61,139 (2004).

filed comments on Paiute's revised proposal. On November 3, 2004, the Commission accepted Paiute's filing subject to certain modifications and directed Paiute to file revised tariff sheets making the required modifications. Paiute filed a request for clarification or, in the alternative, rehearing of the November 3 Order. Sierra also filed a request for rehearing.

3. On November 30, 2004, Paiute filed the tariff sheets listed in the appendix to this order in order to comply with the November 3 Order. As shown in the Appendix, Paiute proposes that some of the tariff sheets be made effective on December 9, 2003 and others on December 30, 2004. Notice of Paiute's compliance filing was published in the *Federal Register* (67 Fed. Reg. 71,019 (2004)), with protests due on or before December 12, 2004. No party filed a protest.

II. Requests for Rehearing

OFO Penalties

4. In its November 2003 filing, Paiute proposed to change the Operational Flow Order (OFO) penalty provision in section 5.2(a) of its General Terms and Conditions from a fixed, tiered penalty rate to one based upon a published index gas price.² Specifically, Paiute proposed the following OFO penalties:

The greater of five dollars (\$5.00) or two times the highest price receipt point for Northwest listed in *Gas Daily* (or a successor publication) for an unauthorized daily overrun or underrun that exceeds three percent and is not greater than five percent of the Daily Scheduled Quantity.

The greater of ten dollars (\$10.00) or four times the highest price receipt point for Northwest listed in *Gas Daily* (or a successor publication) for an unauthorized daily overrun or underrun that exceeds five percent of the Daily Scheduled Quantity.

5. In our November 3 Order, we found that these proposed OFO penalties were reasonable, and we accepted them, subject to review of the proposed gas price indices to determine whether those price indices meet the criteria set forth in the

² Paiute's pre-existing penalties provided for a penalty of \$5/Dth for gas taken in excess of 103 percent of daily scheduled quantities and \$10/Dth for gas taken in excess of 105 percent of daily scheduled quantities.

Commission's policy statement for price index developers.³ We agreed with Paiute's assertion that it now had a greater need to effectively deter overruns and underruns during periods when an OFO was in effect, because of Sierra's February 28, 2003 termination of its contract for service under Rate Schedule LGS-1 (LNG service). Sierra's contract covered 49 percent of Paiute's total LNG capacity. As a result, Paiute would now have less ability to rely upon its LNG facility to meet unexpected system operating needs. We also stated that, by definition, an OFO penalty applies only during critical periods and, therefore, the penalty level should be sufficient to deter conduct that would threaten system integrity. Further, we stated that Paiute's proposed penalty methodology falls within the range of penalties that have been accepted by the Commission for this purpose.

6. In its request for rehearing, Sierra contends that Paiute's proposal to base its OFO penalties on multiples of the "highest price receipt point for Northwest listed in *Gas Daily*" could lead to unreasonably high penalties. For example, Sierra states that during the period December 9 through December 12, 2000 *Gas Daily* reported a price of \$42.30 per Dth for deliveries at the Northwest receipt point. Based on that price, Sierra asserts that Paiute's proposal could result in penalty levels of about \$80 per Dth (two times the market price index or \$160 per Dth (four times the index). Sierra states that such penalty levels—that are not theoretical but based on recent experience—are unconscionable *per se*. Sierra further states that the Commission has approved OFO penalties for other pipelines that are not based on price indices, or if they do, impose only the index price and not any multiple of that index price.

7. Further, Sierra asserts that there is no justification to apply the proposed market-based penalty structure to undertakes of gas. Sierra recognizes that a penalty based on the market price of the gas commodity may provide an appropriate incentive to deter a shipper from taking in excess of contract demand to offset the natural desire of a shipper to obtain gas when gas may be in short supply, which is when the price of gas would be high. However, Sierra contends that such incentives are irrelevant for undertakes of gas. Sierra states that a shipper might have an incentive to leave gas on the system, when gas is abundant and prices are low, but the shipper would not have any incentive to leave gas on the system when prices are high.

8. Finally, Sierra points to the November 3 Order where as justification for approving Paiute's proposed penalty levels, the Commission agreed with Paiute that because Paiute's LNG facilities were no long subscribed, Paiute could no longer rely upon its LNG service to meet unexpected system operating needs. Sierra claims this justification will have likely been eliminated by the time the Commission acts on the

³ *Policy Statement on Natural Gas and Electric Price Indices* (Price Index Policy Statement), 104 FERC ¶ 61,121 (2003).

instant rehearing request. Specifically, Sierra points to a pending settlement and an October 25, 2004 amended Paiute certificate application in Docket No. CP04-343 which Sierra states, if approved, would result in a full subscription of the LNG facilities.⁴ If so, Sierra contends that Paiute's sole justification for its draconian changes in the OFO penalty provisions will no longer apply.

