

169 FERC ¶ 61,011
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Gas Transmission Northwest LLC

Docket No. RP19-1546-000

ORDER ACCEPTING TARIFF RECORD SUBJECT TO CONDITION

(Issued October 4, 2019)

1. On September 6, 2019, Gas Transmission Northwest LLC (GTN) filed a revised tariff record¹ pursuant to section 4 of the Natural Gas Act and Part 154 of the Commission's regulations. In its filing, GTN proposes to add language to section 6.33 of the General Terms and Conditions (GT&C) of its tariff allowing GTN to issue an accelerated right of first refusal (ROFR) notice to firm shippers in certain instances where GTN is proposing a fully subscribed expansion to its pipeline system.

2. As discussed below, we accept GTN's proposed tariff record, to be effective October 6, 2019, subject to the condition that GTN either modify or provide additional justification for its proposal.

I. GTN's Filing

3. GTN states that its system moves predominately Western Canadian Supply Basin production to markets in the U.S. Northwest and West. GTN states that as the availability of firm capacity on its system becomes more constrained, its ability to serve expanding gas markets with Western Canadian Supply Basin production is inhibited.² GTN states that to properly plan for and size a possible expansion project, it is proposing to modify³ section 6.33 of the GT&C of its tariff to add a new provision allowing it to

¹ Gas Transmission Northwest LLC, FERC NGA Gas Tariff, GTN Tariffs, [6.33 - GT&C, ROFR Upon Termination of Firm Service Agreement, 5.0.0](#).

² Transmittal Letter at 2.

³ GTN's proposed modification appears in the tariff record submitted as Appendix A to its tariff filing.

provide shippers with an accelerated ROFR notice in certain instances when GTN is proposing an expansion to its system.⁴

4. Under GTN's proposal, in the event that GTN is proposing an expansion project that would utilize capacity on its existing facilities, the expansion project is fully subscribed, and the sizing of the project could be affected by a firm shipper's plans regarding the continuation of service, GTN will have the right to issue a notice (accelerated ROFR notice) to a firm shipper no more than 36 months prior to the termination of the shipper's service agreement that its capacity is subject to the ROFR election and process under GTN's tariff.⁵ In addition, GTN shall require a response from the shipper no later than 10 business days from the date that GTN issues the accelerated ROFR notice.⁶ If the shipper elects to terminate, then GTN may reserve that shipper's capacity pursuant to GT&C section 6.32.⁷ If the shipper elects not to terminate, then GTN will commence open bidding pursuant to section 6.33 of its tariff. Under this section, GTN will evaluate any bids and notify the shipper of acceptable bids, at which point the shipper will have an opportunity to match those bids up to the maximum applicable rate. If the shipper decides to match an accepted bid, the capacity is awarded to the shipper. If the shipper declines to match, then the capacity is awarded to the bidder.

5. GTN asserts that its proposal is consistent with Commission policy⁸ and with similar provisions that the Commission has approved in other FERC gas tariffs.⁹ GTN

⁴ Transmittal Letter at 2.

⁵ Appendix A at 1.

⁶ *Id.*

⁷ *Id.*

⁸ Transmittal Letter at 2 (quoting *Bison Pipeline LLC*, 131 FERC ¶ 61,013, at P 39 (2010) (*Bison*)).

⁹ *Id.* (citing *Bison*, 131 FERC ¶ 61,013; Tuscarora Gas Transmission Company, FERC NGA Gas Tariffs, Tuscarora Tariffs, [6.27.5.3 – GT&C, Existing Shipper's Notice of Election to Exercise its ROFR, 1.0.0](#); Northern Border Pipeline Company, FERC NGA Gas Tariffs, Northern Border Tariffs, [5.1.4.1-Rate Schedule T-1, Service Continuation, 3.0.0](#); Portland Natural Gas Transmission System, FERC NGA Gas Tariffs, PNGTS Tariffs, [Part 6.13 GT&C, Available Capacity and Right of First Refusal, 4.0.0](#)).

requests that the Commission accept the proposed tariff record to become effective October 6, 2019.¹⁰

II. Notice, Interventions, and Comments

6. Public notice of GTN's filing was issued on September 9, 2019. Interventions and protests were due September 18, 2019. Pursuant to Rule 214,¹¹ all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. On September 18, 2019, five intervenors filed protests, which are discussed below.¹² GTN filed an answer to the protests on September 25, 2019. On September 27, 2019, NW Natural filed a reply to GTN's answer. On September 30, 2019, Turlock and Puget filed responses to GTN's answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹³ prohibits an answer to a protest and answers to answers unless otherwise ordered by the decisional authority. We will accept GTN's answer, NW Natural's reply, Turlock's response, and Puget's response because they have provided information that assisted us in our decision-making process.

