128 FERC ¶ 61,231
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 10, 2009

In Reply Refer To:
Questar Pipeline Company
Docket No. RP09-882-000

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

Attention: L. Bradley Burton, Manager

Reference: Sale of In-Kind Gas

Ladies and Gentlemen:

1. On August 11, 2009, Questar Pipeline Company (Questar) filed a revised tariff sheet[1] to its FERC Gas Tariff, First Revised Volume No. 1 (Questar Tariff) to clarify its authority to sell certain gas it receives as in-kind payment from its customers at Questar's Clay Basin Storage Reservoir (Clay Basin). The Commission accepts the proposed tariff sheet to be effective September 1, 2009, subject to conditions discussed below.

2. On November 7, 2007, the Commission issued an order in Docket No. RP07-606-000 accepting a Stipulation and Agreement (Stipulation) between Questar and its customers relating to fuel gas reimbursement for storage and gas conditioning services at Clay Basin.[2] Among other things, the Stipulation addressed the costs of conditioning gas and provided for Clay Basin customers to make certain in-kind payments to Questar or to elect to convert those amounts to a cash payment.[3]

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[1] First Revised Sheet No. 172 D.

[2] *See Questar Pipeline Co.*, 121 FERC ¶ 61,137 (2007).

[3] *See* Questar Tariff section 16.3 (b)(iii).

3. Questar states that, in order for it to recover its cost of service, Questar and its customers contemplated that Questar would resell the gas delivered to it in kind and retain the revenues from such sales. Questar also states that historically it has considered its tariff, along with the Stipulation, as sufficient authority for Questar to resell gas paid in kind by Clay Basin customers. However Questar states that it is proposing new language to remove any ambiguity from its tariff. Specifically, Questar proposes to modify Sheet No. 172 D of its tariff to re-designate section 16.5 as section 16.6, and to add the following language as section 16.5:

> Questar may make sales of those quantities of "in-kind" natural gas received from shippers pursuant §§16.3 and 16.4 above and to retain the revenues from such sales. Questar shall have the right to make sales of such gas pursuant to the terms of the blanket certificate of public convenience and necessity granted to Questar pursuant to 18 C.F.R. § 284.284.

4. Questar requests waiver of the Commission's notice requirement under 18 C.F.R. § 154.207, to allow the tariff sheet to be effective September 1, 2009.

5. Notice of Questar's filing was issued on August 12, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2009). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2009), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. BP America Production Company and BP Energy Company (BP) timely filed a motion to intervene and protest. On August 27, 2009, Questar filed a response to BP's protest. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Questar's answer because it has provided information that assisted us in our decision-making process.

6. BP states that it supports Questar's ability to sell any in-kind gas received from Clay Basin shippers and that it is not attempting to change the Clay Basin settlement. However, BP states, the Commission should direct Questar to clarify the procedures that apply to the sale of Clay Basin gas. First, BP states that the Commission should require Questar to use competitive bidding to make sales of the in-kind gas as the Commission has required of other pipelines with regard to operational gas transactions.[4] BP states that Questar's proposed in-kind gas sales are operational gas sales because the presence of the gas available for sale is the result of the operation of the Questar system at Clay Basin. According to BP, the Commission has found that posting operational gas sales for

[4] BP Protest at 5.

competitive bidding will "ensure that all parties have an opportunity to bid on the sale of any excess gas incidental to [a pipeline's] operations."[5] BP notes that the Commission also requires competitive bidding for pipeline capacity.

7. Next, BP argues that to ensure that transportation services will not be bundled with the sale of in-kind gas the Commission should require Questar to revise its tariff to provide that the sale of in-kind gas received at Clay Basin can only occur at Clay Basin. BP notes that the Commission has banned the bundling of transportation and gas sales because such bundling gives a pipeline an ability and incentive to favor its own sales service.

8. Further, BP argues that Questar's sale of in-kind gas at Clay Basin requires the use of Questar's delivery point at Clay Basin; however, purchasers of such in-kind gas are not entitled to any scheduling priority to receive the gas from Questar. BP also argues that a purchaser of in-kind gas from Questar is not entitled to special transportation service or discounted rates. BP states that the Commission should require Questar to revise its tariff to clarify these points.

9. BP also argues that the Commission should require Questar to post information on its electronic bulletin board for each in-kind gas transaction. BP states that in advance of a proposed sale, Questar should be required to post (1) the reasons for the proposed sale, including the cause for the pipeline's accumulation of the in-kind gas quantities; (2) the location (i.e., Clay Basin); (3) the date and time of the proposed sale; (4) the gas quantities to be sold; (5) the time period for removal of the in-kind gas quantities after the sale is completed and the maximum delivery point capacity available from the removal of the gas; (6) any minimum price levels or minimum gas volumes applicable to bidding; and (7) the applicable bidding procedures and the method for determining the best bid. BP states that, after a sale, Questar should be required to post (1) the identity of the winning bidder; (2) the winning bid; and (3) the agreed-upon time period for the shipper/ purchaser to take delivery of the gas.