9. We deny rehearing on this issue. Penalties for a violation of an OFO by definition only apply during critical periods, since that is the only time that Paiute can impose an OFO. In the Order No. 637 compliance proceedings, the Commission consistently approved high penalties for violating OFOs. We reject Sierra's argument that Paiute's penalty levels are unreasonably high in light of certain December 2000 daily gas prices. Sierra's use of western market delivered gas prices during December 2000 is highly misleading. Those data points are not representative or controlling since the time period is one when western energy market prices were excessive due to market manipulation. Gas prices in the western markets during the 2000/2001 winter period were an anomaly and further, it is more appropriate to use more recent operating experience such as the winter of 2003/2004 when Paiute made its filing to revise its penalty provisions.⁵ The Commission's examination of the Gas Daily prices for the Northwest point showed prices generally ranging from \$5.00 to close to \$6.00 per Dth during the months of December 2003 and January 2004. The highest penalty under Paiute's revised penalty charges using this more recent operating experience

⁴ On December 22, 2004 the Commission granted certificate authority for Paiute to (1) acquire and operate the H.G. Laub LNG facilities near Lovelock, Nevada and associated loop pipeline facility that Paiute currently leases; and to (2) render new long-term LNG storage services under its Rate Schedule LGS-1 to four of its local distribution company (LDC) customers. *Paiute Pipeline Company*, 109 FERC ¶ 61,333 (2004).

⁵ This time period would also be more applicable since as Paiute points out in its comments on the technical conference, Sierra violated daily entitlement restrictions on at least four occasions during the winter of 2003/2004 after Paiute's proposed penalty provisions went into effect on December 9, 2003. *See Post-Technical Conference Reply Comments of Paiute Pipeline Company*, at 13 ("Sierra incurred overrun penalties during restricted daily entitlement periods on December 16 and 29, 2003, and January 4 and 26, 2004").

would be approximately \$24 per Dth, not \$160 as Sierra suggests.⁶ Such a penalty of \$24 per Dth is comparable to OFO penalties on other pipelines.⁷

10. Further, we reject Sierra's complaint that Paiute's proposal to change from a fixed price penalty to one based on a published price index is unreasonable. In addressing a proposal by Gulf South Pipeline Company to change from a fixed price penalty to one based on a commodity index, we said the following:

Given the potential for significant fluctuation in gas prices, the Commission finds that basing the OFO penalty on a commodity index is reasonable. Further, placing a premium on top of this commodity index should serve as an effective deterrent to commodity arbitrage. . . . As the price of gas fluctuates, the penalty level will automatically adjust, making it less likely for Gulf South to make further tariff filings to change penalty levels.⁸

Similarly, Paiute's revised penalty structure which we approved in the November 3 Order was based in part upon elevated gas prices and the need to discourage gaming by shippers during critical periods when line pack may be insufficient to address operational emergencies.⁹ Also, Paiute's index based penalty charges fall within the range of penalties that have been accepted by the Commission for Portland General Electric Company and Northwest Pipeline Corporation, both of which have penalty

⁶ See, i.e., Gas Daily prices for Northwest, Wyoming pool on the following dates: December 16, 2003 (\$5.815); December 31, 2003 (\$5.555); January 5, 2004 (\$5.320); January 16, 2004 (\$5.525); and January 24, 2004 (\$5.290).

⁷ See the tariffs of the following pipelines for OFO penalties of \$25 per Dth: Algonquin Gas Transmission, LLC (Fifth Rev. Vol. No. 1, Original Sheet No. 571); National Fuel Gas Supply Corporation (Fourth Rev. Vol. No. 1, Second Rev. Sheet No. 399); Northern Natural Gas Company (Fifth Rev. Vol. No. 1, Third Rev. Sheet No. 263C); and Transcontinental Gas Pipe Line Corporation (Third Rev. Vol. No. 1, Third Rev. Sheet No. 374T).

⁸ *Gulf South Pipeline Company*, 98 FERC ¶ 61,278 at (2002).

⁹ See November 3 Order at P 16 ("Paiute also believes its proposed index approach is a better method of penalizing OFO violations in today's environment where gas prices can fluctuate and often exceed a fixed penalty level").

charges that are based upon multiples of a price index,¹⁰ and both of which have pipeline systems, like Paiute, that are located in the western part of the country.