A. Protests

7. In general, the protesters contend that GTN's proposal would improperly burden shippers by requiring them to determine whether they wish to terminate their service agreements 36 months prior to their contract termination date. The protesters also argue that GTN did not inform its shippers of its proposal before it submitted the instant tariff filing and has not shown that the proposal is consistent with Commission policy. Certain protesters request that the Commission reject GTN's filing or, in the alternative, suspend it and establish a technical conference.

8. Puget argues in its protest that GTN's proposal is unreasonable and fails to address the Commission's requirement that a reasonable period for a shipper to give notice as to

¹⁰ *Id.* at 3.

¹¹ 18 C.F.R. § 385.214 (2019).

¹² The following intervenors filed protests: Puget Sound Energy, Inc. (Puget); Northwest Natural Gas Company (NW Natural); Sacramento Municipal Utility District (SMUD); Sierra Pacific Power Company d/b/a NV Energy, Inc. (NV Energy); and Turlock Irrigation District (Turlock).

¹³ 18 C.F.R. § 385.213(a)(2).

whether to terminate its service agreement is between six months and one year before the agreement expires.¹⁴ Puget argues that this proposal provides shippers with less time to decide whether to terminate their contracts than GTN's existing ROFR tariff provision, which states that GTN must provide notice to a shipper no earlier than 13 months and no later than 12 months before termination of the shipper's service agreement.¹⁵ In addition, Puget argues that under GTN's proposal, existing shippers desiring to retain their expiring capacity would be required to match the bids that GTN receives for expansion capacity.¹⁶ Puget states that the triggering event for the accelerated ROFR procedure, an open season for a possible expansion, is entirely within GTN's control.¹⁷

9. According to Puget, GTN's contention that its proposal is consistent with Commission policy and other Commission-approved tariff provisions is unpersuasive. Puget contends that GTN bases this claim on a citation to a single Commission order, which does not constitute Commission policy.¹⁸ Moreover, Puget contends that the fact that the Commission accepted tariff records in other proceedings does not eliminate its obligation to render a reasoned decision on GTN's proposal in this case.¹⁹

10. Puget further argues that GTN's accelerated ROFR proposal would result in internal inconsistencies within its tariff. Puget states that the existing section 6.33.1 of GTN's GT&C provides that if a shipper elects to terminate its service agreement in response to a ROFR notice, GTN "shall post" the original capacity holder's capacity on its website as available capacity in accordance with section 6.18.2(c) of its GT&C.²⁰ By comparison, the tariff provision that GTN proposes to add to section 6.33 states that if the

¹⁴ Puget Protest at 4 (citing *Dominion Transmission, Inc.*, 111 FERC ¶ 61,135, at P 20 (2005); *Transcontinental Gas Pipe Line Corp.*, 103 FERC ¶ 61,295, at P 20 (2003); *Texas. Eastern. Transmission, LP*, 101 FERC ¶ 61,215, at P 8 (2002)).

¹⁵ *Id.* at 3.

¹⁶ *Id.*

¹⁷ *Id.* at 5 (citing *Transcontinental Gas Pipe Line Corp.*, 103 FERC ¶ 61,295 at P 19).

¹⁸ *Id.* at 4.

¹⁹ *Id.*

²⁰ *Id.* at 5 (quoting Gas Transmission Northwest LLC, FERC NGA Gas Tariff, GTN Tariffs, [6.33 - GT&C, ROFR Upon Termination of Firm Service Agreement, 4.1.0](#)) (emphasis in original).

original capacity holder elects to terminate its service agreement, its capacity “may be reserved” by GTN pursuant to section 6.32 of its GT&C.²¹ Section 6.32, in turn, states that before capacity may be reserved under that section, the capacity “must have first been made available” under section 6.18.2(c) of GTN’s GT&C.²²

