125 FERC ¶ 61,400
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 31, 2008

In Reply Refer To:
East Tennessee Natural Gas, LLC
Docket No. RP09-76-000

East Tennessee Natural Gas, LLC
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, East Tennessee Natural Gas, LLC (East Tennessee) filed tariff sheets[1] proposing numerous modifications and changes, primarily to sections 17 and 18 of its General Terms & Conditions (GT&C) concerning the procedures for shippers to release their capacity. East Tennessee states that the main purpose of these changes is to comply with the capacity release requirements promulgated by Order No. 712.[2] In addition, East Tennessee 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 conditions discussed below, effective January 1, 2009 as requested.

2. East Tennessee proposes to revise its GT&C 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. East Tennessee proposes several changes to GT&C sections 17.1 and 18.1 in order to provide that releases of one-year or less are not subject to the rate cap. In addition, proposed GT&C sections 17.13(p) and 18.13(i) state that such short-term releases will, therefore, not be subject to refund. East Tennessee 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. East Tennessee 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, East Tennessee proposed several changes to its tariff provisions concerning capacity release bid evaluation methods. Also, East Tennessee 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 East Tennessee 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.

4. Public notice of East Tennessee's filing was issued on November 17, 2008. Interventions and protests were due 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. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Piedmont Natural Gas Company, Inc. (Piedmont) filed comments and a request for technical conference. Atmos Energy Corporation (Atmos) filed comments and a request for technical conference one day out-of-time. The Commission grants Atmos' late-filed comments and request, as doing so does not delay or disrupt the proceeding or place additional burdens on existing parties. On December 9, 2008, East Tennessee filed an answer to Piedmont and Atmos. Pursuant to Rule 213,[5] we grant East Tennessee's request for leave to answer.

[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).

5. For the reasons discussed below, the Commission finds that East Tennessee's proposed revisions to sections 17 and 18 of its GT&C are generally consistent with Order No. 712 and the Commission's capacity release policies. Accordingly, the Commission accepts East Tennessee's filing subject to conditions.

6. Piedmont and Atmos separately file similar requests for a technical conference. Piedmont and Atmos state that the breadth of the proposed changes and lack of detailed explanation in East Tennessee'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. Piedmont and Atmos request that a technical conference be convened to resolve any such confusion. For example, Atmos states that it is unclear whether and to what extent East Tennessee 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 East Tennessee should clarify (or propose) a policy allowing the asset manager/replacement shipper to receive the same discounted usage and fuel rates applicable to 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. East Tennessee asks the Commission to reject the request for a technical conference by Atmos and Piedmont. The Commission is not obligated to hold a technical conference, East Tennessee argues, unless "material issues of fact are in dispute that cannot be resolved on the basis of the written record."[6] Atmos and Piedmont fail to raise any factual dispute. Further, East Tennessee states, the request fails to specify any issues at all, except for how the tariff addresses pass-through of discounted commodity and fuel rates. East Tennessee states that its proposed tariff does not affect this issue, nor does it believe that Order No. 712 mandated any changes. East Tennessee 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

[6] East Tennessee 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)).

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 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. East Tennessee 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 East Tennessee 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 shipper, 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. Before deciding these issues, the Commission will give the parties an opportunity to comment on these issues. In its comments, East Tennessee should provide a general description of how it intends to determine whether to grant usage charge discounts to asset manager replacement

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

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

[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.

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.

10. East Tennessee 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. East Tennessee's 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, East Tennessee must revise GT&C sections 17.1 and 18.1 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 East Tennessee filing revised tariff sheets as discussed above within 20 days of the date of this order.

12. Initial comments on the issue of pass through of a releasing shipper's usage charge discounts to its asset manager replacement shipper are due 20 days from the date of this order. Reply comments are due 30 days from the date of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

East Tennessee Natural Gas, LLC
FERC Gas Tariff, Third Revised Volume No. 1
Tariff Sheets to be Effective January 1, 2009

Fifth Revised Sheet No. 339
Fourth Revised Sheet No. 340
Third Revised Sheet No. 341
Original Sheet No. 341A
Fifth Revised Sheet No. 342
Second Revised Sheet No. 343
Second Revised Sheet No. 344
First Revised Sheet No. 345
Second Revised Sheet No. 346
Third Revised Sheet No. 347
Fourth Revised Sheet No. 348
Fourth Revised Sheet No. 349
Fourth Revised Sheet No. 350
Second Revised Sheet No. 351
First Revised Sheet No. 353
Second Revised Sheet No. 354
Fifth Revised Sheet No. 355
First Revised Sheet No. 358
Second Revised Sheet No. 359
Fourth Revised Sheet No. 360
Second Revised Sheet No. 361
Third Revised Sheet No. 362
Original Sheet No. 362A
Fourth Revised Sheet No. 363
Third Revised Sheet No. 364
Third Revised Sheet No. 365
Second Revised Sheet No. 366
Second Revised Sheet No. 367
Second Revised Sheet No. 368
Second Revised Sheet No. 369
First Revised Sheet No. 371
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Third Revised Sheet No. 393