

127 FERC ¶ 61,062
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 21, 2009

In Reply Refer To:
CenterPoint Energy – Mississippi River
Transmission Corporation
Docket No. RP09-262-000

CenterPoint Energy – Mississippi River Transmission Corporation
P.O. Box 21734
Shreveport, LA 71151

Attention: Lawrence O. Thomas
Director, Rate & Regulatory

Reference: Order No. 712 Compliance Filing

Ladies and Gentlemen:

1. On January 26, 2009, CenterPoint Energy – Mississippi River Transmission Corporation (MRT) 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 February 25, 2009, 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

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 (December 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008).

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. MRT proposes several changes to the capacity release provisions in Section 14 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. Notice of MRT's filing 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 the proceeding or place additional burdens on existing parties. Atmos Energy Corporation (Atmos) 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 MRT'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 MRT's filing, effective February 25, 2009, subject to conditions and further review as discussed below.

5. Atmos requests that the Commission require MRT 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 MRT 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 MRT 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.

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.² Therefore, only pipelines using a non-Straight-Fixed Variable (SFV) rate design which includes some fixed costs in their usage charges can discount their usage charges. MRT is one such pipeline. 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.³ However, pipelines with negotiated rate authority may enter into negotiated rate agreements which are not bounded by their tariff maximum and minimum rates. MRT 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.⁴ 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

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

³ *Mississippi River Transmission Corp.*, 98 FERC ¶ 61,119, at 61,352 (2002).

⁴ *El Paso Natural Gas Co.*, 61 FERC ¶ 61,333, at 62,309 (1992) (*El Paso*).

El Paso for the releasing shipper under that contract and is not relevant to other contracts and services to other shippers, including replacement shippers.⁵

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.⁶ 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.⁷ 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 MRT to deny an asset manager/replacement shipper the same discounted usage charge or 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/replacement shipper;⁸

(2) if the discounted or negotiated rate agreement with the releasing shipper provides that the discounted or negotiated 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 granted the discount or negotiated rate to the releasing shipper? This then raises the question of whether the pipeline should be required to offer the same discounted or negotiated rate to the asset manager/replacement shipper at those points, but not at any other point;

⁵ *Id.*

⁶ See *Williston Basin Interstate Pipeline Co.*, 85 FERC ¶ 61,247, at 62,028-30 (1998), and cases cited, for a discussion of this policy.

⁷ *Texas Eastern Transmission, LP*, 125 FERC ¶ 61,396, at P 21 (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).

(3) whether MRT should be required to include in its tariff a provision concerning the circumstances under which it would provide similar discounted or negotiated usage and fuel and LAUF 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 discounted or 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 MRT, and will give the parties an opportunity to provide supplemental comments. In this regard, the Commission directs MRT to file the following information within 30 days of the date of this order: (1) how many of MRT's existing firm shipper contracts include discounted or negotiated usage and fuel rates, (2) how many of any such contracts limit the discounted or negotiated rate to specific points, (3) a general description of how MRT intends to determine whether to grant usage charge discounts or negotiated usage and fuel and LAUF charges to asset manager/replacement shippers, and (4) what factors it will consider in determining whether to grant such discounts or negotiated rates. Other parties may file comments within 20 days of the date of MRT'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 MRT's system.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: Public File
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Appendix

CenterPoint Energy – Mississippi River Transmission Corporation

FERC Gas Tariff, Third Revised Volume No. 1
Tariff Sheets to be Effective February 25, 2009, Subject to Conditions

Seventh Revised Sheet No. 165
Fourth Revised Sheet No. 165A
Eighth Revised Sheet No. 167
Fifth Revised Sheet No. 167A
Fifth Revised Sheet No. 168
Original Sheet No. 168A
Seventh Revised Sheet No. 169
Second Revised Sheet No. 169A
Ninth Revised Sheet No. 170
Fifth Revised Sheet No. 172
Third Revised Sheet No. 177