104 FERC ¶ 61,161
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northwest Pipeline Corporation	Docket Nos. RP00-506-004 RP00-506-005 RP00-506-006 RP00-506-007

ORDER ON COMPLIANCE FILING AND REHEARING

(Issued July 29, 2003)

1. On April 25, 2001, the Commission issued an order conditionally accepting tariff sheets submitted by Northwest Pipeline Corporation (Northwest), but requiring revisions to eliminate a requirement for pro rata reductions of maximum daily quantities (MDQs) and maximum daily delivery obligations (MDDOs) at individual receipt and delivery points in capacity reduction situations.[1] Additionally, the April 2001 Order deferred decision on a related request for rehearing by Puget Sound Energy, Inc. (Puget), pertaining to the exercise of right of first refusal (ROFR) options with respect to Northwest's tariff filing, pending the submission of supplemental information by the parties. In this order, as explained below, the Commission will deny Puget's request for rehearing. Additionally, we find that Northwest has not fully complied with the April 2001 Order's requirement of changes in tariff language concerning reductions in aggregate MDQs and MDDOs as a result of capacity turnback reductions. This order benefits Northwest's customers by assuring that the tariffs at issue are properly interpreted.

Background

2. On August 25, 2000, Northwest filed proposed revisions to modify its Right of First Refusal (ROFR) provision as permitted by Order Nos. 637, 637-A, and 637-B and to make certain other related tariff changes. As relevant here, Northwest proposed to add language governing the reduction of a shipper's MDQs and MDDOs in the context of a

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[1] Northwest Pipeline Corp., 95 FERC ¶ 61,098 (2001) (April 2001 Order).

shipper's exercise of its ROFR, capacity release, or capacity turnback. Northwest's contracts with its firm shippers define their firm rights based on a shipper's rights to tender gas at primary receipt points and to take delivery at various points. A shipper's primary receipt point rights are set forth in MDQs and its primary delivery point rights are set forth in MDDOs. As described further below, some shippers have higher MDDOs than MDQs. Northwest's proposed tariff changes in this case stated that in the event a shipper partially reduces its contract demand, it must reduce its MDQs and MDDOs by the same percentage at each individual receipt and delivery point, unless a different pattern of retention can be accommodated without adversely affecting system operations or design displacement levels for firm services. In an order issued on September 22, 2000, the Commission accepted Northwest's proposed revisions subject to Northwest providing additional support for its proposal.[2] The Commission found that Northwest could require shippers to make the same percentage reductions in their aggregate MDDOs as in their aggregate MDQs. However, we rejected Northwest's proposal to require the same percentage reductions in receipt and delivery point capacity at each individual point as "unsupported and vague."[3] In this context, we explained that under Order Nos. 637 and 637-A, shippers are permitted to reduce their capacity on a volumetric, rather than a geographic, basis and that nothing in those orders "restricts shippers' rights at specific receipt or delivery points or requires the use of percentage figures."[4]

3. Northwest subsequently made a filing attempting to support its proposal for requiring pro rata reductions of MDQs and MDDOs at each individual receipt and delivery point in capacity reduction situations. Additionally, Puget requested that the Commission clarify Northwest's tariff proposal with respect to ROFRs when a shipper is reducing its contract demand under more than one contract. Puget observed that the Commission has recognized, under Section 284.221(d) of its regulations[5] "that ROFR options may be exercised under each expiring contract as defined by the terms of that

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[2] Northwest Pipeline Corp., 92 FERC ¶ 61,245 (2000) (September 2000 Order).

[3] 92 FERC at 61,783.

[4] Id.

[5] 18 C.F.R. § 284.221(d) (2003). This regulation states, in relevant part, that abandonment of transportation services is authorized upon the expiration of the contractual termination of each individual transportation arrangement unless the firm shipper exercises any contractual right to continue such service.

agreement."[6] Puget requested that the Commission clarify this with respect to Northwest's tariff proposal.

4. In an order issued on February 23, 2001, the Commission rejected Northwest's explanation with respect to requiring the same pro rata reduction at each receipt and delivery point as unsupported.[7] In this regard, we explained that Northwest's proposal placed "arbitrary limits on shipper options [that] could lead to unreasonable results, and [was] contrary to Northwest's own tariff and Commission policy."[8] Additionally, we determined that Northwest's proposal ran afoul of the Commission's long-standing policy requiring pipelines to permit shippers flexible receipt and delivery point access.[9] Finally, Northwest had presented no evidence that allowing receipt and delivery point flexibility would compromise system operations.

