

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Portland Natural Gas Transmission System                      Docket No. RP04-171-001

ORDER ON COMPLIANCE FILING

(Issued June 20, 2005)

1. On April 9, 2004, Portland Natural Gas Transmission System (Portland) filed revised tariff sheets and explanations to comply with the Commission's order dated March 25, 2004 (March 25, 2004 Order),<sup>1</sup> which accepted, subject to conditions, Portland's proposal to establish a new firm transportation Rate Schedule HRS for Hourly Reserve Service (HRS service).<sup>2</sup> As discussed below, the Commission accepts the April 9, 2004 compliance filing for filing purposes, directs certain revisions to Portland's tariff, and accepts the proposed tariff sheets, subject to conditions, effective April 1, 2004. This order benefits customers by approving hourly flow services consistent with Commission precedent and the pipeline's tariff.

**I. Background**

2. On February 17, 2004, Portland submitted tariff sheets to implement a new firm hourly transmission service under new Rate Schedule HRS. Portland stated that, under its new Rate Schedule HRS, an HRS shipper will contract for firm transportation service up to a specified Maximum Hourly Quantity (MHQ), as well as a specified Maximum Daily Quantity (MDQ). Portland asserted that the MHQ allows the shipper to receive delivery of its MDQ at an accelerated rate over a specified number of hours during the Gas Day. Portland further stated that HRS service has a minimum specified delivery pressure of 550 psi at the shipper's primary delivery point. Portland stated that it was proposing this service to provide additional options and flexibility to shippers, such as electricity generators or those serving electricity generators, whose intra-day delivery

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<sup>1</sup> *Portland Natural Gas Transmission System*, 106 FERC ¶ 61,289 (2004), *reh'g denied*, 110 FERC ¶ 61,375 (2005).

<sup>2</sup> In its April 9, 2004 compliance filing, Portland submitted the following revised tariff sheets: Substitute First Revised Sheet No. 218; Substitute Original Sheet No. 219; Substitute Original Sheet No. 223; Substitute Third Revised Sheet No. 326; and Substitute Second Revised Sheet No. 329.

requirements may not be uniform and who may require accelerated flow rates and minimum delivery pressures during particular periods of the Gas Day. Portland asserted that its proposed HRS firm service is modeled after similar hourly firm services that the Commission has approved for a number of other pipelines.<sup>3</sup>

3. Portland asserted that its provision of HRS service will not degrade the quality of Portland's existing firm services. Portland maintained that it will provide HRS service from available system capacity; therefore, no new facilities construction is required. Portland states that HRS service will be complementary to Portland's existing FT service and will provide Portland more flexibility to meet the needs of the market. Portland stated that it is proposing no changes to its existing tariff provisions for FT service in connection with offering the new HRS service. Portland stated that firm service under Rate Schedule HRS will have the same scheduling and curtailment priority as Portland's other firm services under Rate Schedule FT and under Rate Schedule FT-Flex for FT-Flex service that is not subject to interruption.

4. Portland explained that HRS shippers will elect a single Primary Delivery Point for their MHQ. Portland stated that HRS shippers may contract for one of five different firm hourly flow options, ranging from 4.16 percent of the shipper's MDQ (which translates into uniform deliveries over a 24-hour Gas Day) up to 8.33 percent of the shipper's MDQ, which translates into full daily deliveries over 12 hours. By electing to receive firm higher hourly deliveries during a Gas Day, Portland asserted that the HRS shipper will pay a higher reservation rate for the additional firm capacity required to provide the higher hourly deliverability. Portland further explained that an HRS shipper will have the right to utilize any other delivery point on a secondary basis, but such secondary service will be provided on a uniform hourly flow basis (*i.e.*, up to MDQ, but without regard to MHQ), unless Portland can honor the MHQ at a secondary point without interfering with any other service request on the system.

5. Portland proposed a bifurcated HRS reservation rate derived from its maximum FT reservation rate consisting of: (1) a capacity reservation rate of \$12.9271 per dekatherm (Dth) of Monthly MDQ (one-half of the existing Rate Schedule FT reservation rate of \$25.8542 per Dth); and (2) a deliverability reservation rate which varies based on the firm hourly flow rate elected by the shipper (from \$25.8542 per Dth of MDQ for 12-hour service, to \$12.9271 per Dth of MDQ for 24-hour service). Portland noted that, like Portland's FT service, HRS service has a zero usage rate, to which is added the ACA surcharge. Additionally, Portland proposed a Rate Schedule HRS Usage-2 rate applicable to scheduled authorized overrun service, *i.e.*, volumes in excess of the shipper's MDQ or MHQ, which are scheduled along with interruptible services. Portland

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<sup>3</sup> Portland cited *Vector Pipeline, L.P.*, 103 FERC ¶ 61,391 (2003); *Gulfstream Natural Gas System, L.L.C.*, 91 FERC ¶ 61,119 (2000); *Panhandle Eastern Pipe Line Co.*, 90 FERC ¶ 61,119, *order on reh'g*, 91 FERC ¶ 61,174, *reh'g granted*, 93 FERC ¶ 61,211 (2000).

explained that the Usage-2 rate is equal to the sum of the two HRS reservation rate components (*i.e.*, capacity rate and deliverability rate), stated on a 100 percent load factor basis, for the HRS the service option selected by the shipper. Portland further stated that HRS overrun volumes will have a scheduling and curtailment priority equal to IT service and FT-Flex service that is subject to interruption, which services are to be scheduled and curtailed based on price.

6. The filing was protested and, in the March 25, 2004 Order, the Commission accepted Portland's proposal, effective April 1, 2004, subject to conditions. In the March 25, 2004 Order, the Commission required several modifications and directed Portland to respond to several questions. The Commission directed: (1) that if Portland intends to permit the negotiation of minimum pressure requirements, it must modify section 4.6 of Rate Schedule HRS so that it clearly states the minimum delivery pressure shall be 550 psi unless the parties agree to a different minimum delivery pressure; (2) that if Portland does not intend to permit such negotiation, Portland should revise the *pro forma* service agreement accordingly; (3) that Portland explain whether it is feasible to provide a minimum delivery pressure of 550 psi at all delivery points and under all rate schedules; (4) that Portland explain whether HRS service can be provided at lower delivery pressures, and if not, why not; (5) that Portland modify its tariff sheets to reflect that HRS service is limited to one HRS contract per delivery point and one HRS delivery point per contract; (6) that Portland clarify the meaning of "Maximum Contract Demand" as it relates to the HRS service and file revised tariff language reflecting such clarification, with appropriate support and examples for such provision; (7) that Portland explain how scheduling at secondary points is accomplished, with examples and support, and whether it intends section 7.4(b)(2) to relate only to out-of-path secondary points; (8) that Portland explain fully and clearly what its scheduling priorities would be once HRS service was implemented, and how Portland would implement scheduling and curtailment of HRS service, with accompanying support and examples, including proposed clarifying tariff changes; (9) that Portland explain why scheduling procedures for these services should not be codified in Portland's tariff; and (10) that Portland explain why it should not accord equal scheduling priority for these other overrun and/or make-up services with HRS overruns.

7. The Commission also found Portland's proposed rates to be just and reasonable, but advised Portland that it will be responsible for any under recovery of costs to provide HRS service, and it will not be allowed to subsidize the cost of providing HRS service from customers receiving service under other rate schedules. Further, in response to Portland's agreement to revise its proposal in response to a protest, the Commission directed Portland to file revised tariff language to reflect that HRS service is limited to one HRS contract per delivery point and one HRS delivery point per contract. Finally, the Commission rejected Portland's proposed revisions to section 7.10 of its General Terms and Conditions (GT&C), finding that the changes did not allow for any mutually

agreeable departures from uniform hourly flow rates as provided under the existing provision, and that they were unnecessary to implement HRS service. Accordingly, the Commission directed Portland to file revised tariff sheets to reflect the foregoing rulings.

## **II. Public Notice, Interventions, and Protests**

8. Public notice of Portland's April 9, 2004 compliance filing was issued on April 15, 2004, with interventions and protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2004)). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2004), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage will not disrupt the proceeding or place additional burdens on existing parties.

9. On April 21, 2004, Calpine Corporation; Rumford Power Associates, L.P.; and Androscoggin Energy, L.L.C. (collectively, the Generators) protested Portland's compliance filing and requested a technical conference. On May 6, 2004, Portland filed an answer to the Generators' protest and request for a technical conference. On May 12, 2004, Wausau Papers of New Hampshire, Inc. (Wausau) filed a response in support of the Generators' request for a technical conference. On June 2, 2004, Portland filed an answer to Wausau's response, and on June 17, 2004, Wausau filed a response to Portland's answer. The Commission waives Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2) (2004), and permits the answers as they may aid in the Commission's understanding of the issues raised by the filing.

