

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Pine Needle LNG Company, LLC

Docket No. RP03-14-001

ORDER ACCEPTING COMPLIANCE FILING

(Issued June 9, 2003)

1. In an order issued on November 27, 2002,<sup>1</sup> the Commission found that tariff provisions of Pine Needle LNG Company, LLC (Pine Needle) concerning the right-of-first-refusal (ROFR) were unjust and unreasonable and required Pine Needle to revise its tariff to include just and reasonable ROFR provisions. In this order, the Commission accepts Pine Needle's compliance filing, as discussed below. This order serves the public interest because it secures rights afforded by the Commission's regulations and policies to firm shippers on Pine Needle's system.

**Background**

2. On October 4, 2002, Pine Needle filed a proposed tariff sheet<sup>2</sup> to modify its ROFR tariff provisions to be consistent with 18 C.F.R. § 284.221(d)(2)(ii) (2002), as revised by Order No. 637.<sup>3</sup> Order No. 637 permitted pipelines to limit the ROFR to firm shippers

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<sup>1</sup>101 FERC ¶ 61,265 (2002) (November 27 Order).

<sup>2</sup>First Revised Sheet No. 80 to its FERC Gas Tariff, Original Volume No. 1.

<sup>3</sup>Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Stats. & Regs., Regulations Preambles (July 1996 - December 2000) ¶ 31,091 (Feb. 9, 2000); order on rehearing, Order No. 637-A, FERC Stats. & Regs., Regulations Preambles (July 1996 - December 2000) ¶ 31,099 (May 19, 2000); order on rehearing, Order No. 637-B, 92 FERC ¶ 61,062 (July 26, 2000); aff'd in part and remanded in part, Interstate Natural Gas Association of America v. FERC, 285 F.3d 18 (D.C. Cir. 2002) (Interstate Natural Gas Association), order on remand, 101 FERC ¶ 61,127 (2002).

paying the maximum rate in contracts for 12 or more consecutive months of service or for multi-year seasonal service.

3. Pine Needle proposed to add Section 23.1<sup>4</sup> of the General Terms and Conditions of its tariff (GT&C) regarding ROFR. The Commission found that the referenced language adding Section 23.1 of the GT&C in First Revised Sheet No. 80 limiting the eligibility for the ROFR was consistent with Order No. 637.<sup>5</sup> The subject tariff sheet was accepted, effective December 1, 2002. However, the Commission's review of Pine Needle's other ROFR provisions revealed several problems with the ROFR provisions it did not propose to change in its filing. For these reasons, the Commission acted under Section 5 of the NGA to require Pine Needle to modify certain of its ROFR tariff provisions. The Commission found that Pine Needle's existing ROFR provisions in Section 23 of the GT&C violate the Commission's policy on ROFR and, therefore, directed Pine Needle to modify that section.<sup>6</sup>

### Notice of Filing

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<sup>4</sup>"This section sets forth the provisions which shall apply to Customers eligible for a right of first refusal. A Customer is eligible for a right of first refusal if the Customer is receiving firm service at the applicable maximum rate pursuant to a Service Agreement with either (1) a term of service of at least twelve consecutive months or (2) for a service which is not available for 12 consecutive months, a contract term of more than one year. Additionally, a Customer receiving firm service at less than the applicable maximum rate pursuant to a Service Agreement executed prior to March 26, 2000 that meets the foregoing term criteria, will also be eligible for a right of first refusal; provided however, the right of first refusal will not apply to a re-executed Service Agreement unless it is at the applicable maximum rate."

<sup>5</sup>101 FERC ¶ 61,265 (2002).

<sup>6</sup>The Commission has found that where a pipeline has a tariff that the Commission has found to be just and reasonable and the tariff currently differs from the ROFR regulations in any respect, the tariff determines the scope of the ROFR on that pipeline until the Commission finds the tariff to be unjust and unreasonable under Section 5 of the NGA and determines a new just and reasonable provision under that section. Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services, 101 FERC ¶ 61,127 (2002). The Commission has followed that procedure in this case.

4. Notice of Pine Needle's compliance filing was published in the Federal Register with comments, interventions and protests due on or before January 6, 2003. No adverse comments, interventions, or protests were received.

**Pine Needle's Compliance Filing of December 24, 2002**

5. Pine Needle's revised Section 23.1(b) provides shippers with the option of exercising a ROFR when either Pine Needle or the shipper gives notice to terminate a service agreement consistent with the notice provisions in the individual service agreement. Upon such notice by either party, the provisions provide that the ROFR posting and bidding procedures are initiated, provided that the shipper gives Pine Needle timely notice that the shipper may desire to continue all or a portion of its service.

6. New Section 23.7 provides that Pine Needle can terminate service entitlements of the shipper without giving the shipper ROFR rights, only where the shipper fails to give the notice described above.

7. Revised Section 23.2, notice provision for posting the capacity on the EBB under bidding procedures, includes provisions where shipper desires to continue to receive service and has given Pine Needle the notice of an intent to retain some or all of the capacity entitlement, and participate in the awarding of the capacity entitlement. Under Section 23.4 , the shipper has 15 days to match the best bid received.

8. Upon review of Pine Needle's compliance filing, the Commission finds the revised notice and ROFR provisions, described above, are now consistent with Commission policy. The relevant revised tariff sheets are accepted effective as of the date of issuance of this order.

The Commission orders:

Pine Needle's proposed second Revised Sheet Nos. 80 and 81 in its FERC Gas Tariff, Original Volume No.1, are accepted to be effective as of the date of issuance of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.