11. NW Natural argues that GTN misstates the Commission’s policy, which in fact provides that a pipeline may provide a ROFR notice to existing capacity holders whose contracts will expire within 36 months before the expansion’s projected in-service date.²³ NW Natural states that GTN’s proposal does not tie the timing of the ROFR notice with the in-service date of the proposed expansion.²⁴ NW Natural claims that the Commission has not previously considered and approved this exact ROFR notice provision and, in fact, rejected a similar provision that GTN proposed in an earlier proceeding.²⁵

12. In addition, NW Natural contends that GTN’s proposal does not address how it relates to contractual evergreen rights.²⁶ NW Natural observes that section 6.33.7 of GTN’s GT&C provides shippers that hold unilateral evergreen rights with the ability to decide whether to retain their evergreen rights or invoke their ROFR rights by providing a notice of termination.²⁷ NW Natural claims that because GTN’s proposal does not reference section 6.33.7, it is unclear whether section 6.33.7 would apply in the event of a fully subscribed expansion or whether, in that circumstance, GTN’s ROFR notice would void the tariff’s existing protections for unilateral evergreen contractual rights.²⁸ NW Natural requests that the Commission require GTN to (i) preserve the unilateral evergreen

²¹ *Id.* (quoting Tariff Filing, Appendix A at 1).

²² *Id.* at 5-6 (quoting Gas Transmission Northwest LLC, FERC NGA Gas Tariff, GTN Tariffs, [6.32 - GT&C, Reservation of Capacity for Expansion Projects, 2.0.0](#)) (emphasis in original).

²³ NW Natural Protest at 3 (citing *Southern Natural Gas Co.*, 128 FERC ¶ 61,211, at PP 88-89 (2009) (*Southern*); *Gas Transmission Nw. Corporation*, 117 FERC ¶ 61,315, at P 55 (2006) (*GTN*)).

²⁴ *Id.*

²⁵ *Id.* (discussing *GTN*, 117 FERC ¶ 61,315).

²⁶ *Id.* at 4.

²⁷ *Id.* at 5.

²⁸ *Id.*

contract rights under section 6.33.7, even in the event of a planned expansion, and (ii) negotiate in good faith with capacity holders with bilateral evergreen rights in all circumstances before providing a termination notice.²⁹

13. NW Natural further claims that GTN's proposal curtails the planning flexibility of long-term firm shippers.³⁰ NW Natural explains that it requires certainty in its interstate pipeline contracts to cover its supply portfolio and meet its resource planning needs. It states that, although it supports the goal of avoiding overbuilding, GTN's proposal does not ensure that use of the accelerated ROFR process will achieve its stated objective of correctly sizing an expansion. NW Natural argues that while the accelerated ROFR proposal would apply only to fully subscribed expansions that "could be" affected by a capacity holder's plans regarding the continuation of service, it contains no data sharing provisions or mechanism for evaluating GTN's assessments of the amount of existing capacity that would reduce the size of the proposed expansion or whether the expansion is fully subscribed before GTN provides a ROFR notice.³¹

14. NW Natural further states that even after a capacity holder has gone through the ROFR process and matched the highest bid for its existing capacity, there is nothing in GTN's existing tariff that assures that GTN will proceed with the proposed expansion.³² Moreover, NW Natural contends that GTN's proposal could force capacity holders into long contract terms to retain their capacity. NW Natural states, for example, that if GTN received a maximum rate bid for NW Natural's existing capacity on GTN's system for a 30-year contract term, NW Natural would have to agree to a 60-year term to match the bid and retain its capacity.³³

15. SMUD echoes NW Natural's concern that GTN's expansion ROFR proposal could require existing capacity holders to exercise their ROFR to retain their existing capacity in response to a possible expansion that may never come to fruition.³⁴ SMUD also asserts that GTN's proposal fails to distinguish between a backbone expansion and an incremental lateral expansion, ignores the contributions of long-term capacity holders

²⁹ *Id.*

³⁰ *Id.* at 2-3.

³¹ *Id.* at 6.

³² *Id.*

³³ *Id.* at 6-7.

