121 FERC ¶ 61,158
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Northwest Pipeline Corporation Docket No. CP06-45-005

ORDER AUTHORIZING ABANDONMENT AND APPROVING LEASE

(Issued November 15, 2007)

1. On August 24, 2007, Northwest Pipeline Corporation (Northwest) filed an application seeking permission and approval to abandon the Parachute Lateral[1] by conveyance to a newly created subsidiary, Parachute Pipeline LLC (Parachute).[2] Under the proposal, Parachute would act as a passive owner of the Parachute Lateral and Northwest would lease the facilities back from Parachute and retain certificate authority to continue to operate such facilities as part of its interstate transmission system. This order approves the transfer of ownership of the Parachute Lateral from Northwest to Parachute and approves the lease of the Parachute Lateral by Northwest.

<u>Background</u>

2. As originally authorized, the Parachute Lateral consists of: (i) approximately 37.6 miles of 30-inch diameter pipeline and appurtenant facilities in Garfield and Rio Blanco Counties, Colorado; (ii) the Starkey Gulch receipt meter station; and (iii) delivery

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[1] The construction and operation of the Parachute Lateral were authorized by a certificate issued to Northwest on August 16, 2006, in Docket Nos. CP06-45-000 and 001. *Northwest Pipeline Corp*., 116 FERC ¶ 61,151 (2006).

[2] Although Northwest's application was styled as a request under section 7(c) of the Natural Gas Act (NGA) to amend the certificate authority issued in the August 16, 2006 order, the facilities at issue have been constructed and in operation since May, 2007. Hence, the applicant is, in fact, seeking approval to abandon and lease back these facilities.

interconnects with Wyoming Interstate Company's Piceance Basin lateral and Colorado Interstate Gas Company's pipeline system at the Greasewood Hub in Rio Blanco County, Colorado. Additionally, since the in-service date of the Parachute Lateral, Northwest has installed the Collins Gulch delivery meter station and is in the process of installing the Skinner Ridge receipt tap under Northwest's blanket certificate.[3]

3. The Parachute Lateral was placed in service on May 16, 2007, and the available 450,000 Dth/d of firm transportation service is fully subscribed through an agreement with Williams Power Company, Inc. (Williams Power). The agreement provides for a negotiated rate and is for an initial term of 15 years.

Proposal

4. Northwest contends that, although the Parachute Lateral was originally built to provide transportation for new pipeline-quality gas supplies from the Piceance Basin, the economic character of the basin is changing. Northwest's parent corporation, The Williams Companies, Inc. (TWC), has announced plans to construct the Willow Creek Processing Plant, a 450,000 Dth/d cryogenic facility designed to process gas from new development areas in the Piceance Basin and to maximize natural gas liquids extraction from gas moving on the Parachute Lateral. Williams Field Services Company, LLC (WFS) will operate the Willow Creek plant which has a planned in-service date of third quarter 2009. Upon completion of the processing plant, TWC anticipates the function of the Parachute Lateral will change from interstate transportation to gathering, as WFS plans to use the lateral to feed unprocessed gas into the new Willow Creek plant. Thus, Northwest states that it views this application as the first step in moving the Parachute Lateral facilities from the interstate pipeline system of Northwest to the gathering and processing system of WFS.

5. Pursuant to the Parachute Pipeline LLC Transfer Agreement, Northwest is to facilitate the timely transfer of the Parachute Lateral to WFS. Northwest states that it has created Parachute to hold the facilities until they are transferred to WFS. Northwest proposes to sell the Parachute Lateral to Parachute at net book value, lease the facilities back, and continue to operate the Parachute Lateral under its FERC Gas Tariff as part of its jurisdictional pipeline system until the necessary regulatory approvals are received allowing the transfer of operational control to non-jurisdictional Parachute. Northwest

[3] Northwest's blanket certificate authority was issued in Docket No. CP82-433-000. *Northwest Pipeline Corp.*, 20 FERC ¶ 62,412 (1982).

anticipates that this transfer will be on or near the in-service date of the Willow Creek Processing Plant in late 2009.[4]

6. The Parachute Lateral Facilities Lease Agreement (Lease Agreement) between Northwest and Parachute provides for Parachute to lease the facilities to Northwest to operate as part of its jurisdictional interstate transmission system under Northwest's existing tariff. Northwest states that, upon Commission approval of the requested transfer of the facilities to Parachute, and for the term of the Lease Agreement, there will be no change in operation or jurisdictional control of the facilities and no effect on the rates, charges, or services being provided by Northwest to any of the shippers on its system. Northwest states that it will continue to operate the leased facilities as part of its jurisdictional pipeline system pursuant to the certificate authority authorizing the operation of facilities.

