

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Paiute Pipeline Company

Docket No. RP04-51-000

ORDER ACCEPTING PRO FORMA TARIFF SHEETS  
SUBJECT TO CONDITIONS

(Issued November 3, 2004)

1. This order addresses a *pro forma* tariff filing made by Paiute Pipeline Company (Paiute) on March 16, 2004 to reflect the modifications discussed at the technical conference held in this docket on February 25, 2004.<sup>1</sup> Based on our review, the Commission conditionally accepts Paiute's filing, subject to modification, and directs Paiute to file within 20 days of the date of this order revised tariff sheets. This order benefits Paiute's customers by ensuring that Paiute's tariff revisions more accurately define Paiute's operating procedures in emergency situations and providing shippers the additional flexibility associated with segmentation.

**I. Background**

2. On November 7, 2003, Paiute filed revised tariff sheets to: (1) more accurately define Paiute's procedures with respect to the operation of its LNG storage facility and the operation of its pipeline system in emergency conditions; (2) add provisions providing for capacity segmentation and backhaul transportation; (3) add and remove receipt points; and (4) clarify, improve and/or update the text in various provisions.<sup>2</sup>

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<sup>1</sup> *Paiute Pipeline Company*, 105 FERC ¶ 61,271 (2003) (December 4 Order).

<sup>2</sup> *See id.*, at P 3 through 7 for details of Paiute's proposal.

3. Paiute owns and operates an interstate natural gas pipeline system which extends from a point of interconnection with the facilities of Northwest Pipeline Corporation (Northwest) at the Idaho-Nevada border to the California-Nevada state line near the north and south ends of Lake Tahoe, where Paiute delivers gas into the facilities of two local distribution companies (LDCs). Paiute also operates a jurisdictional liquefied natural gas (LNG) peak shaving storage facility located near Lovelock, Nevada.

4. Paiute's pipeline system is capable of flowing gas in one direction only. Paiute receives gas into its system from Northwest at the Idaho-Nevada border, and transports the gas down its mainline to the Wadsworth Junction. Along the way, Paiute can also receive gas into its mainline from its LNG storage facility. At the Wadsworth Junction, Paiute's mainline divides into two mainline extensions, the Reno Lateral and the Carson Lateral. The Reno Lateral extends to the city of Reno, while the Carson Lateral extends to the Carson City area, where the pipeline further divides into Paiute's North Tahoe and South Tahoe Laterals.

5. For the most part, Paiute historically has received gas into its system only at the Northwest interconnection and at the LNG storage facility.<sup>3</sup> Recently, however, Paiute established a new interconnection with a second upstream interstate pipeline, Tuscarora Gas Transmission Company (Tuscarora).

6. Public Service Resources Corporation (Resources) protested Paiute's proposed changes to the operation of its LNG facilities. Sierra Pacific Power Company (Sierra) and Northern Nevada Industrial Gas Users (NNIGU) both protested Paiute's filing primarily with respect to Paiute's proposed segmentation and backhaul provisions. Sierra also protested Paiute's proposed tariff changes concerning penalties, facility construction, and reservation charge credits. Our December 4 Order accepted and suspended the filed tariff sheets to become effective December 7, 2003, subject to refund and subject to the outcome of the technical conference. The tariff sheets became effective on December 9, 2003, subject to the conditions adopted by our December 4 Order.

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<sup>3</sup> Paiute also formerly operated a non-jurisdictional liquefied petroleum gas, propane/air storage and injection facility located near Reno (LPG Plant). Following the 1995-1996 winter heating season, none of Paiute's customers expressed any further interest in taking service from that plant. The facility thus was dismantled and is no longer operational.

7. On February 25, 2004, a technical conference was held to discuss the issues raised by the parties. Paiute clarified certain issues and was able to resolve many of the concerns expressed by the participants regarding Paiute's segmentation and backhaul tariff proposals. Paiute agreed to file *pro forma* tariff sheets reflecting the modifications discussed at the conference. The parties were afforded the opportunity to file initial comments and reply comments concerning those proposed modifications. While Paiute and the intervenors have resolved a number of issues, there remain several issues that have not been resolved.<sup>4</sup>

## II. Discussion

### A. Penalties

#### 1. Unauthorized Overrun Penalties

8. Paiute proposes no change in substance in this proceeding to its unauthorized daily contract entitlement overrun penalty provision in section 5.1(c) of its General Terms and Conditions (GT&C). Paiute asserts that this provision was approved, over Sierra's objection, in Paiute's Order No. 637 compliance proceeding.<sup>5</sup> Section 5.1(c) provides that all gas taken by the shipper in excess of its daily authorized quantity, without the advance permission of Paiute, shall constitute unauthorized overrun gas and shall be subject to the following penalties: (1) for levels which exceed the contract level, but are less than 102 percent of the contract level, there is no additional charge; (2) for levels which are between 102 percent and 105 percent of the contract level, the penalty is \$5.00 per Dth; (3) for levels which are greater than 105 percent of the contract level, the penalty is \$10.00 per Dth.

9. Sierra asserts that existing section 5.1(c) of the GT&C should be revised because it provides for an automatic imposition of penalties for any unauthorized overrun, even if the overrun occurs during periods when there are no capacity constraints and capacity exceeds demand, as is often the case on Paiute's system, particularly during the summer

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<sup>4</sup> Of the three intervenors filing comments, only Sierra announces that it has remaining concerns, while NNIGU and Southwest Gas Corporation (Southwest) now either support or do not oppose Paiute's proposed tariff revisions. Resources, which participated at the February 25 technical conference, but is not a party herein, also states that certain of its concerns have been addressed.

