UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Gas Transmission Northwest Corporation Docket Nos. RP06-407-000 and
RP06-407-002

ORDER ON TECHNICAL CONFERENCE

(Issued December 21, 2006)

1. On July 31, 2006, the Commission issued an order (July 31 Order) accepting and suspending tariff sheets filed by Gas Transmission Northwest Corporation (GTN) in its section 4 rate case and setting certain issues for hearing or technical conference.[1] For the reasons discussed below, based upon its review of the technical conference comments, the Commission will require certain tariff sheets filed by GTN to be modified, other tariff sheets to go into effect at the end of the suspension period without modification, and certain issues to be set for hearing. This order also addresses GTN's October 6, 2006 supplemental filing in this docket proposing revised tariff sheets to implement its revenue-sharing proposal.

Background

2. On June 30, 2006, GTN filed revised tariff sheets pursuant to section 4 of the Natural Gas Act (NGA) and Part 154 of the Commission's regulations. In its filing, GTN proposed to charge market-based rates for interruptible service, a rate increase for existing firm recourse service, and changes in certain terms and conditions of service. GTN requested an effective date of August 1, 2006 for its tariff sheets.

3. On July 31, 2006, the Commission issued an order accepting and suspending tariff sheets for five months to be effective January 1, 2007, and setting certain issues for hearing or technical conference. The issues that were set for technical conference include 1) the 1996 settlement (*i.e.*, turnback capacity and billing determinants); 2) risk-sharing and revenue-sharing proposals; 3) market-based IT rates; 4) flexible services rate; 5) reservation of capacity for future expansions; 6) creditworthiness with regard to evaluation of bids, replacing credit assurances, additional assurances, and elimination of

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[1] *Gas Transmission Northwest Corporation*, 116 FERC ¶ 61,109 (2006).

tangible net worth test; and 7) right of first refusal (ROFR) with regard to open season for expansion capacity and ROFR capacity, and a requirement of 36 months notice to exercise ROFR rights when an expansion project is proposed.

4. A technical conference was held on September 26 and 27, 2006 to discuss these issues. Initial comments were filed on October 18, 2006 by GTN; PPM Energy, Inc. (PPM); Avista Corporation (Avista); The City of Redding, California (Redding); Public Utilities Commission of the State of California (CPUC); Pacific Gas and Electric Company (PG&E); United States Gypsum Company (Gypsum); Northern California Power Agency (Northern California); Turlock Irrigation District (Turlock); BP Canada Energy Marketing Corp and IGI Resources, Inc. (collectively, BP); EnCana Marketing (USA) Inc., Nexen Marketing U.S.A. Inc., Petro-Canada Hydrocarbons Inc., and Tenaska Marketing Ventures (collectively, Canadian Suppliers); Calpine Energy Services, L.P. (Calpine); Sierra Pacific Power Company (Sierra); San Diego Gas & Electric Company (San Diego); Puget Sound Energy, Inc. (Puget); Indicated Shippers;[2] Northwest Natural Gas Company (Northwest Natural); City of Klamath Falls, Oregon (Klamath); Canadian Association of Petroleum Producers (CAPP); and Northwest Industrial Gas Users (Northwest Industrials). Reply comments were filed on October 27, 2006 by GTN; PPM; Avista; CPUC; PG&E; Indicated Shippers; Canadian Suppliers; Sierra; San Diego; BP; CAPP; and Northwest Natural.

5. In addition, as a result of discussions in the technical conference, GTN filed revised tariff sheets in Docket No. RP06-407-002 to describe its revenue-sharing mechanism. Public notice of GTN's filing was issued on October 12, 2006. Interventions and protests were due October 18, 2006, as provided in section 154.210 of the Commission’s regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214), any timely filed motion to intervene is granted unless an answer in opposition is filed within 15 days of the date such motion is filed. Any motions to intervene out-of-time filed before the date of this order are granted pursuant to 18 C.F.R. § 385.214(d), since the Commission finds that granting intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Comments were filed by Avista; Calpine; Klamath; Redding; CPUC; Indicated Shippers; Northwest Industrials; Puget; and Sierrra. GTN filed an answer.

Discussion

6. As a result of supplemental information received on October 27, 2006, following the technical conference, the Commission will require GTN to modify certain tariff

[2] Indicated Shippers include Anadarko Energy Services Company, Chevron U.S.A. Inc., Conoco Phillips Company, and Coral Energy Resources, L.P.

sheets pertaining to creditworthiness and ROFR issues as well as its revenue-sharing proposal. Because additional information is necessary, the Commission will set for hearing the issue of whether GTN has properly implemented its 1996 rate case settlement with respect to the billing determinants for its FT rates, and issues related to the flexible services rates and risk sharing proposals. Finally, because the Commission continues to evaluate the prospective application of GTN's market-based IT rate proposal, the Commission will address the issue in the near future by separate order.

A. Policy Issues Resolved on the Merits

1. Considering Creditworthiness when evaluating bids and awarding capacity

i. Proposal

7. GTN proposes to consider using a shipper's credit quality when evaluating bids and awarding capacity in an open season for long-term firm capacity. Specifically, GTN has revised section 18.1(e) of its GT&C to state that the bid with the greatest economic value will be the bid with the highest net present value (NPV) based on the 1) reservation charge, 2) term of service as limited by shipper's credit quality and 3) probability of default for the applicable bid term. GTN proposes in section 33.2 of its GT&C that the above bid evaluation methodology apply to ROFR as well.

8. GTN also proposes to revise section 18.1(e) of its GT&C to provide that as part of an open season posting, GTN will provide a probability of default table and will identify any limits, based upon credit rating, to be placed on bid lengths. The probability of default table will define a bidder's probability of default based upon 1) the applicable bid term and 2) the credit rating of the shipper. GTN also states that it is willing to include a provision in section 18.1(e) of its GT&C to state that "[u]nless otherwise specified in its open season posting, GTN will use Standard & Poor's most recent fifteen-year 'Cumulative Average Default Rates By Rating Modifier' table, as extrapolated to reflect the maximum bid term to be used for evaluation purposes, to quantify Shipper's probability of default."[3]

[3] GTN states that upon consultation following the technical conference, it agrees to include this provision in its tariff if so directed. *See* Page 66 and Appendix B, Sheet No. 129 of GTN's initial comments on technical conference.

ii. <u>Comments</u>

9. Sierra states in its comments that GTN's proposal could result in a non-creditworthy shipper having to post excessive collateral. GTN answers that nowhere has GTN proposed to require a shipper to post more than the FERC-permitted level of collateral. GTN states that a shipper does, however, have the option to post additional collateral to increase the net present value of its bid if it so chooses. Sierra also argues that GTN's proposal contravenes the Commission's creditworthiness policy and Commission precedent because it does not set forth any objective factors.[4] GTN responds that it has proposed a formula that will be published with each open season posting and an objective probability of default factor that is derived by Standard & Poor's (S&P), a well-respected and independent credit rating agency.

10. Sierra also argues that GTN's proposal to use a probability of default factor in its NPV bid evaluation criteria improperly applies creditworthiness as a factor in evaluating bids for unsubscribed capacity as well as ROFR capacity. Redding argues that GTN's proposal to include creditworthiness as a factor in ROFR evaluation bid process is inconsistent with section 284.221(d) of the Commission's regulations.[5] GTN responds that many pipelines' tariffs, including GTN's, contain one bid evaluation procedure that is applicable in a variety of contexts, including generally-available capacity, ROFR capacity and capacity release. GTN also states that the Commission has held that a ROFR shipper must match the competing bid with the highest overall value to the pipeline based on the net present value evaluation and not simply the highest rate and longest term.[6]

11. Avista, Gypsum, San Diego, and Indicated Shippers state that GTN's proposed probability of default creditworthiness requirement is vague and is not objective. Avista argues that GTN's probability of default criteria should be rejected since this is an attempt to make decisions of creditworthiness status a matter for GTN's discretion.

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[4] *See Commission's Policy Statement on Creditworthiness*, 111 FERC ¶ 61,412 at P 16 (2005). *See also Tennessee Gas Pipeline Company*, 102 FERC ¶ 61,075 (2003), and *order on reh'g*, 103 FERC ¶ 61,275 (2003).

[5] Redding states that section 284.221(d) of the Commission's regulations provides that a ROFR shipper may retain capacity as long as it will match the longest term and highest rate offered for its service.

[6] GTN cites *TransColorado Gas Transmission Company*, 109 FERC ¶ 61,117 at P 6 (2004) and *Algonquin Gas Transmission Company*, 105 FERC ¶ 61,330 at P 8 (2003).

Gypsum and Calpine state that GTN should be required to provide shippers objective standards by which their probability of default will be judged in its tariff. Calpine states that GTN should be required to provide an explanation of how its probability of default table will be used. Avista argues that in the event GTN's credit proposal is not rejected, GTN should clarify that a shipper that has provided a letter of credit or a guarantee to satisfy its credit requirements will not be directly subject to the probability of default determination so long as the guarantor remains creditworthy. Avista also requests that if GTN's probability of default proposal is accepted, GTN should revise its tariff to state that a shipper could elect to post additional collateral to increase the net present value of its bid.[7] Indicated Shippers argue that if GTN's probability of default factor is accepted, then GTN should be required to clarify that the probability of default factor does not apply if the bidding parties meet the "first tier" creditworthiness standards (*i.e.*, BBB S&P credit rating or Baa2 Moody's crediting rating). Indicated Shippers contend that there is no need to force shippers into an expensive collateral bidding process.

