

135 FERC ¶ 61,225
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 10, 2011

In Reply Refer To:
Big Sandy Pipeline, LLC
EQT Energy, LLC
EQT Corporation
Docket No. RP11-2111-000

Big Sandy Pipeline, LLC
BAKER BOTTS L.L.P.
1299 Pennsylvania Avenue, NW
Washington, DC 20004-2400

Attention: Brooksany Barrowes, Counsel for Big Sandy Pipeline, LLC

Reference: Temporary Waiver Request

Ladies and Gentlemen:

1. On May 13, 2011, Big Sandy Pipeline, LLC (Big Sandy), EQT Energy, LLC (EQT Energy), and EQT Corporation (collectively, the Petitioners) filed a request for temporary waiver of the Commission's section 284.8(b)(2) and 284.8(h)(1)(iii) capacity release regulations in order to allow two long-term, negotiated rate transportation service agreements on Big Sandy's system currently held by EQT Energy: (1) to be permanently released by EQT Energy to EQT Corporation; and (2) simultaneously to be released by EQT Corporation back to EQT Energy on a temporary basis. The Petitioners request the waiver become effective June 12, 2011, and continue for the earlier of 60 days following the date of the Commission's order or the date on which the capacity release transactions are completed.¹ For the reasons discussed below, and for good cause shown, we grant the requested waiver.

¹ The Petitioners state that they intend to complete the capacity release transaction on July 1, 2011.

2. The petitioners state that the two negotiated rate transportation service agreements between EQT Energy and Big Sandy dated May 9, 2011, as amended, (Agreements) provide for firm transportation service under Big Sandy's Rate Schedule FTS. Contract No. BSP11932 specifies a Maximum Daily Quantity (MDQ) of 53,493 dekatherms (Dth) per day and Contract No. BSP11931 specifies and MDQ of 48,407 Dth per day. Both Agreements reflect a negotiated Reservation Charge of \$19.7721 per Dth of MDQ per month under the terms of Big Sandy's Tariff. The maximum Reservation Charge for service under Rate Schedule FTS is \$17.2724 per Dth of MDQ per month. On May 11, 2011, in Docket No. RP11-2102-000, Big Sandy filed the Agreements as negotiated rate agreements.

3. The Petitioners state that the transferred Agreements are part of EQT Corporation's sale of Big Sandy to Spectra Energy Partners, LP (Spectra Energy). The Petitioners assert that following the sale of Big Sandy, EQT Energy and Big Sandy will no longer be affiliates, but EQT Energy will continue to be a significant shipper on Big Sandy pursuant to the Agreements. The Petitioners argue that in order to protect the revenue stream associated with the Agreements following completion of the sale of Big Sandy, the Purchase and Sale Agreement governing that sale requires that EQT Corporation, as the parent company of EQT Energy, become the primary guarantor for the Agreements. The Petitioners state that to meet this requirement, and upon receipt of the requested waiver, EQT Energy will permanently release its capacity under both Agreements to EQT Corporation. Further, simultaneous with this permanent release, EQT Corporation must release the capacity under the Agreements back to EQT Energy on a temporary basis so that EQT Energy may continue to ship its natural gas while maintaining compliance with the Commission's shipper-must-have-title rules. Furthermore, both releases will be made at the current negotiated rate, upon receipt of the requested waiver. As a result of the permanent release, EQT Corporation will have a service agreement with Big Sandy making it financially responsible for the capacity in the event of default by EQT Energy. The Petitioners argue that both legs of this two-part capacity release must be completed so that EQT Corporation can meet the credit terms of the Purchase and Sale Agreement, providing a parental guaranty for the revenue stream to Big Sandy, while permitting title for the gas to reside with the same entity that holds rights to the capacity on the Big Sandy Pipeline necessary to ship that gas.

4. The Petitioners request that the Commission waive sections 284.8(b)(2) and 284.8(h)(1)(iii) of its regulations. In addition, the Petitioners request waiver of the two sections of Big Sandy's General Terms and Conditions (GT&C) implementing those

regulations, sections 6.22.6[b][ii]² and 6.22.7[a][iii], respectively.³ The Petitioners argue that the Commission has previously granted such waivers under similar circumstances. The Petitioners argue that granting waiver of the applicable maximum rate cap is appropriate under these circumstances and consistent with Commission precedent.

