133FERC ¶ 61,128
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Sempra Energy Trading LLC and
J.P. MorganVentures Energy Corporation

Docket No. RP11-55-000

ORDER GRANTING TEMPORARY WAIVER

(Issued November 10, 2010)

1. On October 8, 2010, Sempra Energy Trading LLC (Sempra Trading) and J.P. Morgan Ventures Energy Corporation (JPMVEC) (collectively, the Petitioners) filed a joint petition for temporary waivers (Petition). The Petitioners seek waiver of several of the Commission's capacity release regulations and related policies, and of certain related tariff provisions of affected pipelines, in order to allow Sempra Trading to permanently release transportation and storage service agreements and other agreements to JPMVEC to facilitate Sempra Trading's exit from the natural gas marketing and trading business (the Transaction). The Petitioners request Commission action by November 15, 2010, and ask that the waiver remain in effect for a 180-day period from the date of the order granting the waiver. For the reasons discussed below, we grant the requested waiver subject to the conditions set forth below.

I. <u>Background</u>

2. Sempra Trading is a commodity trading and marketing company which trades and markets energy commodities throughout North America. Sempra Trading markets at wholesale substantial quantities of natural gas and, in support of its natural gas trading and marketing operations, is both a holder of firm capacity on numerous interstate natural gas pipelines and storage facilities and an active participant in the interstate pipeline capacity release markets.

3. JPMVEC is an indirect subsidiary of JPMorgan Chase & Co., a financial holding company regulated by the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956, as amended. JPMVEC is an energy marketer that provides, *inter alia*, natural gas, electricity, and energy-related services to customers throughout the United States. JPMVEC's natural gas related activities include the

purchase, shipment, storage, and sale of natural gas in interstate commerce pursuant to blanket marketing certificate authority granted pursuant to 18 C.F.R. § 284.402 (2010).

4. Sempra Trading is wholly owned by the Joint Venture (JV) between The Royal Bank of Scotland plc (RBS), a global bank with world headquarters in Edinburgh, Scotland, and Sempra Energy, a Fortune 500 integrated energy holding company with headquarters in San Diego, California. The JV was formed in April 2008. RBS directly owns a fifty-one percent interest in the Joint Venture, and Sempra Energy indirectly owns a forty-nine percent interest.

5. In 2009, the European Commission determined RBS had been afforded state aid under European Union law. To achieve compliance with European Union guidelines governing the provision of state aid, the European Commission sought, and in December 2009 obtained, RBS' commitment to undertake a comprehensive restructuring plan. One element of that plan was the divestiture of RBS' interest in the JV.

6. In July 2010, RBS completed the first phase of the required divestiture with the closing of the JV's sale of its metals, oil, and European energy business lines to JPMVEC and its affiliates. At that time RBS and Sempra Energy announced that they would continue to pursue the sale of the JV's North American Power and Gas and Sempra Energy Solutions business lines. On September 20, 2010, RBS and Sempra Energy announced that the JV had agreed to sell the Sempra Energy Solutions business line to Noble Americas Gas and Power Corp. RBS and Sempra Energy also conducted an active and well publicized process through which they offered the JV's North American power and gas assets for sale. Petitioners have been told that three final bids were received, and that upon review JPMVEC was determined to have put forward the best overall bid for JV's North American power and gas assets.

7. In the Transaction, Sempra Trading will transfer and JPMVEC will acquire Sempra Trading's North American natural gas and power wholesale trading agreements, as well as related natural gas transportation and storage agreements. As part of the Transaction, Sempra Trading will assign and permanently release to JPMVEC or an affiliate or designee of JPMVEC numerous firm natural gas transportation and firm storage agreements and assign or otherwise transfer "park and loan" service agreements with Commission-regulated service providers. Sempra Trading will also transfer to JPMVEC numerous service agreements with natural gas transportation and storage service providers not subject to the Commission's Natural Gas Act jurisdiction, some of which provide such services in interstate commerce pursuant to limited Commission authorization under either section 311 of the Natural Gas Policy Act of 1978, as amended, or section 284.224 of the Commission's regulations. These agreements provide variously for recourse rates, discounted rates, negotiated rates (above and below the applicable recourse rates) and market-based rates for the services they cover. Included with the Petition is Appendix A which sets forth the jurisdictional firm natural gas transportation and storage service agreements that the Petitioners have identified to be

transferred. The list: (i) identifies, by contract number, each jurisdictional firm natural gas transportation and storage agreement to be released; (ii) identifies, by name, the jurisdictional transporter or storage provider; and (iii) shows the contract quantity under each such agreement in MMBtu/day. Appendix A also identifies park and loan agreements and an agreement that is associated with an AMA consistent with Order No. 712.[1]

8. The Transfer Agreement provides that, prior to closing, in the ordinary course of business and in order to maintain the existing portfolio, Sempra Trading may add new trading positions and natural gas agreements to the list of agreements to be transferred to JPMVEC. Petitioners propose that the Petition apply to these after-acquired agreements. Because the transfer of Sempra Trading's natural gas transportation and storage agreements subject to Commission jurisdiction on an integrated basis is an essential element of the Transaction, the Agreement provides, *inter alia*, that the consummation of the Transaction is conditioned upon the Commission's grant of this Petition before closing.