10. BP states that the reporting requirement will allow shippers and the Commission to evaluate whether Questar is implementing the sales in a non-discriminatory and non-preferential manner. BP also states that Questar should be required to post its report within two business days of the completion of a transaction. BP argues that any longer period would make it more difficult for the Commission and shippers to evaluate whether the pipeline is properly implementing operational gas purchases and sales.

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[5] *Id.* (quoting *Dominion Transmission Inc.*, 106 FERC ¶ 61,029, at P 17 (2004) (*Dominion*)).

11. In response, Questar argues that BP seeks to impose on Questar burdens that were not part of the Stipulation in Docket No. RP07-606-000. Questar reiterates that it filed the instant proposal to remove any doubt that it had authority to sell the gas it receives in kind at Clay Basin, noting that it has not previously had reason to sell such gas as this is the first year in which in-kind payments have been received.[6] With regard to BP's assertion that competitive bidding procedures should be used, Questar states that unlike the operational gas sales tariffs addressed in other cases, the instant proceeding involves a very limited quantity of gas which is supplied to Questar, at customers' election in lieu of cash payments, with the express understanding that Questar will recover its costs by reselling the gas. Questar states that it does not control the quantity of gas it receives, which it receives as a convenience to its customers, and that it needs flexibility to negotiate prices and delivery terms in order to achieve the best price for its gas consistent with market conditions and potential buyers' needs and transportation arrangements. Questar also states that it does not have any market power with respect to the potential sales of gas it receives as in-kind payments and that the potential quantities of in-kind gas are a small fraction of the volumes delivered in and out of Clay Basin every day.

12. Questar argues that there is no basis for restricting Questar's sales to an auction procedure, if that is what BP is proposing, and no such restrictions were contemplated by the Stipulation. Questar states that the Commission has not required detailed auction procedures in other cases[7] and that a variety of factors will affect the potential price.[8] Questar argues that the variety of relevant factors requires that Questar have an opportunity to negotiate contracts for sale, not restricted to a single factor—i.e., a price-only auction. Questar adds that BP's analogies to auctions for transportation capacity are irrelevant to unbundled sales of natural gas.

13. Questar states that it intends to resell the gas on an unbundled basis either in place or at the outlet of the Clay Basin storage field. Questar adds that a buyer will have to arrange transportation from Clay Basin pursuant to Questar's tariff. With regard to BP's arguments regarding scheduling priority, special transportation service or discounted rates, Questar states that any transportation discounts to shippers are already fully transparent because they are posted and the subject of other reporting obligations. With regard to reporting, Questar states that it is prepared to file an annual report of its sales, as

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[6] Questar Answer at 3 & n.2.

[7] *Id.* at 5-6 (citing *Columbia Gulf Transmission Co.* 118 FERC ¶ 61,066, at P 9 (2007) (*Columbia Gulf*); *Dominion*, 106 FERC ¶ 61,029).

[8] Questar states that these factors include the buyer's needs and transportation arrangements, quantities sold, credit issues, and the wide variety of other terms of any natural gas sales contract. *See id.* at 6.

the Commission has required of other pipelines. Questar states that the Commission has rejected requests such as BP's for more frequent reports.[9]

14. To clarify its proposal, Questar has attached Appendix A to its answer, which is a draft of amended language to supplement its August 10, 2009 filed tariff language. Specifically, Questar proposes to add the following to section 16.5 of its tariff:

> Sales of such gas will be made in place or at the outlet from Clay Basin. Transportation from the point of sale must be separately arranged by buyer. Prior to selling such gas, Questar will post an announcement of its intention to sell quantities of gas received in-kind pursuant to Sections 16.3 and 16.4 and solicit offers from potential buyers. Mutually acceptable terms and conditions for gas sales shall be the subject of negotiation between Questar and potential buyers. By July 1 of each year, Questar will file a report that identifies for the 12 months ending April 30th, all sales of gas pursuant to this section, including the quantities, dates of sales, prices and revenues.

15. Questar states that the proposed tariff language is consistent with language approved in other cases.[10] Questar requests that the Commission accept its August 10, 2009 tariff filing, subject to the further clarifying language set forth in Appendix A. Questar also states that the Commission should grant Questar waiver of section 284.286 of the Commission's regulations, 18 C.F.R. 284.286, to clarify that no separation of personnel or other application of the marketing affiliate standards of conduct is required.[11]

16. The Commission finds Questar's proposed revisions to its tariff to be just and reasonable, subject to modification, as discussed below.

