

127 FERC ¶ 61,012
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 3, 2009

In Reply Refer To:
Southern Natural Gas Company
Docket No. RP09-288-000

Southern Natural Gas Company
P.O. Box 2563
Birmingham, AL 35202

Attention: Glenn A. Sheffield
Director - Rates

Reference: Order No. 712 Compliance Filing

Dear Mr. Sheffield:

1. On January 26, 2009, Southern Natural Gas Company (Southern) 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 effective July 30, 2008, subject to the conditions discussed below.
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 capacity release made as part of state-approved retail access program. Southern proposes

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 No. 712).

several changes to the Firm Transportation Service pricing sheets, capacity release provisions in Section 22 of the General Terms & Conditions (GT&C) and Appendix H of its tariff to reflect the various changes in the capacity release regulations made by Order Nos. 712 and 712-A.

3. Notice of Southern's filing in Docket No. RP09-288-000 was issued on January 29, 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) and Southern Cities² (Cities) submitted comments. On February 27, 2009, the Interstate Natural Gas Association of America (INGAA) submitted comments out of time. On March 11, 2009, the American Gas Association (AGA) filed a response to INGAA's comments.

4. The Commission finds that Southern's proposed revised tariff sheets are generally consistent with the Commission's capacity release policies and Order Nos. 712 and 712-A and are otherwise just and reasonable. Accordingly, the Commission accepts Southern's filing, effective July 30, 2008, subject to conditions as discussed below.

5. Atmos requests that the Commission require Southern to include provisions allowing the "flow-through" of discounts from releasing shippers to their asset managers. For example, Atmos states that it is unclear whether and to what extent Southern 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 that Southern 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 to Order Nos. 712 and 712-A.

6. 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.

² "Southern Cities" include the City of Tallahassee, Florida, and the Cities of Cordele, Dublin, Cartersville, Cuthbert, Hawkinsville, La Grange, and Tallapoosa, Georgia.

7. In its comments, 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 AMAs. 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 AMAs and retail choice programs.

8. 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.³ Therefore, a pipeline such as Southern 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.⁴ Thus, the issue of the “flow-through” of discounted usage and fuel charges to an asset manager/replacement shipper does not arise on Southern’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. Southern 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.

9. 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.⁵ 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

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

⁴ *Mississippi River Transmission Corp.*, 98 FERC ¶ 61,119 (2002).

⁵ *El Paso Natural Gas Co.*, 61 FERC ¶ 61,333, at p. 62,309 (1992) (*El Paso*).

releasing shipper under that contract and is not relevant to other contracts and services to other shippers, including replacement shippers.⁶

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.⁷ These same policies apply to negotiated usage and fuel charges.

10. Order No. 712 did not modify the Commission's existing policy concerning the pipeline's offering usage charge discounts to replacement shippers.⁸ 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 AMAs does raise the following issues in this proceeding:

(1) whether it would be unduly discriminatory for Southern 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;⁹

(2) if a negotiated rate agreement between Southern 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,¹⁰ should the asset manager/replacement shipper's use of those points be considered to be within the usage contemplated by Southern when it granted the negotiated rate to the releasing shipper? For this reason, should Southern be required to offer the same negotiated rate to the asset manager/replacement shipper at those points, but not at any other point?

⁶ *Id.*

⁷ See *Williston Basin Interstate Pipeline Co. (Williston Basin)*, 85 FERC ¶ 61,247, at p. 62,028-30 (1998), and cases cited, for a discussion of this policy.

⁸ *Texas Eastern Transmission, LP*, 125 FERC ¶ 61,396, at P 21 (2008).

⁹ See 18 C.F.R. § 284.8(h)(3) (2008) of the Commission's regulations, as revised by Order No. 712-A (defining a release to an asset manager).

¹⁰ *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).

(3) whether Southern 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; 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 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.

11. Before deciding these issues, the Commission requires additional information from Southern, and will give the parties an opportunity to provide supplemental comments. In this regard, the Commission directs Southern to file the following information, within 30 days of the date of this order: (1) how many of Southern'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 Southern 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. Other parties may file comments within 20 days of the date of Southern's filing.

12. With respect to the request by INGAA that the Commission pursue these issues in a generic proceeding, the Commission will consider the need for such a proceeding after analyzing the parties' responses to the above request for information and comments concerning the specific circumstances on Southern's system.

13. Cities asserts that the language of GT&C Section 22 fails to make clear that, in order to be eligible for the uncapped rate, the capacity release must commence within one year of the date upon which Southern is notified of the release.¹¹ Cities requests that Southern clarify the restriction in their tariff.

14. In Order No. 712-A, the Commission revised its regulations so that the lifting of the price cap for short-term releases would only apply to releases that take effect within one year of the date the pipeline is notified of the release to prevent shippers from releasing units of capacity in a manner designed to circumvent the price ceilings remaining in effect.¹² Therefore, the Commission directs Southern to file revised tariff sheets, within 15 days of the date of this order, to reflect this requirement of Order No. 712-A.

¹¹ 18 C.F.R § 284.8(b)(2) as modified in Order No. 712-A.

¹² Order No. 712-A at P 62.

15. Cities asserts that Southern should make clear in GT&C Section 22.5 that, although replacement shippers receiving service under short-term capacity release agreements may not be eligible to share in rate case refunds, the associated releasing shippers paying rates higher than the refund levels will be fully entitled to receive such refunds.

16. In *Texas Eastern Transmission, LP*,¹³ the Commission found that it was consistent with Order No. 712 to deem rates paid by replacement shippers for terms of one year or less to be final and not subject to refund.¹⁴ However, the Commission also stated that a releasing shipper paying a recourse rate higher than the maximum just and reasonable rate determined in a rate case would be eligible for refunds because Order No. 712 did not remove any maximum rates for the pipeline's sale of its own capacity.¹⁵ Therefore, the refunds must be paid by the pipeline to the releasing shipper. However, the conditions of the release may address the issue of who ultimately receives the refund amounts.

17. The Commission finds that the discussion in *Texas Eastern* provides sufficient guidance on this issue, without the need for Southern to revise its tariff in the manner requested by Cities.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: Public File
All Parties

¹³ Citing, *Texas Eastern Transmission, LP*, 125 FERC ¶ 61,396, at P 13 (2008) (*Texas Eastern*).

¹⁴ *Texas Eastern* at P 13.

¹⁵ *Id.*

Appendix

Southern Natural Gas Company

FERC Gas Tariff, Seventh Revised Volume No. 1
Tariff Sheets to be Effective July 30, 2008, Subject to Conditions

Seventieth Revised Sheet No. 14
Seventieth Revised Sheet No. 16
Second Revised Sheet No. 164
Seventh Revised Sheet No. 169
Fifth Revised Sheet No. 170
Third Revised Sheet No. 171
Second Revised Sheet No. 172
Fifth Revised Sheet No. 176
Tenth Revised Sheet No. 177
Fourth Revised Sheet No. 178
Fifth Revised Sheet No. 184
Tenth Revised Sheet No. 275
Seventh Revised Sheet No. 276
Seventh Revised Sheet No. 277