

168 FERC ¶ 61,016
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 15, 2019

In Reply Refer to:
BP Energy Company
Petrohawk Energy Corporation
Docket No. RP19-1323-000

BP Energy Company
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Petrohawk Energy Corporation
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Re: Petition for Capacity Release Waiver

Dear Messrs. Haskell, Heywood, and Eddlemon:

1. On June 19, 2019, BP Energy Company (BPEC) and Petrohawk Energy Corporation (Petrohawk) (together, Petitioners) filed a joint petition for temporary waivers of the Commission's capacity release policies and regulations, and the related interstate pipeline tariff provisions of Enable Gas Transmission, LLC (Enable), ETC Tiger Pipeline, LLC (ETC Tiger) and Gulf South Pipeline Company, LP (Gulf South). The Petitioners request a shortened comment period and expedited consideration of the request to facilitate the assignment and permanent release from Petrohawk to BPEC of

certain interstate natural gas transportation service agreements (Petition). For the reasons discussed below, and for good cause shown, the Commission grants the requested waivers, to remain in effect for 90 days following the date of this order.

2. According to the Petitioners, this transfer is part of a larger complex commercial transaction in which BPEC's affiliate, BP America Production Company (BPAPC) (BPAPC together with BPEC is BP), acquired BHP Billiton Petroleum (North America) Inc.'s (BHP) oil and gas production and resources located in the Permian and Eagle Ford basins in Texas, and the Haynesville gas basin in Texas and Louisiana.¹ Petitioners state that under the terms of this transaction, BPAPC acquired 100 percent of BHP's wholly-owned subsidiary, Petrohawk. Petrohawk holds the oil and gas production assets, as well as the transportation service agreements that are the subject of the Petition.² The Petitioners submit that following the closing of the transaction on October 31, 2018, and continuing through July 31, 2019, BHP has provided certain marketing services to BP, during which time Petrohawk has continued to hold the subject natural gas transportation service agreements.³ The Petitioners state that at the conclusion of these services, effective August 1, 2019, they intend to assign the transportation service agreements from Petrohawk to BPEC. Petitioners assert that they are authorized to state that the affected pipelines do not oppose the requested relief and will be financially indifferent to the requested permanent capacity release(s), and that the Petitioners have met the creditworthiness and security requirements of the three pipelines.⁴

3. Additionally, the Petitioners state that two of the eight pipeline capacity agreements referenced in the Petition contain non-conforming provisions which were previously filed with and accepted or approved by the Commission.⁵ Specifically,

¹ Petition at 1.

² *Id.* at 1-2.

³ *Id.* at 2.

⁴ *Id.* at 3.

⁵ *Id.* at 8-9. See *CenterPoint Energy Gas Transmission Co.*, 133 FERC ¶ 61,098 (2010); *CenterPoint Energy Gas Transmission Co.*, Docket No. RP10-1372-001 (Jan. 12, 2011) (delegated order); *ETC Tiger Pipeline, LLC*, Docket No. RP11-2208-000 (July 28, 2011) (delegated order). See, Joint Petition at 2 n.1. Enable was formerly known as CenterPoint Energy Gas Transmission Company, LLC. See, *CenterPoint Energy Gas Transmission Co., LLC*, Docket No. RP11-1707 (Feb. 25, 2011) (delegated order); *Enable Gas Transmission, LLC*, Docket No. RP13-1254 (Sept. 11, 2013) (delegated order).

Petitioners state that one of the contracts contains non-conforming credit and collateral provisions while the other contract contains both non-conforming provisions and minor and non-material deviations from its tariff form of service agreement.⁶ The Petitioners further state that if the Commission grants the waivers sought in the Petition, Enable and ETC Tiger will be required to file replacement agreements for Commission approval.⁷

4. Petitioners generally seek waiver of the Commission's capacity release policies and rules set forth in 18 C.F.R. § 284.8 (2018), including (a) the posting and bidding requirements, (b) the maximum recourse rate limitations,⁸ (c) the prohibition against tying pipeline transportation capacity to any extraneous condition, (d) the shipper-must-have-title policy, (e) the prohibition against buy/sell arrangements, and (f) any other policy the Commission deems necessary and appropriate to permit the commercial transaction described in the Petition. Petitioners also request temporary and limited waivers of the applicable tariff provisions of the affected pipelines.