12. GTN states that its proposal is consistent with the Commission's Policy Statement on Creditworthiness[8] which states that the Commission would:

> Consider on a case-by-case basis any pipeline proposal to take into account a shipper's credit status in determining whether more than three months collateral can be required when shippers are bidding for available capacity on the pipeline's existing system. In allocating available capacity, the pipeline is generally permitted to allocate capacity to the highest valued bidder. A shipper's credit status may be a relevant factor in assessing of the [sic] value of its bid as compared with bids by more creditworthy shippers, and in determining the amount of collateral that non-creditworthy shipper must provide to have its bid considered on an equivalent basis.

13. GTN states in its initial comments that following consultations at the technical conference it now proposes to revise its tariff in section 18.1(e) pertaining to probability of default to state that unless otherwise specified in its open season posting, GTN will use Standard & Poor's most recent fifteen year cumulative average default rates by rating modifier table, as extrapolated to reflect the maximum bid term to be used for evaluation purposes, to quantify shipper's probability of default.[9]

[7] Avista cites GTN's initial comments at page 64 where GTN states its willingness to accept additional collateral to increase a shipper's NPV bid.

[8] *Id.* at P 15 (2005).

[9] *See* page 66 of GTN's initial comments.

14. Puget is in favor of all the proposed creditworthiness tariff changes proposed by GTN. Puget states that GTN should require all customers to be creditworthy and the proposed revisions provide new and useful tools to ensure that only creditworthy shippers obtain capacity.

iii. Determination

15. While to date there has not been a pipeline proposal for using a shipper's credit quality when evaluating bids, the Commission has previously discussed this concern in its policy statement on creditworthiness. The Commission stated that a pipeline is generally permitted to allocate capacity to the highest valued bidder.[10] The Commission also stated that a shipper's credit status may be a relevant factor in assessing the value of its bid as compared with bids by more creditworthy shippers.[11] Further, the Commission stated that a pipeline must use a method for evaluating credit status that is objective and non-discriminatory.[12]

16. GTN's overall proposal is consistent with the intent of the Commission's policy statement on creditworthiness as stated above. The Commission finds that using a probability of default methodology that is based upon publicly-available information is objective and non-discriminatory. GTN has provided a justifiable rationale for using credit status as a means of evaluating bids through its probability of default table. GTN has explained that using creditworthiness in evaluating bids allows GTN to attract and retain more creditworthy customers while protecting the financial stability of the pipeline. GTN states that taking creditworthiness into account 1) negates the unfair advantage a non-creditworthy bidder would have in bidding unrealistically long terms for capacity and thereby outbidding legitimate offers of more creditworthy shippers[13] and 2) encourages shippers to use the highest possible credit quality to support their bids. However, as agreed to by GTN in its initial comments, the Commission will require GTN to revise section 18.1(e) of its GT&C to provide that a shipper could elect to post

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[10] *Id.* (2005).

[11] *Id.* (2005).

[12] *Id.* at P 16 (2005).

[13] GTN's current methodology provides that only rate and term are factors in evaluating bids for awarding capacity.

additional collateral to increase the net present value of its bid.[14] The Commission finds this provision will provide shippers with the flexibility to decide whether to post additional collateral thereby improving their creditworthiness and increasing the net present value of their bid for transportation capacity that becomes available.

17. The Commission will reject GTN's proposal to limit term of service by a shippers' credit quality in the bid evaluation process. The Commission agrees with the concern raised by Gypsum that implementing all of GTN's creditworthiness provisions would provide too much discretion to GTN and may result in shippers defaulting on their contracts.[15] The Commission finds that GTN's proposal to limit term of service by credit quality would further restrict a shipper's ability to bid for capacity since GTN is already proposing to use credit as a factor in determining a shipper's probability of default. The Commission finds that using credit as a factor more than once in the evaluation of bids is unduly discriminatory.

18. The Commission will also reject GTN's proposal in section 33.3 of its GT&C to require ROFR shippers to match bids based on credit status as set forth in section 18.1(e) of its GT&C. The Commission agrees with the comments of Redding that GTN's proposal to include creditworthiness as a factor in evaluating ROFR bids is inconsistent with section 284.221(d) of the Commission's regulations.[16] This regulation requires that only factors such as term and rate be matched. The Commission finds that GTN's proposal imposes conditions on shippers with ROFR rights, by requiring evaluation of credit status upon renewal of an expiring contract, that could preclude shippers from retaining capacity rights. Such a result is contrary to Commission policy and the regulations that guarantee a ROFR right. The Commission finds that new credit policies and credit limits should not apply to existing long-term firm shipper contracts (*i.e.*, such as PG&E). The Commission also finds that while the *TransColorado* and *Algonquin* cases cited by GTN did use overall NPV in evaluating winning bids, neither case used credit status as a determining factor in evaluating bids; rather, these two cases relied solely on rate and term as factors in the overall bid evaluation.[17]

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[14] *See* page 64 of GTN's initial comments where GTN states its willingness to make such a modification.

[15] *See* page 4 of Gypsum's initial comments.

[16] *See* page 6 of Redding's initial comments.

[17] *See TransColorado Gas Transmission Company*, 109 FERC ¶ 61,117 at P 6 (2004) and *Algonquin Gas Transmission Company*, 105 FERC ¶ 61,330 at P 8 (2003).

19. The Commission will reject GTN's proposed phrase in section 18.1(e) of its GT&C that states "*unless otherwise specified in its open season posting,*" GTN will use the Standard and Poor's table to quantify a shipper's probability of default. The Commission finds this phrase provides GTN too much discretion to use another means of evaluating credit quality other than the S&P table described in the tariff. If GTN intends to use other credit evaluation methodologies, those should be included in the tariff along with the S&P table.

2. **Replacing Original Credit Assurances with Alternative Assurances**

i. **Proposal**

20. GTN proposes to revise its tariff to provide GTN with the discretion to determine whether to allow a shipper to replace its original credit assurance with an alternative assurance. Specifically, sections 18.3(A)(2)(b) and 18.3(D)(3) of GTN's GT&C state that if a shipper does not establish or maintain creditworthiness, the shipper has the option of receiving transportation service by providing to GTN a guarantee acceptable to GTN, collateral (*i.e.* cash or letter of credit), or security. GTN may not unreasonably prevent a shipper from later switching the type of credit alternative that it provides. GTN states that its proposal would prevent a shipper from using a superior form of credit assurance to secure capacity in an open season and then substituting an inferior form of security thereafter.

ii. **Comments**

21. Avista and Calpine argue that the above proposal which includes the phrase *unreasonably prevent* would provide GTN too much discretion in determining whether to refuse a substitution of collateral. Avista and Sierra argue that the above provision undermines the principles of the Policy Statement on Creditworthiness that provide "pipelines should accept reasonable forms of security."[18] Sierra contends that the Commission has already deemed as reasonable each of the forms of collateral set forth in GTN's tariff. Sierra argues that if the Commission authorizes GTN to include a creditworthiness factor in bidding for capacity, then it would not object to limit the switching of collateral in that limited context. Avista proposes that GTN be required to permit the swapping out of collateral so long as the replacement value of the new collateral is equivalent to the value of the old collateral. Avista argues that to the extent

[18] *See Commission's Policy Statement on Creditworthiness*, 111 FERC ¶ 61,412 at P 21 (2005).

the Commission does not reject GTN's proposal outright, GTN should be required to provide clarity in its tariff as to what its list of acceptable collateral is and how such replacement collateral can be utilized.

22. GTN states that even though there are several forms of assurances that a non-creditworthy shipper can provide, these assurances are not qualitatively equal in protecting GTN from default risks. GTN argues that this provision is necessary to prevent a shipper from manipulating the market for capacity by switching to an inferior form of credit assurance after being awarded capacity. GTN also assures that it will use its authority on a not unduly discriminatory basis and will provide a shipper with a written explanation of any denial of a request to substitute credit assurances.

iii. Determination

23. The Commission finds that the phrase *may not unreasonably prevent* provides GTN with too much discretion in deciding which form of credit alternatives are acceptable to GTN. The Commission's Policy Statement on Creditworthiness provides that

> pipelines should accept reasonable forms of security. Such security could include cash deposits, letters of credit, surety bonds, parental guarantees, security in gas reserves, gas in storage, contracts or asset liens. A pipeline must not unreasonably discriminate in the forms of security it determines to accept from customers.[19]

Consistent with the Commission's Policy Statement on Creditworthiness, GTN is required to revise sections 18.3(A)(2)(b) and 18.3(D)(3) of its GT&C to permit a shipper to use any of the approved forms of collateral stated in its tariff when switching credit alternatives.[20] In addition, GTN is required to remove the sentence *GTN may not unreasonably prevent a shipper from later switching the type of credit alternative that it provides* from sections 18.3(A)(2)(b) and 18.3(D)(3) of its GT&C. The Commission will also require GTN to revise its tariff to include procedures, as agreed to in its initial comments, which provide assurances that GTN will use its authority on a not unduly

[19] *Id.* (2005).