## **III. Discussion**

### **A. Minimum Delivery Pressure**

10. In the March 25, 2004 Order, the Commission directed that if Portland intends to permit the negotiation of minimum pressure requirements it must modify section 4.6 of Rate Schedule HRS so that it clearly states the minimum delivery pressure shall be 550 psi unless the parties agree to a different minimum delivery pressure, and that if Portland did not intend to permit such negotiation, Portland should revise the *pro forma* service agreement accordingly. The Commission also directed Portland to explain whether it is feasible to provide a minimum delivery pressure of 550 psi at all delivery points and under all rate schedules, and to explain whether HRS service can be provided at lower delivery pressures, and if not, why not.

11. In its compliance filing, Portland proposes to modify section 4.6 of Rate Schedule HRS to state that the minimum delivery pressure shall be 550 psi unless the parties agree to a different minimum pressure. However, Portland explains that, while the delivery pressure into Portland's system at the U.S.-Canada border is governed by contract, and Portland can control maximum flows at specific points through its remote flow control

equipment, Portland does not have any compression facilities of its own and does not control the compression facilities used to deliver gas into its system. Therefore, Portland asserts that it is not in a position to guarantee minimum pressures for all delivery points for all rate schedules, and that Portland's existing tariff does not require it to do so. Portland further clarifies that, while it could provide HRS service at lower pressures, it is the responsibility of the shippers to install any facilities required to lower the pressure of the delivered gas below the existing line pressure.

12. The Generators contend that Portland's compliance is deficient for several reasons and request a technical conference to explore the issues. With regard to the proposed minimum delivery pressure for HRS service, the Generators argue that Portland's proposed minimum delivery pressure for HRS service is unduly discriminatory. The Generators state that Portland does not address the issue of undue discrimination between Rate Schedule HRS shippers and shippers that receive service under other firm rate schedules that are not offered a minimum delivery pressure of 550 psi by the pipeline, even though they may be paying the same or higher rates than HRS customers. The Generators state that while Portland says it is not in a position to guarantee minimum delivery pressures for all delivery points for all rate schedules, it continues to propose a minimum delivery pressure of 550 psi for HRS service. The Generators argue that what Portland does not explain is how delivery pressure can be guaranteed under one rate schedule and not others even when the same physical delivery point could be served by either or both.

13. The Generators also state that Portland's compliance filing raises serious operational concerns and reveals what the Generators have long suspected; namely, that because Portland does not control the metering and compression facilities at the Canadian border and does not operate the Joint Facilities meter at the Westbrook interconnect, Portland attempts to control the facilities designated as the PNGTS-North facilities by manipulating the remote pressure control valves at its customer's delivery meters. The Generators contend that Portland's remote operation of the flow control valves at customer meters has caused fuel supply problems at the Rumford and Androscoggin generating facilities on several occasions in the past. The Generators are now concerned that Portland's attempt to provide hourly delivery services by operating the remote pressure control equipment at customer meters will further negatively affect service to shippers located north of Westbrook that depend on Portland as their sole source of natural gas.

14. The Generators state that if Portland is allowed to include a minimum pressure of 550 psi in Rate Schedule HRS, it must also be directed to include identical language in its other firm rate schedules, and offer the 550 psi minimum guarantee to existing FT shippers. The Generators contend that the tariff language also should be modified to require Portland to offer a minimum delivery pressure of 550 psi unless the parties agree to a greater minimum delivery pressure. The Generators assert that without this obligation from Portland the reference to the 550 psi minimum pressure has no meaning,

and that Portland could simply refuse to agree to the 550 psi minimum delivery pressure. The Generators conclude that if all of these steps are not taken to protect new or existing shippers under other rate schedules from undue discrimination, the Commission should reject Portland's proposal to provide a minimum delivery pressure of 550 psi solely to the HRS customers.

15. In its May 6, 2004 answer, Portland contends that its modification to section 4.6 of Rate Schedule HRS fully and directly complies with the Commission's directive in the March 25, 2004 Order and, accordingly, that the Generators' protest should be denied.

16. With regard to the Generators' argument that it would be unduly discriminatory for Portland not to provide a minimum delivery pressure guarantee to shippers under other firm rate schedules even though those shippers may be paying the same or higher rates than HRS customers, Portland asserts that the Generators are incorrect. Portland contends that HRS shippers pay premium tariff rates for premium service rights and those HRS rates are significantly higher than the comparable annual rates under Portland's other firm rate schedules. Moreover, Portland states that the Generators acknowledge that Portland explained why it is not in a position to offer a minimum pressure guarantee under all rate schedules; namely, Portland does not have compression facilities on its system and does not control the upstream compression used to deliver gas into its system. Under these circumstances, Portland contends that it is not unduly discriminatory to provide the minimum pressure guarantee to Rate Schedule HRS shippers, given that those shippers pay premium tariff rates for the premium HRS service.

### **Commission Determination**

17. Portland has complied with the Commission's first two directives by stating that the minimum delivery pressure shall be 550 psi unless the parties agree to a different minimum pressure. With regard to the latter two directives, namely, to explain the feasibility of providing a minimum delivery pressure of 550 psi and whether HRS service can be provided at lower delivery pressures, we find that Portland has not adequately explained why it cannot guarantee a minimum delivery pressure of 550 psi at all delivery points and under all rate schedules. Portland's claim of operational inability to provide such a guarantee due to absence of compression should apply equally to HRS service. Simply observing that HRS shippers pay a premium for HRS service, for which such minimum pressure requirements are included, does not render such a guarantee operationally feasible just for HRS service. Portland has provided no evidence that the premium rate paid for HRS service is related to anything other than hourly flexibility. Portland is directed to revise its Rate Schedule HRS and *pro forma* service agreement to remove minimum delivery pressure guarantees.

## **B. Contract Points**

18. In the March 25, 2004 Order, the Commission directed Portland to modify its tariff sheets to reflect that HRS service is limited to one HRS contract per delivery point and one HRS delivery point per contract. Portland has complied by proposing to add a section 1(g) and to modify section 2(c) of Rate Schedule HRS to reflect that HRS service is limited to one HRS contract per delivery point and one HRS delivery point per contract.

## **C. Maximum Contract Demand, Scheduling, and Curtailment**

19. In the March 25, 2004 Order, the Commission directed Portland to explain fully and clearly what its scheduling priorities would be once HRS service is implemented, and how Portland would implement scheduling and curtailment of HRS service, with accompanying support and examples, including proposed clarifying tariff changes. In particular, the Commission directed Portland to explain what “Maximum Contract Demand” means given the addition of HRS service with a daily (*i.e.*, MDQ) and hourly (*i.e.*, MHQ) contract demands. The Commission also directed Portland to explain why scheduling procedures for these services should not be incorporated in Portland’s tariff.

20. Section 7.4 of the GT&C of Portland’s tariff establishes priorities for the allocation of capacity on constrained portions of the system. Portland proposed to add the following underscored language to section 7.4(b)(1) which provides the highest priority to firm service at Primary Points:

7.4(b)(1) First, Transporter shall schedule service under Rate Schedule FT-Flex for Shippers whose nominated volumes Transporter has previously declined to schedule on 10 days during the current Month and whose current nomination is for Primary Receipt and Delivery Point(s), and Rate Schedule FT and Rate Schedule HRS nominated at Primary Receipt and Delivery Point(s) on a pro-rata basis based on Maximum Contract Demand.

The Commission noted that existing section 7.4(b)(1) provides that allocation of constrained capacity at primary points is on a *pro rata* basis “based on Maximum Contract Demand,” and that the same reference to “Maximum Contract Demand” is made with respect to secondary receipt points located downstream of the shipper’s primary receipt point.<sup>4</sup> Thus, the Commission determined, with the addition of Rate Schedule HRS service, it is unclear whether “Maximum Contract Demand” means an HRS

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<sup>4</sup> Section 2 of the GT&C of Portland’s tariff defines “Maximum Contract Demand” as: “the sum of the Receipt Point Maximum Daily Quantity or Quantities, as set forth in the executed Gas Transportation Contract under Rate Schedule FT.” Second revised Sheet No. 303 to Portland’s FERC Gas Tariff, First Revised Volume No. 1.

shipper's MDQ or its MHQ at such points. Accordingly, the Commission directed Portland to clarify its intent and file revised tariff language reflecting such clarification, with appropriate support and examples for such provision.

21. Portland also proposed to add the following underscored language to the provisions of section 7.4(b)(1) and (b)(2) which set forth capacity allocation procedures for secondary firm service:

7.4(b)(1) . . . For purposes of allocating mainline capacity pursuant to this paragraph, any Nomination for service at a Secondary Receipt Point located downstream of a Shipper's Primary Receipt Point, shall be treated as a Nomination for service at Shipper's Primary Receipt Point, up to the Shipper's Maximum Contract Demand at such Primary Receipt Point. For purposes of allocating mainline capacity pursuant to this paragraph, any Nominations for service at a Secondary Delivery Point located upstream of a Shipper's Primary Delivery Point, shall be treated as a Nomination for service at Shipper's Primary Delivery Point, up to the Shipper's Maximum Daily Quantity, on a uniform hourly flow basis, regardless of the contracted flow rate, at such downstream Primary Delivery Point.