<sup>5</sup> *Paiute Pipeline Co.*, 96 FERC ¶ 61,167 at pp. 61,752-753 (2001).

months. Sierra argues that under Order No. 637, the Commission determined that shippers should be given the flexibility to exceed contractual limitations, unless such action jeopardizes system reliability and integrity.<sup>6</sup>

10. Paiute argues that Sierra's argument amounts to a collateral attack on the Commission's orders in Paiute's Order No. 637 compliance proceeding,<sup>7</sup> and, thus, should be rejected.<sup>8</sup> Paiute states that in that proceeding, the Commission rejected Sierra's protest and held that Paiute's tariff provisions concerning overruns were in compliance with Order No. 637. Paiute states that in determining that the existing provision is just and reasonable, the Commission determined that: (1) "Paiute's proposal allows Paiute to maintain system reliability by knowing in advance when a shipper plans to exceed its contract level;" (2) Paiute had eliminated any penalty *for authorized overrun volumes*; (3) the provisions offered shippers a "tool" to manage daily imbalances; and (4) the interruptible transportation rate to be charged *for authorized overrun gas* was not excessive. Paiute states that Sierra has not justified why the Commission should act now pursuant to its authority under section 5 of the Natural Gas Act (NGA), when the Commission recently approved a similar provision over Sierra's almost identical objection in Paiute's Order No. 637 proceeding.

11. The Commission recognizes that in its orders in Paiute's Order No. 637 compliance proceeding, we did not require Paiute to modify its existing penalties for unauthorized penalties. However, we erred in failing to do so, and Paiute's current penalties for unauthorized overruns are higher than those we permitted in the Order No. 637 compliance proceedings of other pipelines. In Order No. 637, the Commission shifted its policy away from one that fosters the use of penalties, to a service-oriented policy that gives shippers other options to obtain flexibility and relies on penalties when necessary to protect system integrity.<sup>9</sup> As we said in *Colorado Interstate Gas Transmission Corp.*,<sup>10</sup> and subsequent Order No. 637 orders, a pipeline's penalty

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<sup>6</sup> Order No. 637-B, 92 FERC ¶ 61,062 at pp. 61,171-172 (2000).

<sup>7</sup> *Paiute Pipeline Co.*, 96 FERC ¶ 61,167 (2001).

<sup>8</sup> *See Tuscarora Gas Transmission Co.*, 104 FERC ¶ 61,302 (2003) (dismissing answer as collateral attack on prior order).

<sup>9</sup> *See* Order No. 637-A, FERC Stats. & Regs., Regulations Preambles (July 1996 – December 2000) ¶ 31,099 at p. 31,598 (2000).

<sup>10</sup> 95 FERC ¶ 61,321 at p. 61,124 (2001).

structure and level should have relationship to the harm the conduct could likely cause to the system. We found that pipelines had not adequately justified, in light of our policy stated in Order No. 637, why substantial overrun penalties should apply on non-critical days.<sup>11</sup> During non-critical periods, a shipper who scheduled overrun service would presumably receive the requested service. Assessing a penalty that is many times higher than the authorized rate for failure to request service is excessive when the conduct would not likely cause harm to the system.

12. In those cases, we required pipelines to revise their tariffs so that the current unauthorized overrun penalties are applied only during critical periods. We said that for non-critical periods, a pipeline can propose a more nominal penalty that is sufficient to provide an incentive to nominate overrun volumes but also takes into account the lessened impact such unauthorized overruns will have on the system during non-critical time periods.<sup>12</sup> In *Questar Pipeline Company (Questar)*,<sup>13</sup> issued after the orders in Paiute's Order No. 637 proceeding, we further refined our policy. In *Questar*, we said that to comply with Order No. 637's requirements, a pipeline could propose a more nominal penalty for non-critical periods, not to exceed twice its IT rate, that is sufficient to provide an incentive to nominate overrun volumes but also takes into account the lessened impact such unauthorized overruns will have on the system. Alternatively, a pipeline could retain its existing penalty but must waive the unauthorized overrun penalty if the unauthorized overrun does not cause operational problems.

13. Paiute's existing unauthorized overrun penalties of \$5.00 and \$10.00 per Dth apply during all periods, not just critical periods. Paiute's maximum authorized overrun rate is \$.3094 per Dth, the maximum IT rate. Consistent with our rulings in previous

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<sup>11</sup> Under CIG's proposal, unauthorized overrun penalties would be charged to shippers who exceed their contract demand in excess of three percent and the level of penalty began at two times the monthly spot index price. The Commission noted that under CIG's tariff, a shipper could avoid unauthorized overrun penalties by a request to nominate and schedule overrun deliveries. CIG's maximum overrun rate was \$.3250 per MMBtu, the maximum IT rate.

<sup>12</sup> 95 FERC ¶ 61,321 at p. 61,125. *See also, Gulf States Transmission Corp.*, 96 FERC ¶ 61,690 (2001) and *Trailblazer Pipeline Co.*, 97 FERC ¶ 61,056 (2001).

<sup>13</sup> 100 FERC ¶ 61,212 at PP 73-74 (2004); *see also, Trailblazer Pipeline Co.*, 103 FERC ¶ 61,074 (2003), and 106 FERC ¶ 61,278 (2004).