[20] GTN's approved forms of collateral in section 18.3(A)(2)(b) of its GT&C include a guarantee of financial performance, cash security deposit (*i.e.* three months worth of reservation charges, letter of credit, and any other security mutually agreed upon by shipper and GTN.

discriminatory basis and will provide a shipper with a written explanation of any denial of a request to substitute credit assurances.[21] This revision is consistent with the Commission's Policy Statement on Creditworthiness, which provides a pipeline must not unreasonably discriminate in the forms of security it determines to accept from customers.[22]

3. Requesting Additional Credit Assurances

i. Proposal

24. GTN proposes to clarify sections 18.3(A)(2)(b)(i) and 18.3(D)(3)(a) of its GT&C to state that GTN has the authority to request additional credit assurances when a shipper provides GTN with a guarantee and the guarantor has become noncreditworthy or no longer has a sufficient credit limit. GTN states that its proposal is consistent with Commission policy.

ii. Comments

25. Calpine argues that contemporaneously with the posting of the new security instrument, the previous guarantor must be released of all obligations to prevent a double collateralization. Calpine also argues that under no circumstances should a shipper be required to post collateral greater than that allowed by the Commission (*i.e.*, three months for existing capacity or pro-rata share of facilities costs ratcheted down over time). GTN states in its comments that it has not proposed to require a shipper to post more than the FERC-permitted level of collateral.

iii. Determination

26. The Commission will accept GTN's proposal as consistent with Commission precedent.[23] The Commission has approved a similar proposal in *Texas Eastern Transmission, L.P.* with tariff language in section 3.3(C) of Texas Eastern's GT&C requiring a customer to provide replacement security if its guarantor's letter of credit

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[21] *See* GTN's initial comments on technical conference at p. 68.

[22] *Id.* (2005).

[23] *See Texas Eastern Transmission, L.P.*, 112 FERC ¶ 61,235 (2005).

ceases to meet the pipeline's credit appraisal at any time during the period of service.[24] Further, the Commission finds that GTN is simply using the same forms of collateral that are required of a non-creditworthy shipper as set forth in sections 18.3(A)(2)(b) of its GT&C, and applying it to a non-creditworthy guarantor. As a result, GTN is not proposing, nor does it have authority to require more than three months of reservation charges as a form of collateral. However, the Commission agrees with Calpine that the previous guarantor that was found non-creditworthy must be released of all obligations at the time the shipper meets the additional credit assurances required by GTN. Therefore, the Commission will require GTN to revise sections 18.3(A)(2)(b)(i) and 18.3(D)(3)(a) of its GT&C consistent with the above discussion.

4. Flexibility for Net Worth of Shippers

i. Proposal

27. GTN proposes to eliminate its current 10 percent of tangible net worth test for establishing shipper credit limits in section 18.3(A)(2)(b) of its GT&C. GTN states that it proposes to replace this language with a more flexible approach that considers a shipper's specific circumstances in determining credit limits. As a result, GTN proposes to revise section 18.3(G) of its GT&C to provide credit limits based on an annual dollar amount and a maximum term. GTN proposes to set the above credit limits for a shipper based upon a credit appraisal of the guarantor.

ii. Comments

28. Gypsum argues that the 10 percent tangible net worth test for establishing a shipper's credit limit is objective and should not be removed from GTN's tariff. Gypsum supports the continuance of the 10 percent tangible net worth test by citing to both *Tennessee Gas Pipeline Company* and *Natural Gas Pipeline Company of America* where a similar test based on a tangible net worth test of 15 percent was used.[25] Calpine and Sierra argue that the removal of the 10 percent tangible net worth test would remove an

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[24] *See* Original Sheet No. 516A of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1.

[25] Gypsum cites to section 4.3 of the GT&C of Tennessee Gas Pipeline Company's FERC Gas Tariff, Sheet No. 405; and section 16(a) of Natural Gas Pipeline Company of America's FERC Gas Tariff, Sheet No. 279. Gypsum notes that Columbia Gulf Transmission Company also is currently proposing to use a tangible net worth test for determining creditworthiness in FERC Docket No. RP06-596-000.

objective criteria in favor of a purely speculative determination by the pipeline.[26] Calpine requests that GTN be required to modify its tariff to allow for a waiver of the 10 percent test and permit a greater percentage of the tangible net worth on a non-discriminatory basis.

29. GTN states that the Commission has recognized the need to consider the individual circumstances and complexities of different shippers,[27] which is the reason GTN proposes to remove the 10 percent tangible net worth test. GTN explains that the 10 percent tangible net worth test artificially constrains GTN from extending even greater credit to shippers that are not a credit risk for certain contracts. GTN explains that although a few pipelines currently use a tangible net worth test, many pipelines do not use such a test. GTN further explains that the tangible net worth test does not treat similarly-situated shippers equally and improperly discriminates between customers with differing contract lengths.

iii. <u>Determination</u>

30. The Commission rejects GTN's proposal to eliminate its current 10 percent of tangible net worth test for establishing shipper credit limits in section 18.3(A)(2)(b) of its GT&C. GTN has not demonstrated that its proposed change is reasonable. The Commission finds that replacing the 10 percent tangible worth test, which is based solely on dollar limits, with an undefined test that combines and imposes annual dollar limits as well as term of service limits, is more restrictive. The Commission finds that without some objective criteria to be applied, GTN's use of credit appraisal as a factor in establishing dollar and term of service limits provides too much discretion for GTN to set credit limits. The Commission also finds that GTN's proposal to establish credit limits based on a shipper's credit appraisal would further restrict a shipper's ability to bid for capacity since GTN is already proposing to use credit as a factor in determining a shipper's probability of default.

31. The Commission has not previously addressed the appropriateness of allowing a pipeline to establish limits on a shipper's ability to request any specific term of service. The Commission's policies with respect to creditworthiness are designed to allow shippers an opportunity to contract for capacity even if they cannot demonstrate

[26] Sierra cites to *Tennessee Gas Pipeline Company*, 102 FERC ¶ 61,075 at P 41 (2003); and *order on reh'g*, 103 FERC ¶ 61,275 at PP 40-41 (2003), where the Commission recognized the need for objective criteria in evaluating creditworthiness.

[27] *See Commission's Policy Statement on Creditworthiness*, 111 FERC ¶ 61,412 at P 10 (2005).

creditworthiness. Placing limits on the term of service request may unreasonably deny a shipper access to capacity. GTN has not demonstrated why such limits are necessary or appropriate. Our recent policy statement stated that the Commission would review proposals to allocate capacity that takes creditworthiness into account.[28] GTN's proposal to use default risk tables accomplish this. However, GTN has not demonstrated why it is also necessary to place limits on term of service based on credit quality. As a result, the Commission rejects GTN's proposal to revise section 18.3(G) of its GT&C to establish annual dollar and term credit limits based on a shipper's credit appraisal.

5. Reservation of Capacity for Future Expansion

i. Proposal

32. GTN is proposing to revise section 32 of its GT&C to reserve unsubscribed firm capacity, or capacity under existing or expiring firm transportation agreements that are not subject to ROFR, for use in future expansion projects. GTN states that it will only be permitted to reserve capacity for a future expansion project for which an open season has been held or will be held within one year of posting the capacity as reserved. GTN also states that capacity may only be reserved for up to one year prior to GTN filing a certificate application for the proposed expansion, and thereafter until the expansion is placed into service. GTN states that its proposal is consistent with Commission policy.[29]

ii. Comments

33. Avista argues that the proposed reservation of expansion capacity provisions do not expressly preserve existing contracts with evergreen rights. Avista explains that evergreen rights permit shippers such as Avista to extend their agreements with GTN prior to termination without resorting to the ROFR process. Avista requests that the Commission require GTN to revise section 32 of its GT&C to preserve contractual evergreen rights when a future expansion is proposed. The CPUC and PG&E request that GTN be required to confirm in writing that its proposed capacity reservation modifications have no impact on and do not in any way diminish PG&E's evergreen

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[28] *Id.* at P 15.

[29] GTN cites *Texas Gas Transmission, LLC*, 111 FERC ¶ 61,380 (2005); *Dominion Transmission, Inc.*, 111 FERC ¶ 61,135 (2005); *Tennessee Gas Pipeline Co.*, 84 FERC ¶ 61,304 (1998), *reh'g and clarification*, 86 FERC ¶ 61,066 (1999).

rights. GTN responds that it is willing to revise section 32 of its GT&C to provide that contracts with evergreen rights will not be included as capacity reserved for future expansion unless a shipper has elected termination under an evergreen provision.[30]

34. Avista also argues that GTN appears to propose an indeterminate time when it can post available reserved capacity and when it can file its certificate application. Avista contends that the proposed provisions in section 32 appear to contemplate a period of greater than one year during which GTN will be reserving capacity, which Avista opposes. Avista states that assuming an open season is held one year after the posting of the reserved capacity, such capacity can presumably be held for a longer period of time pending the submittal of a certificate application. GTN responds that its proposal explicitly provides that capacity reserved under this section may be reserved for up to one year prior to GTN filing for certificate approval for the proposed expansion, and thereafter until such expansion is placed into service. GTN further states that once it posts capacity as reserved for an expansion, it must file a certificate application for that particular expansion project within one year of the posting.

35. Avista argues that GTN has not provided sufficient justification for retaining capacity for up to thirty days that was previously reserved for an unfulfilled expansion project. GTN states that its proposed tariff provisions with respect to the reservation of capacity for future expansions are consistent with the capacity reservation tariff provisions that the Commission has approved for several other pipelines.[31] Puget supports GTN's proposal to modify its GT&C regarding reservation of unsubscribed capacity for future expansion. Puget contends that GTN's proposal is consistent with other tariffs approved by the Commission and would limit the possibility that GTN could again over-build its system.

iii. <u>Determination</u>

36. The Commission will accept GTN's proposal to reserve capacity for future expansions. The Commission's policy is to allow pipelines to reserve capacity for

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[30] *See* Page 74 of GTN's reply comments on technical conference.

