126 FERC 61,269
FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

March 25, 2009

In Reply Refer To:
Destin Pipeline Company, L.L.C.
Docket No. RP09-251-000

Destin Pipeline Company, L.L.C
Attn: Bruce D. Whiteford, Vice President
550 Westlake Park Boulevard
Houston, Texas 77079

Reference: Order No. 712 and 712-A Compliance Filing

Dear Mr. Whiteford:

1. On January 23, 2009, Destin Pipeline Company, L.L.C. (Destin) 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] For the reasons discussed below, the Commission finds that Destin'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 Destin's tariff sheets listed in footnote 1 to be effective February 23, 2009, subject to Destin making a compliance filing within 20 days of the date of this order reflecting the revisions to the tariff discussed in the body of this order.

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

[1] Fourth Revised Tariff Sheet No. 98, First Revised Sheet No. 102, and Third Revised Sheet No. 103 to its FERC Gas Tariff, Original Volume No. 1.

[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 No. 712), *order on reh'g*, Order No. 712-A, 73 Fed. Reg. 72,692 (December 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008) (Order No. 712-A).

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 capacity releases made as part of a state-approved retail access program.

3. Destin proposes several changes to its General Terms and Conditions to provide that capacity releases of one-year or less are not subject to the maximum rate cap. Destin also proposes additional modifications to clarify and revise the bidding requirements for capacity release transactions associated with an AMA or a state-approved retail open access program.

4. Public notice of Destin's filing was issued on January 27, 2009. Interventions and protests were due 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 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. Motions to intervene and comments were filed by BP America Production Company and BP Energy Company (collectively, BP).

5. On February 18, 2009, Destin filed an answer to the comments filed by BP. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[5] prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Destin's answer because it has provided information that assisted us in our decision-making process.

6. BP states that it generally supports Destin's proposed changes. However, BP raises three issues discussed below stating that Destin has not fully complied with the Commission's capacity release regulations required by Order Nos. 712 and 712-A.

7. Section 284.8(h)(2) of the regulations, as adopted by Order No. 712-A, provides that, when a release is exempt from bidding because its term is 31 days or less, the releasing shipper may not roll over or extend the release to the same replacement shipper using the 31-day or less bidding exemption until at least 28 days after the first release. Section 284.8(h)(2) also states that the 28-day hiatus does not apply to any re-release to the same replacement shipper that is posted for bidding or that qualifies for any of the other exemptions from bidding. In its compliance filing, Destin has proposed to revise section 18.3(c) of its GT&C to list the types of releases that are exempt from bidding,

---

[3] 18 C.F.R. § 154.210 (2008).

[4] 18 C.F.R. § 385.214 (2008).

[5] 18 C.F.R. § 385.213(a)(2) (2008).

including a release of capacity for 31 days or less. It also proposes to include in section 18.3(c) a statement that "Once the term of a release for 31 days or less hereunder has expired, the releasing shipper cannot release its capacity to the same acquiring shipper under this provision until . . . 28 days or more have elapsed since the termination of the unposted release."

8. BP argues that the Commission should require Destin to include in its tariff an express statement that the 28-day hiatus period is not applicable to re-releases of short-term (31 days or less) capacity releases that are posted for bidding or otherwise qualify for an exemption from the bidding requirements. Specifically, BP requests that Destin amend section 18.3(c) to state:

> The 28-day hiatus period does not apply to any re-release to the same ACQUIRING SHIPPER that is posted for bidding or that qualifies for any of the other exemptions from bidding under this section 18.3(c).

9. In its answer, Destin states that its proposed tariff language is consistent with the Commission's Section 284.8(h)(2) prohibition on re-releases to the same shipper. Moreover, because the Commission's rules explicitly allow re-releases in the circumstances described by BP, Destin will interpret its tariff to allow them. Destin argues that BP's requested amendment is not required because nothing in Destin's tariff precludes a re-release that otherwise qualifies for an exemption and because the requested change does not apply to releases under this section of the tariff, which are not subject to bidding.

10. The Commission denies BP's request. Destin has included affirmative language implementing the 28-day restriction on re-releases to the same shipper in its tariff. Consistent with Order Nos. 712 and 712-A, and the resulting revisions to section 284.8(h)(2) of our regulations, Destin's proposed tariff language only applies the 28-day hiatus requirement to a releasing shipper's "release [of] its capacity to the same acquiring shipper under this provision," i.e. the exemption for releases of 31 days or less. The Commission does not believe it necessary for Destin to include additional tariff language expressly stating the inapplicability of the 28-day hiatus where that restriction does not apply. The Commission thus denies BP's request.

11. Order No. 712 amended section 284.13(b)(1) of the Commission's regulations to add a new subsection (x), requiring pipelines to post on their internet web sites whether a capacity release is to an asset manager and if so, the volumetric level of the replacement shipper's delivery or purchase obligation and the time periods during which that obligation is in effect. The Commission also added new subsection (xi) requiring pipelines to post whether a release is to a marketer participating in a state regulated retail access program.

BP asserts that Destin failed to revise its tariff to require releasing shippers to provide Destin with the information that new sections 284.13(b)(1) (x) and (ix) require Destin to post. Therefore BP, is asking that Destin be required to add a provision to section 18.6(c) of its GT&C requiring releasing shippers to identify as part of their offer to release the following information: (1) whether a release is to an asset manager; (2) whether a release is to a marketer participating in a state-regulated retail access program; and (3) any delivery of supply obligations related to a release to an asset manager.

12. Destin recognizes that when a shipper engages in a pre-arranged release to an asset manager or marketer participating in a state-regulated retail access program, the pipeline must post such information on its website. Destin also states that, while section 18.6(c) of its GT&C lists some of the information that the releasing shipper must provide to Destin in order for it to comply with section 284.13, that section does not list all such information. However, Destin states that it should not be required to amend its tariff. Destin states that, although its tariff does not purport to list every piece of information releasing shippers must provide, it will ensure that they provide all necessary information for it to comply with the section 284.13 posting requirements.

13. Order No. 712 specifically required that releasing shippers provide, and pipelines post, additional information with regard to releases to implement asset management arrangements (AMAs) and releases to marketers participating in state regulated retail access programs.[6] Thus, we will require Destin to file, within 20 days of the date of this order, tariff language that requires a releasing shipper to identify as part of its offer to release, as applicable, the following information: (1) whether a release is to an asset manager; (2) any delivery or supply obligations related to a release to an asset manager; and (3) whether a release is to a marketer participating in a state-regulated retail access program.

14. Finally, BP states that in accordance with Order Nos. 712 and 712-A, Destin should revise the deadline set forth in its tariff by which it will post the terms of the releases that are not subject to bidding to state that the pipeline will post such transactions "as soon as possible, but not later than the first nomination, after the release transaction commences."[7] In its answer Destin acknowledges that its tariff does not presently reflect this deadline, and agrees to amend it accordingly. Therefore, the Commission directs Destin to file, within 20 days of the date of this order, revised tariff provisions to reflect the modified deadline.

[6] Order No. 712, FERC Stats. & Regs. ¶ 31,271 at P 175 and P 201.

[7] See 18 C.F.R. § 284.8(h)(1)(v).

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: Public File
All Parties