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 No. RP07-164-000
Anadarko Petroleum Corporation and Anadarko Energy Service Company	

ORDER DENYING PETITION FOR WAIVERS

(Issued April 10, 2007)

1. On January 31, 2007, Anadarko Petroleum Corporation (APC) and Anadarko Energy Services Company (AESC) (collectively Anadarko) and Gas Transmission Northwest Corporation (GTN) filed a joint petition for limited waivers of (1) certain GTN capacity release tariff provisions, (2) the Commission's Order No. 636-A policy regarding the "tying" of a gas delivery contract to released transportation capacity, and (3) and other provisions of the GTN tariff or Commission policy necessary to permit the transaction described in the petition. Anadarko asserts that the purpose of the petition is to permit Anadarko to exit the Canadian natural gas marketing business. For the reasons discussed below, the Commission denies Anadarko's and GTN's joint petition.

Background

2. Anadarko states that prior to October 1, 2006, APC owned Anadarko Canada Corporation (ACC). ACC produced and purchased natural gas in Canada, and under transportation agreements with Nova Gas Transmission Ltd. and TransCanada Pipeline (the Canadian transportation agreements), transported the gas to the interconnect with GTN. Anadarko states that AESC purchased the gas from ACC at the border and transported it on GTN to various sales points.

3. Anadarko states that, in August 2006, APC acquired Kerr McGee Corporation and Western Gas Resources, Inc. (WGR). Anadarko states that, after the acquisition, APC began a corporate restructuring, which included the divestiture of ACC. However, the purchaser of ACC did not acquire the Canadian transportation agreements. Anadarko

states that, instead, ACC transferred the Canadian transportation agreements to the only remaining APC affiliate in Canada, WGR Canada, Inc., which is a wholly owned subsidiary of WGR. Anadarko states that APC is in the process of divesting all remaining Canadian assets, including the Canadian transportation agreements.

4. Anadarko states that inasmuch as the primary place the gas under the Canadian transportation agreements flows is into GTN, and the primary source of gas into GTN is the TransCanada Pipeline, APC (through its WGR subsidiary) and AESC seek to permanently transfer to a third party, as a logical and operationally discrete package the Canadian transportation agreements and the two transportation contracts on GTN held by AESC. Anadarko states that these two contracts represent the entirety of Anadarko's capacity on GTN. Anadarko asserts that including the Canadian transportation agreements in the discrete package will promote a more efficient use of the GTN capacity and permit APC to exit Canadian natural gas marketing activities in an orderly manner.

The Joint Petition

5. Anadarko states that it plans to effectuate the transfer through a prearranged capacity release and assignment agreement with a qualified, creditworthy third-party (the Prearranged Replacement Shipper) to be selected prior to the posting and bidding of this transaction under a reverse auction process. Because of the current market conditions, Anadarko states that the agreement will include a commitment by Anadarko to make a payment to the Prearranged Replacement Shippers as consideration for the Prearranged Replacement Shipper assuming a permanent release of the transportation contracts at GTN's maximum tariff rates for the remaining terms of the contracts, as well as an assignment of the related Canadian transportation agreements at published tolls. Anadarko states that it will request GTN to post the prearranged transaction for competing bids and evaluate the bids on the basis of which shipper will require the smallest payment by Anadarko to the shipper in order to accept transfer of the GTN transportation contracts, as well as the upstream Canadian transportation agreements.

6. GTN and Anadarko are seeking limited waivers of GTN's tariff so that the U.S. and Canadian transportation contracts may be posted and bid upon as a bundled package through a single reverse auction procedure. Anadarko states that GTN's capacity release tariff provisions are set forth in Section 28 of the General Terms and Conditions (GT&C). As pertinent here, Anadarko states that Section 28.3 provide an extensive list of information required to complete a posting on the GTN Internet website. Section 28.5 requires that a Releasing Shipper's posting on the GTN Internet website contain the information stated in Section 28.3. Section 28.6 of the GTN tariff places a number of conditions and restrictions upon a Replacement Shipper as it submits a bid for released capacity. Anadarko states that GTN's tariff requires a Replacement Shipper to submit an "open" bid subject to review by all participants that cannot be "closed" by request of the

Releasing Shipper or Replacement Shipper. In addition, GTN requires that Replacement Shippers submit an extensive list of information to be posted on its Electronic Bulletin Board. Prearranged Shippers information, as detailed within Section 28.6, is to be provided by Releasing Shippers. Anadarko and GTN assert that these sections do not provide a means of posting both US and Canadian transportation contracts in a bundled manner requested by Anadarko. Accordingly, GTN and Anadarko request a waiver of Sections 28.3, 28.5 and 28.6 of GTN's tariff.

7. In order to divest its U.S. and Canadian transportation contracts, Anadarko wishes to release its related GTN capacity and associated Canadian transportation contracts as a single package. Accordingly, Anadarko and GTN request that the Commission waive its tying prohibition announced in Order No. 636-A, which holds that a releasing shipper cannot tie the release of capacity to any extraneous conditions.