7.4(b)(2) Second, Transporter shall schedule service under Rate Schedule FT-FLEX for Shippers whose nominated volumes Transporter has previously declined to schedule on 10 Days during the current Month and whose current nomination is for Secondary Receipt and Delivery Point(s) and Rate Schedule FT and Rate Schedule HRS at Secondary Receipt and Delivery Point(s) on a pro-rata basis based on the highest percentage of the Maximum Demand Rate for the service being provided. Shippers that are paying the same percentage of the Maximum Demand Rate for such service shall be allocated capacity on a pro rata basis. For purposes of allocating mainline capacity pursuant to this paragraph, any nomination for service at a Secondary Delivery Point, up to Shipper's Maximum Daily Quantity, shall be scheduled on a uniform hourly flow basis regardless of the contracted flow rate.

Since section 7.4(b)(1) requires scheduling to be based on Maximum Contract Demand, whereas scheduling under section 7.4(b)(2) is based on price, the Commission directed Portland to explain how scheduling at secondary points is accomplished, with examples and support, and whether it intends section 7.4(b)(2) to relate only to out-of-path secondary points

#### **Portland's April 9, 2004 Compliance Filing**

22. In its April 9, 2004 compliance filing, Portland proposes to modify sections 7.4(b)(1) and (b)(2) to provide that HRS service at other than primary points shall be



pursuant to its proposed section 7.10(a) of the GT&C, which it was directed to restore to its existing tariff's requirement that receipts and deliveries must be as nearly as possible at uniform hourly flows, but that any departure from uniform hourly flows shall be allowed if mutually agreeable. Portland states that the intent of the changes to sections 7.4(b)(1) and 7.4(b)(2) was simply to reflect the principle that, for purposes of scheduling service and allocating capacity, an HRS shipper's nomination at a secondary delivery point would be scheduled without regard to its MHQ, thus putting the HRS shipper at a secondary delivery point effectively on the same footing as shippers under Portland's other firm rate schedules. In this regard, it states that section 4.3 of Rate schedule HRS states:

Shipper shall have the right to utilize all other delivery points as Secondary Delivery Points, except that requests for service at a Secondary Delivery Point shall be scheduled as a request for service at a uniform hourly flow rate without regard to Shipper's MHQ; provided, however, that Transporter shall honor Shipper's MHQ at a secondary point if doing so will not interfere with the provision of any other service request on the system.

23. Additionally, Portland asserts that this principle is consistent with the Commission's directive to limit HRS service to one HRS contract per delivery point and one HRS delivery point per contract. It provides the following example of secondary point scheduling and the definition of Maximum Contract Demand for secondary points. An HRS shipper with an MDQ of 24,000 dekatherms per day (Dth/day) and an MHQ of 2,000 dekatherms per hour (Dth/hour) nominates service at a secondary delivery point. Portland states it would honor the HRS shipper's nomination at the secondary delivery point up to its MDQ of 24,000 Dth/day in the same manner that Portland honors other firm service nominations at secondary points. However, Portland states it would not honor such HRS shipper's nomination at the secondary delivery point for service at 2,000 Dth/hour, unless such accelerated flow could be provided without interfering with any other service. Moreover, Portland states that if the secondary delivery point is located upstream of such shipper's primary delivery point (invoking GT&C section 7.4(b)(1)), any allocation of capacity would be made *pro rata*, based on such shipper's Maximum Contract Demand, without regard to such shipper's MHQ. Portland states that if the secondary delivery point is an "out-of-path" point (invoking GT&C section 7.4(b)(2)), any allocation of capacity additionally would consider the percentage of the applicable maximum demand rate that such shipper is paying. Finally, Portland clarifies that GT&C section 7.4(b)(2) is limited to "out-of-path secondary points," given that section 7.4(b)(1) covers all "in-the-path" secondary transactions.

24. In its compliance filing, Portland offers the following example of scheduling cuts at primary points. Shipper A has a contract for HRS service with an MDQ of 24,000 Dth/day and an MHQ of 2,000 Dth/hour. Shipper B has a contract for FT service with an MDQ of 24,000 Dth/day. Each shipper nominates its full MDQ at its primary delivery point (or upstream of that point). To evaluate the scheduling of those nominations,

Portland would first determine whether it had sufficient capacity to schedule the combined nominations requiring up to 3,000 Dth/hour during any hour (*i.e.*, 2,000 Dth/hour for Shipper A and 1,000 Dth/hour for Shipper B). Assuming that Portland had sufficient capacity to provide 3,000 Dth/hour, both shippers would be scheduled for their fully nominated amounts. Portland asserts that it only contracts for firm services for which it has sufficient capacity to provide. Therefore, absent *force majeure*, Portland would expect to have sufficient capacity to provide all firm nominations on every day. However, Portland continues, if for some reason it could only provide 2,700 Dth/hour (*i.e.*, 90 percent of the total nominated amount), pursuant to section 7.4(b)(1) of its GT&C, each shipper's hourly entitlement would be reduced *pro rata* (*i.e.*, by 10 percent), based on each shipper's Maximum Contract Demand. Under this scenario, Shipper A would be scheduled for 1,800 Dth/hour and Shipper B would be scheduled for 900 Dth/hour. Portland asserts that even at these reduced hourly flow levels, both shippers still may receive their total MDQ for that day.

25. Portland develops the example further. If Shipper A and Shipper B nominate the same level of service but at an out-of-path secondary delivery point (thereby invoking GT&C section 7.4(b)(2)), it states that the same scheduling principles would apply so long as both shippers are paying the same percentage of their respective maximum demand rates. However, if one of the shippers is paying a higher percentage of its maximum demand rate, then that shipper would be scheduled first—up to its nominated MDQ.

26. Portland explains that curtailments of service under GT&C section 10.2 follow the same priority principles with the following two exceptions. First, once a shipper is scheduled, any curtailments or interruptions are based on the shipper's scheduled amount rather than its Maximum Contract Demand. Second, section 10.2(d) (which, it states, applies to secondary delivery points including "out-of-path" points) does not consider the percentage of the maximum demand rate paid by the shipper, but rather once scheduled, firm services at secondary delivery points are on equal footing for curtailment purposes, regardless of the percentage of the respective maximum demand rate being paid.

### **The Generators' April 21, 2004 Protest**

27. With regard to Maximum Contract Demand, the Generators state that, although Portland does not directly respond to the Commission's directive to clarify the definition of Maximum Contract Demand as it applies to Rate Schedule HRS, based on a scheduling example included in the compliance filing, it appears that Portland incorrectly interprets the Maximum Contract Demand to be an hourly quantity, despite the fact that Maximum Contract Demand is currently defined as a daily quantity under Rate Schedule FT. The Generators assert that section 2 of Portland's GT&C defines Maximum Contract Demand as the sum of the MDQs for all receipt points under Rate Schedule FT. The Generators assert that the same definition should also apply to Rate Schedule HRS, and notes that the *pro forma* service agreement Portland filed for Rate Schedule HRS

includes a blank for the Maximum Contract Demand in both Schedule 1 and Schedule 2. The Generators state that Schedule 1 defines the Maximum Daily Quantity for each of the shipper's receipt points, and includes no reference to hourly quantities; therefore, the Generators conclude that Portland intended the Maximum Contract Demand to be the sum of the MDQs, consistent with Rate Schedule FT. The Generators further conclude that since a shipper has only one Maximum Contract Demand for each service agreement, this same daily quantity must also define the MDQ in Schedule 2.

28. The Generators assert that this interpretation is reinforced by the way in which the Maximum Contract Demand is then used for scheduling in section 7.4 of the GT&C. The Generators state that because Portland schedules gas on a daily basis, and the Maximum Contract Demand is measured in Dth/day for all other rate schedules, the only way that an allocation of capacity on the basis of Maximum Contract Demand can have any meaning is if the Maximum Contract Demand for Rate Schedule HRS is defined as a daily quantity.

29. The Generators contend that despite the existence of a clear definition of Maximum Contract Demand as it relates to Rate Schedule FT, and the lack of any justification for adopting a different definition for Rate Schedule HRS, Portland nevertheless appears to adopt a different interpretation for purposes of GT&C section 7.4.

30. The Generators refer to the scheduling example on page 6 of Portland's compliance filing in which Portland indicates that it would schedule available capacity on the basis of a Maximum Contract Demand for HRS service that is equal to the MHQ, and a quantity for FT service that is artificially calculated by dividing the Maximum Contract Demand by 24. The Generators contend that Portland's purported methodology is simply wrong. The Generators assert that, to clarify that under all firm rate schedules the Maximum Contract Quantity is the sum of a shipper's MDQ across all receipt points, Portland must be directed to add Rate Schedule HRS (and Rate Schedule FT-Flex) to the existing, unaltered definition of Maximum Contract Demand already located in Portland's GT&C.