Order No. 637 orders, we find that Paiute's \$5.00 and \$10.00 per Dth penalty on Paiute's system is a greater than nominal penalty and therefore unjustified for non-critical periods.<sup>14</sup> Therefore, we will require Paiute to revise its tariff and propose a more nominal penalty for non-critical periods, not to exceed twice its IT rate, or in the alternative, Paiute can retain its existing penalties but must waive the unauthorized overrun penalty if the unauthorized overrun does not cause operational problems.

## 2. OFO Penalties

14. Paiute proposes to change the Operational Flow Order (OFO) penalty provision in section 5.2(a) of its GT&C from a fixed, tiered penalty rate to one based upon a published index gas price.<sup>15</sup> Specifically, Paiute's proposed section 5.2(a) would provide for the following penalties:

The greater of five dollars (\$5.00) or two times the highest price receipt point for Northwest listed in *Gas Daily* (or a successor publication) to unauthorized daily overrun or underrun gas that exceeds three percent and is not greater than five percent of the Daily Scheduled Quantity.

The greater of ten dollars (\$10.00) or four times the highest price receipt point for Northwest listed in *Gas Daily* (or a successor publication) to unauthorized daily overrun or underrun gas that exceeds five percent of the Daily Scheduled Quantity.

15. Paiute states it proposes to revise section 5.2(a) because of the serious threat to Paiute's system operations posed by a shipper's non-compliance with entitlement restrictions during such emergency situations. In support, Paiute explains that there has been a change in Paiute's ability to continue to rely upon its LNG facility to address emergency situations. Sierra has terminated its contract with Paiute for LNG service.

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<sup>14</sup> See *Gulf States, supra* at 61,690 (a \$2.00 per Dth penalty on Gulf States' system is a greater than nominal penalty and therefore unjustified for non-critical periods), and *Trailblazer Pipeline Co.*, 97 FERC ¶ 61,056 (2001) and *Questar Pipeline Co.*, 98 FERC ¶ 61,159 (2002) (a \$10.00 per Dth unauthorized overrun penalty is not justified on non-OFO days).

<sup>15</sup> Paiute's pre-existing penalties provided for a penalty of \$5/Dth for gas taken in excess of 103 percent of daily scheduled quantities and \$10/Dth for gas taken in excess of 105 percent of daily scheduled quantities.

Sierra's contract covered 49 percent of Paiute's total LNG capacity. Before Sierra's contract termination, Paiute's unbundled LNG service enabled Paiute to minimize system integrity problems by using customer gas stored in the LNG facility. Paiute states that Sierra's termination of its LNG service resulted in significantly less ability for Paiute to rely upon its LNG facility to meet unexpected system operating needs.

16. Paiute also believes its proposed index based approach is a better method of penalizing OFO violations in today's environment where gas prices can fluctuate and often exceed a fixed penalty level. Paiute maintains its proposed penalty methodology is reasonable because it is necessary to discourage behavior that would jeopardize system integrity. Further, Paiute asserts the use of a gas price index keyed to receipts into Northwest's system is comparable to the approach used on other pipelines.<sup>16</sup> In addition, Paiute states it believes the referenced *Gas Daily* index for prices at receipt points for Northwest meets the Commission's policy for liquidity and price formation.<sup>17</sup> Paiute adds that the use of a multiple of two and four times the index for the higher of charge is also reasonable for Paiute's system given Paiute's limited linepack and restricted ability

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<sup>16</sup> See *Portland Gen. Elect. Co.*, 105 FERC ¶ 61,023, at PP 24, 44 (2003) (approving an overrun/underrun penalty based upon the greater of \$25.00 or two times the index price which was Northwest's maximum 100 percent load factor firm rate "plus the greater of: (a) daily high price as reported in *Gas Daily* for Sumas Washington; or (b) the high end of the absolute price range as reported in *Gas Daily* for the NW, Wyoming pool," subject to staff's review of the final tariff pursuant to the Commission's price formation policy.). See *B-R Pipeline Co.*, 105 FERC ¶ 61,025 at P 44 (2003) (approving index based overrun/underrun penalty referencing *Gas Daily* Sumas or Northwest, Wyoming pool gas prices), *reh'g on other grounds*, 106 FERC ¶ 61,166 (2004); *Northwest Pipeline Corp.*, 89 FERC ¶ 61,115, p. 61,314 (1999) (affirming an OFO penalty set at "the greater of \$10.00 or four times the referenced spot rate," and allowing Northwest to change the index from *Inside FERC* to *Gas Daily*.)

<sup>17</sup> See *Portland, supra*, 105 FERC ¶ 61,023, at P 45, and *B-R Pipeline, supra*, 105 FERC ¶ 61,205, at P 45, *citing* Price Discovery in Natural Gas and Electric Markets, 104 FERC ¶ 61,121, at P 37 (2003).

to utilize LNG to meet system emergencies.<sup>18</sup> Paiute states that shippers can avoid incurring penalties by engaging in a number of reasonable practices, such as: (1) complying with scheduled quantities during declared entitlement emergency periods; (2) bringing in or limiting gas supplies on upstream pipelines, as needed; and (3) purchasing available LNG storage pursuant to Paiute's existing Rate Schedule LGS-1.

17. Sierra disputes Paiute's claim that the need for increased penalties was due to changing circumstances on its system. Sierra states that the need to protect system integrity already existed when the Commission approved Paiute's existing penalties in its Order No. 637 proceeding. Sierra asserts that Paiute must demonstrate why the penalties must be increased so dramatically to avoid that potential harm, given the mandate of Order No. 637 that pipelines "narrowly design penalties to deter conduct that is actually harmful to the system." Sierra states that while Paiute has failed to justify any increase in penalties, Sierra would not object to a revision to Paiute's penalty structure for unauthorized overruns to include consideration of a market based component. Sierra suggests a penalty per Dth for unauthorized overruns of \$2.50 plus the highest price receipt point for Northwest listed in *Gas Daily*.