[31] GTN cites to *Texas Gas Transmission, LLC*, 111 FERC ¶ 61,380 (2005); *Dominion Transmission, Inc.*, 111 FERC ¶ 61,135 (2005); and *Tennessee Gas Pipeline Co.*, 84 FERC ¶ 61,304 (1998).

expansion purposes.[32] In *Natural Gas Pipeline Company of America*, the Commission stated that the reservation of capacity will minimize facility construction and associated environmental impacts, will encourage fuller utilization of capacity, and will minimize the rate impact of allocating the costs of unsubscribed capacity to existing customers once the expansion is completed.[33] In addition, GTN's proposal is consistent with the orders cited above pertaining to the reservation capacity for future expansions. However, as agreed to by GTN,[34] the Commission will require GTN to revise section 32 of its GT&C to provide that contracts with evergreen rights will not be included as capacity reserved for future expansion unless a shipper has elected termination under an evergreen provision.

37. The Commission finds that GTN is not proposing to reserve capacity for future expansions for a period greater than one year as alleged by Avista. GTN correctly explains that its proposal explicitly provides that capacity reserved under this section may be reserved for up to one year prior to GTN filing for certificate approval for the proposed expansion, and thereafter until such expansion is placed into service. GTN further states that once it posts capacity as reserved for an expansion, it must file a certificate application for that particular expansion project within one year of the posting.

38. The Commission finds that GTN's proposal to repost capacity that was once reserved for a future expansion project within thirty days is consistent with Commission precedent.[35] Further, the Commission finds that thirty days is a reasonable amount of time for GTN to determine what capacity it has available to repost and then make the capacity available. As a result, no further justification or explanation is required of GTN to support its proposal as argued by Avista.

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[32] *See Texas Gas Transmission, LLC*, 111 FERC ¶ 61,380 (2005); *Northern Natural Gas Company*, 105 FERC ¶ 61,057 at P 8 (2003); *Natural Gas Pipeline Company of America*, 88 FERC ¶ 61,205 (1999); *Dominion Transmission, Inc.*, 111 FERC ¶ 61,135 (2005); and *Tennessee Gas Pipeline Co.*, 84 FERC ¶ 61,304 (1998).

[33] *See Natural Gas Pipeline Company of America*, 88 FERC ¶ 61,205 (1999). *See also Northern Natural Gas Company*, 105 FERC ¶ 61,057 at P 8 (2003).

[34] *See* Page 74 of GTN's reply comments on technical conference.

[35] *See Texas Gas Transmission, LLC*, 111 FERC ¶ 61,380 at P 3 and P 6 (2005).

6. ROFR Capacity and Expansion Capacity

i. Proposal

39. GTN proposes to add section 33.11 to its GT&C to permit GTN to hold one open season for an expansion project and a shipper's ROFR capacity upon the announcement of a project expansion and a shipper notifying the pipeline of its intent to exercise its ROFR rights. GTN states that allocating ROFR capacity and expansion capacity in one open season would mitigate the risk of future capacity turnback by ensuring that the longest possible term for the capacity is obtained. GTN explains that in 2001, an open season for ROFR capacity generated contract extensions of 2 to 5 years while contemporaneous open seasons for GTN's 2002 Expansion Project generated binding bids for terms ranging from 10 to 52 years. According to GTN, shippers have been reluctant to bid on ROFR capacity because of the uncertainty inherent in the ROFR shipper's right to retain capacity by matching the highest bid.

40. GTN also proposes to include a provision in section 33.11 of its GT&C to require a ROFR shipper to match the lowest acceptable bid that meets the minimum terms and conditions of the expansion open season. GTN states that its proposal to require the shipper to match the minimum terms and conditions in the expansion open season is consistent with Commission policy.[36] GTN submits that its matching proposal is consistent with the Commission's allocative efficiency principle that holds that pipeline capacity should be allocated to shippers that value the capacity most. GTN states that its proposal rationalizes capacity by reducing the pipeline's need to construct additional capacity.

41. Finally, GTN proposes to revise its ROFR procedures in section 33 of its GT&C to provide GTN with the authority, when proposing an expansion of capacity, to notify a shipper that it must exercise its ROFR rights up to 36 months prior to termination of its service agreement. GTN states that section 33 of its GT&C currently requires a shipper to provide one-year notification of the exercise of its ROFR rights. GTN states that its proposal to require 36 months notice is necessary in order to rationalize the allocation of

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[36] GTN cites *Kern River Gas Transmission Company*, 105 FERC ¶ 61,114, at P 14 (2003) (*citing Tennessee Gas Pipeline Co.*, 84 FERC at 62,347, in which the Commission permitted the pipeline to impose the same minimum terms and conditions in the posting of "expired contract capacity" that it received from shippers "as a result of an expansion open season").

ROFR capacity with the allocation of expansion capacity. GTN states that its proposal is virtually identical to language the Commission approved for Northern Border Pipeline Company.[37]

ii. **Comments**

42. Sierra argues that a single open season for both ROFR capacity and expansion capacity is unjust and unreasonable and contrary to Commission policy. Sierra argues that the Commission found in *Williams Natural Gas Company*[38] that the ROFR is a right that is defined by the terms of the existing service agreement and the relevant rate schedule. Sierra states that the Commission further stated that to include in the bidding process capacity that is outside the scope of the service agreement and the tariff governing the service at issue violates this principle. Sierra states that ROFR capacity is not the same as expansion capacity.

43. Indicated Shippers argue that Commission precedent on the solicitation of bids for ROFR capacity is clear. Indicated Shipper states that if the ROFR shipper expresses any interest in renewing the contract, "the pipeline will solicit third party bids *for that capacity*. The pipeline would then present the best offer received to the shipper, which would then be afforded a window of opportunity to match the full amount or a lesser amount of the capacity."[39] Indicated Shippers further state that Order No. 637 provides that "an existing shipper with a long-term firm contract can retain its service from the pipeline by matching the rate and length of service of a competing bid *for that service*.[40]

44. GTN states that its proposal is consistent with the Commission's decisions in *Tennessee Gas Pipeline Company*[41] and *Kern River Gas Transmission Company*.[42] GTN

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[37] GTN cites Northern Border Pipeline Company's FERC Gas Tariff, section 5.1 of Rate Schedule T-1, Third Revised Sheet No. 102A, First Revised Volume No. 1.

[38] Sierra cites *Williams Natural Gas Company*, 81 FERC ¶ 61,350 at 62,628-629 (1997) and *Dominion Cove Point*, 111 FERC ¶ 61,294 at n. 20 (2005).

[39] Indicated Shippers cite *Texas Eastern Transmission, LP*, 103 FERC ¶ 61,135 at 61,464 (2003).

[40] Indicated Shippers cite Order No. 637 at 31,335 (2000).

[41] GTN cites *Tennessee Gas Pipeline Company*, 84 FERC ¶ 61,304 (1998) (*Tennessee*).

states that in *Tennessee* the Commission found that it would allow Tennessee to impose the same minimum terms and conditions on the posting of expired capacity that it made prior to reservation of that capacity for a particular project.[43] The Commission also found that if Tennessee is prohibited from imposing the same minimum terms and conditions under these circumstances, non-expansion shippers could secure that capacity thereby preventing its use as a part of the expansion and potentially increasing the costs of the project.[44]

45. Indicated Shippers argue that the *Tennessee* and *Kern River* cases relied upon by GTN are not on point. Indicated Shippers contend that neither of these cases discussed combining ROFR capacity and expansion capacity. Indicated Shippers argues that both of these cases were limited to expired contract capacity. Indicated Shippers assert that in a recent *Kern River Gas Transmission Company*[45] case, the Commission affirmed the principle that there are only limited exceptions to including ROFR capacity with other capacity (*i.e.*, when the pipeline is full). Indicated Shippers argue that GTN does not meet this limited circumstance.

46. GTN argues that there is no substantive distinction between expired capacity and ROFR capacity that would warrant requiring bidders on expired capacity to meet the minimum terms and conditions from an expansion open season and not applying the same requirement to ROFR shippers when their contracts expire.

47. Various parties argue that GTN's proposal to require ROFR shippers to match bids for expansion capacity must be rejected. Avista argues that the requirement for existing ROFR shippers to match the lowest accepted expansion rate is inconsistent with section 284.221(d) of the Commission's regulations which imposes a cap on the rate a ROFR shipper must match. BP states that the Commission has explained that the ROFR right is defined by the terms of the existing service agreement and the relevant rate schedule. BP states that the Commission further stated that to include in the bidding process capacity that is outside the scope of the service agreement and the tariff governing the service at

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[42] GTN cites *Kern River Gas Transmission Company*, 105 FERC ¶ 61,114 at P 14 (2003) (*Kern River*).

[43] GTN cites *Tennessee Gas Pipeline Company*, 84 FERC ¶ 31,304 at 62,347 (1998).

[44] *Id.*

[45] Indicated Shippers cite *Kern River Gas Transmission Company*, 117 FERC ¶ 61,077 (2006).

issue violates this principle.[46] BP also argues that it is unjust, unreasonable and discriminatory to require an existing shipper to match a contract term that could be as long as twenty to forty years due to the bid of an expansion shipper.