11. Sierra argues that there is no justification for the draconian penalties proposed for OFO undertakes. Sierra argues that a shipper would want to shed gas when prices are low. Sierra also states that the market price of gas may well be irrelevant to why a shipper may want to undertake gas from the pipeline. The Commission rejects Sierra's arguments. The operational integrity of a pipeline may be threatened by either undertakes or overtakes. In such situations, if an OFO is issued, customers are expected to comply, as their actions could impact service on the pipeline. Penalties are necessary to provide incentives to comply with such orders. Further, if a shipper sheds gas when prices are low then it is unlikely that the penalties will be draconian since index prices will also be low. On the other hand, if market prices are irrelevant then a penalty that is the higher of a fixed price or a multiple of an index price should act as a sufficient deterrent to prevent a shipper from undertaking gas when a situation necessitating an OFO has been established on the pipeline.¹¹

12. Finally, we reject Sierra's arguments that Paiute's revised OFO penalty was based solely on Sierra's Rate Schedule LGS-1 termination. The inclusion of a market-based index in the OFO penalty calculation was not exclusively based on the changed circumstances created by Sierra's contract, but rather as discussed above was needed to discourage shipper behavior that could threaten system reliability during critical periods. The Commission found that Paiute's OFO penalty provisions properly apply to operating conditions or events which threaten or could threaten the safe operation of Paiute's system and its OFO penalties were reasonable and in line with penalties approved for other pipelines. For these reasons, the Commission stands on its prior ruling and denies Sierra's request for rehearing on this issue.

¹⁰ See Portland General Electric's tariff (Orig. Vol. No. 1, Original Sheet No. 76) (greater of \$25 or two times the Index Price); and Northwest's tariff (Third Rev. Vol. No. 1, Fourth Rev. Sheet No. 232C and Third Rev. Sheet No. 232D) (greater of \$10 or four times the highest price at NW Wyoming Pool, NW south of Green River, NW Standfield, NW Stanfield, NW Sumas, or El Paso Bondad as reflected in Gas Daily). The Commission's reliance on the *Northwest* order at 89 FERC ¶ 61,115 at 61,314 (1989) was in error. However, in Northwest's Order No. 637 proceeding the Commission approved the preceding penalties based on the current policies in effect. This is similar to the action we are taking here. See, *Northwest Pipeline Corporation*, 100 FERC ¶ 61,347 at PP 77-84 (2002).

¹¹ See, e.g. Portland General Electric's tariff (Orig. Vol. No. 1, Original Sheet No. 76 (penalty equal to \$25 or two times the index price for *unauthorized underrun volumes* which exceeds 10% of an entitlement). [Italics added]

Reservation Charge Credits

13. In our November 3 Order, we rejected Sierra's arguments that section 12.2(c) of Paiute's General Terms and Conditions should be changed. Section 12.2(c) provides the circumstances when Paiute is to provide a reservation charge credit for failure to provide service during *force majeure* situations. That section provides:

The Reservation Charge adjustment provided in section 12.1 hereof shall apply, commencing on the 16th day from the inception of an event of force majeure or non-routine repairs or maintenance, *if by that time Paiute has failed to remedy the force majeure condition or to complete the non-routine repairs or maintenance, provided that the ability to remedy the force majeure condition or to complete the non-routine repairs or maintenance has been within Paiute's control.* [Italics added]

14. We found that no change to that section was necessary because we determined that section 12.2(c) provided for "no credits for the first 15 days and full credits after that period".¹² We concluded that Paiute's existing section 12.2(c) is similar to the *force majeure* reservation charge credit which the Commission described in Opinion 406 as "a form of risk sharing through the establishment of limits on the length of time in which a pipeline may be excused from providing reservation charge credits."¹³

15. In its request for rehearing, Sierra argues that the Commission was incorrect in stating that Paiute's existing section 12.2(c) provides for a sharing of risk. Sierra points out that section 12.2(c) initially states that Paiute will provide reservation charge credits after the first 15 days of a *force majeure* but then states that Paiute will not provide such credits if Paiute did not remedy the *force majeure* situation and should have done so. Sierra argues that in effect, Paiute is proposing that it will not provide credits after the first 15-day period if its failure to provide firm service after the first 15 days is not its fault but is because of a continuation of *force majeure*. Sierra proposes that the Commission require Paiute to revise section 12.2(c) to adopt the sharing of risk approach approved in *Texas Eastern Transmission Corporation*.¹⁴

¹² See November 3 Order at P 33.

¹³ *Tennessee Gas Pipeline Co.*, 76 FERC ¶ 61,022 (1996) (Opinion No. 406), *Order on Reh'g*, 80 FERC ¶ 61,070 (1997) (Opinion 406-A).