18. We find that Paiute's proposed OFO penalties, as set forth in revised section 5.2 (a) of its GT&C, are reasonable and we accept Paiute's proposal.<sup>19</sup> We agree with Paiute that its need for the daily entitlement penalty to effectively deter overruns and underruns is far greater now due to Sierra's February 28, 2003 Rate Schedule LGS-1 (LNG service) contract termination.<sup>20</sup> As a result, Paiute cannot rely upon its LNG to meet unexpected

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<sup>18</sup> Paiute explained at the technical conference that linepack quantification is based upon a variety of constantly changing variables and while Paiute's linepack can approach 20 to 25 MMcf, depending upon Paiute's operating status at any given time, it also can be much lower. Paiute states that even 20 to 25 MMcf of linepack under optimal conditions is insufficient to manage large imbalances when, for example, colder than expected weather hits Paiute's market areas on a winter day.

<sup>19</sup> Section 5.4(c) of Paiute's tariff provides for 100 percent crediting to shippers of revenues from all penalties net of costs.

<sup>20</sup> At Sierra's request, Paiute clarified the unauthorized daily overrun and underrun penalty language in GT&C section 5.2(a). The unauthorized daily overrun penalty will only be assessed against shippers that take gas in excess of their Daily Scheduled Quantity during an OFO period applicable to overruns. The unauthorized daily underrun penalty will only be assessed against shippers that take gas less than their Daily Scheduled Quantity during an OFO period applicable to underruns.

system operating needs. Also, by definition, an OFO penalty applies only during critical periods and, therefore, the penalty level should be sufficient to deter conduct that would threaten system integrity. Further, Paiute's proposed penalty methodology falls within the range of penalties that has been accepted by the Commission for this purpose.<sup>21</sup>

19. Finally, the Commission finds that Paiute's use of a gas price index must meet the criteria set forth in the Commission's policy statement for price index developers and that it also must reflect adequate liquidity at the reference location to be reliable.<sup>22</sup>

Accordingly, when Paiute files its actual tariff, the Commission will review its OFO penalty provisions to ensure that they meet the requirements of the policy statement.<sup>23</sup>

### **B. Priority Among Receipt Points**

20. With the establishment of the interconnection with Tuscarora and the dismantling of the LNG Plant, Paiute has added a receipt point to its system and removed another. Accordingly, Paiute has revised its definition of Receipt Point in its tariff to identify the three current receipt points on its system: (1) the Owyhee Receipt Point, which is the interconnection with Northwest, (2) the Wadsworth Junction Receipt Point, which is the interconnection with Tuscarora, and (3) the LNG Plant.

21. Paiute has also made some ministerial revisions to clarify its references to specific receipt points.<sup>24</sup> Paiute proposes to revise section 12.1 of Rate Schedule FT-1 and section 4.2(d) of its GT&C to replace the pre-existing reference to the term "Receipt Point" with "Owyhee Receipt Point" because the existing text refers only to that specific receipt point. For example, section 4.2(d) provides for a *pro rata* reduction in scheduled quantities on a day when the total pipeline capacity at the Owyhee Receipt Point is less

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<sup>21</sup> See *Northwest Pipeline Corp.*, 89 FERC ¶ 61,115 (1999); and *Portland Gen. Elect. Co.*, 105 FERC ¶ 61,023 (2003).

<sup>22</sup> 104 FERC ¶ 61,121 (2003).

<sup>23</sup> See *e.g.*, *Portland Gen. Elect Co.*, 105 FERC ¶ 61,023 at PP 44-46 (2003).

<sup>24</sup> Prior to this proceeding, the term Receipt Point in Paiute's tariff meant exclusively the Owyhee Receipt Point.

than quantities scheduled for that day.<sup>25</sup> Also, section 4.2(d) provides that when total available pipeline capacity at the Owyhee Receipt Point is not scheduled for firm service, the remainder will be available to shippers under Rate Schedule IT-1.

22. Resources argues that Paiute's proposed changes to section 12.1 of Rate Schedule FT-1 and section 4.2(d) of its GT&C may result in requiring shippers to fully utilize the Owyhee Receipt Point before utilization of other receipt points, thereby creating a hierarchy of points on Paiute's system. Resources asserts that each receipt point on the Paiute system should have equal standing and that there should be no requirement on the part of shippers to use (fully or partially) any other receipt point as a precondition for use of any given receipt point.

23. Paiute states that the tariff language in Rate Schedule FT-1 section 12.1 and section 4.2(d) of its GT&C concerning receipt point capacity merely reflects the historical way in which shippers' contracts addressed winter mainline capacity originating from the Owyhee Receipt Point. Paiute explains that LNG storage service customers have their daily LNG withdrawal entitlements imbedded in their winter period daily transportation contract quantities under Rate Schedule FT-1 and these quantities are stated in their transportation service agreements (TSAs). Paiute states, however, that existing TSAs do not separately identify the customer's Owyhee and LNG Plant receipt point entitlements. Paiute asserts that section 4.2(d) is merely intended to give an LNG storage customer the right to make use of unscheduled receipt point capacity at Owyhee, in lieu of scheduling withdrawals of LNG. Paiute disputes Resources' claim that its tariff provisions create a preference for the Owyhee Receipt Point over the LNG Plant and the Wadsworth Junction Receipt Points. Paiute maintains that customers are free to make maximum use of the receipt point rights they choose, subject to their service agreements and the tariff.

