129 FERC ¶ 61,171
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 23, 2009

In Reply Refer To:
Trunkline Gas Company, LLC
Docket No. RP09-250-000

Trunkline Gas Company, LLC
5444 Westheimer Road
Houston, TX 77056-5306

Attention: William W. Grygar, Rates and Regulatory Affairs

Reference: Order No. 712 Compliance Filing

Dear Mr. Grygar:

1. On January 23, 2009, Trunkline Gas Company, LLC (Trunkline) filed revised tariff sheets[1] to update the capacity release provisions of Trunkline's tariff in compliance with Order No. 712.[2] Trunkline proposed an effective date of February 23, 2009. As discussed below, the Commission accepts the tariff sheets listed in Appendix A to be effective February 23, 2009.

2. Trunkline proposes to revise the footnote describing the maximum rate applicable for capacity release on the rate sheets for Rate Schedules FT, EFT, QNT, LFT, FFZ, NNS-1, NNS-2, and FSS on Tariff Sheet Nos. 10, 12, 13, 14, 15, 18, and 19, respectively. Trunkline states that, in the Negotiated Rates section of each Rate Schedule, it clarifies the maximum rate for capacity releases and the situation where no rate limitation applies.

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[1] The tariff sheets are listed in Appendix A to this order.

[2] *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 73 FR 37058 (June 30, 2008), FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g*, Order No. 712-A, 73 FR 72692 (December 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008), *order on reh'g*, Order No. 712-B, 74 FR 18127 (April 29, 2009), 127 FERC ¶ 61,051 (2009).

Further, states Trunkline, it is updating the Capacity Release section of the General Terms and Conditions to show the rate cap removal on releases of one year or less in sections 9.2(A)(9) and 9.9(A); require additional information in section 9.2(A) (15) on releases to an asset manager or marketer participating in a state-regulated retail access program; enumerate capacity releases that are exempt from the bidding process in sections 9.2(A)(12), 9.3(A), and 9.3(B); and clarify sections 9.2(A)(9), 9.4(B)(1), and 9.4 (B)(2) so that, for capacity release purposes, releases of one year or less are treated differently from releases with a term of more than one year. Additionally, Trunkline states that new section 9.6(G) clarifies that replacement shippers paying a rate higher than the maximum rate will be treated as paying the maximum rate for scheduling purposes.

3. Public notice of Trunkline's filing was issued January 27, 2009, allowing for protests to be filed as provided in section 154.210 of the Commission's regulations.[3] Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[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. Various parties filed comments addressing Trunkline's proposed tariff sheets, and Trunkline filed an answer.

4. Atmos Energy Corporation (Atmos) filed comments generally supporting the revisions, but stated that it is not clear how customers' rights will be affected. More specifically, it questions whether and to what extent Trunkline will permit the flow-through of discounted commodity and fuel rates to an asset manager under qualified Order No. 712 releases. Atmos contends that Trunkline should clarify or propose a flow-through policy with regard to discounted commodity and fuel rates applicable to a qualified asset management arrangement (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 of Order No. 712. Atmos states that Trunkline should be required to implement provisions in its tariff requiring the flow-through of all such discounts from the releasing shipper to a qualified asset manager to promote the stated goals of Order No. 712.

5. The East Ohio Gas Company (East Ohio) also filed comments. It states that Trunkline's tariff changes conform to the requirements of Order No. 712, but it urges the Commission to condition acceptance of Trunkline's tariff sheets on the outcome of its ruling on the issue of whether the Commission should require pipelines implementing Order No. 712 to allow releasing shippers to pass through discounted or negotiated usage

[3] 18 C.F.R. § 154.210 (2009).

[4] 18 C.F.R. § 385.214 (2009).

or fuel charges under releases to asset managers under AMAs and releases to marketers under state-regulated retail access programs.