¹⁴ 62 FERC ¶ 61,015, *aff'd on reh'g*, 63 FERC ¶ 61,100 (1993).

16. We grant rehearing. Our November 3 Order cited to Opinion No. 406 and *Natural Gas Pipeline Co. of America* where the Commission addressed the issue of reservation charge credits for instances of service curtailment.¹⁵ Order No. 406 requires that when the pipeline fails to deliver at least 98 percent of the shipper's scheduled deliveries and the failure is due to conditions under the control of the pipeline, there must be a full reservation charged credit as to the undelivered amount. However, Opinion No. 406 found that when there is a shortfall due to a *force majeure* event, all parties should bear the risk. In this circumstance, the pipeline should provide a partial credit to the affected firm shippers.

17. In Order No. 406, the Commission discussed what constituted an appropriate partial credit in the *force majeure* event. One such method is a partial credit consisting of a credit that covered the portion of the transportation rate associated with the pipeline's return on equity and associated income taxes. The Commission reasoned that since the pipeline under the SFV rate design recovered those costs in its reservation charge, this placed the pipeline at risk for those costs, while the shipper was at risk for the balance of the reservation charge. The Commission discussed other forms of risk sharing citing a *force majeure* provision that the Commission accepted in *Texas Eastern Transmission Corporation*, which provided a limit on the length of time when the pipeline was excused from providing any reservation charge credits.¹⁶ In *Texas Eastern*, the Commission limited the time period during which Texas Eastern could avoid reservation charge adjustments to the earlier of 10 days, or when the pipeline should have resolved the *force majeure* situation through the exercise of due diligence. The Commission said that such a limitation is a reasonable method of sharing the risk since the customers bear the risk for only a limited period of time, and then the risk shifts to the pipeline. The Commission said that this provides an incentive to the pipeline to regain control of its system as soon as possible, and assures customers that they will not bear the risk of an extended *force majeure* interruption.¹⁷

18. Section 12.2(c) does provide for a reservation charge credits after the first 15 days of a force majeure event. However, that section only requires Paiute to provide credits if the ability to remedy the *force majeure* condition has been within Paiute's control.

¹⁵ *Natural Gas Pipeline Co. of America*, 106 FERC ¶ 61,310 (2004); *Order Denying Reh'g and Granting Clarification*, 108 FERC ¶ 61,170 (2004).

¹⁶ See *Opinion No. 406 supra* at p. 61,089 citing *Texas Eastern supra* at 61,089-91.

¹⁷ *Id.*

19. We find on rehearing that Sierra is correct that Paiute's existing section 12.2(c) provides for no sharing of risk in *force majeure* situations where Paiute was unable to remedy the problem within the 15-day period and that such a remedy was within its control. A *force majeure* situation is by definition an event that is not within the control of the pipeline or the shipper. The Commission believed that a short-term exemption from reservation charge credits in *force majeure* situations was an appropriate method of risk sharing between the pipeline and its customers. For the grace period, the shipper was at risk until the excuse period ended since it received no credit during that time. Once the excused period ended, the pipeline was at risk for the entire reservation charge. However, under Paiute's proposal, the excuse period continues if it is unable to fix the problem within the 15 days because the remedy was not within its control. That is not consistent with the Commission's approach in allowing a relatively short excuse period to be followed by reservation charge credits if such problem isn't remedied within the grace period. In *Texas Eastern*, we approved Texas Eastern's revised tariff provisions that specifically limited the time period during which it may avoid reservation charge adjustment to the earlier of ten days or when it has or should have resolved the force majeure situation through the existence of due diligence.¹⁸ We grant rehearing on this issue and direct Paiute to revise its tariff consistent with our discussion above.

Backhaul Transportation – Identification of Points

20. In our November 3 Order, we found that Paiute's proposal to revise its tariff to specify the two points on its system that are available today for backhaul transportation was reasonable. However, we agreed with Sierra and Public Service Resources Corporation that there should be no delay in posting additional receipt points for backhaul transportation as they become available. We directed Paiute to post such additional receipt points eligible for backhauls on its Internet Website within 24 hours of such availability and to revise its tariff to provide notice to shippers that such postings will be made on its website.