48. GTN states that the Commission found in *PG&E Gas Transmission, Northwest Corporation*, that shippers placing new demands on the system's existing capacity should be treated similarly to new customers bidding for expansion capacity on the system.[47] GTN reasons that since a ROFR shipper seeking to extend its contract and a shipper bidding on expansion capacity both place new demands on a pipeline system, they are both similarly situated. GTN also refers to the Commission's *Pricing Policy Statement II*, where the Commission found that when the existing customer's contract expires, the existing customer could be treated similarly to new customers for pipeline capacity who face rates higher than the pre-expansion historic rate.[48]

49. Sierra argues that the *Tennessee Gas Pipeline Company*[49] and *Kern River Gas Transmission Company*[50] cases cited by GTN as support for its ROFR proposal relate to expired or unsubscribed capacity as opposed to expiring contracts with ROFR rights. Puget states that the Commission's ROFR policy provides that only in limited circumstances would a ROFR shipper be required to match a bid up to a maximum rate higher than the historic maximum rate.[51] The one limited circumstance set forth in this policy statement is when the pipeline is fully subscribed which Puget argues GTN's system is not. Northwest Natural argues that it would be possible for GTN to require a ROFR shipper to accept a longer term than the ROFR shipper wanted in order to match

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[46] BP cites *Williams Natural Gas Company*, 81 FERC ¶ 61,350 at 62,628-629 (1997).

[47] GTN cites *PG&E Gas Transmission, Northwest Corporation*, 82 FERC ¶ 61,289 at 62,124 (1998).

[48] GTN cites *Certification of New Interstate Pipeline Facilities, Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128 at 61,395 (2000).

[49] Sierra cites *Tennessee Gas Pipeline Company*, 84 FERC ¶ 61,304 (1998).

[50] Sierra cites *Kern River Gas Transmission Company*, 105 FERC ¶ 61,114 (2003).

[51] Puget cites *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999).

an expansion bid, but then for GTN to decide that it can satisfy the new demand with unsubscribed capacity. Northwest Natural argues that there is no mechanism in GTN's proposal that would reduce the length of term that a ROFR shipper may have been required to match in the event GTN decides not to expand its system or use capacity other than ROFR capacity to satisfy that demand.

50. GTN states that its proposal is consistent with Commission policy.[52] However, GTN states in its initial comments that upon further review, it is now willing to revise its tariff to clarify the following. GTN proposes that in order to match an expansion bid, a ROFR shipper will be required to match the shortest term of any accepted expansion bid(s) that meet the minimum terms and conditions from the expansion project open season. Further, the rate that the ROFR shipper will be required to pay in order to match an accepted expansion bid shall be the ROFR shipper's current maximum recourse rate.[53] GTN states that it is also willing to revise its tariff to reflect other ROFR changes.[54]

51. Various parties argue that the thirty-six month ROFR notice requirement must be rejected. Redding states that a reasonable amount of time to require a ROFR shipper to provide notice of whether it wishes to exercise its ROFR rights when an expansion project is proposed is six months to a year.[55] Redding argues that the Commission has rejected ROFR provisions that would require shippers to make decisions two to five years before their contracts expire, because such provisions do not allow shippers to evaluate the capacity based on current circumstances within a reasonable time of the expiration of the shipper's contract.[56] Gypsum argues that GTN has failed to provide any cite to support its finding that Northern Border's tariff includes a ROFR notice requirement

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[52] *See Tennessee Gas Pipeline Company*, 84 FERC ¶ 31,304 at 62,347 (1998) where the Commission held that it will allow Tennessee to impose the same minimum terms and conditions on the posting of expired contract capacity that it made prior to reservation of that capacity for a particular project. *See also Kern River Gas Transmission Company*, 105 FERC ¶ 61,114 at P14 (2003).

[53] *See* page 60 of GTN's initial comments on technical conference.

[54] *Id.* at pages 60-61.

[55] Redding cites *Texas Eastern Transmission, L.P.*, 103 FERC ¶ 61,135 at P 5 (2003). BP cites *Transcontinental Gas Pipe Line Corporation*, 103 FERC ¶ 61,295 at P 20 (2003).

[56] Redding cites *Dominion Transmission, Inc.*, 111 FERC ¶ 61,135 (2005).

similar to GTN's proposal. Gypsum states that the thirty-six month ROFR notice provision may actually reduce the number of shippers using GTN's system because of the onerous notice requirement.

52. GTN states that the thirty-six month notice simply requires a ROFR shipper to inform the pipeline that it intends to exercise its ROFR. GTN states that by providing notice, the ROFR shipper is under no obligation at that time to actually exercise its ROFR by matching a higher bid such that it is permitted to retain its capacity. GTN states that in some circumstances when an expansion project has been proposed, a ROFR shipper may be required to "exercise" its ROFR by matching a bid from an expansion project open season at some point earlier than the twelve months from the expiration date of the shipper's service agreement. GTN argues that in this circumstance, the benefits outweigh any inconvenience to the ROFR shipper.

iii. Determination

53. The Commission finds that the *Tennessee*[57] and *Kern River*[58] cases relied upon by GTN are not on point. Both of these cases pertained to either expired contract capacity or unsubscribed capacity as opposed to ROFR capacity which is at issue herein. The Commission does not agree with GTN's statement that there is no substantive distinction between expired capacity and ROFR capacity and therefore that the two should be treated the same. Order No. 637 states that "the purpose of the right of first refusal is to protect captive long-term customers from the pipelines' exercise of monopoly power. It is based on the customer's reliance on the pipeline for its historical service. It protects existing customers by providing them with the right to continue their existing service by matching the highest competitive bid for the service, up to the maximum rate and up to a period of five years. At the same time, by requiring that existing customers match competitive bids, the right of first refusal recognizes the role of market forces in determining contract price and term."[59]

54. The Commission will reject GTN's proposal to hold one open season for ROFR capacity and expansion capacity. Order No. 637 states that "existing customers should not be required to subsidize expansion projects that are implemented during the term of

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[57] *See Tennessee Gas Pipeline Company*, 84 FERC ¶ 61,304 (1998).

[58] *See Kern River Gas Transmission Company*, 105 FERC ¶ 61,114 at P 14 (2003).

[59] *See* Order No. 637 at 31,336 (2000). *See also Certification of New Interstate Natural Gas Pipeline Facilities,* 88 FERC ¶ 61,227 (1999).

their contracts. While their contracts are in effect, it would be inequitable to raise their rates to include the costs of expansion projects that will not be used to provide them with service. Thus, it is logical to price the new project incrementally and without subsidies from the rates of the existing shippers. However, when the existing customer's contract expires, the existing customer should be treated similarly to new customers for pipeline capacity, who face rates higher than the pre-expansion historic rate."[60] Under these circumstances there would be insufficient capacity to satisfy all the demands for service on the system. GTN's proposal does not reflect the considerations of these circumstances and is therefore rejected in its present form.

55. However, the Commission finds it reasonable and necessary for a pipeline to be able to plan and rationalize its expansion projects. The Commission finds that if an expansion open season is issued and becomes fully subscribed, GTN may issue a subsequent separate notice prior to construction to its ROFR shippers whose contracts will be expiring in the near future (*i.e.* 36-months). This notice might require ROFR shippers to inform GTN of their intention to exercise their right and match up to the maximum historical rate as proposed.[61] This would allow a pipeline to fully plan and rationalize its pending construction project. Therefore, the Commission will reject section 33 of GTN's GT&C pertaining to the proposed ROFR provisions above, but allow GTN to file revised tariff sheets proposing a separate subsequent notice period following a fully subscribed expansion open season.

7. **<u>Sources of Expansion Capacity</u>**

i. **<u>Proposal</u>**

56. GTN has revised section 33.11 of its GT&C to provide that GTN will satisfy expansion capacity needs in the following order: 1) unsubscribed long-term firm

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[60] *See* Order No. 637 at 31,338 (2000).

[61] Order No. 637 provides that "the existing customer could exercise its right of first refusal by agreeing to pay the historic maximum rate. This protects an existing captive customer against the exercise of market power by the pipeline because the pipeline cannot insist on the shipper paying a higher rate unless its expansion is fully subscribed and there is another bid for capacity at a rate above the historic maximum rate charge the existing shipper. These conditions ensure that the pipeline is unable to use its market power over captive customers to withhold capacity from the market to raise price." (*See* Order No. 637 at 31,338 (2000)).

capacity that has been reserved; 2) capacity subject to ROFR that is included in an expansion open season bidding process; 3) generally solicited turn-back capacity; and 4) expansion capacity.

ii. Comments

57. Canadian Suppliers argue that GTN has not justified why it needs to force ROFR shippers to make a formal early renewal decision prior to soliciting general turn-back capacity from all shippers. As a result, Canadian Suppliers request that GTN be required to reverse the order of number two and three in its list in order to satisfy expansion capacity needs.

iii. Determination

58. As stated above, the Commission is not requiring ROFR capacity to be included in the expansion open season bidding process. Therefore, GTN is required to remove ROFR capacity from its list in section 33.11 of its GTC pertaining to sources of expansion capacity.

B. Issues Set for Hearing

1. Implementation of the 1996 Settlement

59. On September 11, 1996, the Commission issued an order approving a contested settlement resolving all issues in Pacific Gas Transmission Company's general section 4 rate case in Docket No. RP94-149, *et al*.[62] In protests to GTN's June 30, 2006 general section 4 rate filing, several parties argued that the Commission should summarily reject GTN's tariff sheets because GTN's proposed rates did not include approximately 443,000 MMBtu per day in the Rate Schedule FTS-1 rate design that they argue was required by the 1996 settlement. The Commission set the issue for technical conference in its July 31 Order.

i. 1996 Settlement Provisions

60. The pertinent provisions of the 1996 settlement are found in Article IV, (1)(d) and read as follows:

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[62] *Pacific Gas Transmission Company*, 76 FERC ¶ 61,246 (1996), *order on reh'g sub nom., PG&E Gas Transmission, Northwest Corporation*, 82 FERC ¶ 61,289 (1998). These case names reflect the former names of the company that is now known as GTN.