31. With regard to scheduling priorities, in their Protest, the Generators assert that Portland has proposed a scheduling protocol that would give Rate Schedule HRS shippers a higher priority of service than existing FT shippers. The Generators state that this is illustrated clearly by the example presented on page 6 of the compliance filing. The Generators contend that in this example, even though Portland has available capacity to deliver 64,800 Dth/day (2,700 Dth/hour times 24 hours), and the two firm shippers with MDQs that require only 48,000 Dth/day of that 64,800 Dth/day available capacity, Portland would still under-schedule service under Rate Schedule FT by 2,400 Dth/day and under-schedule service to the Rate Schedule HRS shipper by 200 Dth/hour. The Generators assert that while Portland may describe this example as a *pro rata* scheduling, the fact is that only the FT shipper, whose service is calculated on a daily basis, actually receives a reduction in scheduled daily volumes. The Generators explain that because

HRS scheduled service is only reduced on a per hour basis, by taking additional gas during the hours of the day when no scheduling reduction is in effect, the HRS shipper would still be able to receive its full MDQ without exceeding its contractual hourly entitlement.

32. The Generators explain that under Portland's tariff gas is scheduled daily. As long as Portland is able to provide the full MDQ to all firm shippers, there is no basis for under-scheduling service to shippers under Rate Schedule FT, according to the Generators. The Generators further contend that if Portland is to provide firm service under Rate Schedule HRS, it should not be allowed to provide such service to the detriment of other firm contracted services. As Portland proposes to provide HRS service using line pack and not to construct additional facilities, the Generators state that the only other option would be to under-schedule the hourly portion of HRS service prior to reducing the daily quantities for any firm shipper. Therefore, the Generators assert that the Commission should require Portland to propose a scheduling and curtailment priority that will be performed *pro rata*, based on a daily calculation for all services, and that if Portland must schedule or curtail on an hourly basis it must be limited to a *pro rata* approach within the HRS schedule only.

33. With regard to the curtailment of scheduled service, the Generators assert that it is not clear what Portland means when it says that curtailments of service under section 10.2 of the GT&C follow the same priority principles as scheduling. The Generators state that the meaning in the tariff is unambiguous: curtailment of service under firm rate schedules is to be done on the basis of daily Scheduled Quantities, without regard to hourly quantities scheduled under Rate Schedule HRS. The Generators state that if Portland's view that the same priority principles should apply both to curtailments and to scheduling service requests by firm shippers is accepted, then all firm services should be scheduled on the basis of daily contract quantities.

34. With regard to the relationship of HRS service to the flexibility provided under other rate schedules, the Generators state that Portland's response to the Commission directive—to clarify whether an HRS customer's gas would be scheduled ahead of an FT customer's gas when that FT customer requests hourly flexibility consistent with the flexibility Portland has historically allowed—raises additional questions. The Generators agree with Portland when it says that an HRS shipper delivering at a secondary delivery point should be put on the same footing as other firm shippers. But the Generators state that Portland has included language in tariff sections 4.3 and 4.5 of Rate Schedule HRS that reads: "Transporter shall honor Shipper's MHQ at a secondary point if doing so will not interfere with the provision of any other service request on its system." Accordingly, the Generators assert that Portland should address the following questions in order to respond properly to the Commission's directive:

- If a shipper under Rate Schedule HRS is shipping to a secondary point, where service (pursuant to section 4.3 of the applicable rate schedule) is to

be scheduled “without regard to Shipper’s MHQ,” is an MHQ schedule provided by that shipper a proper nomination?

- If HRS and FT shippers are to be on equal footing, how can an HRS shipper’s hourly schedule be more “proper” than an hourly schedule submitted by a shipper taking service under Rate Schedule FT?
- If an HRS shipper using a secondary delivery point and an FT shipper both request hourly flexibility, does Portland interpret the language in section 4.3 to give the HRS shipper at the secondary point a higher priority to whatever level of hourly flexibility the pipeline is able to provide?

35. The Generators state that this last question is what they understood the Commission to have asked in its March 25, 2004 Order. The Generators assert that, in light of Portland’s response, or lack thereof, and to minimize confusion in the future, the Commission should direct Portland to eliminate the clauses at the end of tariff sections 4.3 and 4.5 that begin with the phrase “provided, however” or, in the alternative, to include comparable language in its other firm rate schedules providing hourly flexibility at both primary and secondary delivery points as long as such flexibility does not affect service to other shippers.

#### **Portland’s May 6, 2004 Answer**

36. In its May 6, 2004 answer, Portland contends that the Generators’ argument, that HRS service should be scheduled solely on a measure of daily contract entitlement, such as Maximum Contract Demand, without regard to an HRS shipper’s hourly delivery entitlement, and that curtailment priority for HRS service (which is based on scheduled quantities) should not consider an HRS shipper’s hourly quantities, is incorrect.

37. Portland argues that the flaw in the Generators’ argument is that, despite the fact that HRS shippers and FT shippers share the same scheduling priority and same curtailment priority, HRS shippers contract and pay for not only daily entitlements, but also for expanded firm hourly entitlements, which FT shippers do not contract or pay for under the tariff. Portland asserts that those hourly entitlements cannot simply be ignored for purposes of scheduling and curtailment, as the Generators propose. Indeed, Portland contends that the Generators’ position would negate for the purpose of capacity allocation the central feature of HRS service, *i.e.*, the firm entitlement to accelerated hourly deliveries. Portland asserts that the Generators’ position is inconsistent with the very nature of HRS service and the Commission’s finding in approving that service: “The Commission recognizes that a firm hourly service provides options and flexibility to

shippers . . . whose intra-day delivery requirements may not be uniform and who may require accelerated flow rates and minimum delivery pressures during particular periods of the gas day.”<sup>5</sup>

38. Additionally, Portland argues that given intra-day nominations under the NAESB standards, service cannot be scheduled without regard to hourly demands, as the Generators suggest. Portland states that while such nominations are generally based on daily quantities, NAESB standard 1.3.9 additionally provides that “The interconnected parties should agree on the hourly flows of the intra-day nomination, if not otherwise addressed in transporter’s contract or tariff.” Portland maintains that under section 7.10 of the GT&C, all rate schedules other than HRS receive uniform hourly flows (*i.e.*, 1/24 MDQ per hour), while HRS shippers receive the hourly flow rate elected in their HRS contract.

39. In its May 6, 2004 answer, Portland asserts that the Generators’ misconstrue the example of scheduling cuts provided in Portland’s compliance filing. It explains that the example posits a day where two shippers nominate their full MDQ: (1) an HRS shipper with an MDQ of 24,000 Dth/day and an MHQ of 2,000 Dth/hour; and (2) an FT shipper with an MDQ of 24,000 Dth/day. Portland states that based on those contract entitlements at the beginning of the Gas Day, Portland must stand ready to serve up to 3,000 Dth/hour (*i.e.*, 2,000 Dth/hour for the HRS shipper and 1,000 Dth/hour for the FT shipper). If, due to *force majeure*, Portland can provide only 2,700 Dth/hour, then it states that each shipper would be cut by 10 percent, *i.e.*, *pro rata* based on each shipper’s Maximum Contract Demand (which for purposes of this example is assumed to equal each shipper’s MDQ).<sup>6</sup> Thus, it states, the HRS shipper would be scheduled for 1,800 Dth/hour (24,000 Dth/day times .90 = 21,600, which is then divided by 12) and the FT shipper for 900 Dth/hour (24,000 Dth/day times .90 = 21,600, which is then divided by 24). Nonetheless, it states, because the HRS shipper is entitled to its maximum flow rate (2,000 Dth/hour) for no more than 12 hours, while FT shippers generally receive uniform hourly flows over 24 hours, both shippers would be able to receive their full daily contract quantities over the course of the Gas Day, subject to their willingness to shift gas flows to hours of the day when capacity is available.

40. Portland asserts that the Generators’ argument that the service cut in the example is not truly *pro rata* because only the FT shipper effectively experiences a cut is incorrect, because the HRS shipper is under-served for each hour that its contract

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<sup>5</sup> March 25, 2004 Order, 106 FERC ¶ 61,289 at P 54.

<sup>6</sup> Portland states that the Generators make too much of the fact that the definition of Maximum Contract Demand in Portland’s tariff references Rate Schedule FT, but not Portland’s other firm schedules. Portland further states it would not oppose a tariff modification to clarify that the definition of Maximum Contract Demand applies to all of Portland’s firm rate schedules.

entitlement (*i.e.*, its MHQ) is reduced by 10 percent. Portland states that the HRS shipper contracted and paid a premium for the right to receive its MHQ of 2,000 Dth/hour, but in the example receives only 1,800 Dth/hour, *i.e.*, 10 percent less than its hourly contract entitlement. Moreover, Portland asserts that while the FT shipper and HRS shipper in the example can both ultimately receive their full daily quantity over the course of the Gas Day, the HRS shipper does not receive its full hourly entitlement (*i.e.*, MHQ) during any portion of the Gas Day. Therefore, Portland concludes that only the HRS shipper was truly constrained from firm entitlements.

