

JOINT RESPONSES TO BENCH REQUEST NOS. 1-4

DATE PREPARED: February 22, 2008
DOCKET NOS.: UG-061256, UG-
070332, UG-070639
and UG-072337
REQUESTER: UTC

WITNESS: A panel of witnesses for
CMS, Cascade, Commission
Staff and NWIGU. Public
Counsel also joins in this
response, but is not
sponsoring a witness.

RESPONDER: See above.

TELEPHONE: Please contact counsel for
the parties at the numbers
specified on the service lists.

BENCH REQUEST NO 1:

Please explain why paragraph 20 of the settlement agreement is necessary, as paragraph 17 of the settlement agreement indicates that Cascade Natural Gas Corporation (Cascade) will transfer “any existing CGC Energy, Inc., contracts for Unbundled Retail Sales to Cascade” upon Commission approval of the settlement. Is paragraph 20 intended to address the possibility that CGC Energy, Inc. will assign contracts for Unbundled Retail Sales to a party other than Cascade prior to Commission approval of the settlement agreement?

RESPONSE:

Yes, paragraph 20 is intended to address the possibility that CGC Energy, Inc. will enter into an agreement to assign contracts for Unbundled Retail Sales to a party other than Cascade prior to Commission approval of the settlement agreement.

Paragraph 20 clarifies how Net Gain (as defined in Exhibit A) will be distributed if contracts for Unbundled Retail Sales are assigned by CGC Energy Inc. to a party other than Cascade prior to Commission approval of the settlement agreement and provides protection for core customers if such an event occurs. Paragraph 17 of the settlement agreement intentionally uses the word “any” in the phrase “Cascade will transfer *any* existing CGC Energy, Inc., contracts for Unbundled Retail Sales to Cascade” to cover the possibility that there might not be any such agreements for CGC Energy to transfer after the Commission approves the settlement agreement if CGC Energy has committed to transfer the agreements to a third party at an earlier date.

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RESPONDER: See above.
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BENCH REQUEST NO. 2:

In reference to paragraph 22 (a) of the settlement, please define the meaning of the terms “release of capacity” and “reservation release of pipeline primary capacity” in the settlement agreement. Please also describe the process by which these releases are accomplished through the pipeline’s Electronic Bulletin Board (EBB).

RESPONSE:

Release of Capacity. The term “release of capacity” or “capacity release” relates to interstate pipeline firm capacity held under contract with the relevant pipeline. A shipper holding firm capacity under contract (the “releasing shipper”) voluntarily releases that capacity for use by a “replacement shipper.” The term was defined by the U.S. Court of Appeals for the District of Columbia Circuit in *Pan-Alberta Gas, Ltd. v. FERC*, 251 F.2d 173, 174-75 (D.C. Cir. 2001):

“Capacity release” describes a transaction in which the holder of a contract for firm transport (the “releasing” shipper) sells that capacity to a “replacement” shipper. The releasing and replacement shippers may agree upon any price up to the applicable reservation charge - the maximum price per unit of firm capacity established in the pipeline's tariff. A shipper seeking to release capacity may either auction it to the highest bidder on a public bulletin board maintained by the pipeline or bypass the auction to contract at the reservation charge with a replacement shipper of its choosing. *See* 18 C.F.R. § 284.8(a)-(e). Once a deal to release capacity has been struck, the replacement shipper pays the agreed-upon price not to the releasing shipper but to the pipeline, with which it enters into a new capacity contract. The pipeline then credits payments received from the replacement shipper to the account of the releasing shipper; and the releasing shipper continues to pay the price stated in the original contract, which remains in force. *See id.* § 284.8(f). The pipeline therefore gains nothing from a capacity release transaction; its income is fixed at the price originally agreed upon with the releasing shipper, regardless of the terms of the capacity release agreement. [Emphasis supplied.]

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RESPONSE TO BENCH REQUEST NO. 2 CONT.:

Reservation release of pipeline primary capacity. The term “reservation release of pipeline primary capacity” is synonymous with “capacity release.” The word “reservation” is a reference to the pipeline capacity contract held by the releasing shipper. The word “primary” refers to the releasing shipper’s primary receipt and delivery points on the pipeline, as opposed to secondary points of receipt and delivery.

EBB Capacity Release Processes. Note the reference to 18 C.F.R. § 284.8(a)-(e) in the quoted passage above from *Pan-Alberta Gas, Ltd. v. FERC*. This FERC rule provides the releasing shipper with the option of either utilizing an EBB auction or bypassing that auction process and privately contracting with the replacement shipper of its choosing. Both options use EBB procedures.

Under the EBB auction option, the releasing shipper posts its capacity release offer electronically using software provided by the pipeline on its website. A releasing shipper may use this site to post all or a portion of its contract firm capacity out to bid. When an offer has been submitted, it can be viewed by potential bidders. Only pipeline customers with a valid user ID may post a bid on capacity.

A releasing shipper may offer to release capacity either at the full tariff pipeline rate for firm capacity or at a discount. If the full tariff rate is demanded, there is no competitive auction. The released capacity goes to the bidder willing to accept the capacity at full tariff. The EBB administrator decides on the winning bid and an award is announced. After the award is announced, a replacement contract is set up by the EBB administrator for the winning bidder as replacement shipper.

If the private contracting option is pursued, the replacement shipper is designated a “Prearranged Replacement Shipper.” The prearranged capacity release transaction is posted to the EBB, but the auction process is bypassed.

Under either option, the maximum price for capacity release is capped at the full tariff pipeline rate for firm capacity. Further details of the EBB process for Northwest Pipeline are found in Section 22(d)-(j) of its FERC-approved tariff.

