UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PG&E Gas Transmission, Northwest Corporation Docket Nos. RP03-70-002 and
RP03-70-003

ORDER ON COMPLIANCE AND REHEARING

(Issued December 24, 2003)

1. On May 19, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) filed revised tariff sheets[1] in compliance with the Commission's May 7, 2003 Order on Technical Conference and Denying Request for Rehearing and Stay (May 7 Order).[2] The compliance filing was protested by Calpine Energy Services, L.P. (Calpine), PPM Energy, Inc. (PPM) and United States Gypsum Company (USG). On June 6, 2003, GTN, Calpine and USG requested rehearing of the May 7 Order. This order addresses GTN's compliance filing and the requests for rehearing.

2. For the reasons discussed below, this order denies in part and grants in part the requests for rehearing and accepts GTN's proposed tariff sheets, subject to the modifications discussed below. This order benefits the public because it balances the need to assure that all shippers have a reasonable opportunity to obtain pipeline services with GTN's need to ensure the creditworthiness of its shippers.

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[1] First Revised Sheet No. 106, Second Revised Sheet No. 132, Original Sheet No. 132A, Second Revised Sheet Nos. 133 and 134, Original Sheet No. 134A, Second Revised Sheet No. 135, Original Sheet No. 135A, Second Revised Sheet Nos. 137 and 138, First Revised Sheet Nos. 139, 140 and 141.

[2] 103 FERC ¶ 61,137 (2003).

Background

3. On November 8, 2002, GTN filed revised creditworthiness provisions in Section 18.3 of its General Terms and Conditions (GT&C). GTN's November 8, 2002 filing was submitted as a result of the October 25, 2002 complaint filed in Docket No. RP03-41-000.[3] E-Prime's complaint alleged, in part, that GTN's creditworthiness standards were not clearly articulated in its tariff.

4. On December 6, 2002, the Commission issued an order that accepted and suspended GTN's tariff sheets, subject to conditions and the outcome of a technical conference (December 6 Order).[4] The technical conference was subsequently held on January 10, 2003. GTN made a presentation to explain its creditworthiness provisions including the historical background. The May 7 Order directed GTN to revise its creditworthiness provisions consistent with the discussion in the order and denied the request for rehearing and stay.

5. On January 24, 2003, the Commission issued an order in the complaint proceeding which found that GTN was correct in determining E-Prime was not creditworthy pursuant to its tariff.[5] However, the Commission deferred ruling on the prepayment requirement pending GTN's providing support for its position. On March 14, 2003, the Commission issued an order granting E-Prime's complaint finding that GTN's required prepayment of twelve months of demand charges was not authorized. GTN was directed to refund to E-Prime the overpayment of demand charges in excess of three months, with interest, as specified in the Commission's regulations.[6]

Compliance Filing

6. GTN's compliance filing proposes numerous revisions to GTN's creditworthiness provisions in Sections 18.3 of its GT&C. The compliance filing addresses these matters: (1) GTN's filing sets out definitions 1.36 and 1.37 to distinguish between Existing Capacity and Expansion Capacity within the creditworthiness section of its tariff; (2) a provision for shippers to earn interest on cash prepayments; (3) specification of a gas

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[3] E-Prime, Inc. v. PG&E Gas Transmission, Northwest Corp. (E-Prime), 102 FERC ¶ 61,062 (2003).

[4] 101 FERC ¶ 61,280.

[5] 102 FERC ¶ 61,062.

[6] 102 FERC ¶ 61,289.

price index for GTN's loan and park service and revision of the amount of the prepayment; (4) removal of the notice period discretion in the original filing and replacement with the five-day notice for the one-month continuation of service, to be followed by a three-month prepayment within 30 days; (5) a provision that shippers would not be responsible for reservation charges after suspension of service; (6) specification that shippers who do not have an established credit rating and are determined by GTN to be non-creditworthy, will receive written notice; (7) security requirement on non-creditworthy shippers for expansion capacity; and (8) GTN established a defined balance prepayment mechanism for IT shippers.

7. GTN proposes to pay interest on prepayments at the rate for one-month commercial paper (non-financial) as published in the Statistical Report of the Federal Reserve Board.[7] GTN asserts that the commercial paper rates will most closely reflect the interest rate GTN will receive on any prepayments it holds.

8. For gas lending services under its Park and Loan Service, GTN revised its tariff language in Section 18.3(E) to state that the collateral requirement under the prepayment and Letter of Credit options, for non-creditworthy shippers, includes an amount to account for the value of the gas being lent as well as the transportation rates.[8] The value of lent gas would be based on the average annual Malin, Oregon price, as reported in the Gas Daily Price Survey during the preceding calendar year ending October 31.[9] The collateral requirement is proposed to be based on the shipper's maximum quantity times the Malin price. GTN's obligation to lend gas is limited to the amount of security which GTN holds.

9. GTN's compliance filing removed the provision permitting GTN wide discretion in setting notice periods and the 15-day notice of non-creditworthiness to be issued prior to termination of service. GTN added a 30-day notice requirement for termination of service and a new provision allowing shippers to submit security for one month of service within five days of issuance of a notice and subsequently allow shippers 30 days to submit three-months security to continue to receive service or to obtain new service.[10]

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[7] GTN Compliance filing at 3 and GT&C Section 18.3(A)(1)(c)(1).

[8] GTN Compliance filing at 4-5.

[9] Section 18.3(E).

[10] Section 18.3A(1) and Section 18.3(A) (1)(b)(ii) of the GT&C. GTN filed the same provisions for firm and interruptible shippers. Section 18.3(D).

10. GTN's filing also added the provision that shippers would not be responsible for reservation charges after service is suspended.

11. GTN's compliance filing included a provision that where a shipper has requested an equivalent credit rating and has been found to be non-creditworthy, GTN will provide in writing the reasons why the shipper has been deemed to be non-creditworthy.[11]

12. GTN deleted the cash prepayment of a one-year reservation charges for non-creditworthy shippers and added a cash prepayment provision of three-months of transportation service charges.[12]

13. GTN's compliance filing explains security for expansion capacity as up to shipper's pro rata share of the cost of the expansion facilities. GTN also proposed that it will on an annual basis reduce the security requirement based on the recovery of facility costs associated with the expansion by application of the depreciation rate of the facility as determined in the expansion project.[13]

14. GTN also filed a security provision for non-creditworthy interruptible shippers described as a defined balance.[14] This provision allows IT shippers to place a cash deposit with GTN and then have service up the exhaustion of the defined balance account. Unless the account is replenished by the shipper, service terminates when the balance becomes zero.

Notice, Interventions and Protests

15. Public notice of the compliance filing was issued on May 21, 2003. Interventions and protests were due as provided in Section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214), all timely motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Calpine, PPM and USG protested GTN's compliance filing.

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[11] Section 18.3(A)(1)(a).

[12] Section 18.3 (A)(1)(b)(ii).

[13] Section 18.3(C).

[14] Section 18.3(D)(2)(b)(ii).

DISCUSSION

16. GTN and interveners raise the following issues in the requests for rehearing and the compliance filing. GTN argues that the Commission erred in: (1) limiting prepaid collateral paid by non-creditworthy firm shippers to three months of transportation service; (2) requiring GTN to pay interest on shipper prepayments; (3) prohibiting the imposition of shipper charges where a contract is suspended; (4) permitting non-creditworthy shippers more than five business days to post collateral; (5) failing to address arguments previously raised by GTN; and (6) applying Commission policies to GTN without consideration of its circumstances.