41. Portland notes that the Generators propose that the Commission direct Portland to eliminate the clause in sections 4.3 and 4.5 of the Rate Schedule HRS which states: “provided, however, that Transporter shall honor Shipper’s MHQ at a secondary point if doing so will not interfere with the provision of any other service request on the system.” Portland contends that the Generators’ request should be denied. First, Portland asserts that the referenced tariff language was part of its initial HRS filing in this proceeding and any proposal to modify that language should have been raised in the Generators’ initial comments, not in this compliance proceeding. Second, Portland contends that the language is entirely reasonable and should be retained. Portland maintains that HRS shippers contract for firm hourly rights (*i.e.*, MHQ), which are reflected in higher tariff rates. Thus, Portland maintains that the MHQ also should be honored at secondary delivery points, as well as the primary point, when Portland can do so without interfering with another shipper’s service entitlement.

42. Portland states that the Generators raise a series of questions aimed at advancing the proposition that an FT shipper’s request for hourly flexibility should be treated the same as an HRS shipper’s request for its MHQ at a secondary point. Portland states that the answer is no. The HRS shipper has contracted and paid a premium for firm hourly flexibility (*i.e.*, MHQ) as a feature of its rate schedule, while the FT shipper has not. Accordingly, Portland argues that HRS shippers should receive hourly flexibility at secondary points ahead of shippers that have not contracted or paid for hourly flexibility. Nonetheless, Portland asserts that it will continue to provide hourly flexibility to FT shippers when mutually agreeable and available.

### **Commission Determination**

43. In the Transmittal Letter to its February 17, 2004 filing, Portland asserted that its proposed HRS service “is modeled after similar hourly firm services that the Commission has approved for a number of other pipelines.”<sup>7</sup> Consistent with those other approved services, Portland stated that “[Portland’s] provision of HRS service will not degrade the

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<sup>7</sup> Transmittal Letter to Portland’s February 17, 2004 filing, at 4 (citing, *e.g.*, *Vector Pipeline, L.P.*, 103 FERC ¶ 61,391 (2003); *Gulfstream Natural Gas System, L.L.C.*, 91 FERC ¶ 61,119 (2000); *Panhandle Eastern Pipe Line Co.*, 90 FERC ¶ 61,119, *order on reh’g*, 91 FERC ¶ 61,174, *reh’g granted*, 93 FERC ¶ 61,211 (2000) (*Panhandle*)).

quality of [Portland's] existing firm services" and that it "will provide HRS service from available system capacity."<sup>8</sup> Further, consistent with the cases cited, the exiting tariff's capacity allocation, scheduling and curtailment procedures are to be employed and the new hourly flow service is to have the same scheduling and curtailment priority as its existing FT and other firm services.<sup>9</sup> Based on these representations and Commission precedent, the Commission conditionally accepted Portland's proposed HRS service, subject to Portland clarifying, *inter alia*, its proposed scheduling priorities.

44. We find that Portland has adequately explained and justified how scheduling of HRS service is to be accomplished at secondary points, and has clarified its definition of Maximum Contract Demand as applied at such points. These clarifications should be reflected in its tariff. Accordingly, we direct Portland to file such clarifying tariff language. Further, we find that Portland has complied with the requirement of the March 25, 2004 Order to restore the language regarding mutual agreement to permit departures from uniform hourly flows in section 7.10 and accept its other changes to section 7.10 as reasonable.

45. However, for the reasons discussed below, we find that Portland's proposed scheduling, capacity allocation, and curtailment procedures at primary points, as clarified through narrative and examples in its compliance filing and May 6, 2004 answer, are inconsistent with its existing tariff and result in FT service provided to its other existing shippers being degraded by the addition of the proposed hourly service. We agree with the Generators that, as so clarified, Portland's proposed HRS service is effectively to be granted a higher priority than FT service, contrary to the Commission's authorization of other hourly services and contrary to the daily capacity allocation procedures of its existing tariff. Accordingly, we direct Portland to file revised tariff language to reflect the appropriate scheduling and curtailment procedures as authorized below.

46. At the time of the February 17, 2004 filing, Portland's existing effective tariff provided the following definition in GT&C section 2.17: "Maximum Contract Demand: shall mean the sum of Receipt Point Maximum Daily Quantity or Quantities, as set forth in an executed Gas Transportation Contract under Rate Schedule FT."<sup>10</sup> Section 7.1,

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<sup>8</sup> Transmittal Letter to Portland's February 17, 2004 filing, at 2.

<sup>9</sup> Transmittal Letter to Portland's February 17, 2004 filing, at 3. *See Panhandle Eastern Pipe Line Co.*, 90 FERC ¶ 61,119, at 61,358 (2000). In its March 10, 2004 answer, at page 6, Portland states that scheduling of HRS service will be on the same basis as FT and will be governed by GISB/NAESB standards, which Portland asserts "are compatible with the flow rates proposed under rate Schedule HRS."

<sup>10</sup> Portland FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 303 (currently superseded).



“Nominations,” provided for the Standard, Evening, Intraday-1, and Intraday-2 NAESB nomination cycles for the receipt of Scheduled Quantities.<sup>11</sup> GT&C section 7.4, “Allocation of Capacity,” provided in subsection (b)(1) that, “If due to any cause whatsoever [Portland] is unable, on any Day, to satisfy all nominations for service through any pipeline segment pursuant to the procedures in section 7.1 above, then [Portland] shall allocate capacity in the constrained segment according to the following allocation procedure: (1) First, . . . Rate Schedule FT nominated at Primary Receipt and Delivery Point(s) on a pro-rata basis based on Maximum Contract Demand.” Finally, pursuant to GT&C section 10.2 (g), if Portland must curtail service due to *force majeure* or other unforeseen circumstance, the last service it will curtail is FT service at Primary Points “on a pro-rata basis based on Scheduled Quantities.” Thus, under Portland’s existing tariff, all scheduling, allocation of capacity, and curtailment among firm shippers was based on maximum daily contract demand (*i.e.*, MDQ). With the addition of HRS service with both an MDQ and an MHQ, Portland was directed to explain how it intended to schedule HRS service and, in particular, how it proposes to define “Maximum Contract Demand.” Through the examples it gave in its compliance filing and May 6, 2004 answer, Portland has effectively clarified that it proposes not to follow its existing tariff. Its apparent intent is to modify its existing scheduling, capacity allocation, and curtailment procedures for FT service to use imputed MHQs instead of MDQs which may cause curtailment of FT service in situations where no curtailment of FT service would occur under its existing tariff provisions, thereby degrading existing FT service.

47. In its example, an HRS shipper and an FT shipper each have contracts for a 24,000 Dth/day MDQ and schedule their full MDQ on a day when total available capacity is 72,000 Dth. It posits an HRS 12-hour service, apparently interpreting the HRS entitlement to mean that the HRS shipper may schedule up to 2,000 Dth/hour for 12 hours with no service in the remaining 12 hours, whereas the FT shipper must flow at a uniform hourly flow of 1,000 Dth/hour for each of the 24 hours of the Gas Day, for a total hourly commitment of 3,000 Dth/hour. It then posits a *force majeure* situation that restricts its daily capacity to 64,800 Dth/day and its hourly flow capability to 2,700 Dth/hour. Despite the fact that it still is capable of providing each shipper with its respective nominated MDQ by the end of the Gas Day, and would not be permitted to curtail FT service under its existing tariff procedures, it asserts that it must cut *both* shippers’ scheduled amounts by 10 percent on a *pro rata* basis. It reasons that it must stand ready to provide 3,000 Dth/hour of service each day (2,000 Dth/hour for the HRS shipper plus 1,000 Dth/hour for the FT shipper), but it can only provide 2,700 Dth/hour because of the *force majeure* restriction. It then explains that it would accomplish the tariff’s *pro rata* allocation of capacity by converting the FT shipper’s MDQ into an hourly entitlement of 1,000 Dth/hour (24,000 Dth/day divided by 24) and then cutting the HRS shipper’s MHQ and the FT shipper’s imputed MHQ each by 10 percent to arrive at an HRS MHQ of 1,800 Dth/hour (2,000 Dth/hour times .90) and an imputed FT MHQ of

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<sup>11</sup> Pursuant to NAESB Standard 1.3.9, which is incorporated into Portland’s existing tariff, all nominations should be based on daily quantity.

900 Dth/hour (1,000 Dth/hour times .90) to arrive at the 2,700 Dth/hour hourly capacity of the system. Notwithstanding these cutbacks, Portland then goes on to assert that both shippers would wind up being able to schedule their MDQs anyway over the course of the Gas Day, apparently on the basis that it will permit the shippers to schedule capacity on an ad hoc basis by agreement, using capacity available in the 12 hours that the HRS shipper does not take its reduced MHQ.