<u>One Time Right of Relinquishment for PG&E</u>

> (i) PG&E has permanently released certain of its service rights in excess of the 609,968 MMBtu/d it has reserved for its core customers under its current firm transportation contract. PG&E shall be deemed to have relinquished to PGT any other service rights in excess of the 609,968 MMBtu/d as of the first day of the first month beginning thirty (30) days following the effective date of this Settlement. PG&E's Maximum Daily Quantity under Rate Schedule FTS-1 shall be commensurately reduced, and PG&E shall no longer have any cost responsibility for the relinquished service rights as of the date of the relinquishment.
>
> (ii) Period I and Period II Settlement Rates have been designed using reservation and delivery design determinants that include units for the service relinquished pursuant to section 1(d)(i) of this Article. It is stipulated and agreed that no adjustment to PGT's rates shall be made due to PG&E's exercise of its right under section 1(d)(i) to relinquish service rights. In future rate cases, PGT's reservation charge determinants shall continue to include design determinants equal to the reduction in PG&E's Maximum Daily Quantity pursuant to section 1(d)(i) even if customers have not fully contracted for firm service equal to the service rights PG&E relinquishes.

ii. <u>Comments</u>

61. GTN claims that the dispute with respect to the 1996 settlement is entirely legal and should be resolved independently of technical conference issues. GTN states that the movants argue that GTN is fully at risk for contracting 443,000 MMBtu of firm capacity. GTN contends that the issue is simple because the settlement addresses released capacity (the historical predicate to the settlement) and relinquished capacity (the subject of the settlement). GTN asserts that it remains at risk with respect to relinquished capacity pursuant to the settlement. GTN argues that the presumption that the settlement places GTN at risk for capacity released by Pacific Gas & Electric Company (PG&E) prior to the settlement is not supported by any evidence and is wrong.

62. GTN argues that the language of the 1996 settlement is clear and unambiguous and must be interpreted based on its plain language. GTN asserts that by establishing a one time right of relinquishment for PG&E, the title to this section established a clear line of demarcation between PG&E's one-time right to relinquish capacity back to GTN and the numerous capacity release transactions that PG&E entered into before the 1996 settlement to permanently release its capacity to other shippers. GTN argues that the settlement unambiguously delineates two different categories of PG&E capacity (1) the

capacity that PG&E had already permanently released to third parties prior to and independent of the settlement and (2) other capacity that PG&E would be permitted to relinquish back to GTN pursuant to the one-time right to do so granted by this provision of the settlement. GTN's position is that the relinquished capacity referred to in the at-risk obligation was clearly intended to refer to only the capacity relinquished back to GTN pursuant to the settlement and was not intended to include the capacity PG&E permanently released to other shippers.

63. GTN asserts that any extrinsic evidence of intent offered by CPUC and PG&E is inadmissible. GTN argues that just because CPUC and PG&E claim a different understanding of the settlement provision at issue does not, in and of itself, make the settlement ambiguous and warrant the admissibility of extrinsic evidence.

64. CPUC and PG&E assert that GTN has breached the 1996 settlement which obligates GTN to remain fully at risk for contracting 442,587 MMBtu of full-haul firm capacity. CPUC and PG&E assert that GTN is required to include that 442,587 MMBtu of full-haul capacity in its firm transportation rate design volumes in this proceeding, regardless of whether the capacity is unsubscribed or subscribed at a discount. CPUC and PG&E contend that the 442,587 MMBtu volume represents the difference between PG&E's MDQ of 1,052,555 under its October 26, 1993 FT agreement and PG&E's contract MDQ reduction to 609,968 that occurred as part of the 1996 settlement.

65. CPUC and PG&E assert that GTN's after the fact interpretation of the 1996 settlement would, not surprisingly, reduce GTN's at-risk obligation to only 113,875 MMBtu of short-haul firm capacity. CPUC and PG&E argue that this amount of capacity cannot be derived from any language in the 1996 settlement, including the Period I and II billing determinants, which are expressly referred to in Article IV, section 1(a)(ii) and explicitly identified in the workpapers attached to the 1996 settlement.

66. CPUC and PG&E contend that GTN's suggestion that the reference to permanently released capacity was nothing more than an historic reference makes no sense. CPUC and PG&E submit that the 1996 settlement had to address permanently released capacity in order to override the governing tariff language for ultimate cost responsibility for permanent released capacity. CPUC and PG&E assert that the language was also necessary to make clear that PG&E gave up or relinquished to the pipeline any other service rights associated with permanently released capacity.

67. CPUC and PG&E assert that GTN is unwilling to give full recognition to all language in Article IV. CPUC and PG&E state that GTN wants the Commission to conclude that references to permanently released capacity have no force and effect and merely gave historical perspective to the 1996 settlement. CPUC and PG&E argue that if

the settlement was simply placing the pipeline at risk for only 113,875 MMBtu it would have been easy enough to state that fact in one sentence. However, CPUC and PG&E assert that all of the terms of the applicable provisions of the 1996 settlement speak to a much greater at-risk commitment, that is, PG&E capacity rights above 609,968 MMBtu. CPUC and PG&E submit that the Commission should reject GTN's effort to parse the language in the 1996 settlement.

iii. <u>Determination</u>

68. The issue in dispute between GTN, and PG&E, CPUC and several other parties, is whether Article IV(1)(d) of the 1996 settlement has been implemented correctly. The settlement purportedly put GTN at risk for certain excess capacity beyond what PG&E needed to serve its core customers by requiring GTN, in future rate cases, to reflect in its billing determinants for firm service the amount of excess capacity PG&E relinquished. In its section 4 filing, GTN reflected 113,875 MMBtu in its billing determinants for firm service claiming that this amount represented the amount of capacity PG&E relinquished and, therefore, that it had properly implemented the settlement. GTN's position is that there is a difference between capacity that PG&E permanently released prior to the 1996 settlement, which should not be reflected in the billing determinants, and capacity that was relinquished pursuant to the settlement. CPUC, PG&E and other parties argue that GTN is incorrectly trying to distinguish released capacity and relinquished capacity. CPUC and PG&E assert that GTN is required to reflect 442,587 MMBtu in its billing determinants which is the amount of capacity relinquished by PG&E in excess of the 609,968 MMBtu amount necessary to serve its core customers and includes both the capacity permanently released prior to the 1996 settlement and the capacity relinquished pursuant to the 1996 settlement.

69. GTN's position is that the language of the settlement is clear and unambiguous and must be interpreted based on its plain language. As GTN points out in its comments, the standard for determining ambiguity is "whether the contract is 'reasonably susceptible of different constructions or interpretations.'"[63] The Commission finds that the settlement language at issue may not be as clear on its face as GTN argues and may be susceptible to different interpretations. While GTN asserts that the language is clear, it filed a separate 17 page brief parsing every word in the settlement to support its interpretation. GTN also claims that the sentence "PG&E has permanently released certain of its service rights in excess of the 609,968 MMBtu/d it has reserved for its core customers under its current firm transportation contract" only is intended to provide

[63] *Citing, Papago Tribal Util. Auth v. FERC,* 723 F.2d 950 (D.C. Cir. 1983)(quoting *Lee v. Flintkote Co.,* 593 F.2d 1275,1282 (D.C. Cir. 1979)).

historical context. However, such an interpretation is also not clear from the settlement, and CPUC and PG&E argue that GTN is attempting to render such language superfluous contravening contract interpretation principles. GTN also argues that the Commission's contemporaneous orders on the settlement support its position. GTN focuses on one sentence in the rehearing order which talks about "previously released capacity" as evidence that there is a distinction between released capacity and relinquished capacity.[64] However, as CPUC and PG&E point out there are numerous other instances where the Commission appears to use "released" and "relinquished" interchangeably and the orders also refer to PG&E having no cost responsibility for excess capacity beyond the 609,968 MMBtu needed for its core customers. In addition, CPUC and PG&E filed extrinsic evidence[65] to support their respective interpretations of the 1996 settlement.

70. Based upon a review of the settlement language, the supporting workpapers, as well as the orders approving the settlement, it is not clear from the plain language of the settlement whether the appropriate number to reflect in the billing determinants in the current rate case is 113,875 MMBtu, as claimed by GTN, or 442,587 MMBtu, as claimed by CPUC and PG&E. Further, parties such as PG&E have requested volumes of data from GTN in order to prove their case pertaining to the interpretation of the 1996 settlement. PG&E has requested a copy of specific communications and all documents pertaining to released and relinquished capacity which they argue will show GTN not only understood but corresponded its agreement to PG&E's position. Because this issue requires review of extrinsic evidence not currently in the record and this evidence may also be subject to interpretation, the Commission will set this issue for hearing established by the July 31 Order in this proceeding. Setting the issue for hearing will allow the parties to engage in discovery, introduce extrinsic evidence, and cross examine witnesses.

2. Flexible Services Rate

i. Proposal

71. GTN currently provides a number of what it terms flexible services, which include seasonal long-term firm, variable MDQ long-term firm, and short-term firm and non-full-haul interruptible transportation. GTN proposes to set the maximum rate for new contracts for such flexible services equal to 2.5 times the maximum reservation

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[64] *Citing, PG&E Gas Transmission,* 82 FERC at 62,134.