5. Petitioners state that the requested temporary waivers will only be used for the limited purpose of consummating the transfer of capacity identified as part of the larger, integrated transaction between BPAPC and BHP. The Petitioners maintain that granting the waivers will permit the transaction to proceed in an orderly and efficient fashion and will also facilitate the continued delivery of natural gas to the relevant markets.⁹ Additionally, the Petitioners seek waivers of the rules and regulations associated with bidding and posting to ensure that there are no violations concerning the bidding or posting of the capacity, including maximum rate ceiling limitations. In particular, the Petitioners assert that because the capacity is tied to the purchase and sale of the various assets that are the subject of the underlying transaction, the consideration for the release includes the assumption of Petrohawk's rights and obligations. To the extent such consideration can be deemed compensation that would cause the releases to be deemed greater than the maximum recourse rates, the Petitioners seek waiver of section

⁶ *Id.* at 9-10.

⁷ *Id.* at 10.

⁸ 18 C.F.R. § 284.8(b)(2) (2018).

⁹ Petition at 10-11.

284.8(b)(2) of the Commission's regulations¹⁰ that prohibits the payment of rates in excess of the maximum rates.¹¹

6. Petitioners state that the requested temporary waivers are consistent with Commission precedent.¹² The Petitioners also state that the Commission has granted such waivers in circumstances analogous to those described in the Petition.¹³

¹⁰ 18 C.F.R. § 284.8(b)(2) (2018).

¹¹ Petition at 11.

¹² *Id.* at 4 (citing *Request for Clarification of Policy Regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Businesses*, 127 FERC ¶ 61,106, at P 8 (2009)).

¹³ *Id.* at 5 (citing *e.g.*, *Apache Corp.*, 167 FERC ¶ 61,143 (2019) (granting temporary waiver of Commission's capacity release regulations and policies, including posting and bidding requirements, prohibition of capacity release transactions below or above the maximum rate, shipper-must-have-title rule, prohibition on buy/sell and tying arrangements, and related tariff provisions to permit release of capacity in connection with sale of natural gas production facilities and acreage); *HG Energy II Appalachia, LLC*, 167 FERC ¶ 61,100 (2019) (approving request for waivers of capacity release regulations and policies, and related tariff provisions in connection with sale of production properties and assets in the Marcellus Shale field); *Munich Re Trading LLC*, 166 FERC ¶ 61,212 (2019) (providing waivers of capacity release regulations and policies and related tariff provisions to effectuate sale of natural gas trading business); *Eco-Energy, LLC*, 166 FERC ¶ 61,110 (2019) (granting waivers in connection with an internal reorganization and restructuring in which EENG planned to take over the natural gas marketing and logistics services of its affiliate, Eco-Energy); *QEP Energy Co.*, 166 FERC ¶ 61,001 (2019) (approving request for waivers in connection with sale of natural gas and oil producing properties, underdeveloped acreage, and associated gathering and treating system in Haynesville/Cotton Valley); *ARP Mountaineer Production, LLC*, 164 FERC ¶ 61,143 (2018) (granting temporary, limited waiver of the Commission's capacity release regulations and related pipeline tariff provisions as necessary to effectuate sale of coal bed methane natural gas production assets); *ENGIE Gas & LNG LLC*, 164 FERC ¶ 61,078 (2018) (approving request for waiver of the Commission's capacity release regulations and policies and related pipeline tariff provisions, in relation to sale of a liquefied natural gas import and regasification facility and the seller's exit from the U.S. natural gas market); *EQT Production Co.*, 164 FERC ¶ 61,063 (2018) (granting waivers to facilitate a larger transaction involving the transfer of production wells and midstream assets); *Pioneer Natural Resources USA, Inc.*,

7. Public notice of the filing was issued on June 20, 2019. Petitioners requested and were granted a shortened comment period with interventions and protests due June 26, 2019. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁴ all timely filed motions to intervene and any unopposed 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. No adverse comments or protests were filed.