³⁴ SMUD Protest at 3.

and the arms-length negotiations underlying the terms of their contracts, and enables GTN to exercise market power against its shippers.³⁵

16. NV Energy joins Puget in arguing that the fact that the Commission has accepted expansion ROFR provisions in other proceedings that are similar to GTN's proposed provision does not preclude the Commission from evaluating GTN's proposal based on the particular facts related to GTN and its shippers.³⁶ NV Energy maintains that 10 days is not a reasonable response timeline and requests that the Commission allow GTN's shippers a minimum of 60 days to respond to an expansion ROFR notice.³⁷

17. Turlock contends that GTN has not explained its need for its proposed accelerated ROFR provision.³⁸ In addition, Turlock states that it holds capacity on GTN's system pursuant to a contract expiring in 2023.³⁹ Turlock argues that GTN's proposal would require Turlock's immediate attention to begin determining its transportation and fuel supply needs in advance of its contract's termination, well in advance of when it would be required to begin such planning under GTN's existing ROFR notice tariff provisions.⁴⁰

B. GTN's Answer

18. In its answer, GTN reiterates that it views its proposal as consistent with Commission policy and states that the proposed language is virtually identical to language approved in Bison Pipeline LLC's tariff.⁴¹ GTN also states that certain protesters have mischaracterized its proposal. Specifically, GTN disputes Turlock's claim that GTN's proposal will require Turlock to determine its transportation needs three years before contract expiration. GTN clarifies that its proposed 36-month accelerated ROFR process would only occur in the event of a fully subscribed expansion, the sizing of which would be impacted by Turlock's decision regarding its future

³⁵ *Id.*

³⁶ NV Energy Protest at 4.

³⁷ *Id.* at 7.

³⁸ Turlock Protest at 5.

³⁹ *Id.* at 4.

⁴⁰ *Id.*

⁴¹ GTN Answer at 4-5 (citing *Bison*, 131 FERC ¶ 61,013 at P 39).

capacity, and under all other circumstances GTN's normal ROFR process would apply.⁴² GTN further states that Puget's concerns about matching bids for expansion capacity and protections for evergreen rights are unfounded because shippers will not be required under GTN's proposal to match bids for expansion capacity and the protections for evergreen rights set forth in GT&C section 6.33.7 will continue to apply.⁴³ Finally, in response to Puget's argument that GTN's proposal will result in tariff provisions that are internally inconsistent, GTN clarifies that it intends, under the advanced ROFR process, that contract capacity which has been subject to a termination election may be immediately reserved for the proposed expansion project without first being subject to an open season.⁴⁴

C. Responses to GTN's Answer

19. NW Natural reiterates its view that the Commission has not previously addressed this exact ROFR process and has only accepted similar ROFR provisions in uncontested proceedings.⁴⁵ Thus, NW Natural states that GTN cannot simply claim that its proposal is consistent with Commission precedent. Instead, NW Natural contends that GTN must fully justify its proposed provision and has failed to do so.⁴⁶

20. Turlock states that GTN's explanation that the proposed accelerated ROFR process will only apply in certain circumstances when GTN is proposing an expansion does not allay Turlock's concern that it will be required to determine its transportation needs three years before contract expiration.⁴⁷ Turlock states that it must infer that GTN's proposal is a precursor to a forthcoming system expansion, meaning that Turlock's concern could become a near-term reality.⁴⁸

⁴² *Id.* at 5-6.

⁴³ *Id.* at 6-8.

⁴⁴ *Id.* at 8.

⁴⁵ NW Natural Reply at 2-3.

⁴⁶ *Id.* at 3.

⁴⁷ Turlock Response at 2.

⁴⁸ *Id.*

21. Puget states that GTN has failed to address Puget's argument that the proposed provision will result in internal inconsistencies in GTN's tariff.⁴⁹ Moreover, Puget states that the Commission's approval of Bison Pipeline LLC's tariff is distinguishable because unlike GTN, Bison was a new pipeline whose proposed tariff provisions were known and available to shippers before they submitted bids to acquire capacity on Bison.⁵⁰ Puget also reiterates its claim that GTN's proposal to require shippers to respond to accelerated ROFR notices within 10 business days is unreasonable.⁵¹

III. Discussion

22. For the reasons discussed below, we accept the tariff record listed in footnote 1, subject to the condition that GTN modify or provide additional justification for its proposal, within 15 days of the date of this order, to address the protesters' concerns relating to the proposed 10-business-day response period.

