126 FERC ¶ 61,178
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 26, 2009

In Reply Refer To:
Quest Pipelines (KPC)
Docket No. RP09-258-000

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Attention: Matthew T. Rick
Attorney for Quest Pipelines (KPC)

Reference: Compliance Filing

Dear Mr. Rick:

1. On January 23, 2009, Quest Pipelines (KPC) (Quest) filed revised tariff sheets[1] proposing modifications to its tariff to comply with the capacity release requirements promulgated by Order Nos. 712 and 712-A.[2] In addition, Quest proposed tariff sheets containing minor tariff revisions to reflect non-substantive housekeeping revisions. The tariff sheets listed in the Appendix are accepted effective March 1, 2009, subject to further modifications as discussed below.

2. Notice of Quest's filing was issued on January 29, 2009. Interventions and protests were due February 4, 2009, as provided in section 154.210 of the Commission's

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[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).

regulations.[3] Pursuant to Rule 214,[4] all timely-filed motions to intervene and any motions 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 this proceeding or place additional burdens on existing parties. Atmos Energy Corporation (Atmos) filed comments.

3. Atmos asks the Commission to require Quest to include provisions allowing the "flow-through" of discounts from releasing shippers to their asset managers. For example, Atmos states that it is unclear whether and to what extent Quest will permit a releasing shipper's asset manager to pay the same discounted usage and fuel rates that the pipeline provided to the releasing shipper. Atmos suggests that Quest should clarify (or propose) a policy allowing the asset manager/replacement shipper to receive the same discounted usage and fuel rates applicable to the releasing shipper, particularly since a general refusal to allow "pass-through" of such discounts would impede asset management transactions, contrary to Order Nos. 712 and 712-A.

4. For the reasons discussed below, the Commission finds that Quest's proposed tariff revisions are generally consistent with Order Nos. 712 and 712-A and the Commission's capacity release policies. Accordingly, the Commission accepts Quest's filing, subject to conditions.

5. The issue of whether a pipeline must provide an asset manager/replacement shipper the same discounted or negotiated usage and fuel rates as it has given the releasing shipper only arises to the extent that the pipeline has provided such discounts or negotiated rates to the releasing shipper. The Commission does not permit pipelines to offer discounts below their minimum rates, which are based on the variable costs allocated to the service to which the rate applies.[5] Therefore, a pipeline such as Quest using a Straight-Fixed Variable (SFV) rate design cannot discount its usage charges, because those usage charges only contain variable costs. The Commission has also held that pipelines may not discount their fuel retention rates, because fuel and lost and unaccounted for (LAUF) gas are variable costs.[6] Thus, the issue of the "flow-through" of discounted usage and fuel charges to an asset manager/replacement shipper does not arise on Quest's system. However, pipelines with negotiated rate authority may enter into negotiated rate agreements which are not bounded by their tariff maximum and minimum

[3] 18 C.F.R. § 154.210 (2008).

[4] 18 C.F.R. § 385.214 (2008).

[5] 18 C.F.R. § 284.10(c)(4)(ii) and (5)(ii)(A) (2008).

[6] *Mississippi River Transmission Corp.,* 98 FERC ¶ 61,119 (2002).

rates. Quest has negotiated rate authority, and thus does have authority to enter into negotiated rate agreements providing for fuel retention rates (and usage charges) that vary from those in its tariff.

6. 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 that it gave the releasing shipper.[7] In *El Paso*, 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.[8]

7. While pipelines are not subject to a blanket requirement that they must give replacement shippers the same usage charge discounts (or negotiated usage and fuel rates) given to the releasing 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.[9] These same policies apply to negotiated usage and fuel charges.

8. Order No. 712 did not modify the Commission's existing policy concerning the pipeline's offering usage charge discounts to replacement shippers.[10] Nor did Order No. 712 address any issue concerning the offering of negotiated usage or fuel and LAUF charges to replacement shippers. However, Order No. 712's modification of the Commission's regulations to facilitate AMAs does raise the following issues:

(1) Whether it would be unduly discriminatory for Quest to deny an asset manager replacement shipper the same negotiated usage and fuel and LAUF charge that was

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

[8] *Id.*

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

[10] *Texas Eastern Transmission, LP*, 125 FERC ¶ 61,396, at P 21 (2008).

provided to the releasing shipper, at least during 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.[11]

(2) If a negotiated rate agreement between Quest and the releasing shipper provides that the discount or negotiated rate is only applicable at certain specified receipt or delivery points as permitted by Commission policy,[12] should the asset manager/ replacement shipper's use of those points be considered to be within the usage contemplated by Quest when it granted the negotiated rate to the releasing shipper? For this reason, should Quest be required to offer the same negotiated rate to the asset manager/replacement shipper at those points, but not at any other point?

(3) Whether Quest should be required to include in its tariff a provision concerning the circumstances under which it would provide similar negotiated usage and fuel charges to an asset manager/replacement shipper.

(4) Whether the circumstances of individual releases to asset managers are sufficiently case-specific that pipelines should be allowed to decide whether to grant negotiated usage and fuel and LAUF charges to the asset manager/replacement shipper on a case-by-case basis, subject to a general requirement of no undue discrimination.

9. Before deciding these issues, the Commission requires additional information from Quest, and will give the parties an opportunity to provide supplemental comments. In this regard, the Commission directs Quest to file the following information in a compliance filing within 30 days of the date of this order: (1) how many of Quest's existing firm shipper contracts include negotiated usage and fuel rates, (2) how many of any such contracts limit the negotiated rate to specific points, (3) a general description of how Quest intends to determine whether to grant negotiated usage and fuel charges to

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

[12] *Williston Basin Interstate Pipeline Co.*, 110 FERC ¶ 61,210 at P 5 and 22, *reh'g denied*, 112 FERC ¶ 61,038, at P 19 (2005).

asset manager/replacement shippers, and (4) what factors it will consider in determining whether to grant such negotiated rates. Parties may file additional comments within 20 days of the date of Quest's compliance filing.

By direction of the Commission. Commissioner Kelliher is not participating.

Kimberly D. Bose,
Secretary.

Appendix

Quest Pipelines (KPC)

FERC Gas Tariff, Fourth Revised Volume No. 1
Tariff Sheets to be Effective March 1, 2009, Subject to Conditions

Title Page
Second Revised Sheet No. 21
First Revised Sheet No. 23
First Revised Sheet No. 24
Second Revised Sheet No. 37
First Revised Sheet No. 116
First Revised Sheet No. 119
First Revised Sheet No. 129
First Revised Sheet No. 130
First Revised Sheet No. 131
First Revised Sheet No. 132
First Revised Sheet No. 141
First Revised Sheet No. 142
First Revised Sheet No. 143
First Revised Sheet No. 166
First Revised Sheet No. 167
First Revised Sheet No. 169
First Revised Sheet No. 170
First Revised Sheet No. 171