48. This scheduling and curtailment procedure conflicts with Portland's existing tariff and results in the FT shipper being curtailed solely to accommodate Portland's over-scheduling of HRS hourly capacity. *Pro rata* scheduling, capacity allocation, and curtailment of FT service under its existing tariff are based on daily entitlements, MDQs. But, the basis for the *pro rata* capacity allocation in its example is not a lack of capacity to meet total *daily* contract MDQs under both contracts. The total MDQ under both contracts is only 48,000 Dth/day, whereas total available capacity for the day is 64,800 Dth/day (2,700 Dth/hour times 24 hours = 64,800 Dth/day). The cutback in service, therefore, is not in Portland's ability to meet the shippers' MDQs, but only in its ability to meet the scheduled MHQ of the HRS shipper. There would be no curtailment of FT service under Portland's existing tariff, under which capacity allocations and curtailments are based on MDQs, in the circumstances presented in its example.<sup>12</sup> Since the FT shipper has a daily service with an MDQ and no hourly flexibility, there is no basis to cut its scheduled service under Portland's existing scheduling and curtailment procedures. However, in Portland's example, despite daily capacity exceeding the MDQs of both shippers, the FT shipper would not receive its scheduled MDQ of 24,000 Dth/day; it would only receive 21,600 Dth that day (900 Dth/hour times 24 hours). Notwithstanding Portland's apparent promise to voluntarily agree to increase flows on an ad hoc basis later in the Gas Day, the FT shipper would not have a firm contract right to make up the difference during the hours that the HRS shipper is not taking its MHQ because the FT shipper generally must take service at uniform hourly flows.<sup>13</sup>

49. An inherent flaw in Portland's example is its assumption that, despite the fact that it must reserve (and, therefore, cannot sell as firm capacity to other shippers) 48,000 Dth/day of capacity for the HRS shipper to be physically capable of guaranteeing that the HRS shipper can take up to 2,000 Dth/hour at any hour of the day under a 12-hour HRS service contract, Portland assumes a contract with the HRS shipper with a daily entitlement of only 24,000 Dth/day. That is insufficient daily capacity to support the

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<sup>12</sup> With only an appropriate hourly MHQ of 1,000 Dth/hour, the HRS shipper likewise would not be curtailed under the facts of Portland's example.

<sup>13</sup> Existing section 7.10 of the GT&C imposed the requirement to deliver and receive gas "as nearly as possible at uniform hourly rates" and further provides: "Any departure from uniform hourly flows shall be allowed if mutually agreeable." Portland FERC Gas Tariff, First Revised Volume No. 1, Original Sheet No. 329.

hourly flexibility feature of the service. By only reserving firm capacity to support a daily scheduled MDQ of 24,000 Dth/day, Portland only would be physically capable of supporting an hourly scheduled MHQ of 1,000 Dth/hour (1,000 Dth/hour times 24 = 24,000 Dth/day) for the HRS shipper, not 2,000 Dth/hour as it proposes. It must reserve sufficient daily capacity in advance for the HRS contract to be able to provide 24 hours of service at the shipper's MHQ since Portland does not know in which of the 24 hours the HRS shipper will want service, and at what level per hour, until the shipper submits its nomination. Unlike in *Panhandle*, Portland has claimed that it will reserve sufficient capacity to be able to perform HRS service without impairment of other firm services. Panhandle did not reserve capacity to *guarantee* the hourly flexibility and provided such flexibility on an as available basis only following a case-by-case analysis of "whether the delivery point requested for HFT-1 service physically can accommodate the swing patterns of any service requested at that point without impairing the rights of existing firm shippers."<sup>14</sup> Portland must reserve sufficient *daily* firm capacity if it is to guarantee specific firm *hourly* flow service entitlements. MHQ capacity is a derivative of MDQ capacity.<sup>15</sup>

50. Thus, but for the existence of the HRS contract there would be no curtailment of FT capacity in the circumstances presented in Portland's example. By imposing an hourly flow priority for HRS service in this way, Portland is necessarily degrading the quality of the existing FT services and failing to apply its existing capacity scheduling and curtailment procedures, which are based on daily capacity, contrary to its representation to the Commission and inconsistent with *Panhandle* and other orders approving hourly flexible services.<sup>16</sup> Flexible hourly service is not a feature of FT service and, therefore, the FT shipper cannot have its daily scheduled amount cut because

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<sup>14</sup> *Panhandle*, 90 FERC ¶ 61,119 at 61,359.

<sup>15</sup> For Portland to physically be capable of supporting a 12-hour HRS service with an MHQ of 2,000 Dth/hour, the HRS shipper would have to contract for an MDQ of 48,000 Dth/day (not merely 24,000 Dth/day). In that event, when coupled with an FT shipper MDQ of 24,000 Dth/day and with a *force majeure* event reducing total available daily capacity to 64,800 Dth, *pro rata* capacity allocation or curtailment of both the FT and the HRS shipper would be appropriate under Portland's existing tariff provisions. The HRS shipper would receive a 2/3 *pro rata* share (48,000 Dth/day MDQ divided by 72,000 Dth/day total MDQs) of the 64,800 Dth of available daily capacity for a reduced MDQ of 43,200 Dth/day. The FT shipper would receive a 1/3 share (24,000 Dth/day divided by 72,000 Dth/day total MDQs) of the 64,800 Dth available daily capacity for a reduced MDQ of 21,600 Dth/day. Because its MHQ hourly entitlement is a derivative of its MDQ, the HRS shipper's MHQ would be reduced to 1,800 Dth/hour (43,200 Dth/day MDQ divided by 24).

<sup>16</sup> See cases cited *supra* note 7.

of a *force majeure* event that only affects the hourly flexibility service feature of HRS service provided at extra cost only to the HRS shipper. Converting the FT shipper's MDQ into an MHQ to apply *pro rata* scheduling based on the imputed MHQ conflicts with the nature of FT service. Consistent with *Panhandle*, pro rata capacity allocations or cutbacks in scheduled amounts between HRS and FT shippers should be on the same, common basis of MDQs to maintain the equal scheduling priority approved for the new HRS service vis-à-vis the existing FT service. Only the HRS service's MHQ should be cut back due to the *force majeure* event in Portland's example. In that event, Portland should compensate the HRS shipper for the lowered MHQ or should permit "make-up" flexibility pursuant to section 10.4 of the GT&C of its tariff.

51. Further, Portland's example incorrectly assumes that the HRS shipper would only have an entitlement to take service hourly for 12 specified hours and no entitlement to take any service during the remaining 12 hours. The HRS shipper's reduced HRQ is only a *maximum* hourly flow flexibility restriction and it could take up to that reduced MHQ for as many hours as needed to achieve its MDQ that day. The HRS shipper can decide to schedule up to its hourly maximum each hour and, as long as it does not exceed its MDQ during the course of the Gas Day, it should be allowed to schedule service for as many hours of the day in any combination as it wishes.<sup>17</sup> Rather than relegating the HRS to ad hoc agreements with Portland to arrange additional service during the remaining 12 hours of the day, in the *force majeure* situation posed in Portland's example, the HRS shipper must be allowed to re-nominate up to its reduced MHQ each hour it chooses, during as many hours as necessary, until it reaches its MDQ for the day.

52. Portland's example, where it has sufficient daily but not hourly capacity to meet scheduled commitments, is troublesome. It reflects its proposal to over-schedule an hourly service for the HRS shipper beyond Portland's physical capability of providing such service, and to reduce the FT shipper's scheduled amount to accommodate that over-scheduling. The Commission approved the proposed HRS service, *inter alia*, based on Portland's representation that it will commit to provide the HRS service using existing, available unsubscribed system capacity without harm to existing FT shippers. Its example does not square with that representation. Portland should consider the less-than-firm hourly service approved in *Panhandle*, if the capacity commitment it must make to ensure firm hourly flexibility is beyond what it is willing to provide.

53. Portland is directed to reflect the foregoing rulings, including revising the definitions and other sections of its GT&C to make clear that "Maximum Contract Demand" and "Scheduled Quantities" mean maximum daily quantities (MDQ) for all firm scheduling, capacity allocation, and curtailment purposes.

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<sup>17</sup> Indeed, because the MHQ is just a maximum, it could choose to schedule less than that level each hour and get service for as many hours as needed to meet its MDQ.

54. Finally, Portland has failed to explain how scheduling cuts and curtailment occur among HRS shippers when the total MDQ must be cut in *force majeure* situations. In its example, only one HRS shipper was being provided service. It would appear that the MDQ of each HRS shipper is reduced on a *pro rata* basis with a concomitant *pro rata* reduction in the HRS shipper's MHQ (10 percent in its example), but Portland must file revised tariff language to make those scheduling allocation and curtailment procedures clear.