17. Shippers raise these issues: (1) the Commission must allow shippers to employ an escrow account for deposit of collateral; (2) collateral requirements must be reduced upon payment of transportation charges as an alternative to standing prepayments to the pipeline; (3) the cost of lent gas should be based on different delivery points than proposed by GTN; (4) the notice given to non-creditworthy shippers must contain an explanation; (5) existing capacity must be defined distinct from expansion capacity, and (6) GTN's proposed tariff language must be revised and clarified.

A. Collateral Requirement

GTN Rehearing Request

18. The Commission held that GTN's proposal for security equal to twelve months of service is excessive and that the three-month prepayment amount has been the standard used throughout the natural gas industry, finding that this security will accommodate the concerns of shippers while protecting the pipeline in the event that a firm shipper defaults on its obligations.[15] GTN states that the Commission erred in restricting collateral for existing firm shippers to three months of transportation charges.[16] GTN states that the Commission erred when it dramatically reduced the amount of collateral GTN can demand from non-creditworthy shippers, finding that because its construction costs are sunk (have already been expended), the ongoing financial risk to the pipeline is reduced.[17] GTN contends that the Commission failed to recognize, however, that having

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[15] May 7 Order at P 32.

[16] GTN Rehearing at 7.

[17] GTN Rehearing at 7-9.

already invested its capital in construction of the facilities, a pipeline has no ability to recover its investment other than through the sale of its services. GTN asserts that as long as the pipeline remains at risk for the recovery of capital, it is entitled under the Natural Gas Act to an opportunity to earn a fair return on its investment. GTN contends that because construction costs are "sunk" creates greater risk for the pipeline because the pipeline no longer has the protection of choosing not to construct, and thus, collateral is the only safeguard against defaulting shippers.

Commission Ruling

19. GTN's request for rehearing is denied. The Commission's current policy is that a pipeline can require a shipper on existing facilities to post collateral for up to three-months of service. The Commission's general policy since Order Nos. 436 and 636 has been to require no more than three months of collateral for service on existing facilities.[18] The Commission has chosen this standard for existing service to balance the risks to the pipeline from potential contract default against the need under open access service to ensure that existing pipeline services are reasonably available to all shippers. The Commission adopted the three-month collateral requirement, because three months corresponds to the time period it takes a pipeline to terminate a shipper in default and be in a position to remarket the capacity.[19] Three months of collateral thus protects the pipeline against revenue loss while it completes the termination process and is in position to remarket the capacity. The risk of remarketing capacity is a business risk of the

[18] See Florida Gas Transmission, 66 FERC ¶ 61,140 at 61,261 n.5&6, order vacating prior order, 66 FERC ¶ 61,376 at 62,257 (1994); Southern Natural Gas Company, 62 FERC ¶ 61,136 at 61,954 (1993); Valero Interstate Transmission Company, 62 FERC ¶ 61,197 at 62,397 (1993); Texas Eastern Transmission Corporation, 41 FERC ¶ 61,373 at 62,017 (1987); Williams Natural Gas Company, 43 FERC ¶ 61,227 at 61,596 (1988); Pacific Gas Transmission Company, 40 FERC ¶61,193 at 61,622 (1987); Tennessee Gas Pipeline Company, 40 FERC ¶ 61,194 at 61,636 (1987); Natural Gas Pipeline Co. of America, 41 FERC ¶ 61,164 at 61,409, n.4 (1987); Northern Natural Gas Company, 37 FERC ¶ 61,272 at 61,822 (1986)

[19] The three-months for termination are as follows. The first month's collateral reflects the practice of billing shippers after the close of the prior month. See 18 C.F.R. § 284.12 (a)(1)(iiii), Standard 3.3.14 (billing by the 9th business day after the end of the production month). The second month accounts for the time period given the shipper to pay, and an opportunity to cure a default. The third month reflects the requirement that the pipeline provide 30 days notice prior to termination. See Northern Natural Gas Company, 102 FERC ¶ 61,076 at P 49, n.10; 18 C.F.R. Section 154.602.

pipeline which is being reflected in its rate of return on equity.[20] The rate of return component of the pipeline's base rates, in part, reflects normal financial risks associated with business operations, including contracting risks. To the extent GTN believes that its allowed rate of return is too low, it can file a general rate case to support a higher rate of return.

20. As GTN points out, and as discussed below with respect to new construction, the Commission has at times allowed pipelines to include in their tariffs collateral requirements greater than three-months. GTN, however, cites only to tariff provisions, but not the underlying orders in which the Commission addressed the collateral issue.[21] The fact that the Commission has accepted such tariff provisions does not prevent the Commission from making a determination with respect to GTN's current filing based on its precedent and policy, taking into account the current focus on creditworthiness provisions, as long as it provides a reasoned explanation for its policy, as we have above.[22]

21. GTN maintains that the Commission failed to justify reducing its collateral requirement. The Commission, however, is acting in this case on a filing by GTN under Section 4 of the NGA to establish a twelve-month collateral requirement. It is not acting under Section 5 to reduce a prior approved collateral requirement. Indeed, prior to this filing, GTN's tariff provided only for collateral acceptable to GTN's lenders.[23] But, as the Commission found, its lending agreements do not require twelve months of service as collateral, and accordingly, the Commission's generally applicable three-month collateral

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[20] See Ozark Gas Transmission Company, 68 FERC ¶ 61,032, at 61,107-108 (1994) (business and financial risk determine where the pipeline should be placed within the zone of reasonableness); Williston Basin Interstate Pipeline Company, 67 FERC ¶ 61,137 at 61,360 (1994) ("Bad debts are a risk of doing business that is compensated through the pipeline's rate of return").

[21] For example, in the absence of protests, the Commission may simply have accepted these provisions without examining whether they conformed with Commission policy and precedent.

[22] Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970).

[23] The requirement apparently resulted from application of the Commission's prior policy of allowing longer collateral requirements for greenfield or project-financed pipelines when required by the pipeline's lenders.

requirement applies.[24] In this instance, GTN has failed, under Section 4 to demonstrate that a longer requirement is justified.

22. GTN further contends that the Commission failed to justify the distinction between collateral for new construction projects prior to construction and collateral for service on existing facilities. GTN maintains that longer collateral requirements are necessary in order to ensure the pipeline can recover its cost-of-service.

23. The Commission concludes that there is a meaningful distinction between collateral for new projects and for existing facilities. As explained in the May 7 Order, the Commission has a longstanding policy of permitting larger collateral requirements for new construction.[25] As the Commission explained, the pipeline is under no obligation to construct facilities, and the pipeline as well as its lenders have an interest in ensuring a reasonable amount of collateral from the initial shippers supporting the project before committing funds to the project. Prior to construction, the pipeline is still able to refuse to commit its capital if adequate collateral is not provided.

24. Once having constructed facilities, however, the pipeline's risk from any subsequent shipper's default reflects only the potential costs of remarketing the capacity. As discussed above, three-months of collateral will protect the pipeline's revenue while it completes the process of terminating a contract, and is in position to remarket the capacity. The risk of remarketing capacity is one that pipelines are expected to face, and is part of the rate of return pipelines are allowed on their capital investments.

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[24] e prime, inc. v. PG&E Gas Transmission, 102 FERC ¶ 61,062, on rehearing and compliance, 102 FERC ¶ 61,289 (2003).

