125 FERC ¶ 61,401
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 31, 2008

In Reply Refer To:
Egan Hub Storage, LLC
Docket No. RP09-77-000

Egan Hub Storage, LLC
P.O. Box 1642
Houston, TX 77251-1642

Attention: Janice K. Devers, General Manager
Tariffs and Commercial Development

Reference: Order No. 712 Compliance Filing

Dear Ms. Devers:

1. On November 13, 2008, Egan Hub Storage, LLC (Egan Hub) filed tariff sheets[1] proposing numerous modifications and changes, primarily to section 4 of its General Terms & Conditions (GT&C) concerning the procedures for shippers to release their capacity. Egan Hub states that the main purpose of these changes is to comply with the capacity release requirements promulgated by Order No. 712.[2] In addition, Egan Hub states that it is proposing additional modifications and clarifications as a result of a review of its LINK® system. The tariff sheets are accepted, subject to the conditions discussed below, effective January 1, 2009 as requested.

2. Egan Hub proposes to revise its GT&C mainly to comply with Order No. 712. Order No. 712 permits market-based pricing for short-term capacity releases and facilitates asset management arrangements (AMAs) by relaxing the Commission's

[1] *See* Appendix.

[2] *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 73 Fed. Reg. 37,058 (June 30, 2008), FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g*, Order No. 712-A, 73 Fed. Reg. 72,692 (December 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008).

prohibition on tying and on its bidding requirements for certain capacity releases. Egan Hub states that it is complying with the requirement to exempt releases to asset management arrangements from the bidding process. In order to identify these releases, the proposed tariff requires the releasing customer to specify whether the proposed release involves an AMA or a state-mandated retail access program, and if so to provide certain details about the release.[3]

3. Egan Hub proposes several other modifications and clarifications that it does not directly attribute to Order No. 712 but rather to its goal of improving flexibility and opportunities for releasing and replacement shippers. For example, Egan Hub proposed several changes to its tariff provisions concerning capacity release bid evaluation methods. Egan Hub makes several revisions in order to comply with North American Energy Standards Board (NAESB) Wholesale Gas Quadrant (WGQ) Standards, such as allowing the releasing customer to include in its Customer Notice an election not to reveal any minimum conditions to any party other than Egan Hub and describing the rights and methods for the reput of capacity by the releasing shipper to the replacement shipper that the releasing shipper can specify in its Customer Notice, as called for in NAESB WGQ Standard No. 5.4.7. Finally, Egan Hub standardizes several phrases, so that its use of terminology is consistent throughout its tariff.

4. Public notice of Egan Hub's filing was issued on November 17, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[4] Pursuant to Rule 214,[5] all timely filed motions to intervene and any motions to intervene out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Atmos Energy Corporation (Atmos) filed comments and a request for technical conference one day out-of-time. The Commission grants Atmos' late-filed comments and request, as doing so does not delay or disrupt the proceeding or place additional burdens on existing parties. On December 9, 2008, Egan Hub filed an answer. Pursuant to Rule 213,[6] we grant Egan Hub's request for leave to answer.

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[3] Egan Hub has been authorized to charge market-based rates and therefore, does not have maximum tariff rates. Accordingly, those portions of the Commission's regulations in section 284.8(h) that refer to maximum tariff rates are currently inapplicable to Egan Hub.

[4] 18 C.F.R. § 154.210 (2008).

[5] 18 C.F.R. § 385.214 (2008).

[6] *See* 18 C.F.R. §§ 385.213(a)(2), (a)(3) (2008).

5. For the reasons discussed below, the Commission finds that Egan Hub's proposed revisions to section 4 of its GT&C are generally consistent with Order No. 712 and the Commission's capacity releases policies. Accordingly, the Commission accepts Egan Hub's filing subject to conditions.

6. Atmos requests a technical conference. Atmos states that the breadth of the proposed changes and lack of detailed explanation in Egan Hub's transmittal letter, make it unclear how customer rights are being affected by the proposal, and may place customers at risk for the pipeline's subsequent interpretation. Atmos requests that a technical conference be convened to resolve any such confusion. For example, Atmos states that it is unclear whether and to what extent Egan Hub will permit a releasing customer's asset manager to pay the same discounted usage and fuel rates as the pipeline has provided to the releasing customer. Atmos suggests that Egan Hub should clarify (or propose) a policy allowing the asset manager/replacement customer to receive the same discounted usage and fuel rates applicable to the releasing customer, particularly because a general refusal to allow "pass-through" of such discounts would impede asset management transactions, contradicting Order Nos. 712 and 712-A.

