

126 FERC ¶ 61,282
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 27, 2009

In Reply Refer To:
Eastern Shore Natural Gas Company
Docket Nos. RP09-337-000 and RP09-337-001

Eastern Shore Natural Gas Company
1110 Forrest Avenue, Suite 201
Dover, DE 19904

Attention: Amanda Chi
Manager of Rates and Regulatory Affairs

Reference: Order No. 712 Compliance Filing

Dear Ms. Chi:

1. On February 2, 2009, Eastern Shore Natural Gas Company (Eastern Shore) filed revised tariff sheets proposing modifications to its tariff to comply with the capacity release requirements promulgated by Order Nos. 712 and 712-A.¹ In addition Eastern Shore proposes to revise and reorganize two sections of its General Terms and Conditions (GT&C) to improve the logical flow of information. On February 26, 2009, Eastern Shore filed amended tariff sheets, making various clarifications and corrections in certain parts of the tariff sheets included in the February 2 filing.² The tariff sheets listed in Appendix A are accepted effective March 1, 2009 as proposed, while those in Appendix B are rejected as moot.

¹ *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 (Dec. 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008) (Order No. 712).

² Docket No. RP09-337-001

2. In Order Nos. 712 and 712-A, the Commission removed the maximum rate ceiling on capacity releases of one year or less, which take effect within one year after the pipeline is notified of the release. The Commission also modified its regulations in order to facilitate asset management arrangements (AMAs) by relaxing the Commission's prohibition on tying and on its bidding requirements for certain capacity releases. The Commission further clarified that its prohibition on tying does not apply to conditions associated with gas inventory held in storage for releases of firm storage capacity. Finally, the Commission waived its prohibition on tying and bidding requirements for capacity release made as part of a state-approved retail access program.

3. In its February 2 filing, as amended on February 26 in response to a protest discussed below, Eastern Shore proposes several changes to the capacity release provisions in Section 29 of the General Terms & Conditions (GT&C) of its tariff to reflect the various changes in the capacity release regulations made by Order Nos. 712 and 712-A. In addition, Eastern Shore also states that it proposes to rearrange Section 29 to improve the logical flow of information contained therein. Finally, Eastern Shore has revised Section 1 (Definitions) of its GT&C to move a number of definitions previously found in Section 29 in addition to adding or revising a number of other definitions.

4. Public notice of Eastern Shore's February 2 filing in Docket No. RP09-337-000 was issued on February 4, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2008). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2008), 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. Easton Utilities Commission (Easton) filed a late protest of Eastern Shore's February 2 filing. Public notice of Eastern Shore's February 26 filing in Docket No. RP09-337-001 was issued on March 3, 2009 with comments due by March 10, 2009. No protests or adverse comments on that filing were filed.

5. The Commission finds that Eastern Shore's proposed revised tariff sheets are generally consistent with the Commission's capacity release policies and Order Nos. 712 and 712-A, and are otherwise just and reasonable. Accordingly, the Commission accepts Eastern Shore's filing, as amended, effective March 1, 2009 as proposed.

6. Easton asserts that Eastern Shore's tariff revisions in the February 2 filing do not incorporate language from Order No. 712-A that exempts short-term rollover releases (i.e., releases for a period of thirty-one days or less that are made in successive months to the same replacement shipper) from bidding requirements when such releases are made to a qualified asset manager or a participant in a state-regulated retail access program.

7. In its February 26 amended filing, Eastern Shore addresses this protest by revising Section 29(h)(2) to provide:

When a release of capacity for thirty-one (31) Days or less is exempt from bidding requirements under Section 29(h)(1), a Firm Shipper may not roll-over, extend, or in any way continue the release to the same Replacement Shipper using the 31 days or less bidding exemption until 28 days after the first release period has ended. The 28-day hiatus does not apply to any re-release to the same Replacement Shipper that is posted for bidding or that qualifies for any of the other exemptions from bidding in Section 29(h)(1).

We find that the revised tariff sheet is consistent with Order Nos. 712 and 712-A.

