144 FERC ¶ 61,155
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 26, 2013

In Reply Refer To:
ProLiance Energy, LLC
Docket No. RP13-990-001

Baker Botts L.L.P.
Attention: Gregory S. Wagner
1299 Pennsylvania Avenue, NW
Washington, DC 20004-2400

Dear Mr. Wagner:

1. On August 8, 2013, ProLiance Energy, LLC (ProLiance) filed a petition to amend the temporary waivers of the Commission's capacity release regulations and policies granted by the Commission's July 18, 2013 order in Docket No. RP13-990-000.[1] ProLiance requests that the waivers be amended to include four contracts[2] that were omitted from the Docket No. RP13-990-000 filing and the related pipeline tariff provisions to permit the assignment of these contracts to ETC Proliance Energy, LLC (ETC). ProLiance is a natural gas marketer serving customers throughout the Midwest, primarily in the States of Indiana, Ohio, and Illinois. ProLiance obtains interstate transportation and storage service under agreements with multiple Commission-jurisdictional providers. ProLiance asserts that the requested amendments to the waivers are necessary to permit ProLiance to exit the natural gas marketing business in a prompt and orderly manner.

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[1] *See ProLiance Energy, LLC*, 144 FERC ¶ 61,037 (2013) (July 18 Order). The July 18 Order was issued in response to ProLiance's June 18, 2013 petition (June 18 Petition).

[2] Contract No. FR0419 with Midwestern Gas Transmission Company (Midwestern); Contract Nos. 22552 and 22553 with Panhandle Eastern Pipe Line Co., LP (Panhandle); and Contract No. 141165 with Columbia Gas Transmission, LLC (Columbia).

2. The July 18 Order, issued in response to ProLiance's June 18 Petition, granted ProLiance temporary waiver for 90 days following the issuance of the July 18 Order of the following: (1) the Commission's capacity release rules set forth in section 284.8 of the Commission's regulations, including the posting and bidding requirements; (2) restrictions on capacity releases at negotiated rates currently in excess of the applicable affected pipeline's maximum rate, or which may become so in the future; (3) the Commission's shipper-must-have-title policy; (4) the prohibition against buy/sell arrangements; and (5) the prohibition against tying arrangements for certain contracts. The July 18 Order also granted ProLiance's requested waiver of the relevant tariff provisions of the affected pipelines implementing the capacity release regulations and policies for which ProLiance sought waiver.

3. ProLiance states the Midwestern contract stems from an asset management arrangement (Alcoa AMA) with Alcoa, Inc. (Alcoa), whereby Alcoa released its capacity on Midwestern to ProLiance. ProLiance asserts that it did not seek waivers for the Midwestern contract when it filed its June 18 Petition because it did not believe that waivers of the Commission's capacity release regulations and policies would be necessary with respect to the Midwestern contract since it intended to terminate its obligations under the agreement by requesting that the capacity released under the Alcoa AMA be recalled. ProLiance believed that Alcoa would then be able to release the capacity under a new AMA directly with ETC, the natural gas marketer that has purchased ProLiance's assets. ProLiance states that, upon further review of Midwestern's tariff and the circumstances surrounding the release under the Alcoa AMA, it does not appear that this recall option is available because, under Midwestern's tariff, a releasing shipper must describe in its capacity release offer any rights to recall the capacity being released and under what conditions the capacity shall be reput to the replacement shipper following any such recall. ProLiance asserts that the capacity release posted on Midwestern's website to effectuate the Alcoa AMA did not specify that the capacity was recallable. Therefore, ProLiance is proposing to assign its interests under the Midwestern Contract and the Alcoa AMA to ETC, which will enable ETC to assume ProLiance's rights and obligations under those agreements. Accordingly, ProLiance is requesting waivers of the relevant Commission regulations and policies and the applicable Midwestern tariff provisions to enable this assignment.