23. Under Commission policy, a pipeline may include in its tariff a provision permitting it to initiate an early ROFR process up to 36 months in advance of the termination of a shipper's contract in certain situations involving fully subscribed expansion projects, because such an early ROFR process can help the pipeline ensure that its proposed expansion project is correctly sized.⁵² Pipelines must conduct any such early ROFR process consistent with the generally applicable ROFR process contained in the pipeline's tariff.⁵³ Under the generally applicable ROFR process, once the shipper states that it may wish to exercise its ROFR and extend its contract, the pipeline must hold an open season requesting bids from third parties for the existing shipper's expiring capacity and the existing shipper may then match third party bids for its capacity.⁵⁴ Importantly, to ensure that captive shippers are not required to subsidize expansion projects implemented during the term of their contracts, pipelines must hold separate

⁴⁹ Puget Response at 2.

⁵⁰ *Id.* at 3.

⁵¹ *Id.*

⁵² *Southern*, 128 FERC ¶ 61,211 at P 88; *GTN*, 117 FERC ¶ 61,315 at P 55.

⁵³ *Venture Global Calcasieu Pass, LLC*, 166 FERC ¶ 61,144, at P 53 (2019) (citing *Southern*, 128 FERC ¶ 61,211 at P 88).

⁵⁴ *Southern*, 128 FERC ¶ 61,211 at P 88.

open seasons for ROFR capacity and expansion capacity.⁵⁵ Therefore, pipelines may only solicit bids for an existing shipper's expiring capacity through an open season that occurs after a separate open season for a fully subscribed expansion.⁵⁶ Consistent with this policy, the Commission has approved tariff provisions that allow the pipeline to provide a notice initiating an early ROFR proceeding to a shipper up to 36 months in advance of the shipper's contract termination and to require the shipper to provide, within 10 business days from the date of the notice, a response indicating whether it wishes to exercise its ROFR or terminate its contract.⁵⁷

24. We find that GTN's proposal to initiate an early ROFR process up to 36 months before contract termination is consistent with Commission policy, and we reject the protesters' challenges to the 36-month timeframe. As discussed, we have previously held that pipelines may initiate early ROFR procedures up to 36 months in advance of contract termination.⁵⁸ The protesters have not demonstrated that GTN's proposal allowing it to issue an accelerated ROFR notice to a shipper up to 36 months before the shipper's contract termination will lead to an unjust and unreasonable result.

⁵⁵ *Paiute Pipeline Co.*, 139 FERC ¶ 61,089, at P 70 (2012) (citing *GTN*, 117 FERC ¶ 61,315 at P 54, *order on reh'g*, 142 FERC ¶ 61,021, at PP 6-21 (2013)).

⁵⁶ *Venture*, 166 FERC ¶ 61,144 at P 53 (citing *GTN*, 117 FERC ¶ 61,315 at P 55).

⁵⁷ *E.g.*, Portland Natural Gas Transmission System, FERC NGA Gas Tariff, PNGTS Tariffs, [Part 6.13 GT&C, Available Capacity and Right of First Refusal, 1.0.0](#), *accepted in Portland Nat. Gas Transmission Sys.*, 143 FERC ¶ 61,181, at P 19 (2013) ("The Commission finds that Portland's proposal to modify its tariff provisions regarding . . . right of first refusal . . . [is] consistent with Commission policy."); Bison Pipeline LLC, FERC NGA Gas Tariff, Bison Tariffs, [6.18.3 – GT&C, Notice to Shipper, 0.0.0](#), *accepted in Bison Pipeline LLC*, 133 FERC ¶ 61,256 (2010).

⁵⁸ NW Natural erroneously contends that Commission policy requires that pipelines issue expansion ROFR notices to shippers within 36 months before the expansion project's projected in-service date, as opposed to 36 months from the termination of the shipper's contract. Although the Commission has approved tariff proposals allowing pipelines to issue expansion ROFR notices up to 36 months before the expansion's in-service date, *see Sierrita Gas Pipeline LLC*, 147 FERC ¶ 61,192, at P 81 (2014), this does not change the fact that the Commission's policy likewise allows pipelines to issue such ROFR notices up to 36 months before contract termination. *Southern*, 128 FERC ¶ 61,211 at P 55. Moreover, even when the accelerated ROFR process is tied to the date of contract termination, GTN must have a fully subscribed open season for the expansion *prior* to initiating the accelerated ROFR notice process.