[25] Calpine Energy Services, L.P. v. Southern Natural Gas Company, 103 FERC ¶ 61,273, reh'g denied, 105 FERC ¶ 61, 033 (2003) (30 months of demand charges found reasonable for expansion project); North Baja Pipeline, LLC, 102 FERC ¶ 61,239 at P 15 (2003) (approving twelve-months collateral for initial shippers on new pipeline); Maritimes & Northeast Pipeline, L.L.C., 87 FERC ¶ 61,061 at 61,263 (1999) (twelve months prepayment); Alliance Pipeline L.P., 84 FERC ¶ 61,239 at 62,214 (1998); Kern River Gas Transmission Company, 64 FERC ¶ 61,049 at 61,248 (1993) (stringent creditworthiness requirements required by lenders); Mojave Pipeline Company, 58 FERC ¶ 61,097 at 61,352 (1992) (creditworthiness provisions required by lender); Northern Border Pipeline Co., 51 FERC ¶ 61,261 at 61,769 (1990) (twelve months collateral for new project).

25. Moreover, the amount of collateral demanded of a shipper does not directly reduce the remarketing risk of the pipeline. For example, suppose a shipper's credit rating has fallen so that it is no longer creditworthy under GTN's tariff. Certainly, if the shipper could cobble together the twelve-months of collateral proposed by GTN,[26] GTN would be better protected for a potential future default, since it would have a longer period to try to remarket the capacity. But such a potential future benefit does not change GTN's current remarketing risk. If the shipper defaults, GTN is subject to the risk of remarketing the capacity. Further, requiring twelve months of collateral will increase the current risk of default from a shipper that cannot provide such expensive collateral. In short, although the Commission recognizes the need for greater collateral for initial shippers on new construction projects, it has determined that in balancing the interests of the pipeline and subsequent shippers on existing facilities, the potential benefit to the pipeline of longer collateral requirements for service on existing facilities is not sufficient to offset the harm to shippers and to the principle of open access service from having shippers required to provide larger collateral.

26. GTN maintains that the Commission's use of three-months collateral would only make sense in situations in which GTN is choosing between a non-creditworthy shipper that could post three-months collateral or not being able to sell its capacity at all. GTN asserts this rationale breaks down when GTN is marketing capacity and is choosing between multiple bidders some of whom are creditworthy and some are not. It posits as an example, a bid from a creditworthy shipper offering a 20 year contract and a non-creditworthy shipper offering the same rate and a 21 year contract, and maintains that it should not necessarily have to sell the capacity to the non-creditworthy shipper with the higher valued bid.

27. It is true that the Commission has allowed pipelines to allocate available capacity based on the highest valued bid for the capacity, without distinction as to customer class.[27] In GTN's example, the pipeline could consider the bid by the creditworthy

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[26] Even a one-year prepayment could not guarantee recovery of costs of facilities with service lives of 30-50 years.

[27] See Tennessee Gas Pipeline Company, 76 FERC ¶ 61,101, at 61,518 (1996) (accepting NPV formula for allocating capacity, aff'd, Process Gas Consumers Group v. FERC, 292 F.3d 831 (D.C. Cir. 2002) (affirming no length of contract cap for NPV bids); Texas Eastern Transmission Corporation, 79 FERC ¶ 61,258 (1997), aff'd on rehearing, 80 FERC ¶ 61,270 (1997) (use of net present value to allocate capacity), aff'd, Municipal Defense Group v. FERC, 170 F.3d 197 (D.C. Cir. 1999) (finding use of NPV allocation method not unduly discriminatory when applied to small customers seeking to expand service).

shipper to be of higher value than the ostensibly higher bid by the non-creditworthy shipper.

28. But this issue is not presented by GTN's filing in this case. GTN proposed to require 12-months collateral in all situations, for instance, for a shipper seeking to continue existing service as well as shippers bidding for available capacity. It did not limit its proposal only to bidding situations in which it is seeking to allocate available capacity among various bidders. Since the statutory standards governing abandonment of service are stricter than those governing acquisition of capacity, GTN has failed to justify its proposal to require 12-months of collateral when a shipper's credit has changed, and it is seeking to retain service.[28] Since GTN's tariff filing did not propose a method for evaluating bids by non-creditworthy shippers as compared to creditworthy shippers, that issue need not be addressed here, and, the Commission denies rehearing.

B. Interest on Prepayments

GTN Rehearing Request

29. The Commission directed GTN to provide shippers with an opportunity to either earn interest or give the shipper the option to deposit prepayment funds into an interest-bearing escrow account (established by the shipper) to which GTN could gain access in the event of a default by the shipper.[29] GTN contends that the Commission erred in requiring GTN to afford shippers an opportunity to earn interest on prepayments.[30]

30. GTN asserts that the application of interest to a prepayment could have the unintended effect of converting the prepayment to a deposit for bankruptcy purposes.[31] GTN states that one indicia that funds are a deposit or prepayment is whether interest is earned. Based on this assertion, GTN claims a bankruptcy court may order GTN to refund such monies to the bankrupt shipper. As such, GTN asserts that requiring a pipeline to pay interest on prepayments vitiates the very benefit the prepayment is intended to provide.

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[28] See Process Gas Consumers Group v. FERC, 292 F.3d 831, 838 (D.C. Cir. 2002), affirming; Tennessee Gas Pipeline Company, 94 FERC ¶ 61,097 at 61,400 (2001) (different bidding standards apply to abandonment than to acquisition of capacity).

[29] May 7 Order at P 35.

[30] GTN Rehearing at 14-15.

[31] GTN Reply Comments at 29.

Commission Ruling

31. GTN's request for rehearing is denied. The Commission addressed these same issues in Tennessee and found that payment of interest on collateral held by the pipeline, as a matter of policy, is appropriate.[32]

32. Under GTN's proposal, it would hold the three-months collateral, while continuing to charge the shippers a monthly demand charge. The shipper also would be entitled to a return of the withheld payments if it satisfies GTN's creditworthiness requirements. The amounts provided by non-creditworthy shippers to GTN are therefore designed to provide collateral or security against potential default, not prepayments of future demand charges, and the pipeline should be responsible for paying the shipper interest to cover the time value of the money it is holding as security.[33] Moreover, the Commission generally requires pipelines to pay interest on amounts held for shippers to ensure that the shippers are not unduly harmed by having the pipeline hold monies due and pipelines are not unduly enriched.[34] The Commission finds no basis for treating collateral put up by non-creditworthy shippers differently from other amounts held by the pipeline. Indeed, the pipeline may well hold such collateral for long periods of time (depending on the shipper's contract duration and whether they can satisfy the pipeline's creditworthiness requirements), and it would be inequitable for the pipeline to hold monies for such an indeterminate time without affording the shipper the opportunity to earn interest on the amounts held.[35]

33. GTN's argument regarding the treatment of interest on prepayments by a bankruptcy court[36] is not persuasive. Whether the funds are considered a deposit belonging to the shipper, or prepayment for services to be rendered by the pipeline by a

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[32] Tennessee Gas Pipeline Company, 105 FERC ¶ 61,120 at P 17-19 (2003).

[33] See Commissioner of Internal Revenue v. Indianapolis Power & Light Co., 493 U.S. 203, 209 (1990) (amounts held by utility were not considered prepayments when the timing and method of refund are within the control of the customer).

[34] See Anadarko Petroleum Co. v. FERC, 196 F.3d 1264, 1267-68 (D.C. Cir. 1999) ("interest is merely a way of ensuring full compensation").

[35] See, e.g., Trailblazer Pipeline Company, 103 FERC ¶ 61,074 at P 69 (2003) (requiring pipeline to pay interest on penalty revenues retained for only one year).