8. The Commission has reviewed the petition and finds that the request is adequately supported and appears consistent with previous temporary waivers granted by the Commission under similar conditions.¹⁵ In these cases, the Commission has granted temporary, limited waiver of its capacity release regulations and the relevant tariff provisions of affected pipelines in connection with complex, integrated transactions

163 FERC ¶ 61,215 (2018) (granting waivers in connection with sale of gas and mineral leasehold acreage and production assets interests); *CNX Gas Company, LLC*, 163 FERC ¶ 61,143 (2018) (approving request for waiver of the Commission's capacity rules and regulations and related tariff provisions to permit release pursuant to larger production acreage and asset sale transaction); *ENGIE, S.A.*, 162 FERC ¶ 61,289 (2018) (approving waivers related to internal corporate reorganization in anticipation of subsequent transfer of upstream and midstream natural gas operations to a third party); *Pivotal Utility Holdings, Inc.*, 162 FERC ¶ 61,286 (2018) (granting waivers related to asset sales associated with exit from natural gas business); *CenterPoint Energy Services, Inc.*, 155 FERC ¶ 61,024 (2016) (granting waivers to facilitate a larger transaction involving the sale and transfer of wholesale jurisdictional assets); *Chesapeake Energy Marketing, LLC*, 155 FERC ¶ 61,092 (2016) (granting waivers in connection with sale of natural gas production properties and other assets); *EQT Energy, LLC*, 156 FERC ¶ 61,013 (2016) (granting waivers in connection with a larger transaction involving the sale of natural gas production assets); *SWN Energy Services Co., LLC*, 155 FERC ¶ 61,245 (2016) (granting waivers to facilitate the transfer of certain oil and gas properties in West Virginia); *Mercuria Energy America, Inc.*, 155 FERC ¶ 61,253 (2016) (granting waivers to facilitate an internal corporate reorganization); *Shell Energy North America (US), L.P.*, 155 FERC ¶ 61,032 (2016) (granting waivers in connection with BG Energy's exit from the wholesale natural gas marketing business and the consolidation of the businesses of BG Energy and Shell Energy North America)).

¹⁴ 18 C.F.R. § 385.214 (2018).

¹⁵ See, e.g., *EQT Production Co.*, 164 FERC ¶ 61,063 (2018); *Pioneer Natural Res. USA, Inc.*, 163 FERC ¶ 61,215 (2018); *CNX Gas Co. LLC*, 163 FERC ¶ 61,143 (2018); *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009).

involving the transfer of natural gas production assets and transportation agreements. In addition, the Commission finds that the Petitioners have provided the information required for granting such waiver, including (1) identification of the regulations and policies for which waiver is sought; (2) identification of the pipeline service agreements and capacity to be transferred; (3) a description of the overall transaction and its claimed benefits, with sufficient detail to permit the Commission and other interested parties to determine whether granting the requested waiver is in the public interest; and (4) filing the petition as much in advance of the requested date as possible.¹⁶

9. Accordingly, and for good cause shown, the Commission grants temporary waiver of the applicable Commission capacity release regulations and policies, to be effective on the date of this order, including the posting and bidding requirements, the prohibition of capacity release transactions below or above the maximum rate, the shipper-must-have-title rule, and the prohibitions against buy/sell and tying arrangements, and only for the limited purpose of consummating the proposed transaction. The Commission also grants, to the extent necessary, limited and temporary waiver of the applicable capacity release tariff provisions included in the affected pipelines' tariffs. The waiver shall remain in effect for 90 days after the date of this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹⁶ *Request for Clarification of Policy Regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Businesses*, 127 FERC ¶ 61,106, at P 10 (2009).