

141 FERC ¶ 61,151
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 26, 2012

In Reply Refer To:
Big Sandy Pipeline, LLC
Docket No. RP13-266-000

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 November 8, 2012, Big Sandy Pipeline, LLC (Big Sandy) and Consolidated Local Energy and Natural Gas Inc. (Clean) (jointly, Petitioners) filed a request for temporary waivers of the Commission's capacity release regulations and certain Big Sandy tariff provisions (Petition) to facilitate the prearranged permanent release of two firm transportation service agreements from Clean to Hayden Harper Energy KA, LLC (Hayden Harper). The capacity release would be part of a recent transaction by which Hayden Harper acquired certain oil and natural gas production assets from Clean, including production assets related to the capacity subscribed under the firm transportation agreements at issue. Petitioners request 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 transactions are completed.¹ Petitioners also request waiver of the Commission's shipper-must-have-title policy for the period from the effective date of the transfer of the production properties at issue herein from Clean to Hayden Harper on May 1, 2011, through the end of the gas day on November 30, 2012. For the reasons discussed below, we grant the requested waivers prospectively from the date of this order.

2. Petitioners state that Hayden Harper purchased various oil and natural gas production properties from Clean, including production assets related to the capacity

¹ Petitioners state that it expects to consummate the permanent capacity release no later than December 1, 2012.

subscribed under the firm transportation agreements at issue in this proceeding, in a transaction that closed on August 17, 2011, but was agreed by the parties to have an effective date of May 1, 2011. At the closing of the transaction, Hayden Harper agreed to acquire the transportation service agreements² with Big Sandy, with such acquisition being effective as of May 1, 2011. Under those agreements, Big Sandy provides firm transportation service to Clean under Rate Schedule FTS with a Maximum Daily Quantity of 1,500 Dths and 1,000 Dths, respectively. The agreements both reflect a negotiated reservation rate of \$19.7721 per Dth, which Big Sandy states is above its maximum tariff recourse rate for service under Rate Schedule FTS.

3. In order to facilitate this prearranged permanent capacity release, Petitioners request limited waivers of certain Commission regulations and policies, and certain provisions of Big Sandy's FERC Gas Tariff. Specifically, Petitioners request 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. Petitioners further request waiver, to the extent necessary, of the posting and bidding requirements of sections 284.8(d) and (e) of the Commission's regulations. Petitioners also request waiver of section 6.22.6(b)(ii) of Big Sandy's 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 for a release for a term longer than one year. Petitioners request that 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. Petitioners state that granting these waivers is appropriate, and that the Commission has granted similar petitions for waivers under analogous circumstances.³

4. In addition, Petitioners request waiver of the Commission's shipper-must-have-title policy and the corresponding warranty of title requirement set forth in section 6.17 of

² These agreements were submitted and approved by the Commission in Docket No. RP11-2102-000 as Contract Nos. 1001002 and 1001003. See *Big Sandy Pipeline, LLC*, 135 FERC ¶ 61,214 (2011).

³ Petitioners Request at 8 & n.6 (citing *Big Sandy Pipeline, LLC*, Letter Order, Docket No. RP11-2374 (Aug. 25, 2011); *BHP Billiton Petroleum (Fayetteville) LLC*, 135 FERC ¶ 61,088, at P 9 (2011); *Total Gas & Power North America Inc. and Chesapeake Energy Marketing, Inc.*, 131 FERC ¶ 61,023 (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)).

its GT&C for the period extending from the effective date of the transfer of the production properties at issue herein from Clean to Hayden Harper. Petitioners state that, while the production properties and the right to obtain the interest in the transportation agreements at issue were effectively transferred to Hayden Harper pursuant to the Purchase Documents on May 1, 2011 (although the transaction did not close until August 17, 2011), Big Sandy was not informed of the transaction until recently. Big Sandy states, when it learned about the transaction and the associated transfer of capacity from Clean to Hayden Harper, Big Sandy informed Clean of the applicable regulations and tariff provisions that would need to be waived to consummate the transaction and the parties prepared this Petition for filing.

5. Petitioners state it is important to note that, during the period following the effective date of the transaction between Clean and Hayden Harper, starting May 1, 2011, the capacity has been utilized to transport production from the same properties and in the same manner as it had historically been utilized by Clean, and no third-parties were harmed during the period given that the capacity is subject to a fixed negotiated rate that exceeds the current recourse rate on the system. Petitioners note that granting the waiver of the shipper-must-have-title policy and the related section in Big Sandy's GT&C for the period described herein will facilitate the final transition of the capacity to Hayden Harper, as contemplated in the Purchase Documents.

6. Petitioners state that, following receipt of the requested waivers, they propose to effectuate the subject capacity release transactions in accordance with section 6.22 of Big Sandy's GT&C, and Big Sandy will execute a new transportation service agreement with Hayden Harper under the same terms and conditions currently applicable to Big Sandy's agreements with Clean, including the same negotiated rate. They state that Big Sandy will post notice of the completion of the capacity releases as soon as possible and before the first nomination associated with the released capacity, and Big Sandy will file the new negotiated rate agreements with the Commission for approval.

7. Public notice of the filing was issued on November 9, 2012. Interventions and protests were due on or before November 14, 2012. Pursuant to Rule 214,⁴ 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 Petitioners' request for temporary waivers and finds that granting the request prospectively from the date of this order is consistent with

⁴ 18 C.F.R. § 385.214 (2012).

previous waivers the Commission has granted under similar circumstances.⁵ Petitioners have provided the information required for approval of such waivers: (1) identification of the regulations and policies for which waiver is sought; (2) identification of the pipeline service agreements and capacity to be transferred; and (3) description of the overall transaction and its claimed benefits, with sufficient detail to permit the Commission and other interested parties to determine whether granting the requested waivers are in the public interest. Moreover, the subject prearranged permanent capacity releases are necessary to facilitate the sale of certain Clean oil and natural gas production properties to Hayden Harper. 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 bidding requirements would necessarily apply in cases of the merger or sale of entire business units as part of a corporate restructuring.⁶

9. Petitioners state that Hayden Harper’s acquisition of Clean’s transportation service agreements 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

⁵The Petitioners state that the asset transfer between Clean and Hayden Harper occurred in August 2011 prior to the filing of Petitioners’ request for waiver with the Commission. Although Clean and Hayden Harper did not comply with the shipper-must-have-title policy, they claim they were not aware of the policy until notified by Big Sandy and argue that there was no harm to third parties because the capacity continued to be used for the purpose for which it was originally purchased: transport gas produced from the properties being transferred to Hayden Harper. However, Clean and Hayden Harper are reminded that in the future they must submit required filings on a timely basis or face sanctions or other possible enforcement actions by the Commission.

⁶ *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).

shown, the Commission grants Petitioners' request for temporary waivers of the specified capacity release regulations, policies, and tariff provisions prospectively from the date of this order to allow for the permanent prearranged release of capacity under the subject firm transportation agreement from Clean to Hayden Harper.

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 releases similar to a prearranged maximum rate release, which can be implemented without posting for bids from other shippers, and to allow the releases to occur even though they are 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 time period prospectively from the date of this order until the end of the gas day on November 30, 2012.

By direction of the Commission.

Kimberly D. Bose,
Secretary.