126 FERC ¶ 61,167
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tres Palacios Gas Storage LLC Docket No. RP09-260-000

ORDER ACCEPTING CERTAIN TARIFF SHEETS SUBJECT TO CONDITIONS AND SUSPENDING OTHER TARIFF SHEETS SUBJECT TO FURTHER REVIEW

(Issued February 24, 2009)

1. On January 26, 2009, Tres Palacios Gas Storage LLC (Tres Palacios) filed revised tariff sheets[1] to comply with the Commission's Order No. 712.[2] Tres Palacios proposes tariff revisions to comply with the Commission's Order No. 712. Tres Palacios also included in its filing several Natural Gas Act (NGA) section 4 tariff proposals, notably: (1) streamlining its tariff procedures by moving individual contract parameters to exhibits attached to *pro forma* agreements; (2) charging firm storage customers for the right to use secondary receipt and delivery points; and, (3) clarifying that customers may not simultaneously inject and nominate from storage at different receipt and delivery points under a firm storage agreement.

2. As discussed below, the Commission accepts those tariff sheets filed to comply with Order No. 712, subject to conditions as set forth below, effective February 25, 2009, as requested. As a condition of acceptance, Tres Palacios is directed to file the additional information specified below within 30 days of the date this order issues. The Commission suspends for five months those tariff sheets setting forth various NGA section 4 proposals, subject to condition and further Commission review.

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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).

Notice, Interventions and Protests

3. The Commission issued public notice of Tres Palacios's filing on January 29, 2009, with comments due by February 9, 2009. NJR Energy Services Company (NJRES) and Virginia Power Energy Marketing, Inc. (VPEM) filed protests. Atmos Energy Marketing LLC (Atmos) filed comments.

4. Notices of intervention and unopposed timely motions to intervene are granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008). Pursuant to Rule 214(d), 18 C.F.R. § 385.214(d), the Commission will grant any late-filed motions to intervene filed prior to the date of this order given the early stage of the proceeding, and the absence of undue prejudice or delay.

Order No. 712 Compliance

Description of Filing

5. Tres Palacios proposes certain tariff revisions to comply with the Commission's Order No. 712. Tres Palacios proposes to modify section 4.1(e) of its General Terms and Conditions (GT&C) to require each releasing shipper under a prearranged capacity release to state whether the replacement shipper is an asset manager or a marketer participating in a state-regulated retail access program. Tres Palacios states this information will facilitate the Internet postings the Commission requires in Order No. 712.

6. Tres Palacios proposes to modify section 4.1(r) of its GT&C to require a releasing shipper to provide a detailed description of any storage inventory that must be transferred with the released storage capacity. Tres Palacios proposes to revise section 4.3(d) of its capacity release provisions to clarify that capacity releases to asset managers and marketers participating in state-regulated retail access programs are not subject to posting and bidding.

7. Finally, Tres Palacios states that, while Order No. 712 eliminated the maximum rate ceiling for capacity releases of one year or less, this revision does not affect Tres Palacios, since it is a storage provider authorized to operate under market-based rates.

Comments

8. NJRES urges the Commission to reject Tres Palacios's proposed section 4.1(r), which would require a releasing shipper to provide a detailed description of any storage inventory the shipper must transfer in connection with its release of storage capacity, arguing the provision is vague and unreasonable. NJRES contends it is not clear what "detailed information" Tres Palacios would require a shipper to provide under the provision. NJRES further asserts the provision is unduly burdensome and unnecessary,

since there is no reason to require a releasing shipper to provide any information beyond the specified quantity to be released and identification of the corresponding contract.

9. Atmos asks the Commission to require Tres Palacios to include provisions allowing the “flow-through” of discounts from releasing shippers to their asset managers. For example, Atmos states it is unclear whether and to what extent Tres Palacios 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 Tres Palacios 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 Order Nos. 712 and 712-A.

Discussion

10. The Commission accepts those revised tariff sheets that Tres Palacios filed to comply with Order No. 712, as set forth in the Appendix, subject to the following conditions.

