126 FERC 61,265
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 25, 2009

In Reply Refer To:
Millennium Pipeline
Company, L.L.C.
Docket No. RP09-320-000

Millennium Pipeline Company, L.L.C.
One Blue Hill Plaza, 7th Floor
P.O. Box 1565
Pearl River, NY 10965

Attention: Gary Kruse, Esq.
Vice President-General Counsel and Secretary

Dear Mr. Kruse:

1. On January 30, 2009, Millennium Pipeline Company, L.L.C. (Millennium) filed tariff sheets[1] proposing modifications to Millennium's FERC Gas Tariff, Original Volume No. 1, to comply with the capacity release requirements promulgated by Order No. 712.[2] We accept the revised tariff sheets to be effective March 1, 2009.

2. In Order Nos. 712 and 712-A, the Commission removed the maximum rate ceiling on capacity releases of one year or less that take effect within one year after the pipeline is notified of the release. The Commission also modified its regulations in order to facilitate asset management arrangements (AMAs) by relaxing the Commission's prohibition on tying and on its bidding requirements for certain capacity releases. The Commission further clarified that its prohibition on tying does not apply

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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).

to conditions associated with gas inventory held in storage for releases of firm storage capacity. Finally, the Commission waived its prohibition on tying and bidding requirements for capacity releases made as part of a state-approved retail access program.

3. Millennium explains that it is revising the capacity release provisions in its tariff in compliance with Order No. 712. Specifically, Millennium is revising its capacity release provisions to reflect (1) the removal of the rate cap for releases for one year or less; and (2) the exemption from certain capacity release requirements for releases to asset managers and marketers in a state-mandated retail unbundling program.

4. Notice of Millennium's filing was issued on February 3, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. §154.210. Pursuant to Rule 214, 18 C.F.R. § 385.214, 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 the proceeding or place additional burdens on existing parties. Consolidated Edison Company of New York, Inc. filed a motion to intervene. New York State Public Service Commission filed a notice of intervention.

5. National Grid Gas Delivery Companies (National Grid) filed a protest requesting two modifications. Specifically, National Grid contends that Millennium should be required to include tariff language that would deem the rate paid by a replacement shipper for a short-term release to be a final rate that is not subject to refund, citing the Commission's decision in *Texas Eastern*.[3] In addition, National Grid requests the Commission to require Millennium to modify its tariff to provide that a releasing shipper may elect to agree to assume responsibility for its replacement shipper's charges from the pipeline, in lieu of any requirement that the replacement shipper satisfy Millennium's creditworthiness standards. On February 24, 2009, Millennium filed an answer. Millennium explains that Order No. 712 does not require pipelines to include the tariff language requested by National Grid.

6. In *Texas Eastern*, the Commission found that it was consistent with Order No. 712 to deem rates paid by replacement shippers for terms of one year or less to be final and not subject to refund. The Commission explained that, as a result of Order No. 712, the pipeline's maximum rates no longer apply to such short-term releases. Therefore, replacement shippers are not entitled to any refunds when the Commission finds that the maximum rates proposed by the pipeline in a section 4 rate case are too high. However, the Commission also stated that a releasing shipper paying a recourse rate higher than

[3] *Texas Eastern Transmission, LP*, 125 FERC ¶ 61,396, at P 13 (2008) (*Texas Eastern*).

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.[4] Therefore, the refunds must be paid by the pipeline to the releasing shipper. The Commission finds that the discussion in *Texas Eastern* provides sufficient guidance on this issue and that the suggested tariff revisions to expressly require that Millennium make such refunds to the releasing shipper are unnecessary. Accordingly, the Commission denies National Grid's request.

7. In response to National Grid's second request, Millennium states that Order No. 712 and Order No. 712-A do not require such a modification. Millennium explains, further, that it does not have the operational capability to accommodate National Grid's request. Millennium notes that its system does not have the functionality to permit a releasing shipper to assume responsibility for a replacement shipper's charges.

8. The Commission finds National Grid's request to be beyond the scope of an Order No. 712-A compliance filing. There is nothing in Order No. 712 that would require Millennium to make the requested modifications. Moreover, Millennium did not propose to change the subject provision and National Grid has not shown that Millennium's currently effective tariff language is unjust and unreasonable. National Grid argues that the Commission has stated that pipelines could give the releasing shipper the option to assume liability for the usage charge in the event of a replacement shipper's default. However, this finding by the Commission concerned an option that the pipelines could permit to their shippers. It was not a mandate that the pipeline must provide such an option.[5] Millennium, of course, is free to propose any additional creditworthiness provisions to the Commission for consideration.

9. The Commission therefore accepts Millennium's revised tariff sheets effective March 1, 2009.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[4] *Id.*

[5] National Grid Protest at 5, *citing Dominion Cove Point LNG, LP*, 104 FERC ¶ 61,184 at P 7 (2003), *citing Regulation of Short Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. And Regs. ¶ 31,091 at 31,299 (2000).

cc: All Parties

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Appendix

Millennium Pipeline Company, L.L.C.
FERC Gas Tariff, Original Volume No. 1

Tariff Sheets to be effective March 1, 2009:

First Revised Sheet No. 178
First Revised Sheet No. 179
Original Sheet No. 179A
First Revised Sheet No. 180
First Revised Sheet No. 181
First Revised Sheet No. 182
First Revised Sheet No. 183
First Revised Sheet No. 184
First Revised Sheet No. 185