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BENCH REQUEST NO. 3:

In reference to paragraph 22 (b) of the settlement, would any other interested person or company be harmed by Cascade providing 48 hour advance notice solely to Cost Management Services, Inc. (CMS), of capacity releases to be posted on the pipeline's EBB? If so, please identify and describe the justification for this advanced notice. Would CMS have an unreasonable preference or advantage under the proposed arrangement?

RESPONSE:

Paragraph 22 of the Settlement Agreement is not a prearranged capacity release transaction, described in the answer to Bench Request No. 2. Instead, it provides only for the EBB posting of the surplus, summer-only capacity specified in Exhibit C to the Settlement Agreement. When posted, this capacity will be offered at the full pipeline tariff rate, meaning that there is to be no competitive auction under the EBB process regarding this released capacity.

There are large companies that monitor the Northwest Pipeline EBB from minute to minute in search of postings. Some of these large players have automated their monitoring of the EBB. By contrast, CMS is a small company with 5 employees; it lacks these EBB monitoring capabilities. The 48-hour notice is an attempt to level the playing field between CMS and these larger players. Without this short notice, CMS would likely have no chance of acquiring any of this released capacity. Instead, it would have been captured by some automated program before CMS could manually view the EBB posting and then manually respond with a bid.

As explained above in answer to Bench Request No. 2, FERC rules and the Northwest Pipeline tariff permit a releasing shipper to privately contract with the replacement shipper of its choice with no advance notice whatsoever to the pipeline or others. The arrangement covered by Section 22 of the Settlement Agreement gives CMS less, while providing third parties with nothing different, than the private arrangements FERC rules already permit. Regardless of Section 22 of the Settlement Agreement, third parties could not competitively bid on this capacity because it is to be offered for release at the full tariff rate.

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RESPONSE TO BENCH REQUEST NO. 3 CONT.:

The Commission should note that CMS may still not succeed in acquiring any of the capacity to be released by Cascade. The advance notice provides no guarantee that a CMS bid will in fact be first to be posted or that CMS will be awarded this capacity by the EBB administrator. The only way CMS could be assured of receiving this released capacity would have been as a "Prearranged Replacement Shipper" under a prearranged capacity release transaction. However, the Settlement Agreement does not so provide.

It is true that advance notice may give CMS an advantage in being the successful bidder for this capacity, but this does not harm other parties or give CMS an *unreasonable* preference or advantage. Because pre-arranged releases are lawful, this advance notification, which does not even ensure that CMS will be the successful bidder, cannot be considered to provide CMS an *unreasonable* preference or advantage.

All parties are in support of this reasonable resolution to the disputes being resolved.

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RESPONDER: See above.
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BENCH REQUEST NO. 4(a):

In reference to paragraph 22 (d) of the settlement:

- (a) Please provide copies of Federal Energy Regulatory Commission (FERC) regulations or citations to cases governing notification regarding releases of pipeline capacity, including any pending regulations governing this activity.

RESPONSE:

FERC's regulations governing capacity release are set forth at 18 C.F.R. § 284.8. Northwest Pipeline's tariff provisions governing capacity release, as approved by FERC, are set forth at Section 22 of the General Terms and Conditions of its FERC Gas Tariff, 4th Revised Vol. No. 1. See <http://www.1line.williams.com/Files/Northwest/tariff/thetariff.html>.

FERC has one pending rulemaking proceeding in which it is seeking public comment on proposed modifications to its capacity release rules. It is in Docket No. RM08-1-000, "Promotion of a More Efficient Capacity Release Market," 121 FERC ¶ 61,170 (2007). See <http://www.ferc.gov/whats-new/comm-meet/2007/111507/G-1.pdf>. Among the changes being entertained by FERC is a proposal to lift the full tariff-price cap on capacity releases of less than one year in duration.

FERC rules and Northwest Pipeline tariff do not directly address the question of notice. However, both permit prearranged transactions to Prearranged Replacement Shippers with absolutely no notice at all to third parties or to the pipeline.

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BENCH REQUEST NO. 4(b):

In reference to paragraph 22 (d) of the settlement:

(b) Cascade and CMS state that they “reasonably believe” that the proposed arrangement “is not inconsistent with and FERC requirements.” On what do the companies base this belief? Does Commission Staff share this belief?

RESPONSE:

FERC’s capacity release regulations and Northwest Pipeline’s capacity release tariff provisions permit firm shippers to make private arrangements for the release of their firm capacity in advance of public posting of the release on the pipeline’s Electronic Bulletin Board (EBB). To that end, Section 22.1(d) of the Northwest tariff defines a prearranged replacement shipper as “a party who desires to contract directly for or who has contracted directly for capacity which is subject to Part 284 of the Commission’s regulations and who has agreed to the terms of a capacity release transaction directly with a Releasing Shipper, which terms are posted to Transporter’s Designated Site.”

As explained in responses to Bench Request Nos. 2 and 3, the Settlement Agreement provides CMS with considerably less than a prearranged capacity release. Only the minimum capacity amounts and the full-tariff price are specified in the agreement.¹ The replacement shipper will not be determined until the release is posted on the Northwest Pipeline EBB. Nothing in Section 22 of the Settlement Agreement is inconsistent with any provision of 18 C.F.R. § 284.8. Thus, Cascade and CMS can state with confidence that the settlement is not inconsistent with any FERC requirements.

Commission Staff also reasonably believes, based upon its review of the cited FERC regulations and the application of these regulations to the facts presented here, that the proposed arrangement is not inconsistent with FERC requirements.

¹ Nothing in the Settlement Agreement restricts Cascade from offering more capacity for release, if it decides in its sole discretion to do so after determining that it has additional surplus capacity.