24. We agree with Resources' that each receipt point on Paiute's system should have equal standing. It is not clear from Paiute's tariff that this is the case because the language concerning the scheduling and allocation of receipt point capacity contained in Rate Schedule FT-1 section 12.1 and section 4.2(d) of Paiute's GT&C applies only to a shipper's contract entitlements at Paiute's Owyhee Receipt Point. In this proceeding, Paiute proposes to revise other sections in its tariff to reflect the new receipt point at Wadsworth Junction, and proposes to revise its form of service agreement so that a

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<sup>25</sup> For purposes of *pro rata* reduction, section 4.2(d) provides that the quantity of gas that a Shipper is entitled to schedule on a given day during the Winter Period is equal to its Rate Schedule FT-1 Daily Reserved Capacity less its Rate Schedule LGS-1 Daily Delivery Quantity.

shipper's transportation service agreement would now separately identify receipt point capacity. Paiute's tariff should contain procedures for the scheduling and the allocation of capacity at all receipt points, not just procedures that reflect the historical way in which LNG shippers have contracted for winter mainline capacity at the Owyhee Receipt Point. Accordingly, we direct Paiute to revise its tariff consistent with the discussion above.

**C. Paiute's Construction Obligation**

25. Paiute has revised section 6 – Facility Additions to its Rate Schedule FT-1. section 6.1 now provides that Paiute will construct facilities to render transportation services hereunder that are requested by Shipper where Shipper agrees to pay all costs associated with such facilities. In addition, section 6.2 now reads that from time to time, shippers may request new facilities for which Shipper will not reimburse Paiute for costs associated with such facilities. In this case, Paiute will construct such facilities that in its sole good faith determination it deems to be economical.

26. Paiute's existing section 6.2 sets forth the criteria that Paiute will use to determine whether projects are economical. Paiute will evaluate projects on the basis of the costs of the facilities, operation and maintenance as well as administrative expenses attributable to the facilities, and the revenues Paiute estimates will be generated as a result of the project. Paiute revised section 6.2 to include the Commission's pricing policies as one of the criteria to be considered. Further, existing section 6.2 provides that based on these criteria, the economic value of a project shall be determined based upon a discounted cash flow rate of return methodology.

27. Sierra claims that the Commission has rejected "sole judgment" language similar to that in section 6.2 as applied to tariff provisions dealing with a right or service. Sierra states that the elimination of the phrase "sole good faith determination" is intended by the Commission to clarify the obligation of the pipeline to make decisions to construct facilities on a nondiscriminatory basis.

28. Paiute argues that Sierra's claim is disingenuous at best, because the construction of pipeline facilities is neither a shipper right nor a pipeline service.<sup>26</sup> Paiute states that the Commission has approved provisions similar to Paiute's proposed tariff provision

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<sup>26</sup> See *Calpine Energy Servs. L.P.*, 105 FERC ¶ 61,033 at P 4 (2003) ("[I]t is well established that section 7 of the Natural Gas Act (NGA) does not obligate pipelines to build new facilities for shippers.")

where, as here, there are objective criteria that apply to the pipeline's decision making process. Paiute states that section 6.2 of Rate Schedule FT-1 sets forth specific criteria that Paiute will follow in making a determination as to whether a project is economical. Paiute points out that such criteria include consideration of a number of factors used to derive a discounted cash value.<sup>27</sup>

29. Sierra's protest has not persuaded the Commission to disallow Paiute's proposed revision. As the Commission has recognized, while pipeline construction is discretionary, the pipeline may not exercise its discretion on an unduly discriminatory basis.<sup>28</sup> However, the Commission has found on numerous occasions that a nondiscrimination condition is implicit under the NGA and need not be included in a tariff, even one that recognizes the pipeline's discretion to determine whether or not it will construct facilities.<sup>29</sup> The Commission has required pipelines either to expressly provide that the construction decision will be made on a nondiscriminatory basis or to remove sole discretion language in situations where the pipeline has no criteria for determining economic feasibility.<sup>30</sup> However, Paiute's tariff already contains clearly defined criteria and thus, Paiute's revision is accepted.

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<sup>27</sup> See First Revised Sheet Nos. 23 and 24.

<sup>28</sup> See e.g., *CNG Transmission Corp.* 90 FERC ¶ 61,005, at p. 61,008 (2000); *United Gas Pipe Line Co.*, 64 FERC ¶ 61,015, at p. 61,140, *reh'g granted, in part, on other grounds*, 65 FERC ¶ 61,006 (1993).

<sup>29</sup> See e.g., *Gateway Pipeline Co.*, 62 FERC ¶ 61,252, at p. 62,706 (1993); *United Gas Pipe Line Co.*, 57 FERC ¶ 61,039, at p. 61,135, *reh'g granted on other grounds*, 57 FERC ¶ 61,397 (1991); *reh'g granted on other grounds*, 58 FERC ¶ 61,303 (1992).

<sup>30</sup> See e.g., *Northwest Pipeline Corp.*, 50 FERC ¶ 61,158, at p. 61,464 (1990).

#### **D. Reservation Charge Credits**

30. Paiute also proposes a revision to section 12 of Rate Schedule FT-1, which provides for a reservation charge adjustment to shippers under this rate schedule.<sup>31</sup> Specifically, Paiute proposes to revise section 12.2(b) to provide that a reservation charge adjustment would not apply where Paiute's failure to deliver gas requested by a shipper was due to the operations of upstream pipelines not within the control of Paiute. Paiute states that this proposed tariff revision would replace the pre-existing reference to only the operations on Northwest's system with a reference to upstream pipelines, so as to reflect the recent addition of the interconnection with Tuscarora Pipeline.