11. The Commission finds proposed section 4.1(r), requiring a releasing shipper to provide a detailed description of any storage inventory the shipper must transfer in connection with its release of storage capacity, is impermissibly vague. As a condition of acceptance, Tres Palacios is to file revised tariff sheets, within 30 days of the date this order issues, specifying in its tariff what information a releasing shipper must provide with respect to any storage inventory it transfers in connection with a capacity release, and an explanation why it needs this information.

12. With regard to the issue raised by Atmos concerning the flow through of usage and fuel charge discounts, 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.[3] 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

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

> contract and is not relevant to other contracts and services to other shippers, including replacement shippers. [4]

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.[5]

13. Order No. 712 did not modify the Commission's existing policy concerning the pipeline's offering usage charge discounts to replacement shippers.[6] Moreover, Tres Palacios does not, strictly speaking, offer or charge discounted usage rates, because the Commission has authorized it to charge market-based rates.[7] 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 Tres Palacios to deny an asset manager/replacement shipper the same market-based usage and fuel charges that were 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 the rate agreement with the releasing shipper provides that the market-based 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 the pipeline when it negotiated the market-based rate to the releasing

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[4] *Id.*

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

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

[7] *Egan Hub Storage, LLC*, 125 FERC ¶ 61,401, at P 9 (2008)

[8] *See* 18 C.F.R. § 284.8(h)(3) (2008), 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, 22, *reh'g denied*, 112 FERC ¶ 61,038, at P 19 (2005).

shipper? This then raises the question of whether the pipeline should be required to offer the same market-based rate to the asset manager/replacement shipper at those points, but not at any other point;

(3) whether Tres Palacios should be required to include in its tariff a provision concerning the circumstances under which it would provide similar usage and fuel 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 similar usage and fuel charges to the asset manager/replacement shipper on a case-by-case basis, subject to a general requirement of no undue discrimination.

14. Before deciding these issues, the Commission requires additional information from Tres Palacios, and will give the parties an opportunity to provide supplemental comments. Therefore, the Commission directs Tres Palacios to file the following information: (1) how many of its existing contracts limit the market-based usage or fuel rate to specific points, (2) what its current practice is with respect to the usage or fuel rate to be charged a replacement shipper, and (3) a general description of how it intends to determine whether to grant the same usage or fuel charge to asset manager/replacement customers as releasing customers, and what factors it will consider. We direct Tres Palacios to file these comments within 30 days of the date this order issues. Parties will have 20 days to file reply comments.

NGA Section 4 Filing

Description of Filing

Contractual Streamlining

15. Tres Palacios states that under its existing tariff, contract parameters such as service and rates are embedded in the body of each agreement, which requires Tres Palacios and the customer to execute a new agreement each time they agree to a new transaction. Tres Palacios proposes to move all the fill-in-the-blank parameters of service and rates from the body of each *pro forma* service agreement to exhibits.

16. Tres Palacios also proposes to modify exhibit formatting to facilitate more transactions. According to Tres Palacios, under its proposal, each of its *pro forma* service agreements would now serve as a master agreement under which the parties may execute multiple exhibits confirming individual transactions under the master agreement. Tres Palacios states this proposal would allow parties to contract as expeditiously as the marketplace demands.

17. As part of this proposal, Tres Palacios proposes to streamline its contracting process by removing title transfers from the Hub Service Agreement, and instead memorialize them through use of a Title Transfer Form, which it would post on its website. Tres Palacios states the Commission previously adopted this approach to title transfers for another independent storage provider, citing *Egan Hub Storage, LLC*.[10]

Secondary Point Rights

18. According to Tres Palacios, under its current tariff, it negotiates with each customer to determine which receipt and delivery points the shipper will specify as primary points under a service agreement. Customers also have rights to use other points on a secondary basis. Tres Palacios asserts the value of these secondary point rights is often not accurately reflected in market-based storage rates. Accordingly, Tres Palacios proposes to revise its Rate Schedule FSS *pro forma* service agreement to provide the option of contracting for firm storage service with, or without, secondary point rights by adding a "check the box" option to its Rate Schedule FSS transaction confirmation.