[36] GTN Rehearing at 15.

bankruptcy court, the Commission has found that these "prepayments" for up to three months of service are not in fact prepayments, but constitute a security. The Commission's determination of how properly to treat collateral held by the pipeline cannot be governed by how a bankruptcy court may possibly treat the transaction, but on the Commission's determination of whether the pipeline's holding of such funds without the payment of interest is just and reasonable. And, as discussed above, the Commission finds that interest must be paid to ensure that the pipeline's rates are just and reasonable and not unduly discriminatory. The Commission, however, has permitted pipelines to flexibility structure their collateral provisions, as long as the shipper is given the ability to earn interest on transactions where the pipeline holds the collateral.[37]

34. The Commission is imposing this interest requirement to mitigate the cost to the shipper of providing collateral when it lacks creditworthiness. This requirement also removes the profit incentive from this form of collateral (a prepayment) versus other forms, such as, irrevocable letters of credit. The actions of the Commission in providing just and reasonable creditworthiness provisions are independent of the hypothetical actions of a bankruptcy court. Further, GTN is not prevented from pursuing any remedies it may have for contract breach in the event of non-payment. We find that prepayments to cure lack of creditworthiness are not GTN's revenues, since GTN has not yet provided service to the shipper related to the prepayments.[38] The prepayments are collateral or security for payment for future service.

C. Interest Payment Procedures

Shipper Protests

35. In response to the Commission's May 7 Order, GTN filed a tariff provision which would permit interest to be paid once each year at a commercial paper rate.[39] PPM[40] and USG[41] take issue with GTN's proposal to pay interest on cash prepayments on an annual

[37] See Northern Natural Gas Company, 102 FERC 61,076 at PP 38-39 (2003) (shipper can deposit funds in an interest bearing escrow account where the principal is maintained by the pipeline and the interest is paid to the shipper).

[38] GTN Reply Comments at 29.

[39] Section 18.3(A)(1)(c)(1) of the GT&C.

[40] PPM Protest at 3-4.

[41] USG Protest at 3.

basis each September 1 at the applicable rate of interest for one-month commercial paper (non financial) as published in the Federal Reserve Statistical Report H.15.[42] PPM asserts there is no reason for GTN not to use the methodology for calculating interest specified in Section 154.501 of the Commission's regulations. Further, USG asserts that GTN should pay interest quarterly and should specify that prepayments and interest on expiring contracts will be made as part of the final billing cycle reconciliation for expiring contracts.[43] Calpine also argues that crediting should be on a monthly basis, not an annual basis as proposed, or at least quarterly.[44]

GTN Answer

36. GTN asserts that in Gulf South,[45] the Commission approved the pipeline's proposal to pay interest on cash prepayments at the same rate of interest earned by the pipeline.[46] GTN asserts that its proposal to pay interest at the specified commercial paper rate is appropriate. GTN contends that its proposal closely tracks GTN's actual earned interest rate; is administratively simple to implement; provides an opportunity for independent verification by the Commission and shippers, and avoids opportunities for arbitrage. However, if the Commission finds GTN's proposal unjust or unreasonable, GTN is amendable to using its actual interest costs, as provided in Gulf South.

Commission Ruling

37. We reject GTN's proposal to pay interest annually based on commercial paper rates. As discussed earlier, GTN is only required to provide shippers with an opportunity to earn interest on collateral.[47] For example, GTN may permit shippers to establish escrow accounts to which GTN has access to the principle if the shipper defaults. But, if GTN holds the collateral, it must pay interest at the FERC interest rate. In the E-Prime order, GTN was directed to calculate interest on prepayments pursuant to Section154.501

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[42] GTN Compliance Filing at 3.

[43] USG Protest at 4.

[44] Calpine Protest at 5. GTN in its answer did not address Calpine's protest on this issue.

[45] Gulf South, 103 FERC ¶ 61,129 at P 40.

[46] GTN Answer at 2.

[47] See P 34 supra.

of the Commission's regulations.[48] GTN was also directed to calculate interest quarterly pursuant to Section154.501 of the Commission's regulations. Although the Commission stated in Gulf South that pipeline's could pay interest on what the pipeline earns itself on the collateral, the Commission later clarified in Tennessee that the pipeline must pay interest at the FERC interest rate on funds it holds.[49] For these same reasons GTN is directed to pay interest from the date of collection of prepayments until the date the prepayment is refunded, as defined in Section 154.501 of the regulations, and so modify its tariff.[50]

D. Provide Alternative Credit Support Within Five Business Days

GTN Rehearing Request

38. The Commission in its May 7 Order held that GTN had not specified a notice period in which the non-creditworthy shipper is required to provide security prior to suspension of service.[51] GTN's request also states that the Commission erred in rejecting the proposed five day notice period.[52] The Commission May 7 Order rejected GTN's proposal that full collateral be provided within 15 days or have its service suspended, and declined to adopt GTN's proposed five-day notice period suggested in its Reply Comments. The Commission found that 30 days notice prior to termination of service is required by the Regulations and as required here.[53] The Commission found that GTN

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[48] E-Prime, 102 FERC ¶ 61,289 at P 8.

[49] Tennessee, 103 FERC ¶ 61,275 at P 21 (2003).

[50] GTN did not file an objection to USG's request that the tariff contains specific provisions with mechanisms for booking interest and payment of interest and return of prepayments on expiring contracts and final billing cycle reconciliations of the shippers' accounts. GTN is directed to address these requests in its submittal of revised tariff sheets.

[51] May 7 Order at P 45-46, 48.

[52] GTN Rehearing at 17.

[53] May 7 Order at P 53.

failed to justify its proposals.[54] GTN contends that the Commission dismissed, without analysis, its proposals for a prepayment and security.[55]

Commission Ruling

39. The Commission disagrees with GTN's contentions. GTN's second proposal was to suspend service on five days notice to the non-creditworthy shipper. The May 7 Order rejected the proposal because GTN did not justify how a period less than 30 days was a reasonable time period to expect a shipper to obtain the requisite collateral and allow the Commission to respond to a complaint filed by a shipper who contends it was unfairly treated by the pipeline.[56] While GTN's proposal was rejected as unsupported, the Commission provided GTN with the opportunity to file and justify any specific notice period as providing shippers with a reasonable opportunity to provide collateral.[57] GTN's revision proposed a suspension of service on five days notice and for termination of the service agreement within a fifteen-days notice period. Consistent with Tennessee[58] and Northern,[59] the Commission rejected GTN's proposal for a five-day notice period because GTN again had failed to justify the proposal. The Commission found that five days had not be shown to be a reasonable time period to expect a shipper to obtain the requisite three months of collateral, nor that its proposal provided sufficient time for the Commission to respond to a complaint filed by a shipper who contends it was unfairly treated by the pipeline. GTN's proposal also failed to provide the 30 days notice required before contract termination. In addition, the shipper may be faced with requests from other pipelines to provide collateral, and five days had not been shown to provide sufficient time for the shipper to arrange for collateral for all pipelines. In short, GTN failed to provide any specific information to justify its proposals.[60] Our May 7 Order included a thorough discussion of the notice period requirements. GTN has raised no new issues. Accordingly, rehearing on this issue is denied. GTN's compliance filing

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[54] 103 FERC ¶ 61,137 at P 45-48.

[55] GTN Rehearing at 3, 10-12.

[56] 103 FERC ¶ 61,137 at P 48.

[57] 103 FERC ¶ 61,137 at P 49.

[58] Tennessee, 102 FERC & 61,075 at P 17-20.

[59] Northern, 102 FERC & 61,076 at P 48.

[60] 103 FERC ¶ 61,137 at P 45-48.

follows our suggestion for the appropriate notice periods, and therefore, its revised tariff on this procedure will be accepted.