[65] See Joint Initial Comments on Technical Conference Issues of the Public Utilities Commission of the State of California and Pacific Gas and Electric Company, filed October 18, 2006.

component of the recourse rate applicable to long-term firm, uniform MDQ shippers. In addition, GTN proposes to charge the delivery component applicable to long-term, uniform MDQ shippers. GTN proposes that revenues above a specified threshold would be shared among GTN and its shippers on a 25/75 percent basis, consistent with the revenue-sharing percentage GTN is proposing for unsubscribed capacity sales.

ii. Comments

72. The parties argue that GTN's flexible service rate proposal should be summarily dismissed as inconsistent with Commission policy and precedent. They argue that the proposal is inconsistent with Commission precedent regarding peak/off-peak rates because GTN does not propose a lower off-peak rate. They claim that the proposal to charge up to 2.5 times the maximum FTS-1 reservation rate is an attempt to seek market-based rates for its flexible services and thus violates the requirement that rates be cost-based. They contend that the proposal would permit GTN to collect revenues in excess of its cost of service, in violation of Commission policy. They further argue that the proposal would act to coerce shippers into contracting for long-term service, rather than provide an incentive for long-term contracting as envisioned by Order No. 637.[66] Finally, shippers argue that GTN's proposal is inconsistent with the Commission's ruling in *El Paso Natural Gas Co.*,[67] that IT service should be priced lower than FT service because it is of lower quality.

73. GTN states that it is not proposing a conventional peak/off-peak rate structure but instead is proposing to set a rate for certain services to capture the value of those services at the times when its services can command a premium. GTN will credit back to long-term shippers the majority of the revenues in excess of what would have been generated by 100 percent load factor rates. GTN argues that its proposal is consistent with Order No. 637 wherein the Commission stated that "[B]asing peak/off-peak rates on value of service concepts, rather than specific costs, is more consistent with the goal of providing efficient pricing signals."[68] GTN further states that Order No. 637 allows pipelines to collect the value of a service at a given time and does not require that each peak/off-peak

[66] *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, 1996-2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,091, at 31,288 (2000).

[67] *El Paso Natural Gas Co.*, 112 FERC ¶ 61,150 at P 56 (2003).

[68] GTN cites Order No. 637 at 31,290.

rate track actual costs.[69] GTN further states that Order No. 637 did not require revenue sharing where a pipeline proposed seasonal or value-based rates in a section 4 proceeding. Rather, GTN contends that Order No. 637 required an equal sharing with long-term shippers of any increased revenue if proposed in a limited section 4 proceeding. GTN states that its proposal exceeds these requirements by proposing to share the majority of the revenue (75 percent) and that any issues regarding the allocation of costs or revenue sharing should be addressed at the hearing along with other cost-of-service issues.

74. GTN asserts that its proposal will not, as alleged by the protestors, coerce shippers to sign long-term contracts, but will alleviate the bias in favor of short-term contracts, which the Commission listed as an important policy goal in Order No. 637.[70] In addition, GTN states that the Commission has held that flexible rate regulation is permissible if, on balance, the benefits outweigh the potential risks.[71] GTN argues that it is entitled an opportunity to demonstrate that benefits exceed rates at the hearing.

iii. <u>Determination</u>

75. After reviewing the record evidence herein and as supplemented, the Commission will not summarily reject the flexible services rate proposal. Contrary to the protestors' claims, GTN's proposal is not inconsistent with Order No. 637. Order No. 637 provides that a pipeline may propose a cost-based seasonal rate.[72] Here, GTN has proposed only a cost-based seasonal rate proposal. This issue was discussed at the technical conference and parties requested information pertaining to billing determinants and cost allocation. The Commission finds that upon further review of this issue at the technical conference, the flexible services rate proposal is not a rate design issue as once thought but rather a cost allocation issue which warrants a full investigation through the hearing process. Therefore, the Commission finds that it is appropriate to set this proposal for hearing so that the potential costs and benefits can be addressed in light of the other cost-of-service issues. As discussed herein, we are setting the 1996 Settlement issue and the risk-sharing

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[69] GTN cites Order No. 637 at 31,291.

[70] GTN cites Order No. 637 at 31,288.

[71] GTN cites *Regulation of Short-Term Natural Gas Transportation Services*, 63 Fed. Reg. 42,982, 42,991 (1998).

[72] Order No. 637 at 31,289.

mechanism for hearing. Because the flexible service rate proposal is interrelated with the revenue-sharing mechanism and other cost-of-service issues, it is appropriate to set the flexible service rate proposal for hearing as well.

3. Risk-Sharing Mechanism

i. Proposal

76. GTN anticipates that during the test period, it will have approximately 450,000 Dth per day of unsubscribed capacity as a result of turnback and/or default by customers. GTN thus proposes to share with its shippers the cost of the unsubscribed capacity, with shippers bearing 90 percent of the costs and GTN bearing 10 percent. GTN further proposes that, on an annual basis, to the extent it is able to remarket the capacity, shippers will receive 75 percent of the revenues generated in excess of associated costs.

ii. Comments

77. Various parties argue that GTN's risk-sharing mechanism should be summarily rejected because it violates Commission policy and precedent. They assert that GTN proposes to shift too great a portion of the risk to its long-term shippers who did not create the unsubscribed capacity. They state that the Commission has made clear its disapproval of risk-sharing proposals that shift the majority of capacity turnback risk to customers for an indefinite period of time. They contend that GTN's proposal to shift 90 percent of the risk to its shippers is virtually the same as the 100 percent proposal rejected by the Commission in *Natural Gas Pipeline Company of America*.[73] They point to the Commission's decisions in *El Paso Natural Gas Co*.[74] and *Transwestern Pipeline Co*.[75] where the Commission accepted proposals that shifted to shippers only 35 and 25 percent of the risk, respectively. The parties disagree with GTN's claim that these cases have no precedential value because they were part of settlements, arguing that the Commission relied on *El Paso* and *Transwestern* in *Mississippi River Transmission Corp*.[76] where it rejected MRT's open-ended 50/50 risk-sharing mechanism. Indicated Shippers further argue that the risk-sharing mechanism is moot, given GTN's obligation in the 1996

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[73] *See Natural Gas Company of America*, 73 FERC ¶ 61,050 (1995) (*Natural*).

[74] *See El Paso Natural Gas Co.*, 79 FERC ¶ 61,038 (1997) (*El Paso*).

[75] *See Transwestern Pipeline Co.*, 72 FERC ¶ 61,085 (1995) (*Transwestern*).

[76] *Mississippi River Transmission Corp.*, 95 FERC ¶ 61,460 (2001) (*MRT*).

settlement to remain at risk for an amount equal to PG&E's relinquished capacity (442,587 MMBtu per day). In addition, the parties argue that GTN's proposal does not provide enough incentive for GTN to remarket the capacity.

78. GTN argues that the Commission should reject the requests for summary rejection of the risk-sharing mechanism. GTN contends that the parties rely on cases that are either inapplicable or have no precedential value because they were settlements. GTN further argues that *Natural* and *El Paso* do not acquire precedential force by being cited in a subsequent order that itself may be cited as valid precedent. GTN contends that *MRT* cannot somehow "bootstrap an earlier disposition which resulted from the agreement of the parties, into a merits decision that emanated from a litigated controversy."[77] GTN further argues that *MRT* does not support summary rejection of GTN's proposal because GTN's situation is different from that in *MRT*, where the Commission rejected MRT's 50/50 proposal. GTN states that MRT's proposal was intended to address the possibility of future turnback, since MRT had not actually experienced any turnback at the time of its filing. GTN further states that MRT proposed to recover the unsubscribed capacity costs through a tracker, unlike GTN's proposal. GTN requests that the Commission address its proposal in the ongoing evidentiary hearing.

iii. <u>Determination</u>

79. The Commission will deny the requests to summarily reject GTN's risk-sharing proposal. Contrary to the contentions of the objecting parties, the Commission has not established a general policy or bright-line test regarding risk-sharing mechanisms. To the contrary, the Commission has addressed each proposal on a case-specific basis, including a number of proposals included in settlements. A number of these cases were relied on by the objecting parties, but have no precedential value because they were the result of negotiated settlements.[78] In *MRT*, the Commission stated that issues relating to recovering unsubscribed capacity costs "are best resolved based on the specific circumstances on the pipeline at the time the turnback occurs."[79] The Commission therefore will not summarily reject GTN's risk-sharing mechanism but will set the

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[77] GTN reply comments at 35.

[78] *See Natural Gas Company of America*, 73 FERC ¶ 61,050 (1995), *El Paso Natural Gas Co.*, 79 FERC ¶ 61,038 (1997), and *Transwestern Pipeline Co.*, 72 FERC ¶ 61,085 (1995).

[79] *See Mississippi River Transmission Corp.*, 95 FERC ¶ 61,460 at 62,659 (2001).

proposal for hearing so that the parties can fully discover and address the issue of sharing unsubscribed capacity costs and can do so in light of the particular circumstances on GTN's system, including the implementation of Article IV of the 1996 settlement.

4. Revenue-Sharing Mechanism

i. Proposal

80. GTN proposes to share with its recourse rate, long-term firm mainline shippers on a 75/25 percent basis the revenue generated from the flexible services and any remarketed unsubscribed capacity. On October 6, 2006, GTN filed tariff sheets in Docket No. RP06-407-002 (October 6 filing) to implement this proposal pursuant to requests by Commission Staff and shippers at the October technical conference. GTN states that the proposed tariff language in section 35 of its General Terms and Conditions (GT&C) is consistent with its filed testimony and its explanation at the technical conference of how the proposal will work. GTN states that, because the revenue-sharing proposal will only act to reduce effective rates for recourse rate, long-term firm mainline shippers, a five-month suspension would serve no practical purpose. GTN thus requests an effective date of January 1, 2007, so that the tariff sheets can be moved into effect along with the other tariff sheets in this proceeding.