21. In its request for rehearing, Sierra acknowledges the Commission's remedy to require Paiute to revise its tariff to provide that Paiute will provide 24 hours notice of additional receipt points for backhaul transportation as they become available. Sierra states however that the problem with this remedy is that Paiute's proposed Section 13.2(c) would still provide Paiute with the discretion when to file the necessary revisions to its tariff, which would mean that the 24-hour notice provided for in the November 3 Order would also be subject to indefinite delay. Sierra states that this result could not have been what the Commission intended. Sierra suggests that to implement the Commission's desire to approve Paiute's proposed language but also to allow customers timely access to backhaul transportation from future receipt points,

¹⁸ *Id.*

Sierra would propose that the Commission require that Paiute revise its tariff to require Paiute to file any necessary tariff provisions to allow additional backhaul deliveries as of the time such deliveries are operationally feasible from additional receipt points.

22. The Commission denies rehearing of this issue, but provides the following clarification of our ruling in the November 3 Order. We agreed with Sierra's concern of the need to assure timely availability of backhaul service for newly eligible points and directed Paiute to revise its tariff to provide notice to shippers that newly eligible points will be posted on its website within 24 hours as of the time additional receipt points are created. An existing or prospective shipper can discern from the notice language in revised section 13.2 and Paiute's website which receipt points are eligible for backhaul transportation. In taking this approach, we intend that additional points would be available once the point is posted on Paiute's website, *i.e.*, to be done within 24 hours of availability. By requiring Paiute to post such 24-notice in its tariff, we did not then deem it necessary to also require Paiute to file to revise section 13.2 each time to list additional points before a customer had access to the points. Additional points for backhaul transportation are available for customers once the points are posted on Paiute's website. This clarification should satisfy Sierra's concern that there be no delay in the availability of additional points once such points are created.

Primary Point Rights

23. On rehearing, Sierra states that the Commission improperly approved Paiute's proposed section 13.3(a) which prohibits a releasing shipper from retaining a primary receipt point or delivery point if such point cannot be accessed by the primary capacity pathway rights that it retains. Sierra is concerned that the proposed tariff provision may inhibit capacity releases. Sierra posits the following hypothetical. Shipper 1 has a capacity path starting with a primary receipt point at "A" which goes through point "B" and ends at primary delivery point "C". Shipper 1 wishes to release capacity to Shipper 2 from points "A" through "B" and retain capacity at points "B" through "C". Sierra asserts that under Paiute's proposed section 13.3(a), Shipper 1 (the releasing shipper) would not be able to implement the capacity release, if it could not access point "B" through the capacity path it retains. Sierra claims that on Paiute the prohibition would apply unless receipt point "B" was also an interconnection at which gas could be received into Paiute's system. Sierra asserts that the prohibition has no rational basis and contravenes the mandates of Order No. 637.

24. Paiute filed an answer to Sierra's request for rehearing asserting that Sierra mistakenly argues that section 13.3(a) would impede releases of capacity by preventing a shipper from retaining a downstream capacity segment after releasing the

upstream segment.¹⁹ Paiute submits that in its hypothetical Sierra incorrectly alleges that Shipper 1 would not be able to utilize its retained capacity from points B to C, because Shipper 1 would no longer have a primary capacity pathway upstream of point B. Paiute asserts that Sierra has misconstrued the scope of the stranded point limitation. Paiute states that under the tariff, a shipper may not retain primary point capacity unless it has retained some upstream capacity segment. Paiute states that contrary to Sierra's conclusion, Shipper 1 would retain primary delivery point capacity at its existing primary point C, because point C is accessed by the segment B to C, which Shipper 1 has retained. Paiute argues that Sierra has mistakenly applied a limitation on stranded point capacity to capacity segments, which is not a correct interpretation of the tariff language.

25. Paiute further states that, in Sierra's example, point B is not an existing primary point under Shipper 1's contract. Paiute states that therefore the ability of Shippers 1 and 2 to obtain primary rights at point B after the segmented release are governed by other portions of section 13.3. Paiute states that under the tariff Shipper 1 would be able to obtain primary receipt point entitlements at point B if it both requests such a primary point under its transportation service agreement and Paiute determines that physical capacity is available at such point. Paiute states that Shipper 2 would have primary delivery point entitlements at new point B if Shipper 2 designates that point as a primary point in Shipper 2's transportation contract and capacity is available at the point on a primary basis.

26. The Commission finds that Paiute has adequately explained how proposed section 13.3(a) works and how Sierra's hypothetical example is not valid. Accordingly, the Commission denies Sierra's request for rehearing.

