126 FERC ¶ 61,154
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Northwest Pipeline GP Docket No. RP09-227-000

ORDER ACCEPTING REVISED TARIFF SHEETS, SUBJECT TO CONDITIONS

(Issued February 20, 2009)

1. On January 21, 2009, Northwest Pipeline GP (Northwest) filed revised tariff sheets proposing modifications to its tariff to comply with the capacity release requirements promulgated by Order Nos. 712 and 712-A.[1] The tariff sheets listed in the Appendix are accepted effective February 20, 2009, subject to further modifications as discussed below.

**Summary of the Proposal**

2. Order No. 712 permits market-based pricing for short-term capacity releases and facilitates AMAs by relaxing the Commission's prohibition on tying and its bidding requirements for certain capacity releases. Northwest proposes several changes to its Statement of Rates, Rate Schedules TF-1, SGS-2F, LS-2F, TF-2, TFL-1, and section 22 of the General Terms and Conditions, to provide that releases of one year or less are not subject to the maximum rate cap. Northwest further states that it is proposing additional modifications to clarify and revise the bidding requirements for capacity release transactions associated with an asset management arrangement (AMA) or a state-approved retail open access program.

3. Northwest proposes several other modifications that are not directly required by Order No. 712, but rather serve to clarify its capacity release provisions. For example, Northwest proposes several revisions to its business practice provisions relating to the

[1] *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).

timing of credit evaluations applicable to capacity release bids so that they will be consistent with the timing for all other service requests on its system. Finally, Northwest revises several tariff sheets to add section headings for pagination reasons.

## Notice of Filing

4. Public notice of Northwest's filing was issued on January 23, 2009. Interventions and protests were due February 2, 2009, as provided in section 154.210 of the Commission's regulations.[2] Pursuant to Rule 214,[3] all timely-filed motions to intervene and any motions 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 this proceeding or place additional burdens on existing parties. Atmos Energy Corporation (Atmos) filed comments.

## Discussion

5. For the reasons discussed below, the Commission finds that Northwest's proposed tariff revisions are generally consistent with Order Nos. 712 and 712-A and the Commission's capacity release policies. Accordingly, the Commission accepts Northwest's filing, subject to conditions.

6. Atmos asks the Commission to require Northwest to include provisions allowing the "flow-through" of discounts from releasing shippers to their asset managers. For example, Atmos states that it is unclear whether and to what extent Northwest will permit a releasing shipper's asset manager to pay the same discounted usage and fuel rates that the pipeline provided to the releasing shipper. Atmos suggests that Northwest 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 since a general refusal to allow "pass-through" of such discounts would impede asset management transactions, contrary to Order Nos. 712 and 712-A.

7. The issue of whether a pipeline must provide an asset manager replacement shipper the same discounted or negotiated usage and fuel rates as it has given the releasing shipper only arises to the extent that the pipeline has provided such discounts or negotiated rates to the releasing shipper. The Commission does not permit pipelines to offer discounts below their minimum rates, which are based on the variable costs allocated to the service to which the rate applies. 18 C.F.R. § 284.10(c)(4)(ii) and (5)(ii)(A) (2008). Therefore, only pipelines using a non-Straight-Fixed Variable (SFV)

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[2] 18 C.F.R. § 154.210 (2008).

[3] 18 C.F.R. § 385.214 (2008).

rate design which includes some fixed costs in their usage charges can discount their usage charges. Northwest is one such pipeline. The Commission has also held that pipelines may not discount their fuel retention rates, because fuel and lost and unaccounted for (LAUF) gas are variable costs.[4] However, pipelines with negotiated rate authority may enter into negotiated rate agreements which are not bound by their tariff maximum and minimum rates. Northwest has negotiated rate authority, and thus does have authority to enter into negotiated rate agreements providing for fuel retention rates (and usage charges) that vary from those in its tariff.

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 that it gave the releasing shipper.[5] In *El Paso*, 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.[6]

While pipelines are not subject to a blanket requirement that they must give replacement shippers the same usage charge discounts (or negotiated usage and fuel rates) given to the releasing 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.[7]

9. Order No. 712 did not modify the Commission's existing policy concerning the pipeline's offering usage charge discounts to replacement shippers.[8] Nor did Order

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[4] *Mississippi River Transmission Corp*., 98 FERC ¶ 61,119, at 61,352 (2002).