17. As a result of the settlement approved by the Commission in Docket No. RP07-606-000 Questar at times receives in-kind gas from shippers in lieu of monetary payments for conditioning services it provides at Clay Basin. As Questar states and BP acknowledges, Questar is authorized pursuant to the Stipulation and its tariff to sell gas received in kind at Clay Basin and to retain the revenues received for such sales. The

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[9] *Id.* at 6 (citing *Dominion*, 106 FERC ¶ 61,029 at P 14).

[10] *Id.* at 4 (citing *Dominion*, 106 FERC ¶ 61,029).

[11] *See id.* at 6. The Commission finds no waiver of section 284.286(a) of the Commission's regulations is necessary with regard to incidental purchases or sales of gas to operate the pipeline because such purchases or sales are not part of the pipeline's sales or marketing activities *per se*. *See Columbia Gulf*, 118 FERC ¶ 61,066 at P 15.

Commission finds that Questar's proposal, as supplemented with the additional proposed tariff language provided in its answer, adds more clarity to the proposal, but that further refinement is necessary.

18. First, we find that Questar's new proposed tariff language coupled with its existing tariff language address issues raised regarding unbundling and any potential for unduly discriminatory treatment with regard to scheduling and discounts. Questar's new tariff language specifies that sales of in-kind gas received at Clay Basin will only be made at Clay Basin and that the sale of such gas is made on an unbundled basis.[12] Further, while we agree with BP that the purchase of in-kind gas should not entitle the purchaser to special discounts or priority in transportation or capacity not generally available to all shippers, we find that additional tariff revisions are unnecessary. As Questar states, transportation discounts to shippers are posted and the subject of other reporting obligations under the Questar Tariff.[13] Offering special transportation discounts or conditions related to the sale of Clay Basin in-kind gas would be in violation of these provisions of the tariff, so additional prohibitions or clarifications against such treatment are not needed.

19. Second with regard to reporting, we find that an annual report that discloses the quantities sold, dates of sales, prices, and revenues received, as Questar proposes in its answer, will provide interested parties with the opportunity to examine Questar's sales of Clay Basin in-kind gas.[14]

20. Regarding competitive bidding, we find auction procedures to be unnecessary here. However, we also find that Questar's proposed procedures are insufficient to enable customers to participate in such in-kind gas sales in a fair and a non-discriminatory manner. The Commission has accepted proposals for the operational sales of gas which specify the posting and bidding terms in the tariff,[15] as well as proposals

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[12] *See* Questar Answer at Appendix A, which provides, "[s]ales of such gas will be made in place or at the outlet from Clay Basin. Transportation from the point of sale must be separately arranged by buyer."

[13] For example, the General Terms and Conditions (GT&C) of Questar's tariff provides that capacity will be offered in a non-discriminatory manner. *See* Questar Tariff, Part 1, GT&C section 6.8.

[14] *See Dominion*, 106 FERC ¶ 61,029 at P 14. As relevant here, in *Dominion* the Commission required the pipeline to identify in its annual report the date of sale, volumes, sales prices, and revenues from the sale. *Id.* at n.11.

[15] *See Colorado Interstate Gas Co.*, 107 FERC ¶ 61,312 (2004).

which merely provide that the pipeline will post the quantities for sale.[16] The Commission has found that where the posting of the terms and conditions of a sale are made when the gas is offered for sale such posting is sufficient to ensure that all interested parties are aware of those terms and conditions and have the opportunity to participate in the sale process.[17] Here, Questar proposes to "post an announcement of its intention to sell quantities of gas received in-kind pursuant to Sections 16.3 and 16.4 and solicit offers from potential buyers. Mutually acceptable terms and conditions for gas sales shall be the subject of negotiation between Questar and potential buyers."[18] While Questar states that the terms and conditions of a sale will be negotiated by Questar and potential buyers, Questar's proposed language does not indicate that the terms and conditions of a particular sale will be specified in the announcement prior to the gas being offered for sale.[19] Nor does Questar provide any information as to how far in advance of a sale it plans to post this notification. Accordingly, we direct Questar to revise its tariff to specify that the terms and conditions of a particular sale will be posted prior to the gas being offered for sale and to identify how long before a sale it will post such a notification.

21. Accordingly, the Commission accepts Questar's proposal subject to Questar making the revisions specified above. The Commission directs Questar to file revised tariff sheets incorporating the specified revisions within thirty days of the date of this order, to be effective September 1, 2009. The Commission also finds that good cause exists for waiver of the Commission's notice requirement, and the revised tariff sheet is accepted, effective September 1, 2009, subject to the conditions as discussed above.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[16] *See Columbia Gulf*, 118 FERC ¶ 61,066; *Dominion*, 106 FERC ¶ 61,029.

[17] *See Columbia Gulf*, 118 FERC ¶ 61,066 at P 9.

[18] *See* Questar Answer at Appendix A.

[19] As BP suggests such terms and conditions could include the date and time of the proposed sale, the gas quantities to be sold, and the time period for removal of the in-kind gas quantities after the sale is completed.