E. Collection of Transportation Charges During Suspension of Service

Rehearing Request

40. The Commission found that GTN's arguments do not provide support for allowing the pipeline to refuse to provide service to shippers, while still collecting reservation charges as if such service was still available. Therefore, in accordance with the decision in Tennessee, GTN was directed to revise its tariff to provide that shippers are not responsible for reservation charges after service is suspended.[61] GTN argues that the Commission erred in prohibiting GTN from continuing to impose transportation charges when it has suspended service to a shipper due to failure to maintain credit-worthiness.[62] GTN reiterates its argument that shippers may refuse to post collateral in order to extricate themselves from contractual obligations. First, GTN explained that its goal is to retain its paying shippers – not to terminate their service. Second, GTN notes that the Bankruptcy Code specifically contemplates that a pipeline may suspend service without prejudicing its right to impose reservation charges. Finally, GTN proffered an alternative to collecting transportation charges during suspension. GTN proposed to implement a penalty structure of $5.00 per Dth with the objective to incent shipper behavior and encourage the shipper to provide additional collateral to the pipeline.[63] Thus, GTN contends that the Commission's holding on this issue is arbitrary and capricious. Moreover, GTN asserts that the Commission's suggested solution - to terminate a shipper's contract altogether - harms both the pipeline and its existing shipper and is, therefore, an irrational solution to a very real problem.[64]

Commission Ruling

41. In Tennessee, the Commission affirmed its determination that shippers should not be billed for demand charges after service is suspended, and the Commission applies that

[61] 103 FERC ¶ 61,137 at P 61.

[62] GTN Rehearing at 15.

[63] GTN Reply Comments at 24.

[64] GTN Rehearing at 16.

same reasoning here.[65] By refusing to transport gas during suspension, GTN is failing to perform its obligation under the contract. GTN, therefore, should not be permitted to continue to charge the shipper as if it were receiving service. The pipeline retains full control of the shipper's obligation to pay. Upon the shipper's failure to maintain creditworthiness, the pipeline can choose a remedy either to suspend service or to continue to provide service.[66] If the pipeline elects to suspend service, it cannot bill for service that it does not offer to provide. However, the pipeline would remain able to sue the shipper for the consequential, unmitigated damages caused by contractual breach. On the other hand, if the pipeline chooses not to suspend, it can continue to bill the shipper under the contract. Further, prepayment requirements are separate from the default and termination provisions of the transportation contracts.

42. GTN maintains that suspension is intended to act as a penalty to force the shipper to post the required collateral. It further supports its proposed penalty for failing to post collateral on the same grounds. Suspension, however, is not intended to be used as a bludgeon for the pipeline to coerce the shipper to provide collateral. Rather, suspension is a remedy that enables the pipeline to protect itself from incurring losses from further performance under the contract, while the shipper is in material breach of its contract. For instance, if the shipper fails to put up the required collateral and, the pipeline is concerned that the shipper will not be able to pay its future charges, the pipeline can limit its potential future losses by suspending the shipper's service. Indeed, when the pipeline terminates service, it cannot continue to charge the shipper reservation charges, and GTN has failed to show that suspension of service entitles it to a greater remedy.[67]

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[65] Tennessee, 103 FERC ¶ 61,275 at P 86-88, reh'g denied, 105 FERC ¶ 61,120 at P 10-14.

[66] The Commission has allowed pipelines the added remedy of suspending service for failure to maintain creditworthiness on shorter notice than termination of service. But the provision of this additional right does not carry with it the consequent ability to charge for service that the pipeline has chosen not to provide. The pipeline is not entitled to repudiate its obligation under the contract while still insisting that it benefit as if the contract was still fully in effect.

[67] In fact, GTN would have the right under its proposal to suspend service indefinitely, and collect reservation charges for an indeterminate period. Suspension is intended to give the pipeline an additional opportunity to protect against future losses during the 30-day period it takes to terminate service. It is not designed to be a remedy superior to termination.

43. Moreover, GTN is under no obligation to suspend service. GTN may continue to provide service, insist on the payment of demand charges, and then seek to terminate service. GTN has failed to demonstrate that it should be afforded the extraordinary remedy of refusing to provide service to a shipper while at the same time billing the shipper as if the service was in effect.

44. GTN has also failed to justify its proposed penalty for non-creditworthy shippers who cannot or will not make the required prepayment so as to continue to receive service. GTN has the ability to terminate the contract of any shipper that fails to put up the required collateral, and it has not established that additional penalties are warranted.

45. GTN also contends that the Bankruptcy Code, citing to 11 U.S.C. §366, specifically contemplates that a pipeline may suspend service without prejudicing its right to impose reservation charges. But this section does not deal with the billing of reservation charges during a suspension of service. All §366 provides is that a utility cannot discontinue service to a bankrupt unless the trustee or debtor fails to provide adequate assurance of payment within 20 days after the date of the order for relief. The section says nothing about the utility refusing to provide service, but charging for the service at the same time.

46. We find that GTN has not provided evidence of adverse shipper behavior to require a departure from the decision rendered and affirmed in Tennessee. For these reasons, rehearing is denied.

F. Failure to Address Arguments in Comments

Rehearing Request

47. GTN states the Commission entirely ignored its arguments regarding why the circumstances on GTN's system require more substantial collateral.[68] GTN states that it is a debt-financed pipeline which is similar to project-financed pipelines and new pipelines, which the Commission allows a one-year collateral requirement. In addition, GTN states that the current economic environment necessitates a greater level of protection against shipper defaults. Further, GTN states the Commission failed to address related arguments GTN raised in its technical conference comments.[69]

[68] GTN Rehearing at 10-14.

[69] GTN cites its Initial Comments at 25 and its Reply Comments at 24-25.

Commission Ruling

48. GTN provided no data to support its contention that it is similar to project financed pipelines with debt obligations that specifically require a one-year prepayment of transportation charges. Prior to 1993, GTN did have such debt financing.[70] However that debt was refinanced with traditional debt. Numerous pipelines which have similar debt financing capital structures have had recent problems with shipper creditworthiness.[71] All of these circumstances make GTN typical among pipelines rather than unique. No evidence offered by GTN shows that it has project financing requiring specified collateral from shippers. Additionally, if GTN believes that its rate of return is inadequate with respect to its business risk, it may seek to support a higher return in a general rate increase case.

G. Prepayment Election

Rehearing Request

49. USG asserts that shippers should have the right to elect between the pipeline holding the prepayment and paying interest or establishing a shipper escrow account.[72] USG contends that giving the shipper the right to make the election is both appropriate and critical where the shipper believes that its cash prepayment may be at risk if deposited with the pipeline.

Commission Ruling

50. USG contends that the shipper should have the right to elect between the pipeline holding the prepayment and paying interest or establishing a shipper escrow account.[73] USG contends that it should be granted this right because of concerns about the financial stability of PG&E's corporate family. Under the creditworthiness provisions, the pipeline allows a shipper that has been deemed non-creditworthy to continue to receive

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[70] E-Prime, Inc. v. PG&E Gas Transmission, Northwest Corp., 102 FERC ¶ 61,062 at 14-15 (2003).

[71] See n. 18, supra.

[72] USG Rehearing at 2-4.

[73] USG Rehearing at 2.

service. The non-creditworthy shipper is required to post collateral to assure payment because of the financial stability of the shipper.

51. In Tennessee, the Commission found that Tennessee must provide its shippers with the opportunity to earn interest on prepayments. Tennessee could either pay the interest itself, or give the shipper the option to designate an escrow account to which Tennessee may gain access to payments for services provided if needed.[74] With this language, Tennessee was given the option of determining the election. Therefore, consistent with Tennessee, GTN may elect to collect collateral and pay interest, or give the shipper the option to designate an escrow account.

