

132 FERC ¶ 61,026
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Gulf Crossing Pipeline Company LLC

Docket No. RP10-184-001

ORDER GRANTING CLARIFICATION

(Issued July 13, 2010)

1. On November 25, 2009, Gulf Crossing Pipeline Company LLC (Gulf Crossing) filed a permanent capacity release negotiated letter agreement with JP Morgan Ventures Energy Corporation (JP Morgan), effective December 1, 2009. On December 10, 2009, the Commission issued a letter order accepting the negotiated rate agreement.¹ On January 5, 2010, BP American Production Company and BP Energy Company (collectively BP) filed a request for clarification or, in the alternative, rehearing of the Letter Order. For the reasons discussed below we grant clarification.
2. As noted, on November 25, 2009, Gulf Crossing filed a negotiated rate letter agreement between itself and JP Morgan, which capacity had been released to JP Morgan by Antero Resources Corporation (Antero). The Commission accepted the agreement in the Letter Order noting that Gulf Crossing had stated that the agreement did not include any material deviations.
3. According to BP, the permanent capacity release at issue is part of an asset management agreement (AMA) between Antero and JP Morgan, through which JP Morgan is required to purchase, and Antero is required to deliver, 20,000 MMBtu per day or 100 percent of the released agreement's daily MDQ on a daily basis for the remaining term of the released agreement.² BP further states that while the agreement was posted as an AMA, neither Gulf Crossing's filing nor the Commission's Letter Order recognized the AMA nature of the release. BP thus requests the Commission clarify that permanent capacity releases can qualify as AMA capacity releases, or more specifically that "an

¹ *Gulf Crossing Pipeline Co. LLC*, Letter Order dated December 10, 2009, Docket No. RP10-184 (Letter Order).

² BP clarification request at p2 (noting that Gulf Crossing posted these details of the capacity release transaction on its electronic bulletin board on November 30, 2009).

asset manager and asset manager customer may enter into a permanent capacity release that qualifies as ‘a release to an asset manager’ under 18 CFR § 284.8(h)(3)’ and that such releases qualify for the exemptions from bidding and the prohibition on tying provided to AMAs by Order No. 712,³ so long as the release satisfies the conditions set forth in the Commission regulations to qualify as an AMA release.⁴ BP argues that while Order No. 712 discussed capacity releases in great detail, it does not distinguish between permanent and temporary releases in relation to AMAs. BP alternatively requests rehearing of the Letter Order in the event the Commission does not grant clarification, arguing that because Order No. 712 does not contain any limitation, qualification or condition stating expressly that a qualified AMA cannot involve permanent capacity release, limiting the availability of AMAs to only temporary capacity releases would not constitute reasoned decision-making.

4. The Commission grants clarification that a permanent release may qualify as a “release to an asset manager” as defined in 18 CFR section 284.8(h), provided that such release satisfies all the requirements of 18 CFR section 284.8(h)(3) to qualify as an AMA release. As BP notes, in Order No. 712 the Commission did not distinguish between permanent and temporary capacity releases with regard to pre-arranged releases that may qualify for the exemptions granted to releases made as part of an AMA. The Commission only required that the release contain a condition that the releasing shipper may call upon the replacement shipper to deliver to, or purchase from, the releasing shipper a volume of gas up to 100 percent of the daily contract demand under the release for the minimum periods set forth in section 284.8(h)(3)(i) through (iii). Accordingly, there is nothing in the Commission’s current regulations that prohibits a permanent release to an asset manager from qualifying as an AMA release. The Commission anticipated, based on the underlying goal of AMAs - that the released capacity be used to serve the releasing shipper’s needs - that most AMA releases would be temporary. The Commission also stated in Order 712, however, that we intended to give parties the flexibility to negotiate the most efficient AMAs to fit their needs⁵ and that one of the goals was to facilitate innovative AMAs.⁶ Accordingly to the extent that parties find it effective and efficient to structure AMAs using permanent releases, the Commission will

³ *Promotion of a More Efficient Capacity Release Market*, Order No. 712, FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh’g*, Order No. 712-A, FERC Stats. & Regs. ¶ 31,284 (2008), *order on reh’g*, Order No. 712-B, 127 FERC ¶ 61,051 (2009) (collectively Order No. 712).

⁴ Clarification Request at p. 3.

⁵ *See e.g.*, FERC Stats. & Regs. ¶ 31,271 at P 169.

⁶ *Id.*, at P 171.

not stand in the way of such developments. We therefore clarify that if a permanent release qualifies as a release to an asset manager pursuant to our regulations, such release is entitled to the exemptions afforded all AMA releases.

The Commission orders:

BP's request for clarification is granted as discussed above. BP's request for rehearing is denied as moot.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.