25. However, we find valid the protesters' concerns that GTN has not adequately supported its proposal to require shippers to respond to an accelerated ROFR notice within 10 business days from the date the notice is issued. Although we have previously accepted tariff records allowing a pipeline to require shippers to respond to expansion ROFR notices within 10 business days in other proceedings,⁵⁹ no party in those proceedings challenged the 10-business-day timeframe and we did not specifically address whether such a timeframe was just and reasonable.⁶⁰ The protesters have raised valid concerns that requiring shipper responses within such a short timeframe could impose unreasonable burdens upon shippers, and GTN's tariff filing does not address these concerns. Accordingly, we direct GTN to either modify its proposal or provide additional support for the 10-business-day period for shipper responses to notices issued under the proposed accelerated ROFR process to address the shippers' concerns.

26. We are not persuaded by the shippers' other objections. We find unfounded Puget's concern that GTN's proposal will require existing shippers seeking to retain their expiring capacity to match the bids GTN receives for expansion capacity. Consistent with Commission policy, GTN's expansion ROFR provision contemplates that open seasons for expiring capacity will occur after an earlier open season for the proposed expansion project has resulted in the expansion project becoming fully-subscribed.⁶¹ Moreover, open seasons for an existing shipper's expiring capacity are governed by the existing ROFR provisions in GTN's tariff, pursuant to which an existing shipper will retain its capacity if it matches any bids for its capacity, and such existing shipper shall not have to match any bid higher than the maximum applicable rate in order to retain the capacity.⁶² Accordingly, existing shippers exercising their ROFR with regard to their expiring capacity rights are not required to match bids for expansion capacity under GTN's proposal.

27. We also reject Puget's argument that the proposed ROFR provision will produce internal inconsistencies in GTN's tariff, pointing to the requirement in existing section 6.33.1 that GTN post the capacity of a shipper electing termination as available capacity

⁵⁹ See *supra* note 50.

⁶⁰ See *Portland*, 143 FERC ¶ 61,181 at PP 11, 19; *Bison*, 131 FERC ¶ 61,013 at P 3, *order on compliance filing*, 133 FERC ¶ 61,256.

⁶¹ Appendix A at 1 (providing that GTN can only initiate accelerated ROFR process “[i]n the event an expansion project is proposed that would utilize capacity on GTN's existing facilities . . . and such proposed expansion project is fully subscribed.”).

⁶² *Id.* at 2.

under section 6.18.2(c)⁶³ and to language in the proposed provision stating that GTN “may” reserve such capacity pursuant to section 6.32, which governs reservation of capacity for future expansion projects.⁶⁴ On the contrary, we interpret the posting requirement in section 6.33.1 to apply equally to GTN’s proposed accelerated ROFR process as well as to its existing ROFR provisions. Moreover, the other tariff section that Puget cites, section 6.32, requires that capacity “must have first been made available pursuant to Section 6.18.2(c)” and must undergo “the posting and bidding procedure outlined in Section 6.18.2(c)” before GTN may reserve it for a future expansion.⁶⁵ As such, where a shipper elects termination under the proposed accelerated ROFR process, sections 6.33.1 and 6.32 require that GTN post the capacity as available capacity under section 6.18.2(c) before it may reserve it for a future expansion.

28. In light of these tariff requirements, we find that GTN’s statement in its answer that it intended to have the ability to immediately reserve capacity subject to a termination election under the accelerated ROFR process for a future expansion is inconsistent with its tariff. As discussed above, we interpret section 6.33.1 to provide that where a shipper elects termination, GTN must post the shipper’s capacity under section 6.18.2(c),⁶⁶ regardless of whether the shipper elected termination under the proposed ROFR provision or the existing ROFR provision. Furthermore, section 6.32

⁶³ Section 6.33.1 provides as follows: “In the event original capacity holder elects termination, original capacity holder shall no longer hold a right of first refusal and GTN shall post the original capacity holder’s capacity on GTN’s Internet website as available capacity in accordance with Section 6.18.2(c) of these General Terms and Conditions.” Gas Transmission Northwest LLC, FERC NGA Gas Tariff, GTN Tariffs, [6.33 - GT&C, ROFR Upon Termination of Firm Service Agreement, 5.0.0.](#)

⁶⁴ Puget Protest at 5-6.