Primary Capacity Rights

27. In its March 16, 2004 filing in this proceeding, Paiute stated that "If firm capacity is available, Shipper may increase any applicable LCL [lateral capacity limitation] on a primary basis up to the Shipper's applicable Daily Reserved Capacity by reducing firm primary rights on a different lateral." Sierra protested claiming that Paiute had not proposed a tariff provision to implement this limitation. The Commission found that all contractual rights and limitations must be explicitly stated in the pipeline's tariff. The Commission stated that Paiute cannot, in a cover letter to

¹⁹ Rule 713(d) of the Commission's Rules of Practice and Procedure (18 CFR 385.713(d) (2004)) prohibit answers to requests for rehearing. However, the Commission will allow Paiute's answer with respect to the limited issue of primary point rights, since Paiute is clarifying how its tariff operates in response to a specific example raised by Sierra not previously addressed in this proceeding and that resolves Sierra's concerns.

a filing, expand or limit the scope of its segmentation proposal. The Commission further stated that to the extent Paiute wishes to incorporate such expanded or limited rights, it must first make a filing proposing to revise its tariff.

28. Paiute filed a request for clarification or rehearing. Paiute asserts that the Commission should clarify that Paiute's existing tariff does not need to contain a statement governing the circumstances under which Paiute will entertain an existing shipper's request for contract amendment so as to increase the shipper's lateral capacity limitation, because such a clarifying statement does not add rights or impose limitations that are not otherwise in Paiute's tariff, and would not constitute the kind of material term or condition of service which must be included in the tariff. If the Commission does not grant Paiute's request for clarification, then Paiute respectfully requests that the Commission grant rehearing of its findings at P 52 of the November 3 order insofar as necessary to hold that: (1) Paiute's existing tariff does not need to contain a statement governing the circumstances under which Paiute will entertain a contract amendment so as to increase a shipper's lateral capacity limitation; and (2) contractual rights and limitations must be explicitly stated in the pipeline's tariff only if they affect rates and services significantly and are not so generally understood so as to render recitation superfluous.

29. The Commission agrees with Paiute that contractual rights and limitations must be explicitly stated in the pipeline's tariff only if they affect rates and services significantly and are not so generally understood so as to render recitation superfluous. The Commission's November 3 Order was not designed to increase Paiute's tariff filing burden to include every possible scenario under which contracts may be changed. However, the Commission finds that Paiute's statement in its cover letter concerning lateral capacity limitation changes may not be so easily discernible as to render recitation in the tariff superfluous. Even Paiute itself recognizes that the ability to modify LCLs was less than clear. In its rehearing, in reference to its statement in its cover letter, Paiute states that "[w]hile there is no disagreement that the existing daily entitlement limitations contained in Paiute's contracts are not expanded or modified by Paiute's segmentation proposal, Paiute sought to make sure there was no confusion over the circumstances in which a shipper could seek to modify its daily entitlement limitations on a particular lateral." Paiute rehearing at 6. The Commission finds that in these particular circumstances adding a tariff provision concerning changes to a shipper's LCL rights would be helpful to shippers and not unduly burdensome on Paiute. Paiute is directed to file revised tariff sheets reflecting the rights discussed in its cover letter with 30 days of the date of this order.

III. Compliance Filing

30. On November 30, 2004, Paiute filed in compliance with the November 3 Order. Paiute requests that the Commission permit the tariff sheets filed here to

become effective as specified in the filing to be effective either on December 9, 2003 or December 30, 2004. The sheets to be effective on December 9, 2003 reflect revisions to corresponding sheets that previously were made effective on that date pursuant to the Commission's December 4, 2003 Order in this proceeding. The sheets to be effective on December 30, 2004 (30 days after the date of this filing) reflect revisions that are prospective from the November 3 Order, as discussed below.

Unauthorized Overrun Penalties

31. In the November 3 Order, we found that Paiute's existing unauthorized overrun penalties of \$5.00 and \$10.00 per Dth apply during all periods, not just critical periods. We directed Paiute to revise its tariff and propose a more nominal penalty for non-critical periods, not to exceed twice its IT rate, or in the alternative, Paiute could retain its existing penalties but must waive the unauthorized overrun penalty if the unauthorized overrun does not cause operational problems.

32. Paiute has revised section 5.1 of its General Terms and Conditions (Sheet Nos. 81 and 81A) to retain its unauthorized overrun penalties when circumstances on Paiute's system are such that unauthorized overruns could impair Paiute's ability to operate its system facilities. Such penalties will only be imposed after a specific operational flow order (OFO) has been issued. Section 5.1 now also provides that for all other times, Paiute will assess a penalty equal to two times its maximum IT rate for any unauthorized contract entitlement overruns.

33. Paiute proposes to make Sheet Nos. 81 and 81A effective December 30, 2004. Paiute states the changes made to these sheets are substantive changes which were directed by the Commission in the November 3 Order, and which were completely unrelated to the changes to those sheets proposed by Paiute in its November 7, 2003 filing. The Paiute filing complies with the November 3 Order on this issue and the tariff sheets are accepted, effective December 30, 2004.