9. Maintaining this package as an integrated whole is consistent with Sempra Trading's desire to complete the Transaction as a major step in RBS and Sempra Energy winding up the JV and JPMVEC's desire to acquire and assume the natural gas agreements and other agreements of Sempra Trading as an integrated package having substantial ongoing value.

II. Request for Waiver

10. In order to permit Sempra Trading to complete the Transaction so that RBS and Sempra Energy ultimately can dissolve the JV in an efficient and expeditious manner, the Petitioners request a temporary waiver of the Commission's capacity release rules and policies, and, to the extent necessary, the related tariff provisions of affected jurisdictional natural gas transporters and storage providers.

11. Specifically, the Petitioners are seeking a waiver of (i) the Commission's capacity release rules set forth in section 284.8 of the Commission's regulations, including posting and bidding requirements and restrictions on capacity releases above or below the maximum rate, (ii) other Commission requirements and policies associated with the release of interstate natural gas transportation and storage capacity, including the shipper-must-have-title policy, the prohibition on buy/sell arrangements, and the

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[1] *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 and clarification*, Order No. 712-B, 127 FERC ¶ 61,051 (2009). 18 C.F.R. § 284.8 (2010).

prohibition against tying, and (iii) to the extent applicable, the relevant tariff provisions of affected jurisdictional transportation and storage providers, including those specifying the timing of postings.[2]

12. Additionally, as noted above, Petitioners request that the waiver apply to any new natural gas agreements added to the list of agreements to be transferred pursuant to the Transaction. The temporary waiver will be utilized only for the limited purpose of consummating the Transaction.

13. Petitioners assert that the administrative process associated with JPMVEC's acquisition and integration of the natural gas agreements into its business will be complex. Transfer of the jurisdictional transportation and storage agreements under the Transaction is intended to be accomplished by means of permanent releases or assignment pursuant to the applicable tariff provisions of the transportation and storage service providers. The jurisdictional transportation and storage service agreements involve numerous pipelines as counterparties, and their respective tariffs contain varying provisions for the assignment and release of capacity under the circumstances.

14. Petitioners state that they are in the process of contacting each of the affected pipelines to inform them of the Transaction and this Petition, and to request that they each provide any consents necessary for the assignment or permanent release of Sempra Trading's jurisdictional transportation and storage agreements to JPMVEC or an affiliate or designee of JPMVEC as soon as possible. Petitioners contemplate that all of these agreements, which also involve a multitude of counterparties and varying provisions governing assignments, will be transferred from Sempra Trading to JPMVEC by assignment or novation. However, given the size of the Transaction and the hundreds of counterparties and tens of thousands of transactions involved, Petitioners do not expect

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[2] Petitioners also seek, to the extent applicable, the buy/sell prohibition the Commission announced in *Arizona Public Service Company and Sequent Energy Management, L.P.*, 132 FERC ¶ 61,064 (2010). That prohibition was to apply to buy/sell transactions on intrastate pipelines operating under section 311 of the Natural Gas Policy Act of 1978 and Hinshaw pipelines providing section 311-type services under a blanket certificate issued pursuant to section 284.224 of the Commission's regulations. However, on October 21, 2010, the Commission issued a *Notice of Inquiry on Capacity Transfers on Interstate Pipelines*, 133 FERC ¶ 61,065 (2010), in which the Commission, at P 19, granted a blanket waiver to allow buy/sell transactions involving section 311 and Hinshaw pipelines to continue to take place while the Commission considered these policy issues, and stated that the Commission will not institute any enforcement actions with respect to prior buy/sell transactions involving section 311 and Hinshaw pipelines in recognition of the preexisting uncertainty of whether the buy/sell prohibition applied to those pipelines. Thus, the Petitioners' request for that waiver is moot.

that all required consents to assignment of these agreements will have been obtained by closing, and assert that securing the necessary consents or novations will take time.