⁶⁵ Section 6.32 provides in relevant part as follows: “Prior to reserving capacity for future expansion projects under this section, the subject capacity must have first been made available pursuant to Section 6.18.2(c) of these Transportation General Terms and Conditions. Capacity that remains available after the posting and bidding procedure outlined in Section 6.18.2(c) may be reserved by Transporter by means of a posting on Transporter's Internet website” Gas Transmission Northwest LLC, FERC NGA Gas Tariff, GTN Tariffs, [6.32 - GT&C, Reservation of Capacity for Expansion Projects, 2.0.0.](#)

⁶⁶ Once GTN has posted capacity as available capacity pursuant to section 6.18.2(c), it may then subject that capacity to an open season bidding process or sell it on a first-come, first-served basis. Gas Transmission Northwest LLC, FERC NGA Gas Tariffs, GTN Tariffs, [6.18.2 - GT&C, Firm Service, 7.0.0.](#)

likewise requires that GTN must post such capacity under section 6.18.2(c) before it may reserve the capacity for a future expansion. These posting requirements are reasonable, as determining whether there is third party interest in the terminating shipper's existing capacity may be helpful to the pipeline in sizing a future expansion project. Accordingly, we conclude that GTN's tariff forecloses its stated intention to immediately reserve such capacity for an expansion project after a shipper elects termination.⁶⁷

29. We likewise disagree with NW Natural's objection that because GTN's proposed provision does not expressly reference section 6.33.7 of the GT&C of GTN's tariff, it is unclear whether that section's protections for unilateral evergreen rights would apply in the event of a fully subscribed expansion project. Section 6.33.7 preserves the ability of shippers with evergreen rights to exercise those rights to extend their contract, and only after a shipper elects termination of those evergreen rights may GTN initiate the ROFR process by issuing a notice to the shipper pursuant to section 6.33. GTN's proposal does not modify or eliminate section 6.33.7, and we do not interpret the lack of an explicit reference to that section in GTN's proposed provision to render it inapplicable in the event that GTN initiates the accelerated ROFR process. Rather, the protections for unilateral evergreen rights set forth in existing section 6.33.7 will continue to apply under GTN's proposal.

30. We find that NW Natural's claim that GTN's proposed provision could require NW Natural to match a 30-year term bid with a 60-year term to retain its existing capacity is unfounded. NW Natural states that its existing contracts are at the maximum rate for capacity from Kingsgate, the northern endpoint of GTN's mainline, to Stanfield, which represents an approximate midpoint on the mainline. NW Natural argues that, to match a maximum rate bid for a 30-year term from Kingsgate to Malin, the southern endpoint of the mainline, GTN would have to agree to a 60-year term in order to retain its capacity. However, section 6.33.6 of GTN's GT&C provides that bids for all or a portion of capacity that is subject to a ROFR are valid only if the original contract path is maintained. Therefore, GTN's tariff precludes the possibility that NW Natural could be required to match a bid for capacity from Kingsgate to Malin in order to retain its capacity from Kingsgate to Stanfield.

31. Regarding NW Natural's contention that GTN's proposed provision contains no data-sharing provisions or mechanisms for evaluating GTN's proposed expansion before it issues an early ROFR notice, we find that this claim raises matters outside the scope of this tariff filing. GTN's proposal includes no such mechanism and NW Natural has not

⁶⁷ We note that GTN stated in its answer that it "is committed to making any necessary tariff modifications beyond those proposed in the instant Tariff Filing should the Commission deem them necessary to ensure that GTN can correctly size its expansion projects." GTN Answer at 9.

cited any prior instance in which the Commission has required expansion ROFR provisions to include such mechanisms.

32. We reject Turlock's argument that GTN has not adequately explained the need for its proposed accelerated ROFR provision. The Commission has previously determined that such provisions allow for pipelines to fully plan and rationalize pending expansion projects,⁶⁸ and GTN has adequately explained that its proposed provision is needed to allow it to properly plan for and size possible future expansions of its pipeline system.⁶⁹

The Commission orders:

The tariff record listed in footnote 1 is accepted subject to the condition that GTN, within 15 days of the date of this order, file to either revise or adequately support its proposal to require shippers to respond to accelerated ROFR notices within 10 business days of the notice.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶⁸ *GTN*, 117 FERC ¶ 61,315 at P 55.

⁶⁹ Transmittal Letter at 2.