

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Texas Eastern Transmission, LP ) Docket No RP09-70-000

**MOTION FOR LEAVE TO INTERVENE OUT-OF-TIME  
AND COMMENTS OF THE  
NATURAL GAS SUPPLY ASSOCIATION**

Pursuant to the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), and the Commission's request for comments in its December 31, 2008 order in the above-captioned proceeding, the Natural Gas Supply Association ("NGSA") hereby respectfully moves for leave to intervene out-of-time in the above-referenced proceeding and submits these comments regarding the continuation of usage charge discounts in the context of an Asset Management Agreement ("AMA").

**I. BACKGROUND**

On November 13, 2008, Texas Eastern Transmission, L.P. ("Texas Eastern") filed revised tariff sheets to comply with Order No. 712<sup>1</sup> and make other changes to provisions related to the pipeline's capacity release procedures. On December 31, 2008, the Commission issued an Order Accepting Revised Tariff Subject to Conditions, *Texas Eastern Transmission, LP*, 125 FERC ¶ 61,396 (2008) (hereinafter "December 31 Order").

The Commission's December 31 Order requested comments regarding whether

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<sup>1</sup> *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).

pipelines should be required to offer usage charge discounts to certain replacement shippers in light of the Commission's Order No. 712. Specifically, the Commission asks:

1. whether the Commission should find that it would be unduly discriminatory for a pipeline to deny an asset manager replacement shipper the same discount of its usage charge as provided to the releasing shipper, at least during those periods when the asset manager is using the released capacity to satisfy the delivery or purchase obligations contained in the release to the asset manager, and
2. if so, whether Texas Eastern should be required to include in its tariff a provision concerning the circumstances under which it would provide similar usage charge discounts to an asset manager replacement shipper, or
3. whether the circumstances of individual releases to asset managers are sufficiently case-specific that pipelines should be allowed to decide whether to grant a usage charge discount to the asset manager/replacement shipper on a case-by-case basis, subject to a general requirement of no undue discrimination.

## **II. MOTION TO INTERVENE OUT-OF-TIME**

NGSA represents integrated and independent companies that produce and market domestic natural gas. Established in 1965, NGSA encourages the use of natural gas within a balanced national energy policy, and promotes the benefits of competitive markets to ensure reliable and efficient transportation and delivery of natural gas and to increase the supply of natural gas to U.S. consumers.

NGSA requests leave to intervene out-of-time in the proceeding to protect its member's interests as they relate to the use of AMAs. In its December 31 Order, the Commission requested comments on the treatment of usage charges as they relate to AMAs. The determination of this issue will have an impact on how this policy is implemented generally by the Commission, which is an issue that will significantly impact our membership as they transact Asset Management Agreements on many

interstate natural gas pipelines, including on Texas Eastern. No other party can adequately represent the interests of NGSAs on these matters.

NGSA's request to intervene out-of-time is the direct result of the Commission's invitation for comments. Its intervention will not disrupt the proceeding nor prejudice or place any additional burdens on any party to the proceeding, and NGSAs will accept the record of this proceeding as it stands. Therefore, good cause exists for the Commission to grant NGSAs' motion to intervene out-of-time.

**WHEREFORE**, in consideration of the foregoing, the NGSAs respectfully requests that it be allowed to intervene out-of-time in this proceeding with full rights as parties hereto.

### **III. COMMENTS**

In Order No. 712, the Commission took significant steps to promote the most efficient use of the secondary market for pipeline capacity by allowing parties the flexibility required to better manage their needs through the use of AMAs. As pipelines propose tariff revisions to comply with Order No. 712, some issues with respect to implementation of the order may need to be determined on a pipeline-by-pipeline basis, yet others, such as the issue here regarding the treatment of usage charges in the context of an AMA, are a matter of generic policy that should be implemented uniformly across pipelines. The outcome of such issues must be determined in a manner that is consistent with the goals of Order No. 712, specifically that of promoting the efficient use of pipeline capacity through AMAs.

