143 FERC ¶ 61,079
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 29, 2013

In Reply Refer To:
Quicksilver Resources Inc.
Docket No. RP13-782-000

Quicksilver Resources Inc.
801 Pennsylvania Ave., NW
Washington, DC 20004

Attention: Jon Harrington, Counsel

Dear Mr. Harrington:

1. On April 4, 2013, Quicksilver Resources Inc. (QRI) filed a petition for a temporary 90-day waiver of certain capacity release and other Commission rules, regulations, and policies, as well as certain tariff provisions of Trunkline Gas Company, LLC (Trunkline) and Midcontinent Express Pipeline LLC (Midcontinent). As discussed below, the Commission grants the requested waivers.

2. QRI explains that, on March 28, 2013, it entered into a purchase and sale transaction with TG Barnett Resources LP (TGBR) that contemplates TGBR's acquisition of a 25 percent interest in QRI's North Texas Barnett Shale properties. QRI states that TGBR will acquire a 25 percent interest in each property and wellhead, rather than a separate allocation of properties, and after the transaction closes, the parties will jointly develop the properties pursuant to joint operating agreements and a development agreement. QRI further explains that to provide for the downstream transportation and marketing of TGBR's equity and production from the North Texas Barnett Shale region, the purchase and sale agreement provides that TGBR is to receive a corresponding 25 percent share of two long-term firm agreements held by QRI for transportation on Trunkline and Midcontinent. QRI further states that the Trunkline contract provides for discounted rates (with the possibility of entering into negotiated rates in the future), and the Midcontinent contract provides for negotiated rates. QRI adds that this complex, integrated transaction involves a cash payment of approximately $485 million by TGBR to QRI at closing (scheduled for April 30, 2013).

3. QRI's contract with Trunkline provides for 100,000 Dth/d of firm transportation capacity. QRI states that it desires to permanently release 25 percent, or 25,000 Dth/d, of its Trunkline capacity to TGBR. Additionally, QRI states that it has a contract with Midcontinent for 25,000 Dth/d of firm transportation capacity in each of Zones 1 and 2. QRI states that it desires to permanently release 25 percent, or 6,250 Dth/d per zone, of its Midcontinent capacity to TGBR. The subject contracts are as follows:

Pipeline	**Contract #**	**Date**	**Contracted Capacity (Dth/day)**	**Released Capacity (Dth/day)**
Trunkline	20844	2/1/08	100,000	25,000
Midcontinent	553386	8/21/08 Amended(1/20/09)	25,000(Zone1) 25,000(Zone2)	6,250(Zone1) 6,250(Zone2)

4. QRI seeks a temporary, 90-day waiver of the following capacity release regulations and policies to effectuate the expeditious transfer to TGBR of a 25percent share of QRI's Trunkline and Midcontinent interstate capacity: (1) applicable maximum rate (18 C.F.R. §§ 284.8(b)(2) and 284.8(h)(1)(iii)); (2) notification for bidding (18 C.F.R. § 284.8(d)); (3) bidding (18 C.F.R. § 284.8(e)); (4) shipper-must-have-title policy; (5) the prohibition against buy-sell transactions; and (6) the prohibition against tying arrangements. In addition, QRI seeks waiver of the following pipeline tariff provisions: (1) Trunkline's (General Terms & Conditions (GT&C) section 9, titled Capacity Release; and (2) Midcontinent's GT&C section 14, titled Capacity Release.

5. QRI maintains that the capacity to be released is not "unneeded" capacity, but rather will be transferred to TGBR to permit current production to continue to be transported out of the North Texas Barnett Shale region to various markets, as is the case now. QRI further states that this will preserve existing commercial relationships and marketing structures and that it also will ensure that the public interest is served by allowing the natural gas from the North Texas Barnett Shale region to continue to be marketed throughout the U.S.

