

136 FERC ¶ 61,130  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

August 25, 2011

In Reply Refer To:  
Big Sandy Pipeline, LLC  
Docket No. RP11-2374-000

Big Sandy Pipeline, LLC  
5400 Westheimer Court  
Houston, Texas 77056-5310

Attention: Janice K. Devers, General Manager  
Tariffs and Commercial Development

Reference: Temporary Waiver Request

Ladies and Gentlemen:

1. On August 11, 2011, Big Sandy Pipeline, LLC, (Big Sandy) filed a request for temporary waivers of the Commission's capacity release regulations and certain of its own tariff provisions to facilitate the prearranged permanent release of a firm transportation agreement from Interstate Natural Gas Company (Interstate) to Nytis Exploration Company LLC (Nytis). The capacity release would be part of a recently announced transaction by which Nytis would acquire certain oil and natural gas production assets from Interstate, including production related to the capacity subscribed under the firm transportation agreement at issue. Big Sandy requests the waivers remain in effect until the earlier of 60 days from the date this order issues or the date in which the capacity release transaction is completed.<sup>1</sup> Big Sandy also requests waiver of the Commission's shipper-must-have-title policy for the limited period from June 29, 2011, through July 31, 2011. For the reasons discussed below, we grant the requested waivers.

2. Big Sandy states that earlier this year, Interstate and Nytis executed a Purchase and Sale Agreement (PSA) whereby Nytis acquired certain of Interstate's oil and natural gas production properties and associated wells, leases, and acreage. Big Sandy states the closing date for the transaction was June 29, 2011. According to Big Sandy, the PSA provides that Nytis is to receive from Interstate the interest in Interstate's firm

---

<sup>1</sup> Big Sandy states that it expects to consummate the permanent capacity release no later than September 1, 2011.

transportation agreement<sup>2</sup> with Big Sandy. Under that agreement, Big Sandy provides firm transportation service to Interstate under Rate Schedule FTS. Big Sandy commenced service under the agreement on April 18, 2011, and the agreement remains in effect until April 14, 2018. Under the agreement, Big Sandy transports up to 2,300 Dt per day for Interstate. The agreement reflects a negotiated rate of \$19.7721 per Dt of maximum daily quantity per month, which Big Sandy states is above its maximum tariff recourse rate.

3. In order to facilitate this prearranged capacity release, Big Sandy requests limited waivers of certain Commission regulations and policies, and certain provisions from its FERC Gas Tariff. Specifically, Big Sandy requests waiver of sections 284.8(b)(2) and 284.8(h)(1)(iii) of the Commission's regulations to permit Big Sandy to treat the subject permanent release similar to a prearranged maximum rate release, which can be implemented without posting for bids from other shippers, and to allow the release to occur even though it is a release above Big Sandy's maximum tariff rate for service under Rate Schedule FTS. Big Sandy further requests waiver, to the extent necessary, of the posting and bidding requirements of sections 284.8(d) and (e) of the Commission's regulations. Big Sandy also requests waiver of section 6.22.6(b)(ii) of its General Terms and Conditions (GT&C) to allow for a prearranged capacity release without posting and bidding, and of section 6.22.7(a)(iii) to allow for a release over the maximum tariff rate. Big Sandy requests these waivers remain in effect until the earlier of 60 days from the date this order issues or the date in which the capacity release transaction is completed. Big Sandy states that granting these waivers is appropriate, and that the Commission has granted similar petitions for waivers under analogous circumstances.<sup>3</sup>

4. Big Sandy also requests waiver of the Commission's shipper-must-have-title policy and the corresponding warranty of title requirement set forth in section 6.17 of its GT&C for the limited time period extending from the closing date of the business transfer on June 29, 2011, until the end of the gas day on July 31, 2011. Big Sandy states that while the production properties and the right to obtain the interest in the transportation agreement at issue were transferred to Nytis pursuant to the PSA on June 29, 2011, the capacity underlying the agreement was not transferred to Nytis prior to the capacity release. Big Sandy notes that the shipper-must-have-title waiver is not necessary for the month of August since Interstate temporarily released its capacity to Nytis for that month.

---

<sup>2</sup> Contract No. BSP11800-00024BSP.