OFO Penalties

34. In the November 3 Order, we found that Paiute's proposed OFO penalties, as set forth in revised section 5.2(a) of its General Terms and Conditions, are reasonable and we accepted Paiute's proposal. We also determined that Paiute's proposed use of a gas price index must meet the criteria set forth in the Commission's policy statement for price index developers and that it also must reflect adequate liquidity at the reference location to be reliable.²⁰ We stated that when Paiute files its actual tariff

²⁰ Citing the Price Index Policy Statement, 104 FERC ¶ 61,121 (2003).

sheets, the Commission will review Paiute's penalty provisions to ensure that they meet the requirements of the policy statement.

35. On November 19, 2004, the Commission issued an "Order Regarding Future Monitoring of Voluntary Price Formation, Use of Price Indices in Jurisdictional Tariffs, and Closing Certain Tariff Dockets."²¹ The Commission found that Platt's *Gas Daily*, the price index referenced by Paiute's General Terms and Conditions 5.2(a), is in substantial compliance with the Price Index Policy Statement and can be used in jurisdictional tariffs.

36. Section 5.2(a) references the "highest price receipt point for Northwest listed in *Gas Daily*." The Northwest index includes three specific trading points that are reported in *Gas Daily*. They are (1) the Wyoming Pool, (2) south of Green River, and (3) Sumas. Each of these three trading locations has met at least one of the three minimum trading activities specified in the November 19 Order.²² Specifically, for the three-month period of August through October 2004, the average daily number of transactions during non-holiday weekdays at each of these trading locations was five or more.²³ In addition, for the same three-month period, the average daily volume traded during non-holiday weekdays exceeded at least 25,000 MMBtu.²⁴

37. Accordingly, pursuant to the November 19 Order, the Platt's *Gas Daily* Northwest receipt point trading locations referenced in Paiute's tariff meet the criteria set forth in the policy statement for price index developers and reflect adequate liquidity, as required by that order. Thus, Paiute has complied with our November 3 Order.

Priority among Receipt Points

38. In the November 3 Order, we directed Paiute to revise its tariff to set forth procedures for the scheduling and allocation of capacity at all receipt points. The

²¹ *Price Discovery in Natural Gas and Electric Markets*, 109 FERC ¶ 61,184 (2004) (November 19 Order).

²² *Id.* at P 68.

²³ The average daily number of transactions during the review period for each points was: (1) Wyoming Pool – 17; (2) Green River – 8; and (3) Sumas – 48.

²⁴ The average daily volume traded during the review period at each point was: (1) Wyoming Pool – 96,100 MMBtu; (2) Green River – 44,400 MMBtu; and (3) Sumas – 305,700 MMBtu.

Commission indicated that it was not clear from Paiute's tariff whether each receipt point on Paiute's system had "equal standing," because the provisions of section 12.1 of Rate Schedule FT-1 and section 4.2(d) of Paiute's General Terms and Conditions addressed only the Owyhee Receipt Point and not the Wadsworth Junction and LNG Plant Receipt Points as well.

39. To comply with our November 3 Order, Paiute has expanded section 4.2(d) (Sheet Nos. 63 and 63.1) to include allocation procedures for the scheduling of receipts at the Wadsworth Junction and LNG Plant Receipt Points. Paiute states that the modifications to section 4.2(d) are prospective in nature. We find that Paiute has satisfactorily complied with the November 3 Order and Sheet Nos. 63, 63A and 63A.1 are accepted, effective December 30, 2004.

Reservation Charge Credits

40. In the November 3 Order, we directed Paiute to revise existing section 12.3 of Rate Schedule FT-1, which governs reservation charge adjustments in *non-force majeure* situations, such as scheduled maintenance. Section 12.3 provided for an exemption from a reservation charge adjustment for interruptions in service due to scheduled tests, repairs, or maintenance, where Paiute gives notice of such scheduled work by the 15th day of the month preceding the scheduled work. We directed Paiute to revise section 12.3 to eliminate this exemption from its obligation to provide for full reservation charge adjustments in *non-force majeure* situations, consistent with Commission policy.

41. Paiute has eliminated from section 12.3, on Sheet Nos. 25B and 25C, the existing exemption from reservation charge adjustments and replaced its prior language with language similar to comparable tariff provisions of El Paso Natural Gas Company²⁵ and Natural Gas Pipeline Company of America,²⁶ two pipelines which have *non-force majeure* reservation charge crediting provisions that have been found by the Commission to be consistent with its policy.²⁷ The revisions to section 12.3 are prospective in nature, and therefore Paiute proposes to make Sheet Nos. 25B and 25C effective December 30, 2004. Paiute's filing complies with the November 3

²⁵ See El Paso Natural Gas Company, FERC Gas Tariff, Second Rev. Vol. No. 1A, Sub Third Rev. Sheet No. 113B.