31. Sierra claims that Paiute's existing reservation charge adjustment provisions in section 12 do not comply with existing Commission policy on reservation charge credits for both force majeure and non-force majeure interruptions of firm service. Sierra points to section 12.2(b), which provides for a reservation charge adjustment credit commencing on the 16<sup>th</sup> day after the time of a force majeure event if Paiute has not remedied the force majeure condition and the ability to do so was within Paiute's control. Sierra also points to section 12.3 which provides for an exemption from a reservation charge adjustment for interruptions in service due to scheduled tests, repairs, or maintenance, where Paiute gives notice of such scheduled work by the 15<sup>th</sup> day of the month preceding the scheduled work. Sierra cites Opinion No. 406 which requires partial reservation credits for force majeure interruptions of firm service, and full reservation credits for non-majeure interruptions.<sup>32</sup> Sierra contends that Paiute's current tariff violates the Commission policy on reservation charge crediting for firm service interruptions.

32. Paiute states that the existing reservation charge credit provision, including the language protested by Sierra, was agreed upon as part of Paiute's rate case settlement in Docket No. RP96-306-000, and was the product of a series of interrelated compromises that provide a mutual sharing of the risk of interruption from force majeure and non-

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<sup>31</sup> Subject to the limitations in sections 12.2 and 12.3, section 12.1 provides for full reservation charge credit (the Reservation Charge Adjustment) where Paiute fails to transport for Shipper the quantity of natural gas schedule for Shipper under Rate Schedule FT on that day pursuant to the normal scheduling procedures set forth in section 4.2(a) of the General Terms and Conditions.

<sup>32</sup> *Tennessee Gas Pipeline Co.*, 76 FERC ¶ 61,022 (1996) (Opinion No. 406), *Order on Reh'g*, 80 FERC ¶ 61,070 (1997) (Opinion No. 406-A) (also cited as *Tennessee*). See also, *El Paso Natural Gas Co.*, 105 FERC ¶ 61,262 at PP 13-15 (2003).

routine repairs or maintenance. Paiute states that Sierra has not shown why the Rate Schedule FT-1 reservation charge credit provision is unreasonable today; nor has it proposed an alternative, as required by section 5 of the NGA. Further, Paiute argues that Sierra also has not explained why it is reasonable for the Commission to extend the scope of this proceeding to address an unrelated provision.

33. First, we accept Paiute's proposed revision to section 12.2(b) exempting it from providing a reservation charge adjustment when the failure to deliver is due to the operations of upstream pipelines. The revision is ministerial and only replaces the previously existing reference to the operating conditions on Northwest's system with upstream pipelines so as to reflect the recent Tuscarora interconnection. However, Sierra raises objections to sections 12.2(c) and 12.3 of Rate Schedule FT-1 that govern the application of reservation charge adjustments in force majeure and non-force majeure events. We disagree with Sierra's objection to section 12.2(c) that applies in the event of force majeure. That section provides for no credits for the first 15 days and full credits after that period. Paiute's existing section 12.2(c) is similar to the force majeure reservation charge credit which the Commission described in Opinion No. 406 as "a form of risk sharing through the establishment of limits on the length of time in which a pipeline may be excused from providing reservation charge credits."<sup>33</sup> For that reason, we will not require Paiute to revise section 12.2(c) since the Commission previously accepted this approach as an appropriate method of sharing the risk.

34. However, section 12.3 exempts Paiute from full reservation credits for scheduled maintenance as long as 15 days notice is provided. In Opinion No. 406, the Commission explained that where scheduled gas is not delivered in a non-force majeure event the pipeline must provide full credit to the affected shipper because the failure was due to the pipeline's conduct and was within its control.<sup>34</sup> Accordingly, Paiute must revise section 12.3 to eliminate this exemption from its obligation to provide for full reservation charge adjustments in non-force majeure situations, consistent with Commission policy.

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<sup>33</sup> *Natural Gas Pipeline Company of America*, 106 FERC ¶ 61,310 (2004) at P 23-24; *Order Denying Reh'g and Granting Clarification*, 108 FERC ¶ 61,170 (2004).

<sup>34</sup> *Tennessee Gas Pipeline Co.*, 76 FERC 61,085-086; *El Paso Natural Gas Co.*, 105 FERC ¶ 61,262 (2003) at P 14.

**E. Segmentation and Backhaul Tariff Provisions**

**1. Identification of Specific Backhaul Points**

35. Both Sierra and Resources object to Paiute's proposal to limit backhaul transportation to specific existing points, specifically, the Wadsworth Junction or LNG Plant receipt points (section 13.2(c)). Both parties believe that Paiute should be required to retain its originally proposed language, which stated that backhaul transportation would be provided from "any point on Paiute's system where gas can be received into the system." At the technical conference, Paiute explained that it sought to change its proposed language to make clear that the Wadsworth Junction and the LNG receipt points are presently the only points at which gas can be received into its system for backhaul transportation.

36. Sierra states that the original language proposed by Paiute is superior because it would not need to be changed to allow additional backhaul deliveries as of the time additional receipt points onto the Paiute system are created. Sierra states that, in contrast, the new language Paiute now proposes would not require Paiute to provide such backhaul transportation until Paiute files a modification to this section of the tariff and the Commission approves the modification. Sierra asserts that although Paiute has stated that it would timely file any necessary tariff proposal, it is not in the pipeline's interest to make timely tariff filings that would allow additional segmentation that may compete with services the pipeline could provide.