52. Although the Commission encourages GTN to provide its shippers with the flexibility to use an escrow account, letters or credit, or other means to establish sufficient creditworthiness, the Commission will not require GTN to modify its tariff, as USG suggests. Just as the Commission has not permitted GTN to deny shippers interest on collateral out of a potential fear of action by the bankruptcy court, USG has not shown that shippers are in such imminent risk from a GTN bankruptcy that a deviation from Commission policy is justified here.

I. Collateral for Pipeline Expansions

Calpine Rehearing Request

53. Calpine argues that the Commission erred in granting GTN the right to require, in its tariff, security amounts up to the costs of the facilities constructed for non-creditworthy shippers involved in greenfield pipeline projects or mainline expansions.[75] Further, Calpine asserts that the Commission erred in not clarifying that tariff Section 18.3(c), Credit Requirements for Pipeline Expansions, would apply only on a prospective basis.[76]

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[74] Tennessee, 103 FERC ¶ 61,275 at P 21.

[75] Calpine Rehearing at 2-3.

[76] PPM also requests clarification that GTN will not, under any circumstances, be allowed to alter or retroactively impose credit requirements for expansion capacity already in service. PPM Protest at 2-3.

Commission Ruling

54. Section 18.3(A)(1)(b)(ii) of GTN's compliance filing proposes that for expansion capacity, the prepayment may be up to the cost of the specific expansion project. Section 18.3(A)(1)(b)(ii) provides that credit requirements for pipeline expansion projects will be separately identified within the nondiscriminatory project requirements included as part of the open season for expansion capacity. The amount of security required for expansion capacity may be up to the shipper's pro rata share of the costs of the specific expansion project. GTN did not state whether these provisions apply to laterals[77] or mainline expansion facilities.

55. In Tennessee, the Commission found that collateral requirements for mainline system expansions should be determined in the context of the individual certification proceeding.[78] Specifically, the Commission found that specific risk sharing arrangements are more appropriately negotiated and agreed to in the context of precedent agreements that may be reviewed in a certificate proceeding.[79] Therefore, GTN is directed to revise its tariff language to clarify that its expansion capacity collateral requirement applies only to lateral facilities.

56. Additionally, in GTN's answer filed on June 17, 2003, GTN clarified that it will not retroactively impose credit requirements for previous expansions beyond the credit requirements applicable when GTN initially executed contracts for expansions.[80] Accordingly, the Calpine and PPM requests that the collateral requirements for expansions be clarified have been satisfied; and GTN's related provisions, subject to the above required change, are accepted.

J. Use of a Valuation Schedule for Expansion Capacity Prepayments

57. The May 7 Order directed GTN to revise its tariff to provide for a reduction in the collateral requirements as the shipper pays off the facilities. Calpine takes issue with GTN's compliance filing proposal in Section 18.3(C) that would reduce the collateral

[77] "Lateral" is defined in 18 C.F.R. Section 154.109(b) and 18 C.F.R. Section 157.202 (2003).

[78] Tennessee, 103 FERC ¶ 61,275 at P 26.

[79] Ibid.

[80] GTN Answer at 2.

requirements associated with new construction, once a year, consistent with the valuation schedule adopted for the specific project.[81] Calpine cites the Commission's definition of depreciation,[82] and Calpine states that depreciation is the natural erosion of an asset's book value over time, due to exposure to the element and normal wear and tear. Calpine asserts that this method of accounting treatment of an asset's book value over its useful life is significantly different than determining how investment recovery occurs. Calpine states that in Natural the Commission held that a shipper will be credited for expansion project prepayments through application of the transportation rates.[83]

58. Calpine argues that GTN's proposed use of the plant valuation schedules for establishing collateral requirements in pipeline expansions are unjust and unreasonable.[84] Calpine argues that the reduction in collateral requirements should instead be based on crediting the entire transportation rate reservation charge.[85]

59. USG also objects to GTN's proposal to reduce security requirements in excess of three month's value of reservation charges annually for expansion shippers and for GTN's failure to specify how the reduction for expansion shippers will be determined.[86]

GTN Answer

60. GTN contends that the May 7 Order directed it to revise its tariff to provide for a reduction in the collateral requirements as the shipper pays off the facilities. GTN asserts that the depreciation schedule reflected in a pipeline's recourse rates reflect the recovery of the facility costs, and it is appropriate to utilize that schedule to reduce an expansion

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[81] Calpine Protest at 2-5.

[82] 18 C.F.R. Part 201 Definition 12B (2003), (Depreciation) as applied to gas plant, means the loss in service value not restored by current maintenance, incurred in connection with the consumption or prospective retirement of gas plant in the course of service from causes which are known to be in current operation and against which the utility is not protected by insurance.

[83] Natural, 102 FERC ¶ 61,355 at P 85.

[84] Calpine Protest at 2.

[85] Calpine cites Natural Gas Pipeline Co., 102 FERC ¶ 61,355 at P 80-85 and Southern Natural Gas Co., 100 FERC ¶ 61,281 at P 26. Calpine Protest at 3-5.

[86] USG Protest at 3.

shipper's collateral. GTN in its answer argues that the Commission in its order[87] stated that collateral requirements should be reduced as the shipper pays off facilities and that depreciation rates reflect recovery of facility costs.[88] Further, GTN argues that other components of a pipeline's recourse rates have nothing to do with O&M expenses, return and taxes, and therefore should not be used to reduce collateral requirements.[89] GTN requests that the Commission clarify that the measure of transportation charges for firm service is the value of the fixed costs reflected in the pipeline's rates.[90]

Commission Ruling

61. The May 7 Order directed GTN to revise its tariff to provide for a reduction in the collateral requirements as the shipper pays off the facilities. GTN proposes to use its transportation plant depreciation rate as the basis for reducing its shipper's collateral requirements. Generally, for gas pipelines, a new lateral would be depreciated at the existing transmission plant depreciation rate. However, if there is an incremental rate for the lateral, the depreciation rate may be set on the basis of the expected life of that lateral.

62. In its compliance filing, Section 18.3(A)(1)(b)(ii) of GTN's revised tariff provides that for expansion capacity, the collateral may be up to the cost of the specific expansion project.[91] Thus, GTN's shipper may be required to collateralize the total cost of a lateral.

63. In Natural, the Commission stated that as Natural recovered the cost of the new facilities through its rates, it must allow a corresponding reduction in the amount of the guarantee required from a shipper.[92] Natural was permitted to recover the cost of the facilities once either through transportation rates, or in the event the shipper defaults, by means of the assurances of future performance provided. We find that GTN's provision is not clear on this point and therefore will require GTN to refile its tariff to include such language.

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[87] 103 FERC ¶ 61,137 at P 39.

[88] GTN Answer at 3.

[89] GTN Answer at 3.

[90] GTN Answer at 4.

[91] GTN Compliance Sheet No. 134.

[92] Natural, 102 FERC ¶ 61,355 at P 85.

64. The Commission agrees with Calpine that transportation plant depreciation should not be used as the basis for returning collateral. The collateral is being required to protect the pipeline against the potential loss of revenue should the shipper default during the term of its contract. Collateral, therefore, should be returned to the shipper in proportion to the reduction in contract term. For example, if the shipper signs a 36-month contract for the expansion, it should receive a return of collateral of 1/36 per month.[93] In addition, we require GTN to refile to include language providing that where facilities are to be constructed to serve multiple shippers, an individual shipper's obligation should be for no more than the proportionate share of the cost of facilities. This provision, as modified, will provide it with financial protection needed before it constructs facilities on behalf of a specific shipper.

