

123 FERC ¶ 61,105
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Freebird Gas Storage, LLC

Docket Nos. RP08-304-000
RP08-304-001

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS

(Issued May 1, 2008)

1. On April 1, 2008, Freebird Gas Storage, LLC (Freebird) filed a completely revised Volume No. 1 in Docket No. RP08-304-000, to revise its tariff to conform to the standard business practices of its new parent company, Enstor, Inc. (Enstor); to correct, update and/or remove certain tariff provisions and to make other minor "housekeeping" changes to its tariff.¹ Freebird proposes an effective date of May 1, 2008 for the tendered tariff sheets. The Commission accepts and suspends the tariff sheets, to be effective the earlier of October 1, 2008, or on a date set by a subsequent Commission order, subject to further review.

Proposal

2. On December 19, 2007, Enstor acquired all of the ownership interests in Freebird Assets, Inc., which was the owner of all of the ownership interests in Freebird. Freebird states that the purpose of the instant filing is to revise various parts of its tariff, including the rate statements, rate schedules, General Terms and Conditions (GT&C), and Forms of Service Agreements to conform to Enstor's standard business practices, to correct, update and/or remove certain tariff provisions, and to make minor "housekeeping" changes to the tariff.

3. Freebird states that the proposed major substantive changes to its tariff include modifications to: (1) more accurately reflect when fuel charges may be imposed; (2) remove the Interruptible Imbalance Trading Service Rate Schedule; (3) revise its treatment of retained gas quantities; (4) revise its method for allocating firm capacity;

¹Freebird's FERC Gas Tariff, First Revised Volume No. 1. On April 4, 2008, Freebird filed, in Docket No. RP08-304-001, Original Sheet No. 3, to include a hardcopy of its system map in its revised tariff.

(5) update its credit terms; (6) clarify certain capacity release provisions; (7) revise certain nomination and scheduling provisions; (8) revise the risk of loss allocation; (9) request exemption from the Standards of Conduct rules; (10) clarify its service termination provisions; and (11) provide a no-fault customer termination option. Freebird proposes an effective date of May 1, 2008.

Notice, Interventions, Comments and Protests

4. Public notice of the filing tendered in Docket No. RP08-304-000 was issued on April 3, 2008. Public notice of the filing tendered in Docket No. RP08-304-001 was issued on April 8, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2007)), all timely filed motions to intervene and any 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. No protests or adverse comments were filed in either docket.

Discussion

5. Freebird proposed numerous and significant tariff changes that will affect virtually all aspects of its service. Freebird proposes numerous changes to its nomination, scheduling, capacity release and creditworthiness provisions. For example, section 8.2(b) has been revised to state that intraday nominations for firm storage service will be given priority over scheduled and flowing interruptible storage service. This section has also been revised to state that Freebird has the right to prorate a shipper's Maximum Daily Injection Quantity or Maximum Daily Withdrawal Quantity for a nomination that takes effect after the beginning of a gas day. Sections 8.1 and 8.2(e) have been amended to as to proper notice of all evening and intraday nominations. Section 8.5 of the GT&C has been revised to provide that a nomination will not become effective until Freebird has confirmed the nominated volumes with the shipper's transporting pipeline. Section 8.6 of the GT&C has been revised to require each shipper to make its nominations in good faith. However, Freebird did not provide the data necessary to assess whether these and other proposed changes are just and reasonable and conform to each of the North American Energy Standards Board's business standards that the Commission requires pipeline tariffs to include by reference or verbatim.

6. Further, Freebird proposes numerous changes to its tariff provisions providing customers with the ability to manage imbalances. Freebird is proposing to remove the Interruptible Imbalance Trading Service (IBTS) Rate Schedule from its tariff. Freebird added section 8.8, Inventory Management, to the GT&C of its tariff to address those situations in which a proper nomination was made but neither Freebird nor the shipper was able to deliver or receive, as applicable, the nominated quantity. Freebird states that this situation would typically create an imbalance, and that its proposal would avoid this

problem by implementing procedures to enable the parties to avoid such imbalances by, for example, giving the shipper the opportunity to enter into corresponding transactions to handle volumes that would have otherwise become imbalances. Freebird did not provide adequate data to evaluate whether these proposals conform to the requirements of Order No. 637.²

7. Another Freebird proposal that requires additional explanation and support is its exit fee for contracts that have not gone into service. Section 24, Shipper Termination Option, provides each of Freebird's hub service customers with the right to terminate, without cause, one or more outstanding Hub Service Agreements at any time before the "Beginning Date of Service" as stated in the relevant Hub Service Agreements. The cost to the terminating customer will be the cost to preserve for Freebird the economic equivalent of any payment, delivery, or service under the designated service agreement that would, but for the early termination, have been required of the parties after the early termination. In addition to this payment, the customer will owe to Freebird a surcharge equal to \$0.05 per Dth of its Maximum Storage Quantity, Maximum Park Quantity, or Maximum Loan Quantity, as applicable, in respect of the designated service agreement, to defer the costs of Freebird's administration and execution risk associated with the termination and retrading of the service agreement.

8. The Commission requires additional information on these proposals and must give the proposals further review in order to determine whether they are just and reasonable and in accordance with Commission precedent, policies and regulations. Staff is directed to issue a data request on these and any other unsupported proposals within 15 days of the date of this order.

Suspension

9. Based upon a review of the filing, the Commission finds that the proposed tariff sheets tendered in the instant dockets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful.

² *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,294 (2000); *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099 (2000); *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000); *aff'd in part and remanded in part sub nom. Interstate Natural Gas Association of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002); *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Association v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

Accordingly, the Commission shall accept the tariff sheets listed in footnote 1 and suspend their effectiveness for the period set forth below, subject to the conditions set forth in this order.

10. The Commission's policy regarding suspensions is that tariff filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.³ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.⁴ Here, the Commission will exercise its discretion to accept and suspend the tariff sheets listed in footnote 1, to become effective the earlier of October 1, 2008, or on a date set by a subsequent Commission order, subject to further review.

The Commission orders:

The tariff sheets listed in footnote 1 are accepted and suspended, to become effective the earlier of October 1, 2008, or on a date set by a subsequent Commission order, subject to further review.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

⁴ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).