8. Anadarko states that its permanent release of GTN transportation capacity is being released in a transparent manner to a voluntary purchaser selected through the reverse auction. Anadarko states that details of its U.S. and Canadian capacity will be provided in sufficient detail to fully describe each contracts as to pipeline, receipt points, delivery points, MDQ and term through an informational posting on GTN's internet website. Anadarko states that interested bidders will then have a three business day evaluation period in which to submit bids.

9. Anadarko asserts that this process does not present the situation the Commission envisioned – potential undermining of the capacity release market by extraneous, unposted conditions – that necessitated its tying prohibition announced in Order No. 636-A. Anadarko contends that its narrowly crafted proposal to exit its natural gas marketing operations in Canada and on GTN is consistent with the Commission's interest in maintaining transparent capacity release markets that efficiently allocate capacity to those that value the capacity the most. Anadarko's submits that its decision to offer for release its U.S. and Canadian transportation capacity as a package in relation to its exit from the natural gas marketing business in Canada is a rational business decision that is fully consistent with Commission precedent.[1] Anadarko asserts that unlike other proceedings

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[1] *Citing*, *Duke Energy Marketing America, LLC*, 114 FERC ¶ 61,309 (2006); *Duke Energy Marketing America, LLC*, 114 FERC ¶ 61,198 (2006); *Tennessee Gas Pipeline Company and Dartmouth Power Associates*, 111 FERC ¶ 61,509 (2005); *Northwest Pipeline Corporation and Duke Energy Trading and Marketing*, 109 FERC ¶ 61,044 (2004).

where the Commission denied a waiver of its tying prohibition,[2] AESC is exiting all of its transportation capacity on GTN, Anadarko is exiting the natural gas marketing business in Canada and a profit will not be realized from the permanent release of the GTN transportation capacity. Accordingly, Anadarko and GTN request that the Commission grant a limited waiver of its tying prohibition announced in Order No. 636-A for this divestiture.

<u>Discussion</u>

10. In a number of recent cases, the Commission has found that a releasing shipper that is attempting to exit the natural gas business, should within certain limitations, be permitted to exit in a rational and orderly fashion, if such action is open and will not unduly discriminate against other shippers.[3] In these cases and other similar cases, in order to facilitate a company's exit from the natural gas business, the Commission granted various waivers, including waiver of the Order No. 636-A tying prohibition and waivers of the capacity release tariff provisions of the relevant pipelines. The most important factor in the cases where the Commission has granted waivers to permit an entity to exit the natural gas business was that the entity was exiting the natural gas business in the United States. The Commission has granted waivers of the Order No. 636-A tying prohibition and permitted entities to package jurisdictional gas transportation contracts with other contracts, including gas supply contracts and non-jurisdictional Canadian transportation contracts, for purposes of exiting the United States natural gas business in a logical and orderly manner. In this proceeding, Anadarko wishes to package jurisdictional transportation contracts on GTN with non-jurisdictional transportation contracts on Canadian pipelines for purposes of exiting the Canadian natural gas marketing business. The Commission finds that while the policy permitting various waivers to exit the natural gas business has some flexibility in accommodating different circumstances, it is not intended to go so far as to permit Anadarko to shed jurisdictional transportation contracts on GTN for purposes of exiting its natural gas business in Canada.

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[2] *Citing, Louis Dreyfus Energy Services, L.P,* 114 FERC ¶ 61,246 (2006); *Wyoming Interstate Gas Company,* 110 FERC ¶ 61,325 (2005); *Cheyenne Plains Gas Pipeline Company,* 110 FERC ¶ 61,326 (2005).

[3] *See, e.g., Duke Energy Marketing America, LLC,* 114 FERC ¶ 61,198 (2006) and *Northwest Pipeline Corporation,* 109 FERC ¶ 61,044 (2004).

11. It appears that the packaging of the Canadian transportation contracts with the GTN contracts is designed to enhance the value of the Canadian contracts as part of Anadarko's exit from the Canadian natural gas marketing business. While the Commission recognizes the value to Anadarko of tying the U.S. contracts to the Canadian contract because the primary outlet for the Canadian gas supply are points on GTN's system, Anadarko's exit from the Canadian natural gas business is not an appropriate concern of this Commission. Further, since Anadarko is not exiting the U.S. natural gas marketing business, the GTN contracts are properly considered part of Anadarko's U.S. operational portfolio. If Anadarko does not wish to retain its GTN transportation contracts, then Anadarko should permanently release the capacity pursuant to the capacity release provisions of GTN's tariff.

12. Finally, if the Commission were to grant the waivers requested by Anadarko and GTN to permit Anadarko to exit the Canadian natural gas marketing business, it could establish a precedent where companies with Canadian or Mexican gas marketing operations could attempt to package unwanted U.S. gas transportation capacity with foreign gas supply or transportation contracts under the guise of exiting the foreign gas marketing business. The Commission finds that as long as a company continues natural gas operations in the United States, it should either retain its U.S. transportation capacity or release the capacity under the appropriate pipeline's capacity release mechanism. Accordingly, for the reasons discussed above, Anadarko's and GTN's joint petition is denied.

<u>The Commission orders</u>:

Anadarko's and GTN's joint petition is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.