

127 FERC ¶ 61,082
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 24, 2009

In Reply Refer To:
Transcontinental Gas Pipe Line Co., LLC
Docket No. RP09-245-000

Transcontinental Gas Pipe Line Company, LLC
P.O. Box 1396
Houston, Texas 77251-1396

Attention: Scott Turkington
Director, Rates and Regulatory

Reference: Order No. 712 Compliance Filing

Dear Mr. Turkington:

1. On January 22, 2009, Transcontinental Gas Pipe Line Co., LLC (Transco) 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 22, 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 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.

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 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).

Finally, the Commission waived its prohibition on tying and bidding requirements for capacity release made as part of a state-approved retail access program.

3. To comply with Order Nos. 712 and 712-A, Transco proposes to revise its tariff sheets to reflect the following revisions: (1) section 3 of Rate Schedules LNG, WSS-Open Access, SS-1 Open Access, FT, FTN, ESS, and EESWS is changed 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; (2) section 42 of the General Terms and Conditions (GT&C) is changed to: (a) add the posting requirements for releases to an asset manager or marketer participating in a state-approved retail access program; (b) reflect the bidding exemption allowed for releases (i) of 31 days or less, (ii) greater than one year at maximum tariff rates, (iii) to an asset manager, or (iv) to a marketer participating in a state-regulated retail access program; (c) clarify the roll over provisions; (d) reflect 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 (e) incorporate the removal of the maximum rate ceiling for releases of one year or less that become effective on or after July 30, 2008.

4. Notice of Transco's filing in Docket No. RP09-245-000 was issued on January 27, 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. Columbia Gas of Virginia, Inc. (CGV), National Grid Gas Delivery Companies² (National Grid), Atmos Energy Corporation (Atmos), and Piedmont Natural Gas (Piedmont) 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.

5. On February 18, 2009, Transco filed an answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority.

² The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Boston Gas Company, Colonial Gas Company, and Essex Gas Company, collectively d/b/a National Grid; Energy North Natural Gas Inc., d/b/a National Grid NH; Niagara Mohawk Power Corporation d/b/a National Grid; and The Narragansett Electric Company d/b/a National Grid, all subsidiaries of National Grid USA.

We will accept Transco's answer because it has provided information that assisted us in our decision-making process.

6. The Commission finds that Transco'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 Transco's filing, effective February 22, 2009, subject to conditions as discussed below.

7. CGV asserts that the language in Transco's proposed tariff sheet, First Revised Sheet No. 454, in section 42(d), states:

For releases that become effective on or after July 30, 2008, the maximum rate ceiling does not apply to such releases provided the release is for a term of one year or less and the release is to take effect on or before one year from the date on which the pipeline is notified of the release. *The rate paid in any such capacity release transaction not subject to the maximum rate ceiling will not be subject to refund.*³

CGV agrees with the above language's applicability with regard to replacement shippers because these shippers are not entitled to refunds in such situations. However, CGV states the provision should be made clear that it does not apply to releasing shippers because releasing shippers are entitled to refunds in situations where the capacity has been released to a replacement shipper for more than the maximum rate.

8. In reply, Transco asserts another party raised this exact issue in Docket No. RP00-443, which was the proceeding in which Transco first included the language as part of Transco's compliance with Order No. 637's limited term suspension of the rate ceiling applicable to capacity release transactions. In *Transcontinental Gas Pipe Line Corporation*, Transco asserts that the Commission found that no change was warranted in Transco's tariff language.⁴ Transco contends that, since the Commission has already addressed and resolved the concern raised by CGV about this language in a prior Transco proceeding, no modification to its tariff is needed.

³ First Revised Sheet No. 454, Section 42.7(d) to FERC Gas Tariff, Fourth Revised Volume No. 1 (emphasis provided).

⁴ See *Transcontinental Gas Pipe Line Corporation*, 92 FERC ¶ 61,193 (2000).

9. The Commission finds no change is warranted in Transco's tariff language. As stated in *Texas Eastern Transmission, LP*,⁵ 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.⁶ The discussion in *Texas Eastern* provides sufficient guidance on this issue, and therefore it is not necessary for Transco to add tariff language expressly requiring that Transco make such refunds to the releasing shipper.⁷

10. National Grid states that it does not oppose Transco's specific proposed tariff revisions, which are intended to facilitate compliance with Order Nos. 712 and 712-A. However, National Grid expresses concern that Transco's tariff provision in section 42.15 of its GT&C may not permit storage shippers to exercise all of the inventory transfer rights permitted under Order Nos. 712 and 712-A. Specifically, National Grid requests that Transco be required to state in its tariff that a releasing shipper's capacity release notice may include terms and conditions concerning the sale and/or repurchase of gas in storage inventory both within and outside the context of an asset management arrangement.

11. Transco believes a tariff change is not required since its existing section 42.15 of the GT&C complies with Order No. 712, and Transco clarifies that nothing in its tariff, including section 42.15, precludes a releasing shipper from including terms and conditions addressing storage inventory in its capacity release offer as permitted by Order No. 712. However, Transco asserts that it is willing to add the following language to the beginning of section 42.15:

A releasing shipper's capacity release notice may include terms and conditions concerning the sale and/or repurchase of gas in storage inventory both within and outside the context of an asset management arrangement.

12. Consistent with Order No. 712, the Commission directs Transco to revise its section 42.15 for clarity purposes. Transco has agreed in its answer to add language to its tariff stating that a releasing shipper's capacity release notice may include terms and conditions concerning the sale and/or repurchase of gas in storage inventory both within

⁵ *Texas Eastern Transmission, LP*, 125 FERC ¶ 61,396, at P 13 (2008) (*Texas Eastern*). Moreover, as Transco points out, the Commission reached the same result with respect to Order No. 637's experimental lifting of the price cap for short-term releases.