15. Petitioners state that although they will endeavor to maintain compliance with the Commission's applicable rules, policies, and orders, as well as the relevant provisions of pipeline tariffs at all times, they nonetheless request the waiver to mitigate their exposure in the event that the integration of the natural gas agreements into JPMVEC's business results in some temporary deviations from these rules, policies, orders and tariffs.

16. Given that the Transaction involves various interdependent facets, the transfer of Sempra Trading's jurisdictional natural gas transportation and storage agreements along with the other natural gas agreements could be viewed as contrary to the Commission's prohibition against tying the release of interstate pipeline or storage capacity to an extraneous condition. Further, because a number of these contracts are at negotiated, discounted, or market-based rates, waiver of the Commission's rules applicable to releases of capacity subject to rates below or above the applicable maximum tariff rate and to capacity release posting and bidding requirements will be necessary to effectuate the Transaction as contemplated, with all natural gas agreements kept together as an integrated package. Information about the permanent releases under the Transaction will, however, be made available through the postings of the releases, consistent with this requested waiver.

17. The Petitioners state that the Commission has previously granted for good cause temporary waivers of its capacity release rules and policies and related pipeline tariff provisions to permit parties to consummate complex transactions, such as a merger or the sale of an entire business unit. According to the Petitioners, the Commission has explained that its decisions in *Macquarie*, *Bear Energy*, and *Barclays* reflect its policy to permit broad waivers of the capacity release requirements "so that the parties could consummate the transfer of an entire business unit."[3]

18. Accordingly, Petitioners request that the waiver be in effect upon the date of a Commission order granting the waiver and continue for a period of one hundred eighty (180) days from the date of closing. The Petitioners submit that good cause exists for the Commission to grant the Petition because it would: (i) allow the owners of the JV to make significant progress, in an efficient and expeditious manner, in the process of unwinding the JV, in accordance with RBS' agreement with the European Commission to dispose of its interest in the JV; (ii) minimize disruption to transactions under the natural gas agreements and to the flow of natural gas supplies and reliable customer service; and

[3] *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).

(iii) mitigate the potential exposure of the Petitioners to risks associated with potential violations of the Commission's rules, policies and orders or tariffs that could occur in connection with the Petitioners' consummation of the Transaction. Further, approval of the Petition would be consistent with Commission precedent granting waivers of the Commission's capacity release rules and policies in similar circumstances.[4]

19. Petitioners state that a waiver period of 180 days is justified here given the size and complexity of the Transaction, which involves, *inter alia*, transfers of natural gas agreements with approximately 750 counterparties. In view of this extended period, they state that they will provide the Commission with a status report regarding the contract transfer and novation process within ninety (90) days of closing. This status report will include notification of any additional jurisdictional service agreements associated with the Transaction that are not included on the list in Appendix A to the petition.

III. Public Notice

20. Public notice of the filing was issued on October 8, 2010. Interventions and protests were due on or before October 15, 2010. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2010)), all timely filed motions to intervene and any motion 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 protests or comments were filed.[5]

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[4] *See, e.g., Nexen Marketing U.S.A. Inc. and J. Aron & Co.*, 131 FERC ¶ 61,282 (2010) (*Nexen*); *Calpine Energy Services, L.P. and Conectiv Energy Supply, Inc.*, 131 FERC ¶ 61,261 (2010) (*Calpine*); *Total Gas & Power North America, Inc. and Chesapeake Energy Marketing, Inc.*, 131 FERC ¶ 61,023 (2010) (*Total*); *Wisconsin Electric Power Co.*, 131 FERC ¶ 61,104 (2010); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008) (*Bear Energy*); *Barclays Bank PLC and UBS AG*, 125 FERC ¶ 61,383 (2008) (*Barclays*); *Macquarie Cook Energy, LLC and Constellation Energy Commodities Group, Inc.*, 126 FERC ¶ 61,160 (2009) ("*Macquarie*"); *Sempra Energy Trading Corp.*, 121 FERC ¶ 61,005 (2007) (*Sempra*); *EnergyMark, LLC and Constellation NewEnergy - Gas Division, LLC*, 130 FERC ¶ 61,059 (2010) (*EnergyMark*); *Sequent Energy Management, L.P. and Integrys Energy Servs., Inc.*, 129 FERC ¶ 61,188 (2009) (*Sequent*).

[5] Rockies Express Pipeline L.L.C. (Rockies Express) moved to intervene and filed comments requesting certain clarification from Petitioners, but subsequently withdrew the request since Petitioners had provided it with the clarification.

