123 FERC ¶ 61,320
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 30, 2008

In Reply Refer To:
Vectren Energy Delivery of Ohio, Inc.
Docket No. RP08-377-000

Bruder, Gentile & Marcoux, L.L.P.
1701 Pennsylvania Avenue, N.W., Suite 900
Washington, DC 20006-5807

Attention: J. Michel Marcoux,
Counsel for Vectren Energy Delivery of Ohio, Inc.

Reference: Request for Waivers

Dear Mr. Marcoux:

1. On May 13, 2008, Vectren Energy Delivery of Ohio, Inc. (Vectren) filed a request, inter alia, for waiver of the Commission's capacity release and bidding regulations.[1] As discussed below, the Commission grants the waivers requested by Vectren so that it may implement its program, approved by the Public Utilities Commission of Ohio (PUCO), to exit its merchant function.

2. Vectren states that it is a local distribution company (LDC) providing natural gas service to nearly 320,000 customers in 17 counties in west central Ohio, and that it is subject to regulation by PUCO. Vectren states that on April 30, 2008, PUCO granted Vectren's application to begin an orderly transition to exit its merchant function, and to enhance its retail unbundling and open access program by promoting greater competition and lowering gas supply prices.

3. Vectren states that it plans to exit its gas merchant function in two stages. In the first stage, Vectren will continue to provide a commodity sales service to those customers who have not chosen an alternative gas supplier under Vectren's retail unbundling and open access program. However, Vectren will purchase the gas supply used in its

[1] 18 CFR §§ 284.8 (c)–(e) (2008).

commodity sales service at its city-gates. Vectren will temporarily release its interstate pipeline transportation and storage capacity in pre-arranged releases at the pipelines' maximum tariff rates to its gas suppliers. The gas suppliers will use that capacity, as well as their own capacity, to transport gas supply to Vectren at its city-gates. Vectren will purchase the gas at a price that includes an auction-determined component intended to compensate the gas suppliers for, among other things, their transportation costs. Vectren states it will then resell that gas to its retail sales customers at the same price it paid to the suppliers.

4. Vectren states that the second stage, following the first stage by approximately 18 months, will involve an additional competitive auction to determine the retail gas suppliers that will use Vectren's released interstate pipeline capacity, posted for auction purposes at maximum tariff rates on interstate pipelines' electronic bulletin boards (EBBs), to provide gas supply for sale directly to Vectren's retail customers at the auction-determined price, without Vectren serving as a merchant middleman.

5. Vectren requests waiver, to the extent necessary, of the notification and bidding requirements in the Commission's regulations that are applicable to the release of interstate pipeline firm capacity. Vectren asserts that such a waiver will allow it to consummate the short-term, pre-arranged, capacity release transactions necessary to implement its transitional plan to exit the gas merchant function and to further its retail unbundling and open access program. Vectren further requests waiver of the Commission's policy against allowing shippers to link storage capacity releases to extraneous conditions, such as taking gas inventory. Vectren states that this policy should not apply to the limited extent necessary to allow for the initial transfer of storage inventory volumes to gas suppliers/asset managers stepping into Vectren's shoes pursuant to its PUCO-approved retail unbundling and open access program.

6. Public notice of Vectren's filing was issued on May 15, 2008, with interventions and protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2008)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2008)), all timely filed motions to intervene and any 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 interventions, adverse comments or protests were filed.

7. The Commission finds that Vectren has demonstrated good cause for granting waiver of the capacity release bidding regulations and the prohibition against tying arrangements to the extent necessary to permit Vectren to implement its state-approved

plan for a gradual exit from its merchant function.[2] Granting the requested waivers is consistent with the Commission's desire not to discourage state retail unbundling programs that give retail end-users a greater choice of suppliers from whom to purchase gas. Such waivers shall only be used for the limited purpose of implementing Vectren's program to exit its merchant function.

8. Moreover, the Commission also recognizes that pursuant to its Final Rule in *Promotion of a More Efficient Capacity Release Market* in Docket No. RP08-1-000,[3] the Commission found that capacity releases by LDCs to implement a state-approved open access program should be granted the same blanket exemption from the Commission's capacity release bidding regulations and the prohibition on tying as it granted to capacity releases made in the context of an Asset Manager Agreement (AMA).[4] The Commission also clarified its prohibition on tying to allow a releasing shipper to include conditions in a release concerning the sale and/or repurchase of gas in storage inventory either inside or outside of and AMA. This exception permits a shipper that releases storage capacity to require the replacement shipper to (1) take title to any gas in the released storage capacity at the time the release takes effect and/or (2) return the storage capacity to the releasing shipper at the end of the release with a specified amount of gas in storage.[5] As described above, the capacity releases at issue here will be used by the replacement shippers to provide the gas supply requirements of retail consumers pursuant to a state-approved retail access program approved by PUCO, albeit with Vectren temporarily acting as the conduit through which the sales to retail consumers will be made. Therefore, once the

[2] The Commission has held that an entity that is attempting to exit the natural gas business should be permitted to exit in a rational and orderly fashion. *See Sempra Energy Trading Corp., et al.,* 121 FERC ¶ 61,005 (2007); *Duke Energy Marketing America, LLC* 114 FERC ¶ 61,198 (2006); *Northwest Pipeline Corp,* 109 FERC ¶ 61,044 (2004), *order on clarification,* 112 FERC ¶ 61,187 (2005); *Bear Energy LP, et al*., 123 FERC ¶ 61,219 (2008) and *Cascade Natural Gas Corp.*, 123 FERC ¶ 61,226 (2008).

[3] *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 123 FERC ¶ 61,286 (2008) (Final Rule).

[4] *Id*. at P 199-200.

[5] *Id.* at P 191.

Final Rule takes effect, Vectren's capacity releases made as part of its state-approved plan to exit the merchant business will qualify for the exemptions provided for under the final rule.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: All Parties
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