125 FERC ¶ 61,399
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 31, 2008

In Reply Refer To:
Maritimes & Northeast Pipeline, L.L.C.
Docket No. RP09-73-000

Maritimes & Northeast Pipeline, L.L.C.
890 Winter Street, Suite 300
Waltham, MA 02451

Attention: Joseph F. McHugh, Director
Rates & Regulatory Affairs

Reference: Order No. 712 Compliance Filing

Dear Mr. McHugh:

1. On November 13, 2008, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) filed tariff sheets[1] proposing numerous modifications and changes, primarily to section 9 of its General Terms & Conditions (GT&C) concerning the procedures for shippers to release their capacity. Maritimes states that the main purpose of these changes is to comply with the capacity release requirements promulgated by Order No. 712.[2] In addition, Maritimes 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 revisions discussed below, effective January 1, 2009 as requested.

2. Maritimes proposes to revise its G&TC mainly to comply with Order No. 712. Order No. 712 permits market-based pricing for short-term capacity releases and

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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).

facilitates asset management arrangements (AMAs) by relaxing the Commission's prohibition on tying and on its bidding requirements for certain capacity releases. Maritimes proposes several changes to GT&C section 9 in order to provide that releases of one-year or less are not subject to the rate cap. In addition, proposed GT&C section 9.7(c) states that such short-term releases will, therefore, not be subject to refund. Maritimes also 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. Maritimes 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, Maritimes proposed several changes to its tariff provisions concerning capacity release bid evaluation methods. Maritimes 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 Maritimes 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, Maritimes standardizes several phrases, so that its use of terminology is consistent throughout its tariff.

4. Public notice of Maritimes' filing was issued on November 17, 2008. Interventions and protests were due November 25, 2008, as provided in section 154.210 of the Commission's regulations.[3] Pursuant to Rule 214,[4] all timely filed motions to intervene and any motions to intervene out-of-time before the issuance date of this order are granted. Indicated Shippers[5] filed a limited protest. On December 9, 2008, Maritimes filed an answer. Pursuant to Rule 213,[6] we grant Maritimes' request for leave to answer.

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[3] 18 C.F.R. § 154.210 (2008).

[4] 18 C.F.R. § 385.214 (2008).

[5] In this proceeding, the Indicated Shippers are BP Canada Energy Marketing Corp., BP Energy Company, and Hess Corporation.

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

5. For the reasons discussed below, the Commission finds that Maritimes' proposed revisions to section 9 of its GT&C are generally consistent with Order No. 712 and the Commission's capacity releases policies. Accordingly, the Commission accepts Maritimes' filing subject to conditions.

6. Maritimes proposes various tariff revisions to implement Order No. 712's removal of the price cap for short term releases of one year or less. These changes include adding a GT&C section 9.7(c), which would deem the rate paid by a replacement shipper for a short-term release to be a final rate and not subject to refund.[7]

7. Indicated Shippers protest, asserting that a replacement shipper paying a rate equal to or less than the applicable maximum rate for a short-term release should be eligible for refunds, where the pipeline's maximum rate is in effect subject to refund and the Commission requires refunds. Indicated Shippers assert that Order No. 712, unlike Order No. 637,[8] did not address whether rates paid by replacement shippers for short-term releases would be treated as final rates not subject to refund. Indicated Shippers state that it would be unduly discriminatory to provide the refund to the releasing shipper rather than to the replacement shipper. Indicated Shippers state that if the Commission allows this part of Maritimes' proposal, it should consider this policy issue as part of a generic proceeding. Alternatively, Maritimes should clarify that releasing shippers will receive any refunds related to the Commission finding the applicable maximum rate to be unjust and unreasonable even if the shipper releases capacity for a short term.

8. Maritimes characterizes the protest of Indicated Shippers as a collateral attack on Order No. 712. In removing the rate cap on short-term capacity release, Maritimes contends, Order No. 712 also removed the replacement shipper's entitlement to refunds, because replacement shippers "could not have been paying a rate ultimately determined to be above a just and reasonable cost-based maximum rate."[9]

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[7] Proposed GT&C section 9.7(c), Maritimes Tariff, Fourth Revised Sheet No. 258.

[8] *See Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *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 Ass'n 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 Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

[9] Maritimes December 9, 2008 Answer at 4.

9. Indicated Shippers misunderstand Order No. 712. In Order No. 712, the Commission eliminated the price ceiling for short-term capacity release transactions of one year or less in order to allow the prices of short-term capacity release transactions to reflect short-term variations in the market value of that capacity. Accordingly, a capacity release transaction of one year or less has a market-based rate, instead of the regulated cost-based rate. Because the pipeline's maximum rates do not apply to short-term capacity release transactions, replacement shippers are not entitled to any refunds when the Commission finds that the maximum rates proposed by a pipeline in a section 4 rate case are too high.[10] As Order No. 712 stated, short-term capacity release rates will be presumed just and reasonable, and treated similarly to how the Commission treats market-based or negotiated rates.[11] Therefore, Maritimes' proposal to deem rates paid by replacement shippers for terms of one year or less to be final and not subject to refund is consistent with Order No. 712. However, a releasing shipper paying a recourse rate higher than the maximum just and reasonable rate determined in a rate case would be eligible for refunds, because Order No. 712 did not remove any maximum rates for the pipeline's sale of its own capacity.

10. Maritimes made the instant filing after the issuance of Order No. 712, but before the issuance of Order No. 712-A. Among other things, Order No. 712-A revised the regulations adopted by Order No. 712 so that the lifting of the price cap for short-term releases only applies to releases that take effect within one year of the date the pipeline is notified of the release. Maritimes' proposed tariff revisions in the instant filing to implement Order No. 712 do not reflect the Order No. 712-A limitation on the lifting of the price cap for short-term releases. Accordingly, in its filing to comply with this order, Maritimes must revise GT&C section 9 as necessary to comply with this aspect of Order No. 712-A. In addition, it may include in that compliance filing any other tariff revisions it finds necessary to comply with Order No. 712-A.

11. The Commission accepts the tariff sheets listed in the Appendix to this order to be effective on January 1, 2009, subject to Maritimes filing revised tariff sheets as discussed above within 20 days of the date of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[10] *See Wyoming Interstate Company, Ltd.*, 92 FERC ¶ 61,198 (2000).

[11] Order No. 712 at P 30-31.

Appendix

Maritimes & Northeast Pipeline, L.L.C.
FERC Gas Tariff, First Revised Volume No. 1
Tariff Sheets to be Effective January 1, 2009

Fourth Revised Sheet No. 246
Fourth Revised Sheet No. 247
Seventh Revised Sheet No. 248
Fourth Revised Sheet No. 249
Fourth Revised Sheet No. 249A
Fifth Revised Sheet No. 250
Fourth Revised Sheet No. 251
Fifth Revised Sheet No. 252
Sixth Revised Sheet No. 253
Second Revised Sheet No. 253A
Fifth Revised Sheet No. 254
Second Revised Sheet No. 255
First Revised Sheet No. 256B
Third Revised Sheet No. 256D
Fourth Revised Sheet No. 257
Fourth Revised Sheet No. 258
Third Revised Sheet No. 259
Fifth Revised Sheet No. 259A
Fourth Revised Sheet No. 259B
Sixth Revised Sheet No. 307