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

November 23, 2010

In Reply Refer To:
Marathon Oil Company
Docket No. RP11-1480-000

Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004

Attention: Karol Lyn Newman
Counsel for Marathon Oil Company

Reference: Temporary Waiver Request

Dear Ms. Newman:

1. On October 29, 2010, Marathon Oil Company (Marathon), on behalf of its affiliate Pennaco Energy, Inc. (Pennaco) filed a petition for temporary waivers. Marathon seeks 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 Marathon to permanently release its firm transportation agreements on those pipelines to CEP-M Purchase, LLC (CEP) as part of Pennaco's sale to CEP of various production properties and related assets. Marathon requests the waiver become effective upon the issuance of this order. For the reasons discussed below, and for good cause shown, we grant the requested temporary waiver.

2. Marathon states that on July 1, 2010, Pennaco and CEP entered into a Purchase and Sale Agreement pursuant to which CEP will acquire from Pennaco certain producing properties, facilities, and related contracts. Currently, Pennaco's production is purchased and sold by Marathon in the Mid-Continent market area. Under the conditions of the Purchase and Sale Agreement, CEP will be responsible for selling and transporting its own production. As a part of that transaction, Marathon is to permanently release to CEP, capacity contained in two firm capacity negotiated-rate pipeline contracts on two

interstate pipelines, which in total provide 37,500 dekatherms of firm transportation per day.[1] Marathon states that the transfer of these transportation agreements is essential for ensuring that that CEP receives the relevant capacity as intended.[2]

3. Marathon seeks limited waivers of three sets of Commission regulations and policies regarding capacity release. First, Marathon seeks waiver of the requirement that long-term releases not exceed the maximum recourse rate.[3] Marathon states that currently all of the subject negotiated rates are at or above the respective pipeline's maximum tariff rate. Marathon argues that it is Commission policy to allow permanent releases at the negotiated rate in order to ensure that the pipeline remain financially indifferent to the transfer.[4] Second, Marathon seeks waiver of the Commission's procedures for notification for bidding and for bidding.[5] Marathon contends that such waiver is necessary in order to ensure that CEP receives the relevant capacity as intended.[6] Third, Marathon seeks waiver of the prohibition against tying capacity releases to extraneous conditions. Marathon requests this waiver because the agreement ties the release of capacity to the sale of production assets.

4. Marathon also seeks limited waivers for the corresponding sections in the General Terms and Conditions of the tariffs of the subject pipelines. The sections in question concern the pipeline's policies for capacity releases, which generally serve to require prior notification of releases, orderly and non-discriminatory bidding procedures, and enforcement of the Commission's maximum rate policies.[7]

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[1] Trailblazer Pipeline Company (Trailblazer) Contract No. 919467 (Expiring May 6, 2012), which has a Maximum Daily Quantity of 22,500 Dth per day; and Wyoming Interstate Company L.L.C. (WIC) Contract No. 41067000 (Expiring November 30, 2015), which has a Maximum Daily Quantity of 15,000 Dth per day.

[2] *See* Joint Petition at 7.

[3] *See* 18 C.F.R. § 284.8(b)(2) (2010).

[4] Joint Petition at 6.

[5] *See* 18 C.F.R. §§ 284.8(d), (e).

[6] *See* Joint Petition at 7.

[7] Trailblazer General Terms and Conditions §§19.5(d)(2)(i), 19.6, 38.2, and §19.8(c); WIC General Terms and Conditions §§ 9.6, 9.7, 9.9, 9.10, 9.11, and § 9.16.

5. Public notice of the filing was issued on November 2, 2010. Interventions and protests were due on or before November 5, 2010. Pursuant to Rule 214,[8] 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 adverse comments were filed.

6. The Commission has reviewed Marathon's request for a temporary waiver and finds that the request is adequately supported and consistent with previous waivers that the Commission has granted under similar circumstances. Our actions here are consistent with those decisions where the Commission granted similar limited, temporary waivers in order to facilitate the transfer of interstate pipeline transportation capacity as part of a larger transfer of entire business units.[9] Marathon is directed to provide notice to the Commission in this docket of the closing of the transaction.

7. Accordingly, for the reasons discussed, we grant limited waivers of section 284.8(b)(2) of our regulations requiring that long-term releases not exceed the maximum recourse rate,[10] as well as sections 284.8(d) and (e) regarding notice and bidding of capacity releases only as necessary to complete the permanent releases specified in the petition. Similarly, we also grant limited waiver of the prohibitions on buy-sell arrangements and tying of capacity releases to extraneous conditions, so that the parties can complete their transaction in an orderly and efficient manner.

8. The Commission also grants a limited waiver of the respective tariff provisions only to the extent necessary to effectuate the permanent releases of capacity amounts specified in the petition for the two agreements as described therein. The tariff provisions for which Marathon seeks waivers apply generally to capacity release requirements and procedures on the respective pipelines for both temporary and permanent releases. We grant waiver of the provisions only as necessary to complete the

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[8] 18 C.F.R. § 385.214 (2010).

[9] *E.g.*, *Conectiv Energy Supply*, 132 FERC ¶ 61,247 (2010); *Nexen Marketing U.S.A. Inc.*, 131 FERC ¶ 61,282 (2010); *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009); and *Barclays Bank PLC*, 125 FERC ¶ 61,383 (2008).

[10] *See* 18 C.F.R. § 284.8(b)(2).

permanent releases specified in the petition and not for any other permanent or temporary releases. Marathon remains obligated to comply with any other applicable provisions of the pipelines' tariffs.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.