37. Paiute states the proposed revised language of section 13.2(c) is reasonable because, as a substantive and operational matter, no one disputes that Paiute is presently obligated to provide backhaul service only from the two named receipt points, and the tariff accurately and clearly reflects this. Second, Paiute asserts that the proposed tariff language is necessary to ensure clarity as to which specific points are eligible for backhauls today. Paiute states that under the changed language, a prospective shipper who may be unfamiliar with Paiute's system can immediately discern from which points on Paiute's system backhaul service is available. Also, Paiute explains that if it were ever to fail to provide backhaul service at eligible receipt points at some point in the future, any aggrieved shipper would have remedies under the NGA. Finally, Paiute claims that its identification of specific points is consistent with the practice on other pipelines, such as Northern Natural Gas Company in analogous circumstances, such as where storage receipts are specifically identified in the tariff.

38. We find that Paiute's proposal to revise its tariff to specify the two points on its system that are available today for backhaul transportation is reasonable. However, we agree with Sierra and Resources that there should be no delay in posting additional receipt points for backhaul transportation as they become available. We find that

additional receipt points eligible for backhauls should be posted on Paiute's Internet Website within 24 hours of such availability and Paiute is directed to revise its tariff to provide notice to shippers that such postings will be made on its website.

## **2. Backhaul Transportation – Lateral Capacity Limitation**

39. New section 13.2(d) of Paiute's segmentation proposal provides the following:

To the extent that Delivery Point capacity is available, Paiute will permit a Shipper to schedule forward hauls up to the lesser of its applicable Reserved Capacity or applicable LCL, and backhauls up to the same limit, to the same Delivery Point at the same time for segmented capacity.

40. Sierra states that it has no objection to the language limiting the forward haul to the reserved capacity or applicable lateral capacity limit (LCL) of the segment. However, Sierra objects to a backhaul being subject to the "same limit" as forward haul transportation, because that limit would include not only the reserved capacity, but also, improperly, the LCL. Sierra states that by definition backhaul transportation is a secondary transportation. Sierra points to proposed revised section 13.2(c), which states that backhaul transportation transactions are considered out-of-path and will be scheduled on a secondary point basis, pursuant to the scheduling provisions in section 4 of Paiute's GT&C.

41. Sierra further contends that Paiute has acknowledged that these backhaul transactions are not subject to an LCL. Sierra refers to section 13.2(a) which provides that a shipper may nominate transportation quantities in excess of its LCL, up to its reserved capacity, on a secondary firm basis. Sierra maintains that given the provisions contained in sections 13.2(a) and 13.2(c), it appears that section 13.2(d) is incorrect insofar as backhauls would be limited to quantities up to a shipper's LCL. Sierra proposes to substitute the phrase "same limit" with the phrase "applicable Reserved Capacity," so that the wording in section 13.2(d) pertaining to backhauls would read as follows: "and backhauls up to the applicable Reserved Capacity," to the same delivery point at the same time for segmented capacity.

42. Paiute contends that Sierra has no legitimate basis for objecting to the language of section 13.2(d), applicable to backhauls and forward hauls to and from the same delivery point, because this limitation is inapplicable to Sierra's operations. Paiute states that the only upstream laterals to which this provision would apply are Elko and Lovelock; yet Sierra has no LCL on either lateral. Paiute states that because no other shippers have objected to Paiute's proposed change, and because this provision has no impact on Sierra, the Commission should reject Sierra's objection.

43. The Commission agrees with Sierra. Consistent with Commission policy, Paiute's proposed section 13 specifically provides that backhaul transportation transactions are considered out-of-path, to be scheduled on a secondary basis. Further, new section 13.2(a) gives a shipper the right to nominate transportation quantities in excess of its LCL, up to its applicable reserved capacity, on a secondary firm basis. However, section 13.2(d) appears to take away that right, by limiting the scheduling of backhauls only up to the "lesser of" a shipper's reserved capacity or LCL. Paiute has not adequately explained why its proposed limitation on backhaul nominations is operationally necessary or otherwise appropriate. Accordingly, we direct Paiute to revise section 13.2(d) to be consistent with sections 13(a) and 13.2(c) or explain why the distinction is appropriate.

**F. Primary Point Rights**

44. Paiute's new section 13.3(a) provides that for each segment that is released, the releasing shipper must identify the primary receipt point and primary delivery point entitlements that it will retain and the primary receipt point and primary delivery point entitlements that it will release. This section also provides, however, that a releasing shipper may not retain entitlements at a primary receipt point or a primary delivery point if such point cannot be accessed by the primary capacity pathway rights that it retains.

45. Sierra argues that the Commission should direct Paiute to eliminate the requirement in section 13.3(a) that a releasing shipper cannot retain a primary receipt or delivery point if the point cannot be accessed by the primary capacity pathway rights. Sierra states that Order No. 637 makes clear that segmentation must be provided, to the extent operationally feasible. Sierra adds that the only qualification to this principle is that a shipper cannot transport more than its daily entitlement in any one segment. Sierra states that Paiute's proposed limitation does not appear to be operationally justified or relevant to preventing a shipper from exceeding its entitlement in any one segment and, hence, should be eliminated.