19. As part of its secondary rights proposal, Tres Palacios would remove references to secondary point rights from its *pro forma* service agreements for firm parking service under FP Rate Schedule and from its loan service under FL Rate Schedule. Tres Palacios argues these services do not require the same degree of flexibility that it offers under FSS Rate Schedule. It states the two services are structured so the customer must inject and withdraw its gas in specified equal daily quantities, which allows it to optimize its system operations and thereby offer the service at a lower price. Tres Palacios argues that customers using service under either rate schedule cannot use secondary points because the use of such points would entail the risk of curtailment to accommodate the higher priority rights of other shippers holding primary firm rights, and the customers would thereby not be able to park or loan the quantity specified in the agreement. Tres Palacios contends removing secondary point rights from FP and FL Rate Schedules will not adversely affect customers.

Nomination Procedures

20. Tres Palacios proposes to modify the nomination procedures set forth in section 8.3 of its GT&C to clarify that a customer may not nominate simultaneous injections and withdrawals under a single contract to achieve the equivalent of unbundled transportation services. Tres Palacios states it occasionally receives service inquiries from customers that involve nominations for simultaneous injections and withdrawals from storage at different receipt and delivery points. Tres Palacios states that, if it were to accept and

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[10] *Egan Hub Storage, LLC*, Docket No. RP07-63-000 (unpublished delegated letter order) (December 11, 2006).

confirm such nominations, it would be providing firm transportation service between the storage service receipt and delivery points, which it is not authorized to provide. Tres Palacios claims, however, that it is authorized to use its existing IW Rate Schedule (interruptible wheeling service) to move gas among its receipt and delivery points for customers.

Comments

21. NJRES argues Tres Palacios is ambiguous with respect to how the proposals would apply to existing agreements and existing customers. According to NJRES, it is unclear which proposals would apply to new agreements filed after any effective date for the tariff revisions, and which would apply to those customers holding agreements already executed as of that effective date.

22. NJRES asks the Commission to reject Tres Palacios's proposal to charge storage customers for the use of secondary points. It states the proposal would fundamentally alter Tres Palacios's firm storage service and restrict a customers' use of open access storage service. It argues the proposal is inconsistent with Tres Palacios's storage certificate, and contravenes the Commission's well-established policies promoting flexible receipt and delivery points.[11] NJRES also argues this proposal to restrict secondary point rights is an attempt to negotiate a fundamental term and condition of service, which the Commission prohibits.[12]

23. NJRES asserts that limiting secondary point rights would unreasonably inhibit the capacity release market since it could prevent Tres Palacios's storage customers from releasing capacity. NJRES also asks the Commission to reject Tres Palacios's proposal to delete references to secondary receipt and delivery points for its park and loan services, asserting that Tres Palacios failed to support the revision.

24. NJRES requests the Commission reject Tres Palacios's proposal to clarify that a customer may not nominate simultaneous injections and withdrawals under a single contract under FSS Rate Schedule. It argues this would force customers to purchase interruptible wheeling service to implement same-day scheduling and take away customer flexibility. NJRES contends customers need such intraday flexibility to serve

[11] *Citing Transcontinental Gas Pipe Line Corp.* 104 FERC ¶ 61,171 at P 25 (2003), (The Commission "has implemented its secondary point policy by acting under NGA section 5 to require pipelines to modify the terms and conditions of service in their tariffs to provide firm shippers the right to use secondary points throughout the zones for which they pay.").

[12] *BGS Kimball Gas Storage, LLC*, 117 FERC ¶ 61,122 (2006).

the natural gas marketplace, citing the unpredictability of gas-fired generators or situations where the market is in over-supply.

25. NJRES also questions whether customers holding executed agreements would still be charged for secondary point rights, since these changes are incorporated by reference into all agreements. It asserts Tres Palacios's representation that its proposed changes would not alter existing agreements is unproven.

26. In its protest, VPEM reiterates NJRES's concerns. Both parties request a hearing or technical conference should the Commission decide not to reject the proposals.

Discussion

27. The Commission finds Tres Palacios's proposed tariff sheets have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission suspends their effectiveness for the period set forth below, subject to refund and further order of the Commission. The Commission directs Tres Palacios to file additional information, within 30 days of the date this order issues, addressing protests that parties raised, as well as other concerns of the Commission's. Parties will have 20 days to comment on Tres Palacios's information filing.