#### **D. Overrun and Make-up Services**

55. Portland proposed to change the section 10.4 curtailment priorities to place HRS Authorized Overrun service at a higher curtailment priority than "make-up quantities" and at the same priority with IT service with service scheduled based on the rate paid, from highest to lowest. In the March 25, 2004 Order, the Commission directed Portland to explain why it should not accord equal scheduling priority for other overrun and/or make-up services with HRS overruns. In its compliance filing, Portland asserts that HRS overrun service and "make-up" service are significantly different and warrant different treatment. Portland asserts that HRS overrun service is a transportation service pursuant to section 2(e) of Rate Schedule HRS, for which a specified rate applies, as provided in section 3.2(b) of Rate Schedule HRS and as set forth on Sheet No. 102 of the tariff. Portland contends that "make-up" service is not a transportation service and incurs no separate charge, but is simply a means for imbalance volumes pursuant to Operational Balancing Agreements (OBA) to be taken from, or returned to, Portland's system, given that Portland does not use a "cash-out" mechanism for imbalances. Moreover, Portland maintains that, consistent with section 8.6 of its GT&C, the accommodation of OBA imbalance quantities is handled between Portland and the third-party point operator pursuant to the terms of the OBA, and the actions of such point operator are not attributed to the shipper. Portland proposes to change the section 10.4 curtailment priorities to clarify that HRS Authorized Overrun service and IT service are scheduled second from last based on the rate paid, from highest to lowest.

56. At the outset, we disagree that make-up services are not transportation services. Section 10.4 of Portland's existing GT&C, "Make-up Service", provides that, in the event of interruption or curtailment of service, "Shipper shall be given the opportunity on a subsequent Day or Days to make up such loss of service provided that such make-up service shall not preclude or interfere with the service priorities set forth in section 7." If such make-up service is subsequently provided, shipper is not to be subject to duplicative charges for the interrupted scheduled services for it has already paid. Nonetheless, we find that Portland has satisfactorily supported its proposed HRS Authorized Overrun service priority. Its existing tariff section 10.4 provided for make-up service to be scheduled next to last overall, below IT. It is reasonable to schedule HRS Authorized Overrun service on an equal priority with IT, based on price, such that a higher-priced HRS Authorized Overrun service will be scheduled ahead of lower-priced IT service. As such, it is also reasonable to maintain the same priority relative to make-up service as in

its existing tariff. However, it is unduly discriminatory to provide authorized overrun service only to HRS shippers. Accordingly, Portland is directed to provide such service to other firm shippers as well.

### **E. Request for Technical Conference**

#### **Portland's Request for Technical Conference and Portland's Response**

57. In their April 21, 2004 filing, the Generators contend that Portland's response is deficient for several reasons and request a technical conference to explore the issues. The Generators argue that, as evidenced by the multitude of complex issues and questions raised, a technical conference would allow the parties to explore the issues in a more efficient manner. The Generators state that they represent the only large-scale electric generation load directly connected to the Portland system and are presumably the current target market for the hourly service. The Generators assert that Portland has not indicated that it has any other customers who are prepared to contract for such hourly service. Accordingly, the Generators state that neither the pipeline nor any potential HRS shipper would be harmed by any potential delay a technical conference may create.

58. In its May 6, 2004 answer, Portland asserts that the Generators' protest and request for a technical conference should be denied. Portland contends that the Generators' issues are without merit, as shown by its answers to the Distributors' Protest.

#### **Wausau's Response in Support of Request for Technical Conference**

59. On May 12, 2004, Wausau filed a response in support of the Generators' request for a technical conference.<sup>18</sup> Wausau requests the Commission to waive any regulations and/or Rules of Practice and Procedure necessary to accept its response. Because Wausau's response will ensure that the Commission is apprised of all relevant (and evolving) facts and circumstances surrounding Portland's HRS service proposal, it will serve to clarify such proposal and provide a more full, complete, and accurate record on which the Commission can base a decision.

60. Wausau states that it shares the Generators' concerns that Portland's offering of HRS service will degrade Portland's service to Wausau by effectively nullifying benefits and rights provided Wausau under its OBA with the pipeline. Notwithstanding the clear intent of the March 25, 2004 Order as well as Portland's representations that existing customer services would not be affected by the offering of HRS service, Wausau maintains that during the several weeks prior to Wausau's filing of its response, Portland began operating the remote pressure/flow control valve at its Wausau delivery point in a

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<sup>18</sup> Although answers to protests are not permitted by Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2) (2004), the Commission finds good cause to waive the rule as Wausau's answer has aided in the disposition of the issues raised by its filing.

manner that severely limits the flexibility previously provided under Wausau's FT Agreement and corresponding OBA, and which has adversely impacted operations at Wausau's Groveton plant without any change in Wausau's historic pattern of operation on the Portland system. Moreover, Wausau claims that in response to Wausau's inquiry as to why physical restrictions on deliverability have now been imposed, Portland provided no system operational reason but, instead, suggested that Wausau should consider purchasing HRS service to obtain the flexibility it had previously been provided. Wausau asserts that Portland is intentionally reducing the deliverability flexibility previously provided Wausau in order to market its new HRS service – an action that clearly degrades existing customer services and rights. Accordingly, Wausau believes a technical conference is necessary to explore these issues, to ascertain the extent to which Portland's actions have been inconsistent with its repeated representations and the Commission's intent that existing customer services not be adversely affected by the offering of HRS service, and to determine whether additional safeguards should be established in Portland's tariff to ensure that existing services will not be degraded by the offering of HRS service.

61. Wausau further explains that at the beginning of April 2004 (following the Commission's approval of Portland's proposed HRS service in this proceeding), Wausau scheduled its entire MDQ of 4,600 MMBtu/d for delivery to its plant for each day of the month, as typically had been the case. On April 20, 2004, although Wausau's daily receipts exceeded its MDQ, they still fell well within OBA tolerance levels. However, on that Gas Day Portland's Gas Control department contacted Wausau plant personnel and advised Wausau that Portland's remote pressure/flow control valve governing deliveries to the plant was closing and that unless Wausau immediately reduced its hourly receipts of gas, gas supply to the plant would be significantly curtailed by Portland. To address this urgent situation, Wausau shut down a steam turbine generator used to supply electric power to the plant which, in turn, caused a severe disruption in plant operations.

62. In the aftermath of this disruption, Wausau states that its personnel contacted Portland for more information concerning Portland's implementation of physical flow controls on its deliveries of gas to Wausau. Wausau states that Portland personnel cited no system operational basis necessitating such but, rather, referenced the uniform hourly flow provisions of Portland's tariff as authorizing Portland to take this action. Specifically, Wausau asserts that Portland personnel explained that they intentionally had adjusted the "set point" on the control valve governing deliveries to the Wausau plant to close when deliveries exceeded 110 percent of a uniform hourly delivery of Wausau's scheduled daily quantity. Wausau states that Portland personnel further explained that while this control valve setting temporarily could be adjusted on an ad hoc basis if Wausau requested such an adjustment in advance, if Wausau's takes will ever exceed its daily scheduled volume, Wausau should purchase additional service from Portland – such as Portland's newly approved HRS service – in order to avoid future delivery curtailments.

63. Wausau asserts that Portland's actions in setting its control valve to require Wausau's rigid adherence to a delivery level based on the uniform hourly flow provisions of the Portland tariff is unprecedented during the five years Wausau has been purchasing transportation service from Portland. Wausau states that its natural gas requirements and delivery patterns at its Groveton plant have not changed from routine historic levels, nor has Portland alleged any system operational need that might justify curtailing Wausau's service. Wausau contends that Portland's action is contrary to both the spirit and intent of the Portland-Wausau OBA, for it effectively nullifies OBA tolerance levels by imposing service curtailments without any operational basis and notwithstanding that a fundamental purpose of the OBA is to avoid the imposition of physical flow controls when daily and monthly tolerance levels are being observed.

64. Wausau concludes that Portland's newly acquired ability to offer HRS service has led it to manufacture a need for that service by degrading the service previously provided its firm customers pursuant to their existing service agreements, OBA, and Portland's other rate schedules. Wausau asserts that such action is both contrary to the representations made to the Commission by Portland in this proceeding in its efforts to obtain approval for its HRS service, and contrary to the clear intent of the Commission's March 25, 2004 Order.

65. Wausau states that throughout the course of this proceeding Portland has repeatedly represented that its offering of HRS service will not degrade the rights and services provided its existing firm customers under existing rate schedules. Wausau further states that the Commission's March 25, 2004 Order conditionally accepting Portland's HRS service made it clear in rejecting certain proposed tariff language that the Commission was allowing the implementation of such service with the explicit understanding that it would not degrade the services or rights of existing customers, and, in particular, would not reduce flexibility previously provided customers to deviate from uniform hourly takes when such deviations are operationally feasible.

### **Portland's Answer to Wausau's Response**

66. On June 2, 2004, Portland filed an answer to Wausau's response.<sup>19</sup> Portland asserts that Wausau's allegation relative to Portland manufacturing a need for HRS service and degrading the service previously provided its firm customers pursuant to their existing service agreements is untrue, and its pleading is inaccurate and misleading. Portland contends that Wausau is using this proceeding regarding HRS service to create leverage for its request that Portland provide new and higher levels of hourly flexibility

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<sup>19</sup> Although answers to protests are not permitted by Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2) (2004), the Commission finds good cause to waive the rule as Portland's answer has aided in the disposition of the issues raised by its filing. On June 17, 2004, Wausau filed a response to Portland's answer. We are not persuaded to accept this answer as it does not aid us in the disposition of these issues, and will, therefore, reject it.



under its existing FT contract, *i.e.*, a level of new flexibility that Portland cannot (and will not) provide consistent with maintaining system integrity and protecting other firm shippers. Portland maintains that the facts show that Portland has neither impaired the firm service rights of its FT shippers, nor altered its historic and ongoing practice of providing reasonable flexibility to FT shippers (including Wausau) when operational conditions permit. Portland concludes that Wausau's arguments are without merit and the Commission should deny its request for a technical conference.

