128 FERC ¶ 61,003
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 1, 2009

In Reply Refer To:
Questar Pipeline Company
Docket No. RP09-270-000

Questar Pipeline Company
180 East 100 South
P.O. Box 45360
Salt Lake City, UT 84145-0360

Attention: L. Bradley Burton
Manager, Federal Regulatory Affairs

Reference: Order No. 712 Compliance Filing

Dear Mr. Burton:

1. On January 25, 2009, Questar Pipeline Company (Questar) 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, subject to the conditions discussed below, effective February 25, 2009, as requested.

2. In Order Nos. 712 and 712-A, the Commission removed the maximum rate ceiling on capacity releases of one year or less, which 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 by relaxing the Commission's prohibition on tying and on its bidding requirements for certain capacity releases. The Commission

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[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 (Dec. 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008), *order on reh'g*, Order No. 712-B, 74 Fed. Reg. 18,127 (Apr. 21, 2009).

further clarified that its prohibition on tying does not apply 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 release made as part of a state-approved retail access program.

3. To comply with Order Nos. 712 and 712-A, Questar proposes to revise its tariff sheets to reflect the following: (1) revisions to Sheet Nos. 5 and 5A (regarding the firm services of T-I, SSXP, NNT and Optional Volumetric Releases), Sheet Nos. 6 and 6A (regarding the firm services of PKS, FSS and firm Optional Volumetric Releases of PKS and FSS services) and Sheet No. 58 (which contains the posting requirements of a releasing shipper) to clarify that short-term capacity releases for a term of one year or less are not subject to the maximum rate; (2) revisions to Sheet No. 59 (containing posting requirements of a releasing shipper for a pre-arranged replacement shipper) to add paragraphs (q), (r) and (s) and to add two qualifications under section 6.9(a)(i) and (iii) consistent with Order No. 712; (3) revisions to Sheet No. 61 to add paragraphs 6.11(a)(viii) and (ix) and revisions to Sheet No. 65 to add paragraphs (c) and (d), to include information required by Order No. 712 as codified under 18 C.F.R. § 284.8 (2008); (4) redesignation of paragraphs (c) through (d) on Sheet No. 65 as a result of the new paragraph additions; and (5) revisions to section 6.11(d) on Sheet No. 62 and section 6.15 on Sheet No. 65 to reflect the exception that short-term capacity releases for a term of one year or less are not subject to the maximum rate.

4. Questar states that the changes incorporate language permitting market-based pricing for short-term capacity release, and new rules associated with asset managers and capacity releases made as part of state-approved retail open access programs. Questar states that the proposed tariff changes are consistent with Commission directives in Order No. 712 and seeks a February 25, 2009 effective date.

5. Notice of Questar's filing was issued on February 9, 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. Atmos Energy Corporation (Atmos) filed comments and Questar filed an answer to Atmos' comments. On February 27, 2009, the Interstate Natural Gas Association of America (INGAA) submitted comments out of time and on March 11, 2009, the American Gas Association (AGA) filed a response to INGAA's comments.

6. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Questar's and AGA's answers because they have provided information that assisted us in our decision-making process.

7. Atmos states that it generally supports the affirmatively proposed revisions in the instant filing. However, Atmos states that it is unclear from the proposed tariff revisions whether and to what extent Questar will permit the flow-through of discounted commodity and fuel rates to asset managers under qualified Order Nos. 712 and 712-A releases. Atmos states that it has previously raised the discount flow-through issue and requested a technical conference in response to the Order No. 712 compliance filing submitted by Texas Eastern Transmission, LP in Docket No. RP09-70-000 and has filed similar comments in other Order No. 712 compliance filing proceedings. Atmos states that to facilitate a bona-fide asset manager’s agreement the pipeline tariff should include provisions allowing asset manager to receive the same discount provided to the primary firm shipper. Atmos states that failure to require the flow-through of discounts to asset managers would increase the cost of asset management arrangements involving discounted capacity thereby inhibiting the formation of such beneficial arrangements.

8. In response, Questar states that commodity or usage charges and fuel reimbursement rates are not discountable under its FERC Gas Tariff. Therefore, Questar argues, Atmos’ request for Questar to flow-through discounts of the commodity/usage charges and fuel reimbursement rates to qualified asset managers is moot. Questar adds that under its general business practices and tariff provisions, all contract terms, unless restricted by the releasing shipper, flow-through to an authorized agent. Questar also states that if in the future it files revisions to its tariff allowing discounts of commodity/usage charges or fuel reimbursement rates, such discounts would flow-through to the asset managers.

9. In its comments, INGAA argues that the Commission should not decide the issue of an asset manager's right to the same discounted or negotiated usage or fuel charge as the releasing shipper in the individual Order No. 712 compliance proceedings. Rather, INGAA asserts that the Commission should address these issues in a generic proceeding because they are of industry-wide scope and have been raised in numerous Order No. 712 compliance filings.

10. AGA urges the Commission to act expeditiously to resolve these issues, regardless of whether it proceeds through a generic rulemaking or case-by-case adjudication, because continued regulatory uncertainty could discourage parties from entering into asset management arrangements. AGA contends that releasing shippers should be permitted to pass through discounted or negotiated usage and fuel charges to asset managers or retail choice marketers, consistent with the goal of facilitating asset management arrangements and retail choice programs.

11. The Commission finds that Questar’s proposed tariff revisions are generally consistent with the Commission’s capacity release policies and Order Nos. 712 and 712-A. Accordingly, the Commission accepts Questar’s filing effective February 25, 2009, subject to conditions as discussed below.

12. 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.[2] Therefore, a pipeline such as Questar 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.[3] Thus, the issue of the "flow-through" of discounted usage and fuel charges to an asset manager/replacement shipper does not arise on Questar's system. However, pipelines with negotiated rate authority may enter into negotiated rate agreements which are not bounded by their tariff maximum and minimum rates. Questar 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.

13. 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.[4] 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.[5]

14. 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

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[2] 18 C.F.R. § 284.10(c)(4)(ii) and (5)(ii)(A) (2008).

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

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

[5] *Id.*

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.[6]

15. Order No. 712 did not modify the Commission's existing policy concerning the pipeline's offering usage charge discounts to replacement shippers.[7] 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 asset management arrangements does raise the following issues in this proceeding:

(1) Whether it would be unduly discriminatory for Questar 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;[8]

(2) If a negotiated rate agreement between Questar 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,[9] should the asset manager/replacement shipper's use of those points be considered to be within the usage contemplated by Questar when it granted the negotiated rate to the releasing shipper? For this reason, should Questar 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 Questar 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; and

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

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

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

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

[9] *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.

16. Before deciding these issues, the Commission requires additional information from Questar, and will give the parties an opportunity to provide supplemental comments. In this regard, the Commission directs Questar to file the following information in a compliance filing within 30 days of the date of this order: (1) how many of Questar's existing firm 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 Questar 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.

17. Questar 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 Questar's compliance filing.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Questar Pipeline Company

FERC Gas Tariff, First Revised Volume No. 1
Tariff Sheets to be Effective February 25, 2009, Subject to Condition

Forty-Seventh Revised Sheet No. 5
Twenty-First Revised Sheet No. 5A
Twenty-Third Revised Sheet No. 6
Twelfth Revised Sheet No. 6A
Eighth Revised Sheet No. 58
Thirteenth Revised Sheet No. 59
Fifth Revised Sheet No. 61
Seventh Revised Sheet No. 62
Fourth Revised Sheet No. 65