

139 FERC ¶ 61,175
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 1, 2012

In Reply Refer To:
Kerr McGee Energy Services Corporation
Kerr McGee Nevada LLC
Western Gas Resources, Inc., and
Anadarko Energy Services Company
Docket No. RP12-607-000

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

Attention: Mark R. Haskell
Attorney for Kerr McGee Energy Services Corporation, Kerr McGee
Nevada LLC, Western Gas Resources, Inc., and Anadarko Energy Services
Company

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

Dear Mr. Haskell:

1. On April 12, 2012, you filed on behalf of Kerr McGee Energy Services Corporation (Kerr McGee Energy), Kerr McGee Nevada LLC (Kerr McGee Nevada), Western Gas Resources, Inc. (WGR), and Anadarko Energy Services Company (AESC), (collectively "Petitioners") a request for temporary waivers of certain capacity release and other Commission rules, regulations, and policies (Joint Petition), to facilitate the assignment and permanent release of several long-term firm transportation service agreements (FTSAs) at existing rates as part of the consolidation of business functions being undertaken by Petitioner's ultimate parent, Anadarko Petroleum Corporation (Anadarko). The Petitioners request the waivers become effective upon issuance of the Commission's order and continue until 90 days past the transaction closing date in order to allow adequate time to consummate the merger transaction. The Petitioners request expedited treatment, requesting that the Commission act on this Joint Petition no later than June 1, 2012, and state that they envision consummating the transaction no later than June 15, 2012. For the reasons discussed below, and for good cause shown, the Commission grants the requested temporary waivers, as proposed.

2. The Petitioners state that Kerr McGee Energy and Kerr McGee Nevada are subsidiaries of Kerr McGee Corporation, which Anadarko acquired in 2006, as well as acquiring WGR in separate transactions, and AESC is a wholly-owned subsidiary of Anadarko. Petitioners state that since the time of the merger, Anadarko has been consolidating business operations to eliminate duplicate functions, and facilitate the effective and efficient operation of its business. Kerr McGee Energy, Kerr McGee Nevada, and WGR seek to assign and permanently release to AESC four contracts. Following the consolidation transaction, Kerr McGee Nevada and WGR will exit the natural gas marketing business and cease to exist. Kerr McGee Energy will exit and cease to function in the natural gas marketing business.

3. As part of this transaction, Petitioners state Kerr McGee Energy will permanently release to AESC its FTSA on Colorado Interstate Gas (CIG), for 80,000 Dth/d through March 31, 2016 (Contract #33232000); Kerr McGee Nevada will permanently release to AESC its FTSA on CIG, for 43,440 Dth/d through March 31, 2016 (Contract #33396000); WGR will permanently release to AESC its FTSA on CIG, for 42,500 Dth/d through November 30, 2013 (Contract #33268000); and WGR will permanently release to AESC its FTSA on Wyoming Interstate Company, L.L.C. (WIC), for 100,000 Dth/d, through November 30, 2013 (Contract #41093000). The Petitioners state that the first three agreements listed above are negotiated rate agreements at rates below the maximum recourse rate, and the fourth agreement is a maximum recourse rate contract.

4. To facilitate the transfers of the FTSA's to AESC, the Petitioners request temporary and limited waivers of the Commission's capacity release rules and policies, including the posting and bidding requirements and, to the extent applicable, the prohibition against tying, as well as any other authorizations or waivers deemed necessary to implement the assignment and permanent release of capacity described above. Additionally, Petitioners request a waiver of Section 9 of the General Terms and Conditions (GT&C) of CIG's FERC Gas Tariff, and Section 9 of the GT&C of WIC's FERC Gas Tariff (the provisions implementing the Commission's capacity release rules and regulations) for the limited purpose of effectuating the release of capacity described above. The Petitioners assert that the waivers it seeks here will be used solely for the limited purpose of facilitating the consolidation transaction.

5. The Petitioners request the waivers become effective upon the issuance of the Commission's order and continue until 90 days past the transaction closing date in order to allow adequate time to consummate the transaction. The Petitioners state that they have discussed this Joint Petition with both CIG and WIC, and state that both companies have authorized the Petitioners to state that they do not oppose this Joint Petition.

6. The Petitioners argue that the waivers requested are in the public interest because they will facilitate the effective and efficient operations of Anadarko's business as well as make compliance controls more effective. The Petitioners assert that the Commission's policy¹ in recent years has been to grant temporary waivers of its capacity release regulations and policies to permit parties to consummate mergers, corporate consolidations, and similar transactions.

7. Public notice of the filing was issued on April 17, 2012. Interventions and protests were due on or before April 24, 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 rates as the releasing shipper(s) is(are) currently paying.² 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 the Petitioner's long-term permanent releases 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 the Petitioners to consolidate, and allow Kerr McGee Energy, Kerr McGee

¹ See *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) (capacity release posting and bidding requirements would not necessarily apply in the cases of the merger or sale of entire business units as part of a corporate restructuring, including the transfer of transportation contracts, supply contracts, employees, data systems and technology).

² See, e.g., *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082, at P 14 (2009) (*North Baja*).

Nevada, and WGR to exit the natural gas business in an orderly and efficient fashion, consistent with Commission policy.³

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 releases of the FTSA's described above. 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; and the posting and bidding requirements for capacity release transactions. In addition, the Commission grants limited, temporary waiver of those sections of CIG's and WIC's tariffs that implement the above policies, in order to allow for the permanent releases of the FTSA's to AESC. We shall allow the waivers to become effective on the issuance date of this order, and to remain in effect for 90 days following the closing date of the transaction described in this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³ *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, and LLC and Constellation Energy Commodities Group, Inc.*