138 FERC ¶ 61,059
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 27, 2012

In Reply Refer To:
Salmon Resources, LTD
Shell Energy North America (US), L.P.
Docket No. RP12-297-000

Bracewell & Giuliani LLP
2000 K Street, NW, Suite 500
Washington, DC 20006

Attention: Charles H. Shoneman
Attorney for Salmon Resources, LTD and Shell Energy North America (US), L.P.

Reference: Joint Petition for Temporary Waiver of Capacity Release Regulations and Policies

Dear Mr. Shoneman:

1. On January 6, 2012, Salmon Resources, LTD (Salmon) and Shell Energy North American (US), L.P. (Shell Energy) filed a request for temporary waivers of certain capacity release and other Commission rules, regulations, and policies (Joint Petition), to facilitate Salmon's transfer of a firm transportation service agreement (FTSA) to Shell Energy as part of a corporate reorganization that involves Salmon exiting the natural gas business. The Petitioners request the waivers remain in effect until the earlier of 90 days following the date of the order granting the requested waivers, or the date on which the capacity release transaction described in this order is completed. For the reasons discussed below, and for good cause shown, the Commission grants the requested temporary waivers, as proposed.

2. The Petitioners state that Salmon and Shell Energy are affiliates under the parent company of Royal Dutch Shell, PLC. They state that the transaction described in the Joint Petition is part of a corporate reorganization at Royal Dutch Shell. Salmon will transfer its contracts and assets to various affiliates and, upon completion of certain administrative tasks, Salmon will exit the natural gas business and cease to exist.

3. As part of this transaction, Petitioners state, Salmon will permanently release to Shell Energy its FTSA on Maritimes & Northeast Pipeline, L.L.C. (Maritimes), which provides Salmon 40,000 Dth per day of firm capacity on Maritimes' system.[1] The FTSA became effective on December 1, 1999, for a primary term of 15 years, at a fixed, negotiated rate. The Petitioners state that the negotiated rate under the FTSA is currently lower than the applicable maximum rate set forth in Maritimes' tariff.

4. To facilitate the transfer of the FTSA from Salmon to Shell Energy, the Petitioners request temporary and limited waivers of certain Commission regulations and policies. Specifically, the Petitioners seek waiver of the Commission's capacity release posting and bidding requirements, prohibition on tying arrangements, restrictions on capacity releases below or above the maximum rate, and any pipeline tariff provisions related to these policies. They also request waiver of section 9 of the General Terms and Conditions of Maritimes' tariff for the limited purpose of the transfer.

5. The Petitioners request the waivers remain in effect until the earlier of 90 days following the date of the order granting the requested waivers, or the date on which the capacity release transaction contemplated herein is completed. The Petitioners state that they have discussed their joint proposal with Maritimes and provided it with a draft of this petition, and that Maritimes has authorized the Petitioners to state that Maritimes supports the petition.

6. The Petitioners argue that the waivers requested on posting and bidding and on tying are in the public interest because they will permit Royal Dutch Shell's corporate reorganization to occur in an orderly and efficient manner and will ensure that Maritimes remains financially indifferent to the permanent release of capacity contemplated in the petition. The Petitioners assert that the Commission has determined that an entity that is attempting to exit the natural gas business "should, within limitations, be permitted to exit in a rational and orderly fashion, if such action is open and will not unduly discriminate against other shippers."[2] Further, the Petitioners argue waiver of the restrictions on capacity releases below or above the maximum rate is appropriate because it will allow Shell Energy to assume the FTSA at the same negotiated rate that Salmon is currently paying, thereby assuring that Maritimes will remain financially indifferent as a result of the release.

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[1] Maritimes Contract No. 8002-R2.

[2] Joint Petition at 8 (citing, among others, *Sempra Energy Trading Corp.*, 121 FERC ¶ 61,005 (2007)).

7. Public notice of the filing was issued on January 9, 2012. Interventions and protests were due on or before January 13, 2012, as provided by the notice. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2011), all timely motions to intervene and any unopposed 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 this proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

8. The Commission has reviewed the Petitioners' request for waivers and finds that the request is adequately supported and consistent with previous waivers that the Commission has granted to permit capacity to be released on a permanent basis at the same negotiated rate as the releasing shipper is currently paying.[3] As the Commission explained in *North Baja*, a pipeline is only required to allow a permanent capacity release, where it will be financially indifferent to the release. If the Commission were to require that Salmon's long-term permanent release be posted for bidding subject to the maximum recourse rate, as required by the capacity release regulations, bidders could not offer to pay the existing negotiated rate for the entire term of the release, because such a rate could violate the maximum rate ceiling during future periods. Therefore, waiver of the bidding requirement for the permanent release is necessary to assure that the pipeline will be financially indifferent to the release, and thus to avoid inhibiting the use of a permanent release to transfer capacity the releasing shipper no longer needs or wants. Further, granting the requested waiver of the tying prohibition will allow Salmon to exit the natural gas business in an orderly and efficient fashion, consistent with Commission policy.[4]

9. Accordingly, for good cause shown, the Commission grants the Petitioners' request for a temporary waiver of the specified capacity release regulations, policies, and tariff provisions to allow the permanent release of the FTSA from Salmon to Shell Energy. Specifically, the Commission grants limited, temporary waiver of section 284.8 of its regulations, which governs the release of firm capacity; the prohibition on tying;

[3] *See, e.g., North Baja Pipeline, LLC*, 128 FERC ¶ 61,082, at P 14 (2009) (*North Baja*).

[4] *E.g., Constellation NewEnergy – Gas Div., LLC*, 130 FERC ¶ 61,059 (2010); *Sequent Energy Mgmt., L.P., et al.*, 129 FERC ¶ 61,188 (2009); *Macquarie Cook Energy, LLC and Constellation Energy Commodities Group, Inc.*, 126 FERC ¶ 61,160 (2009); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008); *Barclays Bank PLC and UBS AG*, 125 FERC ¶ 61,383 (2008); *Wasatch Energy, LLC and Northwest Pipeline Corp.*, 118 FERC ¶ 61,173 (2007); *Sempra Energy Trading Corp.*, 121 FERC ¶ 61,005 (2007); *Northwest Pipeline Corp. and Duke Energy Trading and Mktg., L.L.C.*, 109 FERC ¶ 61,044 (2004).

the posting and bidding requirements for capacity release transactions; and the prohibition on the release of capacity at a rate above the maximum recourse rate. In addition, the Commission grants limited, temporary waiver of those sections of Maritimes' tariff that implement the above policies, in order to allow for the permanent release of the FTSA from Salmon to Shell Energy. We will allow the waivers to remain in effect until the earlier of 90 days following the issuance date of this order, or the date on which the capacity release transaction described in this order is completed.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.