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

[6] *Id.*

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

[8] *Texas Eastern Transmission, LP*, 125 FERC ¶ 61,396, at P 21 (2008).

No. 712 address any issue concerning the offering of negotiated usage and fuel charges to replacement shippers. However, Order No. 712's modification of the Commission's regulations to facilitate AMAs does raise the following issues:

(1) whether it would be unduly discriminatory for Northwest to deny an asset manager replacement shipper the same discounted usage charge or negotiated usage and fuel and LAUF charge that was provided to the releasing shipper, at least during 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;[9]

(2) if the discounted or negotiated rate agreement with the releasing shipper provides that the discounted or negotiated rate is only applicable at certain specified receipt or delivery points as permitted by Commission policy,[10] should the asset manager replacement shipper's use of those points be considered to be within the usage contemplated by the pipeline when it granted the discount or negotiated rate to the releasing shipper? This then raises the question of whether the pipeline should be required to offer the same discounted or negotiated rate to the asset manager replacement shipper at those points, but not at any other point;

(3) whether Northwest should be required to include in its tariff a provision concerning the circumstances under which it would provide similar discounted or negotiated usage and fuel and LAUF charges to an asset manager replacement shipper; or

(4) whether the circumstances of individual releases to asset managers are sufficiently case-specific that pipelines should be allowed to decide whether to grant discounted or negotiated usage and fuel and LAUF charges 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 requires additional information from Northwest, and will give the parties an opportunity to provide supplemental comments. In this regard, the Commission directs Northwest to file the following information: (1) how many of Northwest's existing shipper contracts include discounted or negotiated usage and fuel rates, (2) how many of any such contracts limit the discount or negotiated rate to specific points, (3) a general description of how it intends to determine whether to grant usage charge discounts or negotiated usage and fuel and

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[9] *See* 18 C.F.R. § 284.8(h)(3) (2008), as revised by Order No. 712-A, (defining a release to an asset manager).

[10] *Williston Basin Interstate Pipeline Co.*, 110 FERC ¶ 61,210, at P 5, 22, *reh'g denied*, 112 FERC ¶ 61,038, at P 19 (2005).

LAUF charges to asset manager replacement shippers, and (4) what factors it will consider in determining whether to grant such discounts or negotiated rates.

The Commission orders:

(A) The Commission accepts the tariff sheets listed in the Appendix to this order to be effective on February 20, 2009, subject to the receipt of additional information and a further order by the Commission.

(B) Waiver of the 30-day notice requirement is granted to permit the revised tariff sheets to become effective on February 20, 2009.

(C) Northwest is directed to file additional information, as discussed in the body of this order, within 30 days of the date of this order.  Parties may file additional comments within 20 days of the date of Northwest’s compliance filing.

By the Commission.  Commissioner Kelliher is not participating.

( S E A L )

Kimberly D. Bose,
Secretary.

## Appendix

Northwest Pipeline GP

FERC Gas Tariff, Fourth Revised Volume No. 1
Tariff Sheets to be Effective February 20, 2009

Second Revised Sheet No. 5-C
First Revised Sheet No. 5-D
Second Revised Sheet No. 7-A
Second Revised Sheet No. 8.1
Second Revised Sheet No. 9
First Revised Sheet No. 19
First Revised Sheet No. 19-A
Second Revised Sheet No. 20
Original Sheet No. 20-A
Second Revised Sheet No. 52
First Revised Sheet No. 52-A
First Revised Sheet No. 52-B
Second Revised Sheet No. 81
Original Sheet No. 81-A
First Revised Sheet No. 102-A
First Revised Sheet No. 103
Original Sheet No. 103-A
First Revised Sheet No. 137
Original Sheet No. 137-A
First Revised Sheet No. 258
First Revised Sheet No. 258-A
First Revised Sheet No. 259
First Revised Sheet No. 259-A
First Revised Sheet No. 260
First Revised Sheet No. 261
Original Sheet No. 261-A
First Revised Sheet No. 262
First Revised Sheet No. 263
First Revised Sheet No. 264
First Revised Sheet No. 264-A
First Revised Sheet No. 265
First Revised Sheet No. 265-D
First Revised Sheet No. 265-E
First Revised Sheet No. 265-F
First Revised Sheet No. 266

First Revised Sheet No. 267
First Revised Sheet No. 268
First Revised Sheet No. 269
First Revised Sheet No. 271-A
First Revised Sheet No. 271-B
Second Revised Sheet No. 272