²⁶ See Natural Gas Pipeline Company of America, FERC Gas Tariff, Sixth Rev. Vol. No. 1, 2nd Sub. Seventh Rev. Sheet No. 226.

²⁷ See, e.g., *Natural Gas Pipeline Co. of America*, 106 FERC ¶ 61,310, *reh'g denied, clarified*, 108 FERC ¶ 61,170 (2004); *El Paso Natural Gas Co.*, 108 FERC ¶ 61,056 (2004).

Order and the tariff sheets are accepted on December 30, 2004. However, as discussed above, the Commission has granted rehearing with respect to Paiute's existing reservation charge adjustments in *force majeure* situations. Paiute will therefore need to make further revisions to section 12 (specifically section 12.2) to reflect our directives.

Identification of Specific Backhaul Points

42. In the November 3 Order, the Commission directed Paiute to revise its tariff to state that notice of new receipt points available for backhaul transportation service will be posted on Paiute's Internet website within 24 hours of their availability. Paiute has modified section 13.2(c) of the General Terms and Conditions on Sheet No. 101 to provide for such modification. Paiute's tariff revision is accepted as in compliance with the November 3 Order.

Backhaul Transportation – Lateral Capacity Limitation

43. In the November 3 Order, the Commission found that Paiute's proposal in section 13.2(d) of the General Terms and Conditions to limit a shipper's backhaul transportation quantities under certain circumstances should either be justified on the basis of operational necessity to be revised to be consistent with its other proposed provisions (sections 13.2(a) and 13.2(c)) which permit shippers to exceed their applicable contract lateral capacity limitations on a secondary firm basis. Paiute had proposed that where a shipper was receiving both forward haul and backhaul transportation deliveries to the same delivery point at the same time, the shipper's backhaul deliveries should be limited to the lesser of its applicable Reserved Capacity or any applicable contract lateral limitation.

44. Paiute has modified section 13.2(d) of the General Terms and Conditions on Sheet No. 101 to provide that backhauls under such circumstances will be limited only to the shipper's applicable Reserved Capacity. This section makes section 13.2(d) consistent with sections 13(a) and 13.2(c). Paiute's tariff revision is in compliance with the November 3 Order.

Computer Implementation

45. In the November 3 Order, the Commission recited Paiute's statements at the technical conference and in its initial comments that Paiute would endeavor to implement the new segmentation and backhaul provisions of the tariff within six months, or approximately by October 1, 2004. Paiute explained that in order to implement its segmentation and backhaul provisions, Paiute must make significant modifications to its gas scheduling computer program.

46. In the instant filing, Paiute states it has been working on developing the changes to the computer program, but has been hampered by the uncertainty of not knowing the final, approved provisions. Paiute also states that as a result of recent analysis, they have now concluded that Paiute will need to employ an outside firm to assist in the reprogramming project. Consequently, Paiute now believes that it will be able to implement the new segmentation and backhaul provisions no later than May 1, 2005. Paiute states it will notify all of its shippers and post a notice on its Internet website when it is able to implement the services.

The Commission orders:

- (A) Paiute's request for clarification is granted in part and denied in part.
- (B) Sierra's request for rehearing is granted in part and denied in part.
- (C) Paiute's proposed compliance tariff sheets are accepted as of the dates shown on the Appendix of this order.
- (D) Paiute is required to file revised tariff sheets as discussed in the body of this order within 30 days of the date of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

Appendix

Paiute Pipeline Company
Docket No. RP04-51-001 and 002
FERC Gas Tariff
Second Revised Volume No. 1-A

Effective December 9, 2003

Fourth Revised Sheet No. 22
Substitute First Revised Sheet No. 82
Substitute Fourth Revised Sheet No. 89A
Substitute Second Revised Sheet No. 100
Original Sheet No. 100A
Substitute Second Revised Sheet No. 101
Original Sheet No. 101A
Substitute Second Revised Sheet No. 102
Substitute Original Sheet No. 102A

Effective December 30, 2004

Second Revised Sheet No. 25B
First Revised Sheet No. 25C
Sixth Revised Sheet No. 63
Fourth Revised Sheet No. 63A
Original Sheet No. 63A.1
Fourth Revised Sheet No. 81
Original Sheet No. 81A