5. However, the February 2001 Order found that Northwest had adequately supported tariff revisions requiring that a shipper reduce its aggregate MDDOs at all its primary delivery points by the same percentage as it reduces the aggregate of all its MDQs at its primary receipt points in cases where MDDOs exceed MDQs. The Commission found that this requirement maintains historic contract relationships in reduction situations, and prevents shippers from increasing flexibility under a specific contract at the expense of other shippers. The Commission reasoned that under Northwest's methodology, shippers in the aggregate would neither gain nor lose flexibility embedded in their contracts. The Commission concluded that with the flexibility to distribute the individual primary receipt and delivery points, shippers are assured of the ability to maintain MDDOs where they are needed.

6. On March 26, 2001, Puget filed a request for rehearing of the February 2001 Order in this proceeding on the ground that the Commission had failed to address its concerns about the exercise of ROFR options and their relationship to Northwest's proposal. Puget

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[6]Puget Motion (September 6, 2000) at 16 (emphasis in original), citing Williams Natural Gas Company, et al., 81 FERC ¶ 61,350 at 65,625, 62,627-28, 62,628-29 (1997) (Williams).

[7]Northwest Pipeline Corporation, 94 FERC ¶ 61,206 at 61,776 (2001) (February 2001 Order).

[8]Northwest Pipeline Corporation, 94 FERC ¶ 61,206 at 61,776 (2001) (April 2001 Order).

[9]See 18 C.F.R.§§ 284.221 (g) & (h).

requested confirmation that Section 284.221(d) permits the exercise of ROFR options at the end of the contractual term under each individual transportation arrangement and the firm shipper's contract for service, notwithstanding Northwest's reference in its tariff filing to aggregate reductions in MDQs and MDDOs.

7. Additionally, on March 13, 2001, Northwest made a filing intended to comply with the February 2001 Order.

8. In the April 2001 Order, the Commission addressed both Puget's request for rehearing and Northwest's compliance filing. The Commission explained that it had not previously decided Puget's rehearing issue because it was unclear how, or whether, Rate Schedule TF-1 and TF-2 agreements were related. The Commission found that this issue required further explanation before a reasoned decision could be made. Accordingly, the Commission requested additional information to be provided by the parties.

9. Concerning Northwest's compliance filing, the April 2001 Order concluded that Northwest had added a proviso allowing it to effectively place the same pro rata restrictions on MDDO and MDQ reductions at each point that the Commission had already rejected. The Commission directed Northwest to remove the proviso language and explained:

> Northwest's revised tariff language . . . would restrict shipper options, even in situations where a shipper's flexibility could be operationally accommodated. Such restrictions are inconsistent with Commission policy. Any restriction on shipper receipt and delivery points must be consistent with Commission policy.[[10]]

10. In compliance with the April 25, 2001 order, Northwest filed supplemental information in response to the questions raised by the Commission concerning Puget's request for rehearing. On June 14, 2001, Puget filed its supplemental information in response to our inquiry, as well as its reply to Northwest's responses. Both parties presented their versions of the relationship between TF-1 agreements and TF-2 agreements.

11. Northwest explains that for TF-2 service from Jackson Prairie and other eligible storage facilities except Plymouth, a shipper's daily redelivery rights (i.e. contract demand

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[10] 95 FERC at 61,293.

and associated MDDOs) are separate from and in addition to a shipper's rights under its other firm service agreements. However, Northwest explains that for TF-2 service from Plymouth, a shipper has MDDOs that are shared. Such a shipper has daily redelivery rights at specific delivery points under its TF-2 agreement only to the extent that it is not utilizing all of its MDDOs at those particular points under its other firm transportation agreements. The shipper would, however, continue to have the right to nominate its contract demand to any delivery point on Northwest's system on a secondary basis.

12. Puget disagrees with Northwest's characterization of the relationship between TF-1 service and Plymouth TF-2 service. Puget contends that it is incorrect to view either service as a base service or as an incremental service insofar as MDDOs are concerned. Puget argues that the MDDOs, though shared, should be equally available for the Plymouth TF-2 service and the conjunctive TF-1 service.

13. On May 10, 2001, Northwest made its filing to comply with the April 2001 Order's requirement that it remove the proposed restrictions for reductions of MDQs at points and MDDOs at individual receipt and delivery points in the event of partial capacity turnback. Northwest removed the tariff language to which the Commission objected, but added similar language that it maintained reflected the Commission's policy that "requires pipelines to allow the shippers the flexibility to choose receipt and delivery points only to the extent that the choices are operationally feasible."[11] Specifically, Northwest added to its tariff sheets the following language:

> Shipper may request the MDQs it wishes to retain at each Receipt Point and the MDDOs it wishes to retain at each Delivery Point; and, to the extent operationally feasible, Transporter will grant such requests.[[12]]

14. Notice of Northwest's compliance filing was published in the Federal Register, 66 Fed. Reg. 28,158 (2001). Puget and another group of parties[13] filed protests objecting to

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[11]Northwest May 10, 2001, Filing at 3.