7. Egan Hub asks the Commission to reject the request for a technical conference by Atmos. The Commission is not obligated to hold a technical conference, Egan Hub argues, unless "material issues of fact are in dispute that cannot be resolved on the basis of the written record."[7] Egan Hub states that Atmos fails to raise any factual dispute and, further, the request fails to specify any issues at all, except for how the tariff addresses pass-through of discounted commodity and fuel rates. Egan Hub replies that its proposed tariff does not affect this issue, nor does it believe that Order No. 712 mandated any changes. Egan Hub will therefore continue to "deal with the issue of passing-through of discounted or negotiated commodity and fuel rates to replacement customers on a case-by-case basis," which, it states, conforms to "[t]he Commission's long-standing policy."[8]

8. The Commission has held that the usage charge to be paid by the replacement shipper is a matter between the replacement shipper and the pipeline, and the releasing shipper cannot bind the pipeline to accept any particular usage charge from the replacement shipper. Therefore, the pipeline "generally should not be required to give the replacement shipper the same discount" of the usage charge as it gave the releasing

[7] Egan Hub December 19, 2008 Answer at 2 (quoting *El Paso Natural Gas Co.*, 98 FERC ¶ 61,096 (2002)).

[8] *Id*. at 4 (citing *Gulf South Pipeline Company, LP*, unpublished letter order, Docket No. RP96-320-095 (Sept. 24, 2008)).

shipper.[9] In *El Paso*,[10] the Commission explained that "the discount in the usage charge negotiated between the releasing shipper and El Paso is related only to the contract between the releasing shipper and the pipeline and to the transportation services actually performed by El Paso for the releasing shipper under that contract and is not relevant to other contracts and services to other shippers, including replacement shippers." In the contemporaneous order in *Texas Eastern Transmission, LP*, in Docket No. RP09-70-000, the Commission also states that, while pipelines are not subject to a blanket requirement always to give replacement shippers the same usage charge discounts as to the releasing shipper, in determining whether to grant a discount to a replacement shipper pipelines are subject to the Commission's general policy that selective discounts must be given on a not unduly discriminatory basis to similarly situated shippers.[11]

9. As previously discussed, Egan Hub has been authorized by the Commission to charge market-based rates and as such, unlike Texas Eastern, does not, strictly speaking, offer or charge discounted usage rates. Egan Hub is correct that Order No. 712 did not modify the Commission's existing policy concerning the determination of a replacement shipper's usage charges. However, Order No. 712's modification of the Commission's regulations to facilitate AMAs does raise the issues of (1) whether the Commission should find that it would be unduly discriminatory for a pipeline to deny an asset manager replacement customer the same usage charge as provided to the releasing customer, at least during those periods when the asset manager is using the released capacity to satisfy the delivery or purchase obligation contained in the release to the asset manager, [12] and (2) if so, whether Egan Hub should be required to include in its tariff a provision concerning the circumstances under which it would provide similar usage charges to an asset manager replacement customer, or (3) whether the circumstances of individual releases to asset managers are sufficiently case-specific that pipelines should be allowed to decide whether to grant the same usage charge to the asset manager/replacement customer on a case-by-case basis, subject to a general requirement of no undue discrimination. A further issue is whether the fact Egan Hub has market-based rates should affect the Commission's resolution of these issues in this case. Before deciding these issues, the Commission will give the parties an opportunity to comment on

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[9] *El Paso Natural Gas Co*., 61 FERC ¶ 61,333, at 62,309 (1992) (*El Paso*).

[10] *Id.* at 62,309-10.

[11] *See Williston Basin Interstate Pipeline Co*., 85 FERC ¶ 61, 247, at 62,028-30 (1998), and cases cited, for a discussion of this policy.

[12] *See* § 284.8(h)(3) of the Commission's regulations, as revised by Order No. 712-A, defining a release to an asset manager.

these issues. In its comments, Egan Hub should provide a general description of how it intends to determine whether to grant the same usage charge to asset manager replacement customers as releasing customers and what factors it will consider. Initial comments from all parties will be due 20 days from the date of this order and reply comments will be due 30 days from the date of this order. The Commission finds that the parties have not shown the need for further procedures to address any other issues in this proceeding.

10. The Commission accepts the tariff sheets listed in the Appendix to this order to be effective on January 1, 2009, subject to the Commission's further consideration of the issues upon which it has requested the parties to file comments.

11. Initial comments on the issue of pass through of a releasing customer's usage charge to its asset manager replacement customer are due 20 days from the date of this order. Reply comments are due 30 days from the date of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Egan Hub Storage, LLC
FERC Gas Tariff, First Revised Volume No. 1
Tariff Sheets to be Effective January 1, 2009

Fourth Revised Sheet No. 111
Fourth Revised Sheet No. 112
First Revised Sheet No. 113
Second Revised Sheet No. 114
Second Revised Sheet No. 115
Third Revised Sheet No. 116
Fifth Revised Sheet No. 117
Second Revised Sheet No. 118
Original Sheet No. 118A
Second Revised Sheet No. 119
First Revised Sheet No. 120
Third Revised Sheet No. 121
Second Revised Sheet No. 122
Second Revised Sheet No. 123
Third Revised Sheet No. 124
Second Revised Sheet No. 125A
Second Revised Sheet No. 156