7. Northwest will pay Parachute monthly rent equal to the total amount of revenue collected by Northwest in providing transportation services to shippers on the facilities, less an operating fee of three percent of such revenues, which will be retained to cover Northwest's normal and routine operating costs. In addition, the Lease Agreement provides that costs of non-routine maintenance and repairs or remedying emergency situations which would otherwise result in physical damage, loss or destruction of the facilities; costs associated with completing the transfer of the Parachute Lateral; and costs incurred in the construction of new interconnects or expansion facilities on the lateral will be deducted as an offset to the monthly rent and any excess costs will be directly billed to Parachute.

8. Northwest states that the Lease Agreement will commence upon the transfer of facilities to Parachute and will expire following Northwest's and Parachute's acceptance of Commission order(s) addressing Northwest's future request to abandon its certificate to operate the facilities, and Parachute's petition for a declaratory order.

Notice and Intervention

9. Public notice of Northwest's application in Docket No. CP06-45-005 was published in the *Federal Register* on September 19, 2007 (72 Fed. Reg. 53,549). WFS

[4] Northwest states that at least eight months prior to the in-service date of the Willow Creek Processing Plant, but in no event later than three years from the date of execution of its lease for the Parachute Lateral, Northwest will file an application for abandonment of its certificate authority to operate the Parachute Lateral. In addition, Northwest states Parachute will file a petition for declaratory order seeking to convert the Parachute Lateral to a non-jurisdictional gathering line.

filed a timely, unopposed motion to intervene.[5] No protests or objections to the proposal were filed.

Discussion

10. Since Northwest's proposal pertains to facilities certificated to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, it is subject to the requirements of sections (b), (c), and (e) of section 7 of the NGA.

11. The Commission views lease arrangements differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline.[6] To enter into a lease, the lessee generally needs to be a natural gas company under the NGA and needs section 7(c) certificate authorization to acquire the capacity and operate the facilities. As a passive owner, Parachute does not require a certificate.[7] However, Northwest does require authorization under section 7(b) of the NGA to abandon the facility.

Abandonment

12. In the instant case, the subject facilities are not proposed to be abandoned because they are underused and uneconomical. Nor are they deteriorated and being replaced. No service is proposed to be discontinued. As discussed above, the proposal provides for continuation of service at currently approved rates, terms and conditions of services. Northwest intends that the pipeline will remain functioning to transport natural gas in

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[5] Timely, unopposed motions to intervene are automatically granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214(a)(3) (2007).

[6] *Texas Eastern Gas Transmission Corp.*, 94 FERC ¶ 61,139, at 61,530 (2001).

[7] Under NGA section 7(c)(1)(A), a "natural gas company" as defined by NGA section 2(6), must have a certificate in order to construct, acquire, or operate jurisdictional facilities. The Commission has long held that the concern for regulatory control is met where the operator of leased jurisdictional facilities holds a certificate. A passive owner does not become a "natural gas company" solely because of owning and leasing out the facilities. *See Dome Pipeline Corp*., 22 FERC ¶ 61,277 (1983).

interstate commerce for the same customer under the same tariff.[8] Thus, there is no effect on present or future customers or the gas supply market. No facility will be constructed or removed from service, thus there are no environmental issues.

13. The Commission previously found that the Parachute Lateral will serve the public interest by facilitating the receipt of gas supplies from the Piceance Basin area in Colorado and allowing for deliveries to the Greasewood Hub where interconnects can be made to interstate pipelines that provide access to various markets. This finding will not be altered by the abandonment.

14. In view of the above considerations, the Commission finds that Northwest's proposed abandonment of the facilities is permitted by the public convenience and necessity.

Certificate Policy Statement

15. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction by establishing criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest.[9] A proposal to lease capacity with no related construction of facilities, such as in this proceeding, does not educe the Certificate Policy Statement's concerns with overbuilding, disruptions of the environment and the exercise of eminent domain.

16. However, the threshold requirement under the Certificate Policy Statement, that a pipeline must be prepared to financially support the project without relying on subsidization from its existing customers, is equally applicable to leases. Similarly, whether the applicant has made efforts to eliminate or minimize any adverse effects the proposed lease might have on the applicant's existing customers and existing pipelines in the market and their captive customers is also relevant to our evaluation of the proposal.