46. Paiute argues that, contrary to Sierra's contention, this tariff language is consistent with Commission policy, which permits pipelines to institute tariff provisions that prevent the stranding of primary points by released capacity. Paiute notes that section 13.3(a) would prevent a releasing shipper from stranding primary point capacity where the shipper releases a primary path segment without releasing the associated primary point rights. Paiute explains that when segmenting, shippers have the flexibility to move primary points, but that if they make this election, they cannot strand the primary points associated with the original primary path by creating a new primary path while at the same time retaining the original primary points.

47. The Commission finds that the provision in Paiute's proposed section 13.3(a) is consistent with Order No. 637. Primary points define a shipper's primary firm rights. The pipeline guarantees that the shipper will receive gas at its receipt points and delivery

at its delivery points. If the mainline capacity where the point is located is released to another shipper, then the releasing shipper can not use that point on a primary basis during the term of the release. Thus, the primary point goes to the replacement shipper. The releasing shipper can ensure that the replacement shipper does not change the primary point by putting a condition in the release that the point can not be changed. This will ensure that after the release is over, the releasing shipper will get the point back as a primary point. But, during the term of the release, the primary point rights go to whomever has the mainline capacity where the primary point is located.

#### **G. Primary Capacity Rights**

48. In its March 16 Filing, Paiute provided a summary of its revised segmentation proposal, along with *pro forma* tariff sheets. The summary included the following provision:

If firm capacity is available, Shipper may increase any applicable LCL on a primary basis up to the Shipper's applicable Daily Reserved Capacity by reducing firm primary rights on a different lateral.

49. Sierra claims that Paiute has not proposed a tariff provision to implement this limitation. Sierra claims that the only qualification applicable to the broad segmentation rights required by Order No. 637 is that a shipper may not exceed its daily entitlement rights in any one segment. Sierra claims the above described non-tariff limitation goes beyond this limitation and should be rejected.

50. As Paiute explains, the LCL concept, which is defined in section 13.2(a) of the tariff, reflects this pre-existing contract limitation on daily capacity rights, which some shippers have on downstream laterals. Paiute states that because its capacity is not uniform on all parts of its system (due in part to Paiute's system design), certain shippers, such as Sierra, have daily contract entitlements specified as daily reserved capacity and, on certain laterals, specified as lateral capacity contract limits.<sup>35</sup> Paiute asserts these contractual capacity limitations restrict daily firm primary capacity entitlements. Paiute

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<sup>35</sup> The daily reserved capacity is similar to a contract demand on other pipelines, although on Paiute's system the daily reserved capacity of many shippers is different in the winter than in the summer. The daily reserved capacity quantities of shippers with LNG service have their LGS-1 capacity embedded in their stated winter daily reserved capacity. There are certain specific contract capacity limits on laterals, which limit the daily entitlement of the shipper below its daily reserved capacity on the lateral.

states that Sierra, for example, has a daily reserved capacity of 61,044 Dth/d (summer) and 68,696 Dth/d (winter), but its daily contract entitlement (LCL) on the Reno Lateral is only 57,627 Dth/d.

51. Paiute argues that the Commission did not intend segmentation to increase (or modify) a shipper's contract capacity rights or to enable a shipper to obtain more capacity than that for which it pays.<sup>36</sup> Paiute points out that customers pay significant incremental surcharges for the right to utilize lateral capacity. Paiute states that as a result, although it has only one rate zone, all shippers do not pay the full costs of capacity within that zone insofar as certain lateral capacity has been constructed and paid for through higher incremental facility surcharges.<sup>37</sup> Paiute disagrees with Sierra's contention that Paiute's failure to include a sentence of explanation in its tariff itself can wipe out the underlying capacity limitations of the contracts and tariff provisions that explain these limits.

52. The Commission has found that segmentation rights do not change contract limits on primary firm capacity and Paiute's proposed section 13 is consistent with that policy. However, all contractual rights and limitations must be explicitly stated in the pipeline's tariff. Paiute cannot, in a cover letter to a filing, expand or limit the scope of its segmentation proposal. To the extent Paiute wishes to incorporate such expanded or limited rights, it must first make a filing proposing to revise its tariff.

#### **H. Computer Implementation**

53. At the technical conference and in its initial comments, Paiute explains that the implementation of its segmentation and backhaul provisions requires modification of its gas scheduling computer program. Paiute states that it will make every effort to implement the segmentation and backhaul provisions within six months, or approximately by October 1, 2004.

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<sup>36</sup> See *Florida Gas Transmission Co.*, 106 FERC ¶ 61,160, at PP 17,19 (2004), (finding that segmentation rights do not change contract limits on primary firm capacity); see also *Algonquin Gas Transmission Co.*, 104 FERC ¶ 61,118 at P 21 (2003), *reh'g denied, clarification granted*, 106 FERC ¶ 61,314 (2004) ("In Order No. 637, the Commission did not modify or change existing contract rights.")

<sup>37</sup> See, e.g., *Paiute Pipeline Co.*, 104 FERC ¶ 61,078, at p. 61,288 (2003), (approving incremental facilities surcharge for 5,868 Dth/d of additional capacity on the Carson Lateral); *Paiute Pipeline Co.*, 91 FERC ¶ 61,352, at pp. 62,176-77 (2000), (approving incremental facilities surcharge for 10,800 Dth/d of additional capacity on the Carson and South Tahoe Laterals).

The Commission orders:

(A) Paiute's filing is accepted, subject to the modifications discussed in the body of this order.

(B) Paiute is directed to file, within 20 days of the date of this order, revised tariff sheets, consistent with the discussion in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

**Appendix**

FERC Gas Tariff  
Second Revised Volume No. 1-A

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