6. QRI further states that approval of its request also will facilitate the Commission's policy regarding the transfer of capacity subject to negotiated rates. QRI explains that if capacity subject to negotiated rates is posted for bidding, subject to the

maximum recourse rate, bidders could not offer to pay the existing negotiated rate because such a rate could violate the maximum ceiling rate in the future. According to QRI, the Commission has determined that such a policy would unnecessarily inhibit the use of a permanent release to transfer capacity, and the Commission has found in other cases that granting waiver of its capacity release regulations can provide pipelines with the necessary assurances that they are financially indifferent to the releases. QRI asserts that its request is consistent with similar waiver requests previously granted by the Commission.[1]

7. Public notice of the filing was issued on April 8, 2013. Interventions and protests were due on or before April 16, 2013, as provided by the notice. Pursuant to Rule 214, (18 C.F.R. § 385.214 (2012)), 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 grants QRI's request for a temporary 90-day waiver of the specified capacity release regulations, policies, and tariff provisions. In *North Baja* and *Transco,* the Commission granted waivers to allow capacity to be released on a permanent basis at the negotiated rate in the releasing shipper's contract. As the Commission stated in those orders, its policy is to allow a permanent capacity release only if the pipeline will be financially indifferent to the release. For example, the Commission stated in *North Baja*:

> [W]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…. [D]enial of a waiver request in those 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. While the release here is at a

[1] QRI cites *Antero Resources Piceance LLC*, 141 FERC ¶ 61,250 (2012); *Big Sandy Pipeline, LLC*, 141 FERC ¶ 61,151 (2012); *Antero Resources Corp*., 139 FERC ¶ 61,258 (2012); *BHP Billiton Petroleum (Fayetteville) LLC*, 135 FERC ¶ 61,088 (2011); *Total Gas & Power North America, Inc.* 131 FERC ¶ 61,023, at P 11 (2010); *Macquarie Cook Energy, LLC,* 126 FERC ¶ 61,160 (2009); *North Baja Pipeline, LLC,* 128 FERC ¶ 61,082 (2009) (*North Baja*); *Transcontinental Gas Pipe Line*, 126 FERC ¶ 61,086 (2009) (*Transco*); and *Sempra Energy Trading Corp.*, 121 FERC ¶ 61,005 (2007).

> negotiated, levelized rate that is currently less than the maximum rate, the rate could be above the maximum rate later…. If the Commission were to require that the 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 during future periods. Therefore, as in *Transco*, denial of a waiver of the bidding requirement for a permanent release would unnecessarily inhibit the use of a permanent release to transfer capacity the releasing shipper no longer needs or wants.[2]

9. As was the case in *North Baja*, the negotiated rates at which QRI seeks to release the subject capacity are below the current maximum rates of the respective pipelines, but could be above the maximum rates at a later date. Thus the pipelines here can reasonably conclude that they are financially indifferent to the release, and there has been no objection to the proposed release. Moreover, if the Commission were to require that the proposed 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 in the future. Denial of the requested waivers of the bidding requirement for a permanent release would unnecessarily inhibit the use of a permanent release to transfer capacity. In addition, QRI states that TGBR will continue to use these firm transportation agreements in the same manner as has QRI, i.e., to transport natural gas from the North Texas Barnett Shale production region to various market centers.

10. Accordingly, the Commission grants temporary 90-day waivers of sections 284.8(b)(2) and 284.8(h)(1)(iii) of its regulations requiring that long-term releases not exceed the maximum recourse rate, as well as sections 284.8(d) and (e) regarding notice and bidding of capacity releases. The Commission also grants waiver of the shipper-must-have-title requirement, and the prohibitions on buy-sell arrangements and tying of capacity releases to extraneous conditions so that QRI and TGBR can complete their transaction in an orderly and efficient manner.

11. Additionally, the Commission also grants a limited waiver of the respective pipelines' tariff provisions only to the extent necessary to effectuate the permanent releases of capacity in the amounts specified by QRI. The tariff provisions for which

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

QRI seeks waiver apply generally to capacity release requirements and procedures on the respective pipelines for both temporary and permanent releases. QRI and TGBR remain obligated to comply with any other applicable provisions of the pipelines' tariffs. The waivers are effective on the issuance date of this order and will 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.