28. With regard to its proposed changes to secondary point flexibility, Tres Palacios should explain in detail:

(1) how its proposal conforms to the Commission's open access policy to allow shippers to utilize secondary points for no additional charge when capacity is available at those points;

(2) how its proposal does not represent a negotiated term and condition of service, as NJRES and VPEM assert;

(3) the effects its proposal would have on its shippers' ability to release their capacity;

(4) how often current customers operating under Rate Schedule FSS utilize point flexibility when nominating for service; and,

(5) whether any customers currently using its firm park and loan services have used point flexibility in nominating their receipt and delivery points and, if so, if such flexibility has led to curtailments.

29. With regard to its proposed changes to nominations, Tres Palacios should explain in detail:

(1) whether its proposal pertains to injections and withdrawals on the same day, or only within the same nomination cycle;

(2) the number of instances in which customers have nominated simultaneous injections and withdrawals; and,

(3) why, if a firm storage customer is operating under the provisions of Tres Palacios's tariff and FSS Rate Schedule, Tres Palacios would categorize simultaneous injection and withdrawal nominations to different points as transportation service.

30. Finally, Tres Palacios should explain in detail which of its proposed modifications, if any, would apply to contracts executed prior to the effective date of the proposal, and if so, on what basis would the Commission permit such retroactive application.

31. Upon receipt of the above information the Commission will review the proposal as augmented by this additional information and render its decision concerning the reasonableness of the proposals.

32. Based on a review of the filing, the Commission finds that the proposed tariff sheets listed in the Appendix have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff sheets for filing and suspend their effectiveness for the period set forth below, subject to refund and condition.

33. The Commission's policy regarding suspensions is that tariff filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.[13] It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.[14] Such circumstances do not exist here. In this case, the Commission will exercise its discretion to accept and suspend these tariff sheets for five months, and permit the tariff sheets to become effective July 25, 2009, subject to the conditions set forth in the body of this order and the ordering paragraphs below, and further Commission review.

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[13] *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (5 month suspension).

[14] *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (1 day suspension).

<u>The Commission orders</u>:

(A) Tres Palacios's revised tariff sheets filed to comply with the Commission's Order No. 712, as set forth in the Appendix, are conditionally accepted effective February 25, 2009.

(B) Tres Palacios's revised tariff sheets proposing tariff changes outside the scope of an Order No. 712 compliance filing, as set forth in the Appendix, are accepted and suspended for five months, to become effective on the earlier of July 25, 2009, or a further Commission order.

(C) Tres Palacios is directed to file additional information and revised tariff sheets, consistent with the directives set forth in the body of this order, within 30 days of the date this order issues. For the additional information pertaining to the proposals outside the scope of the Order No. 712 compliance filing, parties will have 20 days to respond to the information.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Tres Palacios Gas Storage LLC
Original Volume No. 1

Tariff Sheets Conditionally Accepted Effective February 25, 2009:

First Revised Sheet No. 114
First Revised Sheet No. 115
Original Sheet No. 115A
First Revised Sheet No. 118
First Revised Sheet No. 119

Tariff Sheets Suspended To Become Effective July 25, 2009:

First Revised Sheet No. 2
First Revised Sheet No. 52
First Revised Sheet No. 138
First Revised Sheet No. 139
First Revised Sheet No. 148
First Revised Sheet No. 149
Original Sheet No. 165
Original Sheet Nos. 166-199
First Revised Sheet No. 201
First Revised Sheet No. 202
First Revised Sheet No. 206
First Revised Sheet No. 207
First Revised Sheet No. 208
First Revised Sheet No. 209
First Revised Sheet No. 212
First Revised Sheet No. 213
First Revised Sheet No. 214
First Revised Sheet No. 219
First Revised Sheet No. 220
First Revised Sheet No. 221
First Revised Sheet No. 225
First Revised Sheet No. 226
First Revised Sheet No. 227
Original Sheet No. 231A
First Revised Sheet No. 232
First Revised Sheet No. 233
First Revised Sheet No. 234
Original Sheet No. 237A
First Revised Sheet No. 238
First Revised Sheet No. 239
First Revised Sheet No. 244
First Revised Sheet No. 245
Original Sheet No. 245A