<sup>3</sup> Big Sandy Request at 6 & n.8 (citing *BHP Billiton Petroleum (Fayetteville) LLC*, 135 FERC ¶ 61,088 (2011); *Total Gas & Power North America Inc. and Chesapeake Energy Marketing, Inc.*, 131 FERC ¶ 61,203 (2010); *Macquarie Cook Energy, LLC and Constellation Energy Commodities Group, Inc.*, 126 FERC ¶ 61,160 (2009); *Sempra Energy Trading Corporation, Sempra Energy Solutions LLC, Sempra Energy Trading (Calgary) Ltd., and the Royal Bank of Scotland plc*, 121 FERC ¶ 61,005 (2007)).

5. Big Sandy states that Nytis's acquisition of Interstate's firm transportation agreement on Big Sandy is an integral part of the overall business transaction. It states that Interstate has used this capacity to move natural gas from certain production facilities to certain market centers, and that Interstate is not simply looking to reallocate capacity. It adds that granting the petition will assist Interstate in permanently releasing this capacity to Nytis and will ensure that Big Sandy is financially indifferent to the release.

6. Big Sandy states that, following receipt of the requested waivers, it proposes to effectuate the subject capacity release transaction in accordance with section 6.22 of its GT&C and will execute a new transportation service agreement with Nytis under the same terms and conditions currently applicable to its agreement with Interstate, including the same negotiated rate. It states it will post notice of the completion of the capacity release as soon as possible and before the first nomination associated with the released capacity, and will file the new negotiated rate agreement with the Commission for approval.

7. Public notice of the filing was issued on August 12, 2011. Interventions and protests were due on or before August 17, 2011. Pursuant to Rule 214,<sup>4</sup> 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. No protests or adverse comments were filed.

8. The Commission has reviewed Big Sandy's request for a temporary waivers and finds that the request is adequately supported and consistent with previous waivers the Commission has granted under similar circumstances. The subject prearranged permanent capacity release is necessary to facilitate the sale of certain Interstate oil and natural gas production properties and associated wells, leases, and acreage to Nytis. In cases involving transfers of assets other than firm transportation capacity and gas supply contracts, including the sale of business units, the Commission has granted waiver of the capacity release regulations and tariffs, including posting and bidding, so that the parties could consummate the transfer of the business unit. 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

---

<sup>4</sup> 18 C.F.R. § 385.214 (2011).

bidding requirements would necessarily apply in cases of the merger or sale of entire business units as part of a corporate restructuring.<sup>5</sup>

9. Big Sandy states that Nytis's acquisition of Interstate's transportation service agreement included in the transaction is an integral part of the overall business transaction. Thus, the transaction at issue here is the type of complex, integrated deal involving assets other than pipeline transportation capacity for which the Commission has waived its capacity release regulations, including posting and bidding. No party has objected that the transaction is unduly discriminatory. Accordingly, for good cause shown, the Commission grants Big Sandy's request for temporary waivers of the specified capacity release regulations, policies, and tariff provisions to allow for the permanent prearranged release of capacity under the subject firm transportation agreement from Interstate to Nytis.

10. Specifically, the Commission grants temporary waiver of sections 284.8(b)(2) and 284.8(h)(1)(iii) of its regulations to permit Big Sandy to treat the subject permanent release similar to a prearranged maximum rate release, which can be implemented without posting for bids from other shippers, and to allow the release to occur even though it is a release above Big Sandy's maximum tariff rate for service under Rate Schedule FTS. Similarly, the Commission grants temporary waiver of the posting and bidding requirements set forth in sections 284.8(d) and (e) of its regulations. The Commission also grants temporary waiver of section 6.22.6(b)(ii) of Big Sandy's GT&C to allow for a prearranged capacity release without posting and bidding, and section 6.22.7(a)(iii) to allow for a release over the maximum tariff rate. These waivers will remain in effect until the earlier of 60 days from the date this order issues or the date in which the capacity release transaction is completed. Further, to facilitate the transfer of capacity, the Commission grants waiver of its shipper-must-have-title policy and the corresponding warranty of title requirement set forth in section 6.17 of Big Sandy's GT&C for the limited time period extending from the closing date of the business transfer on June 29, 2011, until the end of the gas day on July 31, 2011.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

cc: All Parties

---

<sup>5</sup> *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), and cases cited.