67. Portland notes that Wausau's allegations largely concern events occurring on April 21, 2004, when Portland's gas control personnel contacted Wausau personnel to inform them that Wausau had been taking gas at excessive levels for a number of hours causing the automatic flow control valve at its delivery point to begin closing. Portland asserts that Wausau's allegations of mistreatment by Portland are wholly without merit. Portland claims it has not changed its historic practice of providing operational flexibility to FT shippers, including Wausau. Portland states that section 7.10 of the GT&C of its tariff provides that FT shippers will receive gas as nearly as possible "in uniform hourly quantities" and "at uniform hourly flows." Section 7.10 also provides that departures from uniform hourly quantities shall be allowed when mutually agreeable. Consistent with that section, Portland maintains it has granted shipper requests for additional hourly flexibility when operational conditions permit. Further, Portland maintains that it has not changed its historic practices with regard to the operational tools for managing system flows and shipper flexibility, such as automatic flow control valves, and these historic practices have been fairly and consistently applied to Wausau.

68. Portland maintains that it did not deny Wausau reasonable operational flexibility on April 21, 2004. Portland states that Graph 1 of its attachment shows Wausau's gas takes for each day during April 2004. Portland notes that Wausau's gas takes often exceeded the uniform hourly take level, and even the 110 percent level, by substantial amounts, yet on only two occasions during the month (April 17 and April 21) did the flow control valve even begin to close, once closing by only about 20 percent and the second time closing by only about 35 percent. Portland argues that these facts conclusively refute Wausau's claim that Portland has set its automatic flow valves to require rigid adherence to the even hourly take requirement of the tariff.

69. Portland states that Graph 2 of its attachment shows Wausau's hourly gas takes between April 20 and April 22, 2004, which encompasses the period complained of by Wausau. Portland notes that on April 20 Wausau's takes exceeded the 110 percent level by substantial amounts – up to approximately 130 percent – without triggering any closing of the valve. Portland also notes that only after Wausau had sustained excessive takes for more than two hours (between 1:00 a.m. and 4:00 a.m. on April 21) did the valve appreciably react. Finally, Portland notes that, even after the valve began to react, it took almost another four hours of sustained takes at approximately 130 percent of the nominated level (between 4:00 a.m. and 8:00 a.m.) for the valve to close by only about 35 percent.

70. Portland states that the reaction of the valve was a signal to Portland's gas controllers that Wausau had been pulling gas at excessive levels for a sustained period of time. In this regard, Portland contends, Wausau had been taking substantially in excess of not only the tariff-prescribed uniform hourly take level and the 110 percent set-point level, but also significantly above the hourly equivalent of the tolerance level reflected in Wausau's OBA, the terms of which are subject to a confidentiality agreement.

71. Portland has also attached to its answer, copies of the log entries and e-mails that were exchanged between its personnel and Wausau's. Portland asserts its communication with Wausau was reasonable and cooperative and not a heavy-handed attempt to leverage Wausau into HRS service, as Wausau has alleged.

72. Portland states that Wausau's response to one of its e-mails was a request that Portland routinely set Wausau's delivery valve to allow a flow of up to 275 Dth/hour, which is approximately 143 percent of Wausau's MDQ on an even hourly flow basis. Portland contends that it simply does not have sufficient system capacity to allow its FT shippers the hourly flexibility to take gas at 143 percent of MDQ without compromising system integrity and undermining Portland's ability to satisfy its firm obligations to all shippers. Portland states that the Commission has recognized that automatic flow control at delivery points is a legitimate means of protecting pipeline integrity and has approved the use of valve tolerances strictly limited to the even-hourly-flow equivalent (*i.e.*, 1/24) of a shipper's daily entitlement, which is much stricter than the tolerances used by Portland. Nonetheless, Portland states it has communicated to Wausau its willingness to explore potential flow control adjustments that would increase Wausau's hourly flexibility under its FT contract.

73. Portland concludes that the facts show that Portland has not changed its policy of providing reasonable operational flexibility to FT shippers, that Portland is not degrading FT service to leverage sales of HRS service, and that Portland did not deny reasonable operational flexibility to Wausau in April of 2004. Accordingly, Portland contends that Wausau's request for a technical conference should be denied.

### **Commission Determination**

74. As discussed below, we find that a technical conference is not necessary as all issues raised by Portland's February 17, 2004 filing have been adequately resolved by reference to the materials and pleadings in the record herein. In addition, we find that further proceedings here regarding Wausau's claims concerning past actions of Portland are not warranted.

75. The record reflects that Portland's historical practice is to set its automatic flow control valves to remain open despite variances in hourly flows up to and often exceeding a tolerance level of 10 percent above the nominated contract demand for FT service based

on a level hourly flow of 1/24 of the daily nominated volume. Secondly, neither party disputes that, at the time in question, Wausau was taking gas in excess of 110 percent of its contract demand for extended periods and was in fact taking up to 143 percent of its contract demand at one point, although the parties appear to disagree that such large variances were commonly agreed to or were permitted. Portland does, however, concede that it set its automatic flow control valves to accept variances up to 130 percent without triggering the valves to close, apparently leaving the decision of whether to allow continued variances up to its operating personnel. Finally, according to the Wausau, its OBA does not establish hourly flow tolerances; only daily and monthly tolerances.

76. Section 7.10 of the GT&C of Portland's tariff states:

Shipper shall deliver and receive Gas in uniform Daily quantities during any Month and in uniform hourly quantities during any Day as nearly as possible at uniform hourly rates. Any departure from uniform hourly quantities shall be allowed if mutually agreeable.

77. The Commission finds that Portland was acting in accordance with section 7.10 at the time it adjusted the set point on the control valve to limit the flow of gas to Wausau to within a 10 percent tolerance level. Any deliveries of gas in excess of 110 percent were no longer "mutually agreeable" as provided by the tariff.

78. Given the requirement of section 7.10 for Wausau to deliver and receive gas "as nearly as possible" at uniform hourly rates, Wausau could not demand non-uniform service under the tariff because deviations from "uniform" flows must be mutually agreeable pursuant to section 7.10. To the extent that Wausau contends that Portland had an ulterior motive and reduced flows down to the 10 percent tolerance level solely to coerce Wausau into contracting for the new HRS service, which assertion Portland disputes, Wausau's allegation was more properly the subject of a complaint as it goes beyond the issue of what provisions for scheduling, capacity allocation, curtailment should be included in and permitted by Portland's tariff raised by its tariff filing herein. Accordingly, we find that the record does not support setting issues raised by Wausau's allegation for technical conference.

79. That said, however, we find that, based on Portland's own statements in the record, Portland has established a consistent course of conduct in permitting at least a 10 percent variance in uniform hourly flows for its existing FT services. Portland did not propose, nor has it supported, a change in its historic practices regarding FT service. Further, consistent with its historic practice, Portland is required to permit such deviations from hourly flows for all services, including FT service, on a not unduly discriminatory basis unless such deviations will impair its ability to provide service under other contracts or is otherwise operationally infeasible. In this regard, we note that Portland states it has communicated to Wausau its willingness to explore potential flow

control adjustments that would increase Wausau's hourly flexibility under its FT contract. We encourage Portland to do so and to extend such consideration to all of its customers on a not unduly discriminatory basis.

80. We believe that, with the foregoing modifications and clarifications of Portland's tariff and operating practices, Wausau will have the opportunity to receive satisfactory levels of FT service consistent with Portland's tariff without impairment of that service by HRS service. However, it cannot demand more than the service it pays for and its FT service was intended to generally comprehend uniform hourly flows. It cannot insist on continued, voluntary ad hoc agreements of Portland to accept significant hourly flow variances from scheduled quantities. If the limitation on scheduling flexible hourly flows of the FT service Wausau currently has contracted for causes Wausau operational problems, despite the added assurance of reliability of service from the foregoing modifications and clarifications of the tariff and Portland's operating practices, then it has the option to contract for the HRS service, which provides it with the right to schedule a fixed amount of hourly flexibility.

81. The Commission finds that the record does not support directing further revisions in Portland's tariff based on Wausau's allegation of past conduct by Portland. Further, the Commission finds that a technical conference is not necessary in this proceeding as the issues raised regarding Portland's proposed tariff revisions have been adequately addressed above. Accordingly, the Generators' request for a technical conference is rejected.

The Commission orders:

(A) Portland's revised tariff sheets as listed in footnote 2 are hereby accepted, subject to the conditions as discussed in the body of this order and in the ordering paragraph below, effective April 1, 2004.

(B) Portland is directed to file revised tariff sheets as directed in the body of this order, within fifteen days of the date of the issuance of this order.

(C) The request for a technical conference is denied.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.