126 FERC ¶ 61,163
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 24, 2009

In Reply Refer To:
Rockies Express Pipeline, LLC
Docket No. RP09-266-000

Rockies Express Pipeline, LLC
370 Van Gordon St.
Lakewood, CO 80228

Attention: Robert F. Harrington
Vice President, Regulatory Affairs

Reference: Compliance Filing

Dear Mr. Harrington:

1. On January 26, 2009, Rockies Express Pipeline, LLC (Rockies) filed revised tariff sheets[1] in compliance with Order Nos. 712 and 712-A.[2] In addition, Rockies proposes changes to its tariff that it states are consistent with Order No. 698[3] and Order No. 717.[4] Rockies seeks an effective date for these revised tariff sheets of February 26, 2009. The tariff sheets are accepted, subject to the conditions discussed below, effective February 26, 2009 as requested.

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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).

[3] *Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 698, FERC Stats. & Regs. ¶ 31,251 (2007) (Order No. 698).

[4] *Standards of Conduct for Transmission Providers*, Order No. 717, 73 Fed. Reg. 63,796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31,280 (2008), *reh'g pending*.

2. Rockies proposes to revise its tariff mainly to comply with Order No. 712. In addition, Rockies proposes additional minor tariff revisions which it states are consistent with Order Nos. 698 and 717. Specifically, Rockies states that these changes incorporate language clarifying the use of price indices by releasing shippers in Rockies' capacity release provisions. Additionally, Rockies proposes changes to certain tariff sheets reflecting the removal of the terms "Energy Affiliate," "Pursuant to Order No. 2004," and the reference to the posting of organizational charts. Rockies submits that these additional proposed tariff changes are consistent with discussions in prior Commission orders regarding Order No. 712, which allow pipelines to incorporate other tariff changes into their Order No. 712 compliance filings.

3. Notice of Rockies' filing was issued on January 29, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2008). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2008), 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. The East Ohio Gas Company (East Ohio) filed a limited protest.

4. East Ohio states that in Order No. 712, the Commission revised its regulations for the release of interstate pipeline capacity to allow shippers to release capacity to asset managers or to retail choice marketers under state-approved retail access programs without having to conform to the Commission's bidding requirements or its policy prohibiting tying arrangements. East Ohio agrees that Rockies' tariff changes largely conform to the requirements of Order Nos. 712 and 712-A. However, East Ohio urges the Commission to condition acceptance of Rockies' proposed tariff sheets on the outcome of the Commission's ruling in *Texas Eastern Transmission, LP*,[5] addressing whether to allow releasing shippers to pass through discounted or negotiated usage or fuel charges to asset managers under asset management arrangements and to marketers under state-regulated retail access programs.

5. For the reasons discussed below, the Commission finds that Rockies' proposed tariff revisions are generally consistent with the Commission's capacity release policies and Order Nos. 712, 712-A, 698, and 717. Accordingly, the Commission accepts Rockies' filing, subject to conditions.

6. 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

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[5] *Texas Eastern Transmission, LP*, 125 FERC ¶ 61,396 (2008) (*Texas Eastern*).

offer discounts below their minimum rates, which are based on the variable costs allocated to the service to which the rate applies.[6] Therefore, a pipeline such as Rockies using a Straight-Fixed Variable (SFV) rate design cannot discount its usage charges, because those usage charges only contain variable costs. 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.[7] Thus, the issue of the "flow-through" of discounted usage and fuel charges to an asset manager/replacement shipper does not arise on Rockies' system. However, pipelines with negotiated rate authority may enter into negotiated rate agreements which are not bounded by their tariff maximum and minimum rates. Rockies 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.

7. 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.[8] 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.[9]

8. 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

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[6] 18 C.F.R. § 284.10(c)(4)(ii) and (5)(ii)(A) (2008).

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

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

[9] *Id.*

policy that selective discounts must be given on a not unduly discriminatory basis to similarly situated shippers.[10] These same policies apply to negotiated usage and fuel charges.

9. Order No. 712 did not modify the Commission's existing policy concerning the pipeline's offering usage charge discounts to replacement shippers.[11] Nor did Order 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 in this proceeding:

(1) Whether it would be unduly discriminatory for Rockies to deny an asset manager/replacement shipper the same 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;[12]

(2) If a negotiated rate agreement between Rockies and the releasing shipper provides that the discount or negotiated rate is only applicable at certain specified receipt or delivery points as permitted by Commission policy,[13] should the asset manager/replacement shipper's use of those points be considered to be within the usage contemplated by Rockies when it granted the negotiated rate to the releasing shipper? For this reason, should Rockies be required to offer the same negotiated rate to the asset manager/replacement shipper at those points, but not at any other point?

(3) Whether Rockies should be required to include in its tariff a provision concerning the circumstances under which it would provide similar negotiated usage and fuel charges to an asset manager/replacement shipper.

(4) Whether the circumstances of individual releases to asset managers are sufficiently case-specific that pipelines should be allowed to decide whether to grant

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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] *Texas Eastern*, 125 FERC ¶ 61,396 at P 21.

[12] *See* § 284.8(h)(3) of the Commission's regulations, as revised by Order No. 712-A (defining a release to an asset manager).

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

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 Rockies, and will give the parties an opportunity to provide supplemental comments. In this regard, the Commission directs Rockies to file the following information in a compliance filing within 30 days of the date of this order: (1) how many of Rockies' existing shipper contracts include negotiated usage and fuel rates, (2) how many of any such contracts limit the negotiated rate to specific points, (3) a general description of how Rockies intends to determine whether to grant negotiated usage and fuel charges to asset manager/replacement shippers, and (4) what factors it will consider in determining whether to grant such negotiated rates.

11. Rockies is directed to file additional information discussed above in a compliance filing within 30 days of the date of this order. Parties may file additional comments within 20 days of the date of Rockies' compliance filing.

By direction of the Commission. Commissioner Kelliher is not participating.

Kimberly D. Bose,
Secretary.

# **Appendix**

Rockies Express Pipeline, LLC

FERC Gas Tariff, Second Revised Volume No. 1
Tariff Sheets to be Effective February 26, 2009, Subject to Condition

First Revised Sheet No. 173
First Revised Sheet No. 183
Original Sheet No. 183A
First Revised Sheet No. 184
First Revised Sheet No. 186
First Revised Sheet No. 187
First Revised Sheet No. 188
First Revised Sheet No. 189
First Revised Sheet No. 192
First Revised Sheet No. 194
First Revised Sheet No. 197
First Revised Sheet No. 198
First Revised Sheet No. 205
Original Sheet No. 205A
First Revised Sheet No. 246
First Revised Sheet No. 247
First Revised Sheet No. 248
Second Revised Sheet No. 249