In the December 31 Order, the Commission recognized that its policy regarding the treatment of discount usage charges must be seriously reexamined in the context of AMAs and asked parties to provide comments. NGSa fully supports the comments filed by the Marketer Petitioners in this proceeding regarding the treatment of discounted usage charges made as part of an AMA.

While the Commission's current policy is that the pipeline "generally should not be required to give the replacement shipper the same discount" of the usage charge as it gave the releasing shipper,<sup>2</sup> this policy should not be applied in the context of an AMA. Unlike a standard release of pipeline capacity, a capacity release to an asset manager is executed in order to serve the original holder of that capacity. Since the replacement shipper is using the capacity released as part of an AMA to provide service to the releasing shipper, the initial relationship and the basis for the originally-provided discount still exists. Therefore, there is no basis for discontinuing the discount that was afforded to the releasing shipper. Absent the continuation of the discount afforded to the original holder of the capacity, the overall benefits of the AMA will be diminished. Upsetting the benefit of the bargain reached between the two AMA parties, can void the executed AMA, or create uncertainty that would make parties hesitant to enter into an AMA in the first instance.

Therefore, NGSa believes that it would be unduly discriminatory for a pipeline to deny an asset manager replacement shipper the same discount of its usage charge as provided to the releasing shipper. Texas Eastern, as well as other interstate pipelines,

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<sup>2</sup> *El Paso Natural Gas Co.*, 61 FERC ¶ 61,333, at 62,309 (1992).

should be required to include tariff provisions that allow for the continuation of the usage charge discount in all instances in which the release was provided as part of an AMA. As long as the release is made in conjunction with a *bona fide* AMA, as defined by the Commission in Order No. 712 and refined in Order No. 712-A, there simply are no circumstances in which a case-specific determination should be required as to whether the asset manager should be granted the same usage charge discount as was previously granted to the releasing shipper.

In Order No. 712, the Commission stated that:

AMAs provide significant benefits to many participants in the natural gas and electric marketplaces and to the secondary marketplace itself. They maximize the utilization and value of capacity by creating a mechanism for capacity holders to use third party experts to both (1) manage their gas supply arrangements and (2) use that capacity to make gas sales or re-releases of the capacity to others when the capacity is not needed to serve the releasing shipper. AMAs result in ultimate savings for end-use customers by providing for lower gas supply costs and more efficient use of the pipeline grid. The Commission's goal in facilitating AMAs in this rule is to make the capacity release program more efficient by bringing it into line with the realities of today's secondary gas marketplace.<sup>3</sup>

Recognizing these benefits, the Commission took a number of steps to change the current capacity release rules to allow parties to enter into AMAs, such as exempting capacity releases made to implement AMAs from the prohibition on tying and the bidding requirements, permitting short term AMAs to be rolled over without bidding, and clarifying that the price ceiling does not apply to any consideration provided by an asset manager to the releasing shipper as part of an AMA. These steps further enhance the efficiency of AMAs by allowing greater flexibility for parties to customize

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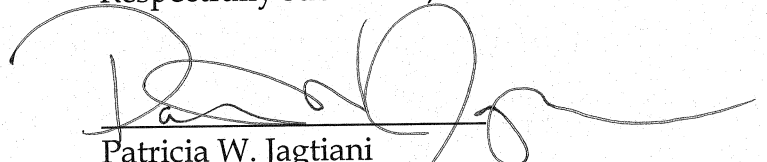
<sup>3</sup> Order No. 712, at pp. 23-24. (internal footnote omitted)

arrangements to meet unique customer needs. In the same vein, allowing pipelines to discontinue the discounted usage charge would run counter to the Commission's goal of facilitating the use of AMAs to more efficiently allocate capacity in the secondary market and, ultimately, to provide savings for end-users by providing for lower gas supply costs and more efficient use of the pipeline grid.

#### IV. CONCLUSION

NGSA asks the Commission to carefully consider the issue of continuation of the discounted usage charge for replacement shippers operating in the context of an AMA. That determination is fully in line with the goals that the Commission had in mind when issuing Order No. 712, and that intent should not be lost in individual compliance proceedings that are made to implement the requirements of Order No. 712.

Respectfully submitted,



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