IV. Discussion

21. The Commission has reviewed Petitioners' request for waiver and finds that the waiver request is adequately supported and consistent with previous waivers that the Commission has granted under similar circumstances. Accordingly, for good cause shown, the Commission grants the requested waivers including waivers of the shipper-must-have-title policy, the prohibitions on buy-sell arrangements and tying arrangements, the restrictions on capacity releases below or above the maximum rate, and the capacity release bidding requirements in section 284.8 of the Commission's regulations and the pipelines' tariffs. Further, consistent with Petitioners' proposal, we will grant a waiver period of 180 days, and require Petitioners to provide the Commission with a status report within 90 days of closing. The status report should provide an update on the contract transfer and novation process, and include notification of any additional jurisdictional service agreements involved in the Transaction that were not included on list of pertinent agreements set forth in Appendix A of the Petition.

22. The Commission finds that our actions here are consistent with the recent decisions in *Bear Energy* and *Macquarie, supra note 5,* where the Commission granted waivers of various policies and regulations relating to the transfer of interstate pipeline transportation capacity in order to facilitate the transfer of natural gas supply and transportation contracts and other assets as a result of various types of corporate restructurings, including corporate mergers and sales of entire business units. In *Bear Energy,* the Commission waived applicable Commission regulations and policies, including the shipper-must-have-title policy, in connection with the merger of the Bear Stearns Companies Inc. with JPMorgan Chase & Co., including the consolidation of the two companies' natural gas trading and marketing businesses. In *Macquarie,* the Commission granted the request of Macquarie Cook Energy, LLC (Macquarie) and Constellation Energy Commodities Group, Inc. (Constellation) for a temporary waiver of various Commission capacity release policies and regulations in order to facilitate the acquisition by Macquarie of Constellation's wholesale natural gas trading portfolio in the United States. The acquisition by Macquarie of Constellation's portfolio of natural gas agreements was part of a larger transaction in which Constellation was seeking to exit the wholesale natural gas commodity trading business in the United States and had agreed to sell its wholesale natural gas trading portfolio as an integrated package to Macquarie.

23. The Transaction at issue in this case, as in *Bear Energy* and *Macquarie,* goes beyond a simple transfer of interstate pipeline capacity from one company to another, or even a transfer of pipeline capacity together with related gas purchase and sale agreements. The Commission adopted its capacity release program in Order No. 636 in order to permit shippers to "reallocate unneeded firm capacity" to those who need it and

promote efficient load management by the pipeline and its customers.[6] The Commission did not contemplate that the capacity release posting and bidding requirements would necessarily apply in the cases of the merger or sales of entire business units, including, as here, the transfer of transportation contracts, supply contracts, and other related arrangements. As the Commission has explained:

> The capacity release mechanism is not suited to these types of complex, integrated deals that do not permit the disaggregation of assets. Order No. 636 adopted the capacity release program in order to permit shippers to "reallocate unneeded firm capacity" to those who need it and promote efficient load management by the pipeline and its customers. The Commission did not contemplate that the capacity release posting and bidding requirements would necessarily apply in cases of the merger or sale of entire business units as part of a corporate restructuring.[7]

24. In this case, Petitioners stated "JPMVEC views it as fundamental to the value for which it is paying to purchase Sempra Trading's North American natural gas and wholesale power book to keep the natural gas transportation and storage agreements intact, as part of an integrated package of natural gas supply, sales, transportation and storage agreements."[8] Granting the waivers by the anticipated closing date will permit Sempra Trading to realize the legitimate value of its wholesale natural gas trading business, and permit JPMVEC to lock in the current value of the business as soon as possible. The waiver granted is granted solely for the purpose of carrying out the Transaction described herein. The Commission will continue to evaluate waiver requests on a case-by-case basis and will grant any necessary waivers based on a balancing of the facts and circumstances in each case with the purposes underlying particular regulations and policies.

<u>The Commission orders:</u>

(A) The temporary waivers requested by Petitioners are granted for 180 days following the closing of the Transaction, as discussed more fully above.

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[6] Order No. 712, FERC Stats. & Regs. ¶ 31,271 at P 119 and n.119, *order on reh'g*, Order No. 712-A, FERC Stats. & Regs. ¶ 31,284 (2008).

[7] *Request for Clarification of Policy regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Businesses*, 127 FERC ¶ 61,106 at P 8, and cases cited.

[8] Petition at 5.

(B) The Petitioners will file with the Commission a status report within 90 days of the date this order issues. The status report should provide an update on the contract transfer and novation process, and include notification of any additional jurisdictional service agreements involved in the Transaction that were not included on list of pertinent agreements set forth in Appendix A of the Petition.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.