126 FERC ¶ 61,222
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 13, 2009

In Reply Refer To:
Pine Needle LNG Company, LLC
Docket No. RP09-239-000

Pine Needle Operating Company
P.O. Box 1396
Houston, TX 77251

Attention: Marg Camardello
Manager – Tariffs and Certificates

Reference: Revised Tariff Sheets to Comply with FERC Order Nos. 712 and 712-A

Dear Ms. Camardello:

1. On January 22, 2009, Pine Needle LNG Company, LLC (Pine Needle) filed revised tariff sheets[1] proposing modifications to its tariff to comply with the capacity release requirements promulgated by Order Nos. 712 and 712-A.[2] The tariff sheets listed in the Appendix to this order are accepted effective February 22, 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 (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 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

[1] *See* Appendix.

[2] *Promotion of a More Efficient Capacity Release Market*, Order No. 712, FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g*, Order No. 712-A, FERC Stats. & Regs. ¶ 31,284 (2008).

capacity release made as part of a state-approved retail access program. Pine Needle proposes several changes to the capacity release provisions in section 20 of the General Terms & Conditions (GT&C) of its tariff to reflect the various changes in the capacity release regulations made by Order Nos. 712 and 712-A.

3. Public notice of Pine Needle's filing was issued on January 27, 2009. Interventions and protests were due February 3, 2009, as provided in section 154.210 of the Commission's regulations.[3] Pursuant to Rule 214,[4] all timely filed motions to intervene and any motions to intervene out-of-time 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. Piedmont Natural Gas Company, Inc. (Piedmont) filed comments. On February 18, 2009, Pine Needle filed an answer to Piedmont's comments.

4. Pine Needle states that it proposes to revise section 4 of Rate Schedule LNG-1 to state that the maximum rate ceiling does not apply to releases with a term of one year or less that become effective on or after July 30, 2008. Pine Needle further states that it proposes to revise section 20 of its GT&C as follows: adding the posting requirements for releases to an asset manager or marketer participating in a state-approved retail program; reflecting the bidding exemption for releases (i) of 31 days or less, (ii) greater than one year at the maximum tariff rates, (iii) to an asset manager, or (iv) to a marketer participating in a state-regulated retail access program; clarifying the rollover provisions; reflecting that releases with a term greater than one year at rates lower than maximum tariff rates, or releases with a term greater than 31 days and less than or equal to one year are subject to competitive bidding, unless such release is to an asset manager or a marketer participating in a state-regulated retail access program; and incorporating the removal of the maximum rate ceiling for releases of one year or less that become effective on or after July 30, 2008.

5. The Commission finds that Pine Needle's filing complies with Order Nos. 712 and 712-A and the Commission's capacity release policies. Accordingly, the Commission accepts Pine Needle's filing, effective February 22, 2009, as proposed.

6. Piedmont argues that Pine Needle should clarify or propose a "flow-through" policy with regard to discounted commodity and fuel rates applicable to a qualified AMA, particularly in light of the fact that a general refusal to allow "flow-through" of such discounts would impede asset management transactions, and is therefore not in conformance with the general principles established in Order Nos. 712 and 712-A.

[3] 18 C.F.R. § 154.210 (2008).

[4] 18 C.F.R. § 385.214 (2008).

Piedmont asserts that, in Docket No. RP09-70-000, the Commission requested further comments concerning the "flow-through" issues raised in the Texas Eastern Transmission, LP (Texas Eastern) compliance filing revising its capacity release provisions.[5] Piedmont further asserts that it has filed comments in that proceeding supporting the inclusion of such "flow-through" provisions in Texas Eastern's tariff. Piedmont argues that, at a minimum, further discussion of this aspect of the proposed tariff modifications related to capacity release transactions is needed.

7. The issue raised by Piedmont does not arise on Pine Needle's system, and accordingly there is no need for any further consideration of that issue in this proceeding. 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. Pine Needle uses a Straight-Fixed Variable (SFV) rate design, and it has not included in its tariff any authority to negotiate rates.[6] Therefore, it cannot discount its usage or fuel charges, because they only contain variable costs.[7] Moreover, because Pine Needle has no negotiated rate authority, it cannot enter into negotiated rate agreements providing for fuel retention rates (and usage charges) that vary from those in its tariff.

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

Nathaniel J. Davis, Sr.,
Deputy Secretary.

---

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

[6] The Commission only authorizes negotiated rates based upon a filing by the pipeline. *See Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation on Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, at 61,241 (1996), *order granting clarification,* 74 FERC ¶ 61,194, *order denying reh'g and clarification*, 75 FERC ¶ 61,024 (1996), *Reh'g denied*, 75 FERC ¶ 61,066 (1996), *pet. for review denied, Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, *et al*., U.S. App. LEXIS 20697 (D.C. Cir. July 20, 1998). Pine Needle has not made such a filing.

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

APPENDIX

Pine Needle LNG Company, LLC
FERC Gas Tariff, Original Volume No. 1

Tariff Sheets Accepted Effective February 22, 2009

Second Revised Sheet No. 11
Second Revised Sheet No. 68
Third Revised Sheet No. 69
Third Revised Sheet No. 70
Second Revised Sheet No. 71
Third Revised Sheet No. 72