

133 FERC ¶ 61,173  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

November 23, 2010

In Reply Refer To:  
BP Canada Energy Marketing  
Corp. and Apache Corporation  
Docket No. RP11-1479-000

BP Canada Energy Marketing Corp.  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004

Attention: Mark R. Haskell  
Counsel for BP Canada Energy Marketing Corp.

Apache Corporation  
Bracewell & Giuliani LLP  
2000 K Street, NW, Suite 500  
Washington, DC 20006

Attention: D. Kirk Morgan II  
Counsel for Apache Corporation

Reference: Temporary Waiver Request

Dear Mr. Haskell and Mr. Morgan II:

1. On October 29, 2010, BP Canada Energy Marketing Corp. (BP Canada) and Apache Corporation (Apache) (collectively, the Petitioners) filed a Joint Petition for temporary waivers of the Commission's section 284.8 capacity release regulations, and other Commission policies and requirements as well as pipeline specific tariff provisions, in order to facilitate the prearranged permanent release of a long-term firm natural gas transportation agreement from BP Canada to Apache on Alliance Pipeline L.P. (Alliance). The Petitioners state that these temporary waivers will be in the public interest because they will allow for the orderly transfer (the transaction) of certain assets from BP Canada and its affiliates

to Apache. The Petitioners request the temporary waivers become effective for 45 days following the issuance of this order.

2. The Petitioners state that pursuant to the subject transaction, Apache will acquire a series of upstream crude oil and natural gas production assets in several Canadian provinces from entities affiliated with BP Canada. The Petitioners state that 1,287 MMBtu/day of BP Canada's capacity on Alliance is used to deliver some of the natural gas from these natural gas production assets to markets in the Midcontinent and Midwest regions of the United States. The Petitioners state that BP Canada currently holds 1,287 MMBtu/day of capacity on Alliance pursuant to a firm transportation agreement with a negotiated reservation rate that is currently above Alliance's maximum recourse reservation rate with a term extending through 2015.<sup>1</sup> The Petitioners state that the transfer of the production interests of entities affiliated with BP Canada to one or more affiliates of Apache along with the permanent release of the Alliance contract to Apache from BP Canada is a complex administrative process. The Petitioners state that Apache's acquisition of the Alliance capacity from BP Canada is necessary in order to continue transporting natural gas without interruption during the upcoming winter heating season. The Petitioners state that the acquisition of BP Canada's Alliance capacity is an integral part of the transaction. The Petitioners conclude that any assignment or permanent release not properly completed will inevitably delay Apache's marketing of these production interests in the critical forthcoming winter heating season.

3. In order to permit the transaction, the Petitioners state that they seek a temporary 45-day waiver of the Commission's capacity release rules set forth in section 284.8 of the Commission's regulations pertaining to the applicable maximum rate, notification for bidding and bidding. In addition, the Petitioners seek a temporary 45-day waiver of the Commission's policy prohibiting tying arrangements since the transaction might be considered as improperly tying a capacity release to an extraneous condition. Finally, the Petitioners seek a temporary 45-day waiver of section 23.2 of the General Terms and Conditions of Alliance's tariff as it relates to the Commission's capacity release regulations and policies listed above.

4. The Petitioners state that the requested temporary waivers are consistent with waivers previously granted by the Commission under similar circumstances to facilitate the permanent release of transportation capacity subject to negotiated

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<sup>1</sup> BP Canada's firm transportation agreement with Alliance is Contract No. US5025P-03 with a contract quantity of 1,287 MMBtu/day and an expiration date of 11/30/2015. See Page 5 of the Joint Petition.

rate agreements.<sup>2</sup> The Petitioners state that they have been authorized by Alliance to state that it does not oppose this joint petition. Petitioners request that the Commission issue an order in this proceeding by November 24, 2010.

5. Public notice of the filing was issued on November 1, 2010. Interventions and protests were due on or before November 5, 2010. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2010)), all timely filed motions to intervene and any motions to intervene out-of-time filed before 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. No protests or adverse comments were filed.

6. The Commission has reviewed Petitioners' request for temporary waiver of the Commission's section 284.8 capacity release regulations, and other Commission policies and requirements as well as pipeline specific tariff provisions. The Commission finds that the request is adequately supported and consistent with previous waivers that the Commission has granted in order to allow capacity to be released on a permanent basis at the negotiated rate in the releasing shipper's contract.<sup>3</sup> A waiver in such circumstances avoids inhibiting the use of permanent releases to transfer capacity that the releasing shipper no longer needs to a shipper that does need it consistent with Commission policy that requires a pipeline to allow a permanent release where the pipeline will be financially indifferent to the release. The Commission also finds that the temporary waivers requested are in the public interest because they will allow for the orderly transition of certain assets from BP Canada and its affiliates to Apache. Finally, the Commission finds that Apache's acquisition of the Alliance capacity from BP Canada is essential for ensuring continued transportation of natural gas under the transaction to markets in the Midcontinent and Midwest regions of the United States without interruption during the upcoming winter heating season.

7. Accordingly, for good cause shown, the Commission grants the Petitioner's request for a temporary 45-day waiver of the specified capacity release regulations, policies, and tariff provisions to allow the permanent release of 1,287 MMBtu/day of firm transportation capacity from BP Canada to Apache on Alliance. Specifically, the Commission grants a temporary 45-day waiver of the

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<sup>2</sup> Petitioners cite *Total Gas & Power North America, Inc. and Chesapeake Energy marketing, Inc.*, 131 FERC ¶ 61,023 (2010); *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082 (2009); *Transcontinental Gas Pipe Line Corp.*, 126 FERC ¶ 61,086 (2009).

<sup>3</sup> *Id.*

Commission's capacity release rules set forth in section 284.8 of the Commission's regulations pertaining to the applicable maximum rate, notification for bidding and bidding. In addition, the Commission grants a temporary 45-day waiver of the Commission's policy prohibiting tying arrangements. Finally, the Commission grants a temporary 45-day waiver of section 23.2 of the General Terms and Conditions of Alliance's tariff as it relates to the Commission's capacity release regulations and policies to the extent necessary.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

cc: All Parties

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