

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 31, 2006

In Reply Refer To:
Trunkline Gas Company, LLC
Docket No. RP06-413-000

Trunkline Gas Company, LLC
5444 Westheimer Road
Houston, TX 77056-5306

Attention: William W. Grygar
Rates and Regulatory Affairs

Reference: Revisions to Bid Evaluation and Right of First Refusal Provisions

Dear Mr. Grygar:

1. On June 30, 2006, Trunkline Gas Company, LLC (Trunkline) filed tariff sheets¹ to remove the ten-year term limitation on the calculation of the greatest net present value of a bid for service and to clarify its tariff provisions concerning existing long-term firm shippers' exercise of their right of first refusal (ROFR) to extend expiring contracts. Trunkline's proposal includes clarification of the procedures for notification, posting, bidding and matching provisions in Sections 10.3 and 11 of its General Terms and Conditions (GT&C). A sole protest was filed, the details of which are discussed below. Trunkline's revised tariff sheets are accepted, effective August 1, 2006, as proposed.

2. Trunkline states that its proposed revision to remove the ten-year term limitation in the calculation of the net present value of a bid for service is in response to the Commission's Order on Remand in Docket No. RM98-10-011,² in which the Commission permitted pipelines to remove the cap on the term that existing shippers had to match in order to retain their capacity. Trunkline asserts that, by removing the term

¹Second Revised Sheet No. 267, Original Sheet Nos. 269A and 269B, and Third Revised Sheet No. 270 to FERC Gas Tariff, Third Revised Volume No. 1.

² *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, 101 FERC ¶ 61,127 (2002) (Order on Remand).

matching cap, this allows the competitive marketplace to influence the term a customer is willing to bid and results in the capacity being allocated to the shipper who values it most. The revised ROFR provisions in Section 11 of the GT&C clarify the procedures for initiating the ROFR process, the posting of available capacity, bidding for such capacity, evaluation of the bids and matching procedures.

3. Public notice of the instant filing was issued on July 3, 2006. Interventions and protests were due as provided in section 154.210, 18 C.F.R. § 154.2210 (2005), of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2005)), all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted. Ameren³ filed a protest. Trunkline filed an answer to the protest. The Commission's Rules of Practice and Procedure generally prohibit answers to protests or answers.⁴ However, in this case, the Commission will accept Trunkline's answer because it provides information that may assist the Commission in its decision-making process.

4. Ameren claims that the tariff change removing the ten-year term matching cap from the calculation of net present value filed by Trunkline cannot be justified on the basis stated by Trunkline. Ameren further argues that Trunkline's ten-year term is sufficiently long to be reasonable for purposes of calculating net present value. Ameren states that allowing a more extended term (such as twenty years) raises the competitive market concerns expressed by the court in *United Distribution Companies v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), cert. denied, 117 S. Ct. 1723 (1997) (*United Distribution*). Ameren states that the *United Distribution* court questioned the sufficiency of a twenty-year cap on contract term to protect existing customers, stating that the twenty-year term could be used as a surrogate for price, leading to longer terms than would exist in a truly competitive environment. Ameren argues that extended contract terms greater than ten years, as it claims would be permitted by Trunkline's revised tariff, will force utilities to match unreasonably long contract terms in order to retain critical pipeline capacity.

5. On July 18, 2006 Trunkline filed an answer to Ameren's protest. Trunkline states that the sole protest of Ameren is an impermissible collateral attack on the Commission's rulemaking in Docket No. RM98-10-011⁵ removing the term matching cap, which has been affirmed by the D.C. Circuit.⁶ Trunkline asserts that it demonstrated that the

³ Ameren consists of Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP.

⁴ 18 C.F.R. § 385.213(a)(2) (2005).

⁵ *Regulation of Short-Term, Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, 101 FERC ¶ 61,127 (2002) (Order on Remand); *reh'g*, 106 FERC ¶ 61,088 (2004).

⁶ *American Gas Association v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

proposed changes are consistent with the Commission's Order on Remand. Trunkline also asserts that, over the last few years, the Commission has approved the filings of numerous pipelines to remove term matching caps from their ROFR procedures.⁷

6. The Commission agrees with Trunkline that Ameren's protest constitutes an impermissible collateral attack on Commission rulemaking and therefore rejects the protest. Ameren's protest, in advocating that Trunkline be required to maintain its ten-year term matching cap, is essentially a protest against the outcomes of the rulemaking in Docket No. RM98-10-011, which the D.C. Circuit has affirmed. Ameren had the opportunity to raise its concerns in the proceedings leading to the Order on Remand and Order on Rehearing in Docket No. RM98-10-011 and cannot now raise those concerns in the instant case. Additionally, as we found in the Order on Remand and as the court affirmed, "other regulatory constraints adequately limit [the pipeline's] ability, as well as any incentive, to induce lengthy contracts,' . . . [so that] no term cap is required to protect existing captive customers exercising their ROFR from pipeline market power."⁸

7. Trunkline's filing is consistent with the Commission's policy permitting the elimination of the term matching cap for the ROFR. The Commission has previously approved similar provisions⁹ in other pipelines' tariffs. Accordingly, Trunkline's revised tariff sheets, as discussed in this order, are accepted, effective August 1, 2006.

By direction of the Commission. Commissioner Wellinghoff voted present.

Magalie R. Salas,
Secretary.

⁷ Trunkline cites the following examples: *Texas Eastern Transmission, L.P.*, 113 FERC ¶ 61,307 (2005); *Maritimes and Northeast Pipeline, L.L.C.*, Docket No. RP06-116-000, Letter Order issued December 26, 2005; *Algonquin Gas Transmission L.L.C.*, Docket No. RP06-114-000, Letter Order issued December 23, 2005; *East Tennessee Natural Gas, L.L.C.*, Docket No. RP06-112-000, Letter Order Issued December 20, 2005; *Iroquois Gas Transmission System, L.P.*, Docket No. RP05-155-000, Letter Order issued February 9, 2005; *Center Point Energy Gas Transmission Co.*, 112 FERC ¶ 61,223 (2005); *Destin Pipeline Co., L.L.C.*, Docket No. RP05-123-000, Letter Order issued January 6, 2005; *Dominion Transmission Inc.*, 106 FERC ¶ 61,257 (2004).

⁸ Order on Remand, 101 FERC ¶ 61,127 at P 15, quoting *Process Gas Consumers Group v. FERC*, 292 F.3d 831, 837 (D.C. Cir. 2002) (*PGC*).

⁹ *Texas Eastern Transmission L.P.*, 113 FERC ¶ 61,307 (2005); *Center Point Energy Gas Transmission Co.*, 112 FERC ¶ 61,223 (2005); *Calypso U.S. Pipeline, L.L.C.*, 110 FERC ¶ 61,157 (2005).