17. The Commission's practice has been to approve a lease if it finds that: there are benefits for using a lease arrangement; the charges for service under the lease are less

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[8] Although Northwest indicates that the parties' ultimate intention is for the Parachute Lateral to be converted to a non-jurisdictional function, that proposal is not currently before us and our ruling here in no way is meant to signal how we might rule on such a proposal when and if it is filed.

[9] *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000).

than, or equal to, the charges for comparable service on the same facilities; and the lease arrangement does not adversely affect existing customers.[10]

18. No current transmission service will be affected by the proposal. For the term of the Lease Agreement, Northwest will operate the facilities and provide natural gas transportation service to existing and potential future shippers consistent with its existing tariff and all obligations of the certificate issued in Docket Nos. CP06-45-000 and 001. The terms of the Lease Agreement enable Northwest to continue to provide seamless transportation service to its existing customer with no adverse economic impact.

19. Under the Lease Agreement, Northwest will continue to charge its customer(s) according to its Commission approved tariff. Northwest will pay Parachute monthly rent equal to the total amount of revenue collected by Northwest in providing transportation services to shippers on the facilities, less an operating fee of three percent of such revenues.

20. Therefore, the lease arrangement will not result in adverse operational or economic impacts on existing or future customers or on any other pipelines or their customers. The benefits of the project found in the underlying certificate order are unchanged. In view of the lack of adverse effects on existing customers, other pipelines, landowners, or communities, we find that the public convenience and necessity will require the approval of the lease proposal.

Environmental Analysis

21. Since the lease proposal requires no construction of facilities, the proposal qualifies as a categorical exclusion under section 380.4(a)(27) of the Commission's regulations and therefore no environmental assessment is required.[11]

Accounting

22. Northwest's proposed accounting for the transfer of facilities at net book value, as detailed in Exhibit Z-2 of the application, is generally in compliance with the Commission's Uniform System of Accounts. Northwest is directed to account for the disposition of these facilities in accordance with the Commission's Gas Plant Instruction No. 5, Gas plant purchased or sold, and Account 102, Gas plant purchased or sold, and to

[10] *See Columbia Gas Transmission Corp.*, 79 FERC ¶ 61,160, at 61,755-59 (1997); *Midwestern Gas Transmission Co.*, 73 FERC ¶ 61,320, at 61,888 (1995); and *Mobile Bay Pipeline Projects*, 55 FERC ¶ 61,358, at 62,078 (1991).

[11] 18 C.F.R. § 380.4 (a)(27) (2007).

file its final journal entries to clear Account 102 no later than six months after the completion of the transaction.[12] The filing must provide a complete explanation of the proposed accounting and must be of such detail as to show the complete transaction and all accounts affected.

23. For accounting purposes, all leases are classified as either capital or operating leases.[13] Northwest is directed to treat the lease of the Parachute Lateral as an operating lease for accounting purposes and to record the rental payments in operating expense Account 860, Rents, in accordance with the provisions of the Commission's Uniform System of Accounts.[14]

24. At a hearing held on November 15, 2007, the Commission on its own motion, received and made part of the record all evidence, including the application and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

(A) Northwest is granted permission and approval under section 7(b) of the NGA to abandon the Parachute Lateral by sale to Parachute.

(B) Northwest shall notify the Commission of the effective date of the abandonment within 10 days thereof.

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[12] 18 C.F.R. Part 201 (2007).

[13] 18 C.F.R. Part 201 (2007), General Instruction No. 19, Criteria for classifying leases:

> If at its inception a lease meets one or more of the following four criteria, the lease shall be classified as a capital lease by the lessee. Otherwise, it shall be classified as an operating lease.
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> 1. The lease transfers ownership of the property to the lessee by the end of the lease term.
> 2. The lease contains a bargain purchase option.
> 3. The lease term is equal to 75 percent or more of the estimated economic life of the lease property.
> 4. The present value of the rents equals or exceeds 90 percent of the fair value of the leased property.

[14] 18 C.F.R. Part 201, General Instruction No. 20, Accounting for leases (2007).

(C) Northwest is required to comply with Gas Plant Instruction No. 5, Gas plant purchased or sold, and Account 102, Gas plant purchased or sold, and file its final journal entries to clear Account 102 no later than six months after the completion of the transaction. The filing must provide a complete explanation of the proposed accounting and must be of such detail as to show the complete transaction and all accounts affected.

(D) A certificate of public convenience and necessity is issued to Northwest authorizing it to lease the Parachute Lateral facilities from Parachute as described in the body of this order.

(E) Northwest shall account for the lease of the Parachute Lateral as directed in the body of the order.

(F) Except as provided herein, the terms and conditions of Northwest's certificate authorization granted on August 16, 2006, are unchanged.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.