125 FERC ¶ 61,397
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 31, 2008

In Reply Refer To:
Saltville Gas Storage Company L.L.C.
Docket No. RP09-71-000

Saltville Gas Storage Company L.L.C.
P.O. Box 1642
Houston, TX 77251-1642

Attention: Janice K. Devers, General Manager
Tariffs and Commercial Development

Reference: Order No. 712 Compliance Filing

Dear Ms. Devers:

1. On November 13, 2008, Saltville Gas Storage Company L.L.C. (Saltville) filed tariff sheets[1] proposing numerous modifications and changes, primarily to section 4 of its General Terms & Conditions (GT&C) concerning the procedures for shippers to release their capacity. Saltville states that the main purpose of these changes is to comply with the capacity release requirements promulgated by Order No. 712.[2] In addition, Saltville 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. Saltville 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. Saltville proposes several changes to GT&C section 4 in order to provide that releases of one-year or less are not subject to the rate cap. In addition, proposed GT&C section 4.10 states that such short-term releases will, therefore, not be subject to refund. Saltville 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. Saltville 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, Saltville proposed several changes to its tariff provisions concerning capacity release bid evaluation methods. Saltville 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 Saltville 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, Saltville standardizes several phrases, so that its use of terminology is consistent throughout its tariff.

4. Public notice of Saltville's 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. Atmos Energy Corporation (Atmos) filed comments and a request for technical conference one day out-of-time. On December 9, 2008, Saltville filed an answer. Pursuant to Rule 213,[5] we grant Saltville's request for leave to answer.

5. For the reasons discussed below, the Commission finds that Saltville's proposed revisions to section 4 of its GT&C are generally consistent with Order No. 712 and the Commission's capacity releases policies. Accordingly, the Commission accepts Saltville's filing subject to conditions.

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[3] 18 C.F.R. § 154.210 (2008).

[4] 18 C.F.R. § 385.214 (2008).

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

6. Atmos files a request for a technical conference, stating that the breadth of the proposed changes, and lack of detailed explanation in Saltville's transmittal letter, make it unclear how customer rights are being affected by the proposal, and may place customers at risk for the pipeline's subsequent interpretation. For example, Atmos states that it is unclear whether and to what extent Saltville will permit a releasing shipper's asset manager to pay the same discounted usage and fuel rates as the pipeline has provided to the releasing shipper. Atmos suggests that Saltville should clarify (or propose) a policy allowing the asset manager/replacement shipper to receive the same discounted usage and fuel rates applicable as the releasing shipper, particularly because a general refusal to allow "pass-through" of such discounts would impede asset management transactions, contradicting Order Nos. 712 and 712-A.

7. Saltville asks the Commission to reject the request for a technical conference. The Commission is not obligated to hold a technical conference, Saltville argues, unless "material issues of fact are in dispute that cannot be resolved on the basis of the written record."[6] Atmos fails to raise any factual dispute. Further, the request fails to specify any issues at all, except for how the tariff addresses pass-through of discounted commodity and fuel rates. Saltville replies that its proposed tariff does not affect this issue, nor does it believe that Order No. 712 mandated any changes. Saltville will therefore continue to "deal with the issue of passing-through of discounted or negotiated commodity and fuel rates to replacement customers on a case-by-case basis," which, it states, conforms to "[t]he Commission's long-standing policy."[7]

8. 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 as it gave the releasing shipper.[8] In *El Paso*,[9] 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

[6] Saltville December 9, 2008 Answer at 2 (quoting *El Paso Natural Gas Co.*, 98 FERC ¶ 61,096 (2002)).

[7] *Id*. at 4 (citing *Gulf South Pipeline Company, LP*, unpublished letter order, Docket No. RP96-320-095 (Sept. 24, 2008)).

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

[9] *Id.* at 62,309-10.

other contracts and services to other shippers, including replacement shippers." While pipelines are not subject to a blanket requirement always to give replacement shippers the same usage charge discounts as to the releasing shipper, in determining whether to grant a discount to a replacement 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.[10]

9. Saltville is correct that Order No. 712 did not modify the Commission's existing policy concerning the pipeline's offering of usage charge discounts to replacement shippers. However, Order No. 712's modification of the Commission's regulations to facilitate AMAs does raise the issues of (1) whether the Commission should find that it would be unduly discriminatory for a pipeline to deny an asset manager replacement shipper the same discount of its usage charge as provided to the releasing shipper, at least during those 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] and (2) if so, whether Saltville should be required to include in its tariff a provision concerning the circumstances under which it would provide similar usage charge discounts to an asset manager replacement shippers, or (3) whether the circumstances of individual releases to asset managers are sufficiently case-specific that pipelines should be allowed to decide whether to grant a usage charge discount to the asset manager/replacement shipper on a case-by-case basis, subject to a general requirement of no undue discrimination.

10. Before deciding these issues, the Commission will give the parties an opportunity to comment on these issues. In its comments, Saltville should provide a general description of how it intends to determine whether to grant usage charge discounts to asset manager replacement shippers and what factors it will consider. Initial comments from all parties will be due 20 days from the date of this order and reply comments will be due 30 days from the date of this order. The Commission finds that the parties have not shown the need for further procedures to address any other issues in this proceeding.

11. Saltville 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. Saltville's proposed tariff revisions in the instant filing to

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

[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.

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, Saltville must revise GT&C section 4 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.

12. The Commission accepts the tariff sheets listed in the Appendix to this order to be effective on January 1, 2009, subject to Saltville filing revised tariff sheets as discussed above within 20 days of the date of this order and subject to the Commission's further consideration of the issues upon which it has requested the parties to file comments.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

Appendix

Saltville Gas Storage Company L.L.C.
FERC Gas Tariff, Original Volume No. 1
Tariff Sheets to be Effective January 1, 2009

Fourth Revised Sheet No. 113
Second Revised Sheet No. 114
Second Revised Sheet No. 115
Third Revised Sheet No. 116
Third Revised Sheet No. 117
Original Sheet No. 117A
Third Revised Sheet No. 118
Fourth Revised Sheet No. 119
Original Sheet No. 119A
Second Revised Sheet No. 120
Original Sheet No. 120A
Second Revised Sheet No. 121
Fourth Revised Sheet No. 122
First Revised Sheet No. 123
Fourth Revised Sheet No. 124
Third Revised Sheet No. 125
Second Revised Sheet No. 126
First Revised Sheet No. 127A
Second Revised Sheet No. 148