⁶ *Id.*

⁷ *Id.* at 61,664.

and outside the context of an asset management arrangement. Accordingly, subject to the condition that Transco files updated tariff sheets as it has agreed within 15 days of this order, we find the GT&C section 42.15 to be consistent with Order No. 712.

13. In addition, National Grid requests that Transco modify the application of its creditworthiness standards in certain capacity release situations and allow releasing shippers to willingly assume the risk that a replacement shipper will default on its payment obligations. National Grid notes that section 42.7(b) of the GT&C requires all potential shippers to satisfy Transco's conditions for creditworthiness before submitting a bid on a capacity release offer. National Grid recommends that Transco remove that requirement when the releasing shipper expressly agrees to assume the risk that a replacement shipper will default on its debt.

14. Transco states that no additional modifications to section 42 of its GT&C are necessary because National Grid's request goes well beyond the issues addressed in Order No. 712, and is outside of Transco's obligation to comply with Order No. 712. Transco further asserts that its existing tariff already addresses National Grid's concern and accommodates National Grid's request that a creditworthy entity may assume liability for all financial obligations related to the replacement shipper's contract on Transco's system. Transco states that it has discussed the availability of this option under section 32.2(c)(iii) of its GT&C with National Grid, and National Grid has indicated that this option has addressed its concern. Transco also states that National Grid proposed that when a releasing shipper accepts this liability, Transco send the replacement shipper's invoices directly to the releasing shipper. Transco indicates that it notified National Grid that Transco would have to redesign its billing system to accommodate this request, especially given the challenges of accommodating subsequent partial re-releases and partial recalls, which is extremely burdensome and complicated. Transco asserts that it has communicated this to National Grid and National Grid has indicated that it would not pursue this proposal.

15. The Commission finds no change is warranted in Transco's tariff language as National Grid's request goes beyond the scope of Transco's obligations under Commission Order Nos. 712 and 712-A. Further, Transco asserts in its answer, and it has not been disputed, that National Grid has indicated that it would not pursue the suggested tariff amendment.

16. Atmos and Piedmont request that the Commission require Transco 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 Transco 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 Transco 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.

17. Transco asserts that Atmos and Piedmont have filed these standard comments regarding “flow-through” issues in other pipelines’ Order No. 712 compliance proceedings. Therefore, in reply to their comments, Transco states that it generally adopts the comments and reply comments filed regarding this issue by Texas Eastern Transmission, LP on January 21, 2009 and January 30, 2009 respectively, in Docket No. RP09-70-000. Transco argues that the “flow-through” issue is beyond the intended scope of a pipeline’s Order No. 712 compliance proceeding and that such a policy, if addressed by the Commission, should be taken up in a separate, industry-wide rulemaking. Moreover, Transco contends that this issue is not ripe for Transco’s system because it currently does not discount fuel and cannot discount its commodity rates.

18. 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.

19. 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.

20. 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.⁸ Therefore, a pipeline such as Transco 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

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

unaccounted for (LAUF) gas are variable costs.⁹ Thus, the issue of the “flow-through” of discounted usage and fuel charges to an asset manager/replacement shipper does not arise on Transco’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. Transco 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.

21. 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.¹⁰ 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 contract and is not relevant to other contracts and services to other shippers, including replacement shippers.¹¹

22. 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.¹² These same policies apply to negotiated usage and fuel charges.

⁹ *Mississippi River Transmission Corp.*, 98 FERC ¶ 61,119 (2002).

¹⁰ *El Paso Natural Gas Co.*, 61 FERC ¶ 61,333, at p. 62,309 (1992) (*El Paso*).

¹¹ *Id.*

¹² See *Williston Basin Interstate Pipeline Co.*, 85 FERC ¶ 61, 247, at p. 62,028-30 (1998), and cases cited, for a discussion of this policy.

23. Order No. 712 did not modify the Commission's existing policy concerning the pipeline's offering usage charge discounts to replacement shippers.¹³ 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 Transco 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;¹⁴

(2) if a negotiated rate agreement between Transco 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,¹⁵ should the asset manager/replacement shipper's use of those points be considered to be within the usage contemplated by Transco when it granted the negotiated rate to the releasing shipper? For this reason, should Transco be required to offer the same negotiated rate to the asset manager/replacement shipper at those points, but not at any other point?

(3) whether Transco 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.

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

¹³ *Texas Eastern LP*, 125 FERC ¶ 61,396 at P 21.

¹⁴ See § 284.8(h)(3) of the Commission's regulations, as revised by Order No. 712-A (defining a release to an asset manager).

¹⁵ *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).

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 Transco 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 Transco's filing.

25. With respect to the request by INGAA and Transco 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 Transco's system.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: Public File
All Parties

Appendix

Transcontinental Gas Pipe Line Company, LLC

FERC Gas Tariff, Fourth Revised Volume No. 1
Tariff Sheets to be Effective February 22, 2009, Subject to Conditions

First Revised Sheet No. 114
First Revised Sheet No. 134
First Revised Sheet No. 157
First Revised Sheet No. 182
First Revised Sheet No. 279
First Revised Sheet No. 293
First Revised Sheet No. 299
First Revised Sheet No. 450
First Revised Sheet No. 451
First Revised Sheet No. 452
First Revised Sheet No. 453
First Revised Sheet No. 454
First Revised Sheet No. 455