5. Public notice of the filing was issued on May 19, 2011. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁴ Pursuant to Rule 214,⁵ all timely filed motions to intervene and any unopposed 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. On May 25, 2011, Spectra Energy filed a Motion to Intervene and Comments in Support of the filing.

6. Spectra Energy's comments support the Petitioners' request for approval of the Waiver Petition. Spectra Energy states that it has entered into an agreement to acquire Big Sandy. Spectra Energy argues that the Commission has granted similar requests for waivers under similar circumstances, and Big Sandy will be financially indifferent to the releases. Spectra Energy notes that all of the parties involved agree to the proposed capacity release transactions and EQT Energy will use the subject capacity in the exact same manner as before. Spectra Energy claims that the Commission's approval of the Waiver Request and the completion of the permanent release of the capacity to EQT Corporation will protect the revenue stream associated with the underlying agreements following completion of Spectra Energy's purchase of the ownership interests of Big Sandy, and the release is an important element of the purchase transaction. Accordingly, Spectra Energy supports the Petitioners' Waiver Petition and requests that the Commission grant the requests for temporary waivers and expedited action as set forth in the Waiver Petition.

² Section 6.22.6[b][ii] states, "competitive bidding is not required for a prearranged release if the capacity release is for more than one year and the Replacement Customer agrees to pay Big Sandy's maximum tariff rate applicable to the service type being released."

³ Section 6.22.7[a][iii] states that if a capacity release is for a term longer than one year, "the rate may not exceed the maximum tariff rate for the applicable service set forth in Big Sandy's FERC Gas Tariff, as may be changed from time to time."

⁴ 18 C.F.R. § 154.210 (2011).

⁵ 18 C.F.R. § 385.214 (2011).

7. The Commission only requires a pipeline to allow a permanent capacity release, where the pipeline will be financially indifferent to the release.⁶ Where, as here, the releasing shipper is paying a negotiated rate in excess of the maximum rate, waiver of the maximum rate is necessary to render the pipeline financially indifferent to the release. Therefore, denial of a waiver request in these circumstances would unnecessarily inhibit the use of permanent releases to transfer capacity that the releasing shipper no longer needs to a shipper that does need it.⁷

8. The Commission finds that here, where the Petitioners propose to permanently release long term capacity to a replacement shipper found acceptable by the pipeline and willing to pay the same negotiated rate, waiver of the applicable maximum rate cap is appropriate. First, all parties (releasing shipper, replacement shipper and pipeline) agree to the transaction. Second, no shipper has protested the transaction as being unduly discriminatory. Third, there is no reason to post this release for third parties to submit higher bids, because the Commission would not waive the applicable maximum rate to permit a release at a rate in excess of the negotiated rate the releasing shipper is currently paying. The Commission is only willing to waive the maximum rate as necessary to render the pipeline economically indifferent to the permanent release, and thereby avoid inhibiting the permanent release of the capacity. Allowing the release to take place at an even higher negotiated rate than the releasing shipper is currently paying is unnecessary for that purpose.⁸

9. In the instant filing, the Petitioners have requested waiver of all the Commission's regulations that the Commission deems necessary to permit the subject capacity release to occur. Finding good cause, the Commission in this order grants waiver of section 284.8(b)(2) and 284.8(h)(1)(iii) of the Commission's regulations and sections 6.22.6[b][ii] and 6.22.7[a][iii] of Big Sandy's GT&C, in order to permit the instant permanent release to take place at the same negotiated rate as proposed. In addition, section 284.8(e) of the Commission's regulations states in part that, "[t]he pipeline must allocate released capacity to the person offering the highest rate (not over the maximum

⁶ *El Paso Natural Gas Co.*, 61 FERC ¶ 61,333, at 62,311-12 (1992) (*El Paso*); *Texas Eastern Transmission Corp.*, 83 FERC ¶ 61,092 (1998); *Enogex Inc.*, 124 FERC ¶ 61,089, at P 123 (2008).

⁷ *E.g.*, *Transcontinental Gas Pipe Line Corp.*, 126 FERC ¶ 61,086, at P 7 (2009).

⁸ *Id.* P 8.

rate) and offering to meet any other terms and conditions of the release.” For the reasons discussed above, the Commission also finds good cause to grant waiver of this regulation.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.