81. The proposed revenue-sharing mechanism is a two step process. First, GTN will determine the total annual flexible service revenues received during the previous 12 months and compare that with the threshold revenues that GTN would have received had it applied its maximum recourse rates for uniform-MDQ, non-seasonal service to the firm flexible services shippers and a 100 percent load factor equivalent rate to the interruptible flexible service shippers. If the total actual revenues exceed the threshold revenues, GTN will credit 75 percent of the excess revenues to Eligible Shippers and retain the remaining 25 percent. Second, GTN will determine the total annual revenues received from transportation services during the previous 12 months, net of any revenues credited or retained from Step 1. If total actual revenues exceed the cost-of-service underlying GTN's current transportation rates, net of any unsubscribed capacity costs allocated to GTN through rate design, GTN will credit 75 percent of the excess revenues to Eligible Shippers and will retain the remaining 25 percent. Eligible Shippers are defined as maximum-recourse rate, uniform-MDQ, long-term firm mainline shippers that are receiving transportation service at the time credits are disbursed.

ii. Comments

82. A number of parties, including Avista, Calpine, CAPP, City of Klamath, CPUC, Northwest Industrials, PPM, Puget, and Sierra Pacific protest the revenue-sharing

proposal. Puget argues that GTN should share neither the risk nor the revenue from unsubscribed capacity. Most of the protestors argue that GTN has set the threshold level too high and that, based on GTN's own admission that its long-term capacity is difficult to market, shippers are unlikely to receive benefits from the revenue-sharing proposal. Avista and Puget suggest that GTN be required to credit revenues from day one, dollar one. Calpine requests that the proposal be rejected because it provides no real mitigation of the onerous risk-sharing proposal. Parties also argue that the risks and revenues should be shared commensurately, instead of sharing the risks 90/10 and the revenues 75/25. Northwest Industrials states that it is premature to structure a revenue-sharing mechanism until the Commission determines how to treat the projected 443,000 Dth per day of unsubscribed capacity. PPM further states that GTN should specifically identify which of its current shippers would be Eligible Shippers. Several parties assert that GTN changed the definition of Eligible Shippers in its October 6 filing to exclude seasonal long-term firm shippers. PPM further argues that GTN should provide more explanation as to how GTN would calculate "any unsubscribed capacity costs allocated to GTN through the rate design."[80] PPM requests that this explanation be subject to the outcome of the hearing. CPUC requests that the revenue-sharing proposal be subject to the outcome of the hearing. Puget further argues that all GTN's rate proposals should be placed into effect at the same time and therefore requests that the proposal be set for hearing. Sierra Pacific argues that GTN's October 6 filing should be rejected because an applicant is not allowed to change a section 4 filing within the suspension period without Commission permission, which Sierra Pacific claims that GTN did not request.[81]

83. GTN replies that there is no legal requirement to share revenues with its shippers but that GTN filed its revenue-sharing proposal to balance the unusual circumstances on its system through a set of measures designed to allocate risk and reward in a just and reasonable manner. GTN clarifies its definition of Eligible Shippers as "uniform-MDQ" was not intended to exclude current seasonal shippers as long as the seasonal MDQs under a contract are uniform for the entire seasonal term and the shipper otherwise meets the applicable definition of Eligible Shipper. GTN further argues that removing the revenue threshold level, as requested by some of the protestors, would require GTN to credit revenue before it has had an opportunity to recover any of its allocated costs. GTN

[80] *See* section 35.3 of GTN's GT&C.

[81] Sierra Pacific cites section 154.205(b) of the Commission's regulations.

asserts that such a result would be confiscatory.[82] GTN contends that the revenue thresholds are designed to preserve GTN's lawful right to recover its cost-of-service under the revenue-crediting mechanism.

84. GTN further requests that the Commission reject Sierra Pacific's request that the October 6 filing be rejected pursuant to section 154.205(b) of the Commission's regulations. GTN argues that the Commission has routinely approved tariff filings during the suspension period, based on a generic request for any necessary waivers of Commission regulations, where the proposed tariff sheets would reduce the originally filed rates that are subject to suspension.[83] GTN states that it requested any necessary waivers to allow the tariff sheets to become effective January 1, 2007 and that there is thus no procedural impediment to Commission approval of the October 6 filing. GTN further argues that the Commission should allow the October 6 filing to become effective January 1, 2007, as requested, for the revenue-sharing mechanism will only serve to reduce the effective rates that recourse-rate, long-term firm mainline shippers will otherwise be required to start paying on January 1, 2007.

iii. <u>Determination</u>

85. The Commission will deny the requests to summarily reject GTN's revenue-sharing proposal. As we stated earlier regarding the risk-sharing mechanism, the Commission has not established a general policy or bright-line test regarding revenue-sharing proposals and thus reviews proposals on a case-specific basis. The proposal is therefore not inconsistent with Commission policy or precedent and will not be summarily rejected.

86. The Commission further agrees with GTN that its October 6 filing is permissible and not contrary to the Commission's regulations. The Commission has broad discretion to establish appropriate procedures for resolving the issues before it.[84] The technical

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[82] GTN states that the Commission and the courts have ruled many times that barring a pipeline from recovering its just and reasonable costs is unconstitutionally confiscatory. GTN cites *TransColorado Gas Transmission Co.*, 112 FERC ¶ 61,135 at P 7, n.6 (2005).

[83] GTN cites *Ozark Gas Transmission, L.L.C.*, 93 FERC ¶ 61,192 at 61,624 (2000); *CNG Transmission Corp.*, 82 FERC ¶ 61,069 at n.9 (1998).

[84] *E.g., Michigan Public Power Agency v. FERC*, 963 F.2d 1574, 1579 (D.C. Cir. 1992).

conference procedures used in this case are not unusual, and frequently, after technical conference discussions, a pipeline will submit revisions to its proposal to address shipper concerns.[85] As the Commission stated in *Equitrans, L.P.*,[86] technical conferences typically result in additional filings by parties or applicants that supplement the record or refine proposals based on a better understanding of and agreements on the issues. In this proceeding, the October 6 filing was made in response to an agreement among the parties that GTN file tariff sheets to reflect its revenue-sharing proposal. All parties attending the publicly-noticed technical conference were aware that, pursuant to the procedures adopted at the conference, GTN would submit the proposed revisions and that parties would have an opportunity to file comments to that filing.

87. The Commission agrees that the revenue-sharing proposal is interrelated with the risk-sharing proposal, the flexible service rate proposal, and the interpretation of the 1996 Settlement, all of which we are setting for hearing. Therefore, the Commission will accept and suspend the tariff sheets filed in the October 6 filing effective January 1, 2007, subject to refund and the outcome of the hearing in this proceeding so that the revenue-sharing proposal can be addressed along with these related proposals.

C. **Market-Based Rate Issue**

88. GTN proposes market-based rates for full-haul interruptible transportation (IT) service from one receipt point (Kingsgate) near the border with British Columbia to one delivery point (Malin) located in Oregon. GTN included in its June 30, 2006 filing a HHI market power analysis supporting its position that GTN does not have market power over full-haul IT in the region proposed. GTN also states that it is not proposing to charge market-based IT rates at any other delivery points on its system since these customers do not have the same quality of good alternatives available to them. GTN states that it will continue to provide all other customers at all other delivery points with IT service at a capped, cost-based IT tariff rate.

89. Various parties filed protests in response to GTN's request for market-based rate authority for its full-haul IT service. At the September technical conference, Ms. Elizabeth Crowe (on behalf of Indicated Shippers) and Mr. James Wilson (on behalf of CAPP) presented alternative market power analyses arguing that GTN does indeed

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[85] *See, e.g., Equitrans, L.P.*, 112 FERC ¶ 61,152 at P 11 (2005); Dominion *Cove Point LNG, L.P.*, 112 FERC ¶ 61,046 (2005); *Dominion Transmission, Inc.*, 111 FERC ¶ 61,135 (2005); *High Island Offshore System, L.L.C.*, 107 FERC ¶ 61,047 (2004); *Northern Natural Gas Co.*, 105 FERC ¶ 61,172 at P 4 (2003).

[86] 107 FERC ¶ 61,333 at P 15 (2004).

have market power over the provision of full-haul IT service from Kingsgate to Malin. Both analyses supplemented the record evidence in this case and were appended to the respective protestors' post technical conference comments received on October 27, 2006. An additional alternative market power analysis was conducted on behalf of BP Canada and IGI Resources by Dr. David DeRamus and was submitted with its post technical conference comments as well. Numerous other parties protested GTN's market-based rate request in initial and reply post technical conference comments.

90. Since market-based rates can only go into effect on a prospective basis after Commission authorization, it is not necessary for the Commission to act before the five-month suspension period in this proceeding ends and GTN's rates go into effect on January 1, 2007.[87] The Commission is currently analyzing the entire testimony, including its market power studies and the post-technical conference comments filed by the parties to this proceeding and will issue a separate order on GTN's market-based rate proposal in the near future.

The Commission orders:

(A) GTN is directed to file revised tariff sheets consistent with the discussion in the body of this order within 30 days of the date this order issues.

(B) Issues pertaining to the 1996 Settlement, flexible services rate, risk sharing, and revenue sharing proposals are set for hearing.

(C) The tariff sheets filed on October 6, 2006, in Docket No. RP06-407-002, as listed in the Appendix, are accepted and suspended effective January 1, 2007, subject to refund and the outcome of the hearing in this proceeding.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

[87] *See Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999).

Appendix

Gas Transmission Northwest Corporation
Docket No. RP06-407-002

Accepted and Suspended Tariff Sheets
Effective January 1, 2007
Subject to Refund and Hearing

Third Revised Volume No. 1-A
Second Revised Sheet No. 221
Original Sheet No. 221