[12]Tariff Sheet Nos. 24, 259 and 278-C (emphasis added).

[13]Pan-Alberta Gas Ltd., Pan Alberta Gas (U.S.) Inc., Southern Company Energy Marketing Canada Ltd., and Southern Company Energy Marketing, L.P.

Northwest's new proposed language, on the ground that it imposed the same type of tariff restrictions that the Commission had already found unjustified in its prior orders.[14]

Discussion

Puget's Request for Rehearing

15. Puget requests confirmation that ROFR rights apply to individual transportation agreements and the firm shipper's contract for service, notwithstanding Northwest's reference in its tariff filing to aggregate reductions in MDQs and MDDOs. The Commission acknowledges that usually ROFR rights can be exercised individually for each separate transportation or storage agreement. However, Northwest has explained in its supplemental data that current customers, including Puget, have grandfathered conjunctive agreements where delivery point rights (MDDOs) are shared among transportation and storage agreements (Rate Schedules TF-1 and TF-2).[15] Puget has one of these conjunctive agreements with Northwest from Plymouth storage field. This agreement is due to expire on October 31, 2004.[16]

16. The Commission concludes that these grandfathered agreements contemplate that both agreements under Rate Schedules TF-1 and TF-2 would need to remain in place in their entirety, or be reduced or terminated jointly. The Commission will not disturb this historical contract relationship. This approach of maintaining historical contract relationships with regard to ROFR rights is consistent with Commission policy.[17] Accordingly, under these particular circumstances if Puget is terminating or exercising ROFR rights (in whole or in part) with respect to any particular contract it will be

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[14] Additionally, Southwest Gas Corporation (Southwest) filed comments in support of Northwest's compliance filing. Southwest concedes that its comments were filed after the due date for protests, but gives no reason for its lateness. Accordingly, we reject Southwest's filing.

[15] See Response No. 11 of Northwest's May 25, 2001, Supplemental Information filed in Docket No. RP00-506-006.

[16] See Attachment to Response No. 11 of Northwest's May 25, 2001, Supplemental Information filed in Docket No. RP00-506-006. See also Page 4 of Puget's September 6, 2000 protest in this proceeding.

[17] See Williams, 81 FERC at 62,627, explaining that the ROFR is defined by the essential elements of the service involved.

effectively exercising ROFR rights with respect to delivery point capacity under both of its Rate Schedules TF-1 and TF-2 contracts as they currently exist. Therefore, given these particular circumstances, the Commission will deny Puget's request for rehearing.

Northwest's Compliance Filing

17. As discussed above, the Commission has approved Northwest's proposal for the aggregate reduction of MDQs and MDDOs in capacity reduction situations, but rejected Northwest's bid to require pro rata reductions of MDQs and MDDOs at each individual receipt and delivery point in such circumstances. While never having sought rehearing on the latter point, Northwest appears to continue to dispute it in the context of its compliance filings.

18. The Commission finds that Northwest has not complied with the April 2001 Order, and will require Northwest to make further revisions. We agree with the protests that Northwest's proposed new language includes the same restrictions on MDQ and MDDO reductions at individual receipt and delivery points that the Commission has already twice rejected. The April 2001 Order directed Northwest to remove the rejected proviso, and did not authorize or invite Northwest to insert additional language to the same effect.

19. As we explained in the February 2001 Order, the Commission does not intend that our receipt and delivery point flexibility policy be implemented to the point of compromising system operations.[18] However, we found that Northwest's proposed tariff revisions concerning MDQ and MDDO at individual receipt and delivery points could be read to unduly restrict flexibility in choices of MDQ and MDDO levels at individual points, even where capacity is available and would not have an adverse impact on system operations. The Commission has twice before given Northwest the opportunity to demonstrate any operational difficulties arising from our rejection of the request for pro rata reductions at each individual receipt and delivery point, and Northwest has not done so. Thus, there does not appear to be any reason for Northwest's newly proposed language and the Commission directs Northwest to remove it, and to replace the word "request" with "specify." The sentence at issue on the three tariff sheets must read:

> Shipper may specify the MDQs it wishes to retain at each Receipt Point and the MDDOs it wishes to retain at each Delivery Point.

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[18] 94 FERC at 61,777.

In view of the history of this proceeding, the Commission directs that this sentence appear in the tariff sheets as shown, without alteration.

The Commission orders:

(A) Northwest's revised tariff sheets are hereby conditionally accepted for filing, subject to further revision within 15 days of the date this order issues, as discussed in the body of this order.

(B) Puget's request for rehearing is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.