K. Valuation of Gas for Lending Services

65. GTN initially filed to require collateral for the maximum amount of gas which could be provided in any three-month period. The Commission's May 7 Order rejected this proposal and required GTN to propose a more reasonable time period, in light of the nature of the service and required a nondiscriminatory mechanism for determining the per unit value of lent gas (the full value of the lent gas based on current market prices at the time of the contract). GTN in its compliance filing revised its tariff language in Section 18.3(E) to state that the collateral requirement under the prepayment and Letter of Credit options, for non-creditworthy shippers, includes an amount to account for the value of the gas being lent as well as the transportation rates.[94] The provision provides the amount of security necessary to collateralize lent gas will be up to the shipper's maximum quantity times the average annual Malin price. The value of lent gas would be based on the average annual Malin, Oregon price, as reported in the Gas Daily Price Survey during the preceding calendar year ending October 31.[95] The collateral

[93] In many cases of lateral line expansions, the depreciation of the project equals the term of the shipper's contract to ensure that the pipeline fully recovers its cost by the end of the contract. In this case, there will be no difference between GTN's use of depreciation and the method required by the Commission. But in those cases where facility depreciation is longer than the term of the shipper's contract, the shipper should be entitled to receive the return of its collateral based on the proportionate amount of time remaining in its contract term.

[94] GTN Compliance filing at 4-5.

[95] Section 18.3(E).

requirement is proposed to be based on the shipper's maximum quantity times the Malin price. GTN's obligation to lend gas is limited to the amount of security which GTN holds.

66. Calpine takes issue only with GTN's current proposal in Section 18.3(E) that values lent gas at the average annual "Malin" price, as reported in Gas Daily Price Survey.[96] Calpine states that Malin's price has been marginally higher than GTN's two other market centers, Stanfield and Kingsgate. In addition, Calpine states that GTN's tariff provides that gas will be loaned and returned by the shipper at the same physical location, but GTN's tariff does not limit the lending service to Malin. Calpine asserts GTN's proposal will require excess collateral on gas loaned at points other than Malin. Further, Calpine asserts that gas valuation for determining collateral on loaned gas should be done on a basis that is more representative of actual risk associated with the value of loaned gas. Recognizing that index prices are not published for every point on GTN's system, Calpine proposes that GTN adopt a basket approach by combining that average prices at Malin, Kingsgate and Stanfield.

GTN Answer

67. GTN states that it proposed utilization of the Malin price because Malin is the most liquid trading point on the GTN's system. GTN asserts that the Malin price does reflect the market view of the cost of transportation, and is therefore the most reliable and reflective source of market prices from which to value gas on the system.[97]

Commission Ruling

68. GTN initially filed to require collateral for the maximum amount of loaned gas which could be provided in any three-month period. The Commission rejected that proposal and required a more reasonable time period. In its compliance filing, GTN has now proposed that collateral be based on the maximum quantity which the shipper can borrow under the parking and lending services rate schedules. The Commission has previously held that the pipelines should be allowed to protect themselves from the risk that the loaned gas might not be returned. Including the value of loaned gas in the collateral protects pipelines and their customers against the risk of a shipper withdrawing gas from the system without replacing or paying for it, and the pipelines' desire to obtain sufficient collateral to cover the value of the gas is reasonable. Moreover, in the event of

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[96] Calpine Protest at 5.

[97] GTN Answer at 3.

a default, sufficient collateral will protect the other shippers on the system from being affected.[98] A collateral requirement based on the per unit price times the maximum quantity (MQ) of gas the shipper may borrow, pursuant to its service agreements with GTN, is an appropriate measure of the security non-creditworthy shippers must post with GTN under its parking and lending services. Accordingly, the Commission finds GTN's current proposal on collateral amounts reasonable.

69. GTN states that the May 7 Order directed it to provide a nondiscriminatory mechanism for determining the per unit value of lent gas (the full market value of lent gas based on current market prices at the time of the contract). GTN proposes to value lent gas by its Malin price. Calpine challenges this price arguing that the Malin price has been marginally higher than GTN's two other market centers. The purpose of using a price index is simply to establish a reasonable basis for collateral, not to establish an exact gas price. The Commission, therefore, finds that Malin, the principal trading point on GTN's system, provides a reasonable basis for establishing the collateral requirement.

70. However, GTN's proposed use of gas indices may be subject to meeting the criteria of the Commission's Policy Statement in Price Discovery in Natural Gas and Electric Markets at Docket No. PL03-3-000 (Policy Statement).[99] In the Policy Statement, the Commission stated that it "will require that any prospective use of any index in its jurisdictional tariffs meet the criteria for price index developers. . ."[100] GTN, therefore, must make a compliance filing indicating whether Malin index is sufficiently reliable to meet the criteria of the Policy Statement in Docket No. PL03-3-000.

L. Definitions of Existing Capacity

PPM Protest

71. In its compliance filing, GTN submitted definitions for existing and expansion capacity. Section 1.37 defines Expansion Capacity as that capacity added to the pipeline as part of a system expansion project where such capacity is within the initial contract term of the agreements with shippers which supported the expansion. GTN includes permanent releases of that capacity during the initial term of the original shipper's

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[98] North Baja Pipeline, LLC, 102 FERC ¶ 61,239 at P 9 (2003).

[99] 104 FERC ¶ 61,121(2003).

[100] Id. at P 41.

contract within the definition of Expansion Capacity. GTN states it is necessary to preserve a specific Expansion Capacity project's risk profile.[101]

72. PPM asserts that GTN's definition for Existing Capacity is unclear.[102] In GTN's definition "existing capacity" includes capacity that is still within such terms where shipper agreements pertaining to the capacity have been terminated by the pipeline. PPM argues in its protest that GTN's definitions for expansion capacity and existing capacity shippers who are not creditworthy need to be modified.[103] PPM contends the definition for "Existing Capacity" should be clarified, consistent with Commission policy, to assure that all contracts for capacity formerly held as expansion capacity and now are classified as existing capacity, carry only a three-month transportation charge collateral requirement. PPM suggests that the definition for existing capacity be modified to "Existing Capacity additionally includes capacity that is still within such initial terms but the Shipper Agreements that originally supported the construction of such capacity have been terminated. Existing Capacity additionally includes any unsubscribed capacity related to a pipeline expansion project." PPM also desires that it be clear that PPM's contract for capacity which was initially expansion capacity held by another shipper, that the tariff provisions in Sections 1.36 and 1.37 do not apply to PPM's capacity. PPM asks that the tariff be clarified to assure that all contracts for capacity previously held by Newport will carry only the three months transportation charge security requirement.

GTN Answer

73. GTN confirms that capacity PPM currently holds that was formerly held by Newport Northwest, LLC (Newport) is by definition existing capacity because PPM did not acquire the capacity through a permanent release from Newport and because Newport's agreement was terminated by GTN.[104] GTN in its answer also states that its

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[101] GTN Compliance filing at 2.

[102] PPM Protest at 3. PPM states it has a 25-year transportation contract for 45,000 Dth/d of unsubscribed 2002 system capacity that it entered into in December 2002. PPM states that the capacity was formerly subject to a 52-year precedent agreement with Newport Northwest LLC, which was terminated.

[103] PPM Protest at 2.

[104] GTN Answer at 2.

provisions are clear and need no modification.[105] GTN states that PPM holds existing capacity acquired through a permanent release.

Commission Ruling

74. The Commission finds that GTN's tariff definition is a satisfactory definition of expansion capacity, because it limits the definition to the contractual term of the initial shippers as well as permanent releases of capacity in which the replacement shipper substitutes for the releasing shipper. As GTN explains, PPM's capacity is not expansion capacity under this definition, because it did not acquire the capacity through a permanent release, but through an independent contract.