8. Easton asserts that in Section 29(h)(3) of the GT&C Eastern Shore proposes language that defines a release to an asset manager that is exempt from bidding as a release where “the Releasing Shipper may, on any day during a minimum period of five (5) months out of each twelve-month period of the release, call upon the Replacement Shipper to (i) deliver to the Releasing Shipper a volume of gas up to *one-percent* of the daily contract demand of the released transportation capacity . . .” (emphasis added).³ Easton observes that the language of Section 284.8(h)(3) of the Commission’s regulations defines a qualifying asset manager as being committed to “deliver to, or purchase from, the releasing shipper a volume of gas *up to 100 percent* of the daily contract demand.” Easton requests that the tariff be updated to properly conform to Order No. 712 and the Commission’s regulations. In its February 26 amended filing, Eastern Shore addresses this protest by revising Section 29(h)(3) to change “one-percent” to “one-hundred percent.”

9. We find that the revised tariff language corresponds to Section 284(h)(3) of the Commission’s regulations.

10. Easton asserts that in its February 2 filing, Eastern Shore failed to revise its tariff to reflect the removal of the price cap on short-term capacity releases by Order Nos. 712 and 712-A. Easton also identifies a potential conflict in Section 29(d)(4) in the GT&C relating to the release of capacity on a volumetric basis which appears to preclude bids that would exceed the maximum tariff rate for short-term releases.

11. In its February 26 filing, Eastern Shore revised Section 29(d)(4) of its GT&C to include:

The rate charged the Replacement Shipper for a release of capacity may not exceed the applicable maximum rate, except that no rate limitation applies to the release of capacity for a period of one year or less if the release is to take effect on or before one year from the date on which the pipeline is notified of the release. Payments or

³ See Sub Second Revised Sheet No. 193F.

other consideration exchanged between the Releasing and Replacement Shippers in a release to an asset manager as defined in Section 29(h)(3) are not subject to the maximum rate.

We find that the revised tariff sheets are consistent with Order Nos. 712 and 712-A.

12. Easton notes that Eastern Shore's filing does not meet the filing criteria laid out in the regulations. Specifically, it states that in tariff amendments: "New numbers and text must be marked by either highlight, background shading, bold, or underline. Deleted text and numbers must be indicated by strike-through."⁴ Eastern Shore's filing displays deleted text in balloons on the margin or at the bottom of the pages. Easton requests that Eastern Shore be required hereafter to file its revised tariff sheets with the Commission in the appropriate form.

13. The Commission reminds Eastern Shore that it must conform to the regulations when formatting future filings.

By the direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: Public File
All Parties

⁴ 18 C.F.R. § 154.201(a) (2008)

Appendix A

Eastern Shore Natural Gas Company

FERC Gas Tariff, Second Revised Volume No. 1
Tariff Sheets to be Effective March 1, 2009

Twenty-Second Revised Sheet No. 4

Twenty-Second Revised Sheet No. 5

Second Revised Sheet No. 92

First Revised Sheet No. 93

First Revised Sheet No. 94

First Revised Sheet No. 95

First Revised Sheet No. 96

Second Revised Sheet No. 97

Second Revised Sheet No. 98

Second Revised Sheet No. 99

First Revised Sheet No. 99A

Original Sheet No. 99B

Second Revised Sheet No. 191

Sub First Revised Sheet No. 192

Sub Fourth Revised Sheet No. 193

Sub Second Revised Sheet No. 193A

Sub Second Revised Sheet No. 193B

Second Revised Sheet No. 193C

Second Revised Sheet No. 193D

Sub Second Revised Sheet No. 193E

Sub Second Revised Sheet No. 193F

Sub Original Sheet No. 193G

Original Sheet No. 193H

First Revised Sheet No. 194

First Revised Sheet No. 194A

Second Revised Sheet No. 195

Third Revised Sheet No. 196

Third Revised Sheet No. 197

Fourth Revised Sheet No. 198

Fourth Revised Sheet No. 199

Third Revised Sheet No. 200

First Revised Sheet No. 201

First Revised Sheet No. 202

First Revised Sheet No. 203

First Revised Sheet No. 204

Second Revised Sheet No. 205

Appendix B

Eastern Shore Natural Gas Company

FERC Gas Tariff, Second Revised Volume No. 1
Tariff Sheets Rejected as Moot

First Revised Sheet No. 192
Fourth Revised Sheet No. 193
Second Revised Sheet No. 193A
Second Revised Sheet No. 193B
Second Revised Sheet No. 193E
Second Revised Sheet No. 193F
Original Sheet No. 193G