6. Trunkline filed an answer to the comments of Atmos and East Ohio, stating that the Commission should institute a separate rulemaking proceeding regarding the flow-through of any discounts or negotiated rates. Additionally, Trunkline states that asset managers should not automatically receive the usage charge discounts that a releasing shipper has with respect to volumes used for the account of any entity other than the releasing shipper, and that the Commission should not require pipelines to automatically flow-through negotiated usage charges to asset managers.

7. The Interstate Natural Gas Association of America (INGAA) filed a motion to intervene out-of-time in this and similar proceedings, stating that it seeks only to address the appropriate procedures and context for the Commission to address industry-wide flow-through issues that have arisen in this and similar proceedings. INGAA urges the Commission not to decide the flow-through issues in individual pipeline Order No. 712 compliance proceedings or at least to address the issues in a generic proceeding where comments of all industry segments can be considered.

8. The America Gas Association (AGA) filed a motion to intervene out-of-time in this and similar proceedings and a response to INGAA's motion. AGA urges the Commission to act expeditiously and resolve the policy questions in a consistent manner to provide customers the benefit of transactions that increase the efficiency of natural gas markets and lower costs to consumers. Further, AGA urges the Commission to require pipelines implementing Order No. 712 to allow releasing shippers to pass through discounted or negotiated usage or fuel charges under releases to asset managers under AMAs and releases to marketers under state-regulated retail access programs.

9. On October 15, 2009, the Commission issued an Order on Flow-Through of Discounted or Negotiated Usage and Fuel Charges addressing numerous Order No. 712 pipeline compliance filings.[5] In that order, the Commission stated that it will not establish a blanket requirement that pipelines must always provide the same discounted or negotiated usage or fuel charges to an asset manager replacement shipper that it has provided to the primary firm shipper. Instead, pipelines should apply the Commission's existing selective discounting policy on a case-by-case basis in deciding whether to grant a discounted or negotiated usage or fuel charge to an asset manager replacement shipper, subject to a general requirement of no undue discrimination.[6] The parties that filed

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[5] *Texas Eastern Transmission LP*, 129 FERC ¶ 61,031 (2009) (October 15, 2009 Order).

[6] *Id.* P 1.

comments in the instant proceeding also filed comments in the proceedings addressed in the October 15, 2009 Order.

10. In the October 15, 2009 Order, the Commission pointed out that, while it appears more likely that an asset manager replacement shipper will be similarly situated to the releasing shipper than in the traditional capacity release context, the asset manager is not similarly situated to the releasing shipper in every situation.[7] Further, the Commission determined that application of its existing policy would protect asset manager replacement shippers from undue discrimination with regard to receiving the benefit of discounts or negotiated rates provided to a releasing shipper while also protecting pipelines against unintended expansion of the rights originally provided to the releasing shipper.[8] The Commission concluded that, because it was not changing existing policy or revising its regulations, there is no need to establish a rulemaking or a separate generic proceeding.[9]

11. Accordingly, the Commission accepts the tariff sheets listed in Appendix A to be effective February 23, 2009.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[7] *Id.* P 19.

[8] *Id.* P 20.

[9] *Id.* P 27.

Appendix A

Docket No. RP09-250-000
Trunkline Gas Company, LLC
FERC Gas Tariff
Third Revised Volume No. 1

Nineteenth Revised Sheet No. 10
Nineteenth Revised Sheet No. 12
Nineteenth Revised Sheet No. 13
Nineteenth Revised Sheet No. 14
Eighteenth Revised Sheet No. 15
First Revised Sheet No. 18
First Revised Sheet No. 19
First Revised Sheet No. 46
First Revised Sheet No. 61
First Revised Sheet No. 69
First Revised Sheet No. 80
First Revised Sheet No. 88
Second Revised Sheet No. 104
Second Revised Sheet No. 117
Second Revised Sheet No. 254
Second Revised Sheet No. 255
Second Revised Sheet No. 256
Second Revised Sheet No. 257
Second Revised Sheet No. 258
Second Revised Sheet No. 263
First Revised Sheet No. 265