M. Clarification of Security Requirement

USG Protest

75. In response to the Commission's May 7 Order, GTN submitted a compliance filing resetting the notices it will give shippers who become non-creditworthy. Service to such a shipper will terminate if the shipper does not comply with the requirement of the notice and within the time period set by the proposed tariff sheet. USG argues in its protest that GTN should be required to revise its tariff to state that during the 30-day period after a notice of non-creditworthiness is issued, the shipper can be required only to provide the next three months of security for service.[106] USG protests that GTN's language in Sections 18.3(d)(1) and (d)(2) does not specify a three- month limit on the amount of the guarantee GTN can demand. Further, USG asserts the proposed tariff, containing the words "all required security" could be read to impose an obligation on shippers much more than three months of prepayment or equivalent security.[107]

GTN Answer

76. GTN in its answer argues that USG's proposal fails to recognize that there are different collateral requirements for existing capacity shippers and expansion capacity shippers. For that reason, GTN does not need to define these requirements, as the tariff is

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[105] Ibid.

[106] USG Protest at 2. USG cites the Commission's order at P 32, 34 and 49.

[107] USG Protest at 4. USG argues that the word in the compliance tariff filing "all required security" could authorized GTN to require more than three-months of service charges.

explicitly clear as to the collateral requirements for both existing and expansion capacity.[108]

Commission Ruling

77. We agree with USG that the proposed language is imprecise and ambiguous, and as such, could lead to unjust or discriminatory results. Accordingly, GTN is directed to revise its tariff to clarify that the term "all required security" means the three-month prepayment mechanism or the letter of credit for existing capacity shippers. It should also clarify its tariff that expansion capacity shippers have differing collateral requirements.

N. Limiting Security Requirements on Third Party Guarantees

USG Protest

78. USG argues that GTN's tariff, which allows a third party to guarantee the security requirement for a non-creditworthy shipper, should be limited to three months of security---either a letter of credit or a cash prepayment.[109] USG asserts that the open ended provisions of GTN's tariff would allow GTN to demand a much greater amount of security.

GTN Answer

79. GTN agrees that its tariff permits a third party, which is creditworthy, to guarantee the contractual obligation of a non-creditworthy firm or interruptible service shipper.[110] However, GTN asserts it should be able to require that third party to stand behind the full obligation of the non-creditworthy shipper based on the present value of the transportation agreement, rather than three months of service. GTN argues it should not be so limited, but if it is, then GTN proposes to remove from its tariff the third party guarantee from its tariff.

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[108] GTN Answer at 4.

[109] USG Protest at 2, 4.

[110] GTN Answer at 5.

Commission Ruling

80. We deny the protest. A guarantee by a parent or third party of the contractual obligation of a shipper is an alternative to the provision of collateral. In the case of a guarantee, the parent or third-party is guaranteeing that in the event of a default by the shipper, the guarantor will pay the applicable charges, not just the collateral. In the case of a guarantee, the pipeline receives no collateral; the guarantee is in lieu of providing the collateral. Thus, GTN is correct that it can require that the guarantee cover the full extent of the shipper's obligation. Alternatively, a shipper can post the required collateral (and of course the parent could provide the funds for the collateral).

O. Failure to Explain Non-creditworthiness Notice

USG Protest

81. USG takes issue with GTN's notice to firm transportation shippers of failure to meet creditworthiness standards because GTN does not include an explanation as to why the shipper fails to meet the standards.[111] USG argues in its protest that notice to firm transportation shippers of failure to meet creditworthiness standards should be accompanied by an explanation of why the shipper failed to meet the pipeline's standards.[112]

Commission Ruling

82. All shippers are entitled to a written explanation when they are found to fail the pipeline's creditworthiness screen.[113] GTN's only related tariff provision provides that it will notify shippers who have asked GTN to determine an equivalent rating of their creditworthiness[114] Pursuant to this provision, GTN intends to explain to those potential shippers the reasons for a non-creditworthiness determination. Such determinations should not be limited to these situations, but should also be provided to non-creditworthy shippers, who have credit ratings, but fail to meet the pipeline's creditworthiness

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[111] USG Protest at 1.

[112] USG Protest at 1.

[113] See Tennessee, 103 FERC ¶ 61,275 at P 45.

[114] See P 11 supra.

standards. GTN is directed to revise its tariff to provide it will include a written explanation why the shipper was deemed non-creditworthy.

O. Security for IT Service

USG Protest

83. USG asserts that Sections 18.3(D) should be revised to limit the value of interruptible transportation charges for security to three months of service.[115] The language in those sections requires that a shipper whose credit is no longer adequate to provide payment within 30 days of all required security and thus could be read to authorize GTN to require security for interruptible service shippers for more than three months of security. GTN filed no response to USG on this matter.

Commission Ruling

84. The May 7 Order directed that once the pipeline is in operation, prepayments required of new shippers must be limited to three months of security. We recognize that GTN has provided definitions for existing capacity and expansion capacity. However, we find that GTN's proposed language in Section 18.3 does not clearly provide that interruptible service shippers are only required to provide three months of security. Therefore, GTN is directed to revise its language to provide for existing as well as the new, non-creditworthy shippers once the pipeline is in operation are limited to three months of security requirements.

Q. Defined Balance Prepayments

USG Protest

85. GTN also filed a security provision for non-creditworthy interruptible shippers described as a defined balance.[116] This provision allows IT shippers to place a cash deposit with GTN and then have service up the exhaustion of the defined balance account. Unless the account is replenished by the shipper, service terminates when the balance becomes zero. USG protests because GTN will not pay interest on defined balance payments[117] and GTN's failure to pay interest on "defined balance" prepayments

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[115] USG Protest at 4.

[116] Section 18.3(D)(2)(b)(ii).

[117] USG Protest at 2.

should be required. This provision allows IT shippers to place a cash deposit with GTN and then have service up the exhaustion of the defined balance account. Unless the account is replenished by the shipper, service terminates when the balance becomes zero.

GTN Answer

86. GTN in its answer states that for those shippers desiring to earn interest on balances should choose the standing prepayment method rather than the defined balance, which allows shippers more flexibility in maintaining the necessary prepayment. The defined balance declines as the service is exhausted. GTN asserts that if it is required to pay interest on defined balances, it should be permitted to withdraw that option from its tariff as it would be administratively burdensome on the pipeline.[118]

Commission Ruling

87. We deny USG's request. IT shippers are not obligated to use this option to meet collateral requirements. Further, the defined balance option is a prepayment for services GTN stands ready to perform for the shipper and does not involve billings and the possibility of default by the shipper. Because of the service flexibilities associated with such prepayments, interest calculations could become excessively complex.

R. Consistency in Use of Terms

USG Protest

88. USG argues that GTN tariff should be consistent in using terms i.e., reservation and transportation charges in Section 18.3 of its tariff, as they are confusing. USG asks that GTN be limited to collecting reservations charges for the three month period.[119]

GTN Answer

89. GTN in its answer asserts that it will change Section 18.3(C) to change the term reservation to transportation because the term reservation charge will include negotiated rates which do not include recovery of all fixed costs.

[118] GTN Answer at 5-6.

[119] USG Protest at 2.

Commission Ruling

90. We direct GTN to make Section 18.3 consistent by using only the term reservation charge, as this is the terminology employed in its rates on file in its tariff.

The Commission orders:

(A) The requests for rehearing are granted in part and denied in part, as discussed in the body of this order.

(B) GTN's tariff sheets (First Revised Sheet Nos. 132 through 138 and Original Sheet Nos. 139 through 140, to FERC Gas Tariff, Second Revised Volume No. 1-A) are accepted to be effective May 8, 2003, subject to the modification, as discussed in the body of this order.

(C) GTN is directed to file, within 20 days of the date of issuance of this order, revised tariff sheets consistent with the discussion in the order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.