4. ProLiance states that, in 2007, it released a portion of the two Panhandle contracts to Direct Energy Source, LLC (Direct Energy) for the period from April 2008 to March 2015. ProLiance asserts that it did not include the two Panhandle contracts in its June 18 Petition because it originally contemplated that its rights and obligations under the two Panhandle contracts would be terminated as of the closing of the purchase

agreement with ETC.[3] However, ProLiance states that it subsequently discovered that when the capacity underlying these contracts was released from ProLiance to Direct Energy, the release did not include recall rights as specified by Panhandle's tariff, which requires the releasing shipper to specify in the release notice whether the release is subject to recall and the applicable recall conditions as well as methods and rights associated with returning the previously recalled capacity to the replacement shipper. ProLiance states that it is therefore unable to recall the capacity under the Panhandle contracts and retains only residual rights to this capacity. Accordingly, in order to permit it to exit the natural gas business with respect to the Panhandle contracts, ProLiance requests waivers of the relevant Commission regulations and policies and the applicable pipeline tariff provisions to enable it to assign its remaining rights and obligations under the Panhandle contracts to ETC, which will enable ETC to assume ProLiance's rights and obligations under those agreements. Panhandle states that Direct Energy's contracts with Panhandle and its rights to the released capacity will remain unaffected by ProLiance's request.

5. ProLiance states that the Columbia contract was inadvertently omitted from the June 18 Petition. In order to enable ProLiance to exit the natural gas marketing business with respect to the Columbia contract and to preserve the underlying economics of the transaction between ProLiance and ETC, ProLiance is proposing to assign its interests under the Columbia contract to ETC, which will enable ETC to assume ProLiance's rights and obligations under the contract. Accordingly, ProLiance is requesting waivers of the relevant Commission regulations and policies and the applicable Columbia tariff provisions to enable this assignment.

6. ProLiance states that granting an amendment to the waivers issued by the Commission in this proceeding is consistent with the public interest, as it will permit ProLiance to exit the natural gas marketing business in an orderly fashion. ProLiance further states that extending the scope of the waivers to cover the four contracts on Midwestern, Panhandle and Columbia will permit ProLiance to assign the contracts to its successor, ETC, and for ETC to assume the rights and obligations of ProLiance under these contracts and will permit Alcoa to continue an asset management relationship with

[3] The July 18 Order explained that ProLiance entered into a Purchase and Sales Agreement pursuant to which ProLiance transferred to ETC Marketing, Ltd. (ETC Marketing) all limited liability company interests of ProLiance Energy Marketing, LLC (PEM) and ProLiance transferred to PEM substantially all of ProLiance's gas marketing assets (including contracts with customers, NYMEX contracts, systems and a real property lease for office space). On June 27, 2013, ProLiance filed a letter with the Commission stating that PEM's name has changed to ETC.

ETC. Further, ProLiance asserts that ETC has discussed this petition with Direct Energy, Alcoa, Panhandle, Midwestern and Columbia, and none has indicated it opposes the relief requested herein. ProLiance requests that the Commission take expedited action to issue an order granting the requested amendments on or before August 26, 2013 to allow for this final step of ProLiance's expeditious exit from the natural gas marketing business to take place by September 1, 2013.

7. Public notice of ProLiance's filing was issued on August 9, 2013, reflecting a comment date of August 16, 2013. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2013)), all timely filed 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 the proceeding or place additional burdens on existing parties. No interventions, protests or comments were filed.

8. In its petition for amendment of the temporary waivers granted in the July 18 Order, ProLiance has requested, and argued in support of, including the four additional contracts as well as the capacity release provisions of the affected pipelines' tariffs in the temporary waivers granted in the July 18 Order, so that it may exit the natural gas marketing business. The Commission finds good cause to grant the requested temporary amendments of the waivers contained in the July 18 Order to include the four contracts identified herein and the applicable associated pipeline tariff provisions to permit ProLiance to exit the natural gas marketing business. The temporary waiver amendments granted herein will expire on the same date that the temporary waivers granted in the July 18 Order expire. As we noted in the July 18 Order, the amendments to the waivers granted herein are similar to those the Commission has previously granted to facilitate other complex, integrated transactions where an entity exited the natural gas marketing business and the required transactions involved the transfer of contracts and other assets as the result of corporate restructuring, including mergers and sales of entire business units.[4] Accordingly, for good cause shown, and in the absence of any objection, the ProLiance petition is granted.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[4] *See* July 18 Order, 144 FERC ¶ 61,037 at P 6.