

144 FERC ¶ 61,201  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

September 16, 2013

In Reply Refer To:  
Apache Corporation  
Fieldwood Energy LLC  
Docket No. RP13-1197-000

Bracewell & Giuliani LLP  
Attention: D. Kirk Morgan II, Attorney for Apache Corporation  
2000 K Street, NW  
Suite 500  
Washington, DC 20006

Vinson & Elkins L.L.P.  
Attention: James E. Olson, Attorney for Fieldwood Energy LLC  
1001 Fannin Street, Suite 2500  
Houston, TX 77002

Reference: Joint Petition for Limited Waivers

Dear Mr. Morgan and Mr. Olson:

1. On August 1, 2013, Apache Corporation (Apache) and Fieldwood Energy LLC (Fieldwood) (jointly, the Petitioners) filed a Joint Petition requesting temporary waivers of the Commission's capacity release regulations and certain other Commission policies for the limited purpose of facilitating a permanent prearranged capacity release as part of an agreement to sell Apache's production assets located in the Gulf of Mexico to Fieldwood. The Petitioners request that such waivers remain in effect until the earlier of 90 days following the date that the asset purchase transaction closes, or the date the capacity release transactions and assignments are completed. For the reasons discussed below, and for good cause shown, the Commission grants the requested limited waivers.

2. The Petitioners state that on July 18, 2013, they entered into a Purchase and Sales Agreement under which Fieldwood acquired from Apache for approximately \$3.75 billion substantially all of Apache's Gulf of Mexico production assets. The Petitioners state that the expected closing date of the transaction is September 30, 2013. The Petitioners state that assets sold under the Purchase and Sales Agreement include the oil

and gas leases, mineral interests and other interests in and to the identified lands, all wells located on any of the identified lands, leases or other land on which any lease has been utilized, all rights and interest in, under or derived from all unitization and pooling agreements in effect with respect to any of the leases or wells and the units created thereby. According to the Joint Petition, the Purchase and Sales Agreement also covers all contracts to which Apache is a party or is bound relating to any of the transferred assets and rights thereunder, including pipeline transportation agreements. Petitioners state that Apache uses the Firm Transportation Agreements and the Interruptible Transportation Agreements to move its production from the Gulf of Mexico to market.

3. To facilitate the permanent prearranged release of capacity as part of the Purchase and Sales Agreement, the Petitioners request waivers of certain Commission regulations and policies as well as related tariff provisions and other waivers deemed necessary. Specifically, the Petitioners request waiver of:

- 1) the Commission's prohibition against tying arrangements;
- 2) the applicable maximum rate provisions set forth in sections 284.8(b)(2) and 284.8(h)(1)(iii) of the Commission's regulations;
- 3) the notification for bidding provisions set forth in section 284.8(d);
- 4) the bidding provisions set forth in section 284.8(e);
- 5) the posting and bidding provisions set forth in the tariffs of the affected pipelines;<sup>1</sup>
- 6) the Commission's shipper-must-have-title policy; and
- 7) the Commission's prohibition against buy-sell arrangements.

4. The Petitioners state that the temporary waivers requested herein are necessary in order to allow Petitioners to implement their asset purchase transaction and to allow the orderly transfer of firm and interruptible capacity (and related agreements) utilized in the transportation of the production sold as part of the transaction. The Petitioners state that the transfer of the firm transportation service agreements and assignment of the interruptible transportation agreements is an integral part of the overall transaction. They state that their waiver request satisfies the Commission's procedural requirements for requests for waivers of the capacity release regulations. They contend that the requested waivers are temporary and will only be used for the limited purpose of consummating the capacity release of the firm transportation agreements and interruptible transportation agreements discussed above. They add that granting waivers will allow the continued use of this capacity to deliver existing natural gas production to market during the transition.

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<sup>1</sup> The pipelines affected by this request for waiver are Dauphin Island Gathering Partners, Discovery Gas Transmission LLC, Northern Natural Gas Company, and Venice Gathering System, L.L.C. (affected pipelines).

5. The Petitioners further state that granting the requested waivers is in the public interest because the waivers will allow for the orderly transition of Apache's production assets located in the Gulf of Mexico shelf from Apache to Fieldwood. They contend that granting the requested waivers would be consistent with waivers previously granted by the Commission under similar circumstances,<sup>2</sup> as well as waivers granted to facilitate the permanent release of transportation capacity subject to negotiated rate agreements.<sup>3</sup>

6. The Petitioners request that the Commission act on the waiver requests by September 16, 2013, to become effective upon the closing of the asset purchase transaction. They state that expedited action is needed to allow them to complete the permanent releases and assignments as part of the overall transaction prior to closing.

7. Public notice of the filing was issued on August 2, 2013. Interventions and protests were due on or before August 8, 2013, as provided by the notice. Pursuant to Rule 214,<sup>4</sup> 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 the prearranged permanent release of capacity under similar circumstances.<sup>5</sup> Accordingly, the Commission will grant temporary, limited

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<sup>2</sup> Petitioners Request for Waiver at 3 & n.3 (citing, *inter alia*, *Antero Resources Corp.*, 139 FERC ¶ 61,258 (2012); *Big Sandy Pipeline, LLC*, 136 FERC ¶ 61,130 (2011); *BHP Billiton Petroleum (Fayetteville LLC) and Chesapeake Energy Mktg., Inc.*, 135 FERC ¶ 61,088 (2011)).

<sup>3</sup> Petitioners Request for Waiver at 3 & nn.3-4 (citing *Total Gas & Power North America, Inc. and Chesapeake Energy Mktg., Inc.*, 131 FERC ¶ 61,023, at PP 10-11 (2010)).

<sup>4</sup> 18 C.F.R. § 385.214 (2013).

<sup>5</sup> *E.g.*, *Constellation NewEnergy – Gas Div., LLC*, 130 FERC ¶ 61,059 (2010); *Sequent Energy Mgmt., L.P., et al.*, 129 FERC ¶ 61,188 (2009); *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082 (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).

waiver of its capacity release regulations, other policies as identified above, as well as the posting and bidding provisions set forth in the affected pipelines' tariffs for the limited purpose of facilitating a permanent prearranged capacity release as part of Apache's agreement to sell its production assets to Fieldwood. Granting these waivers will allow the Petitioners to execute their Purchase and Sales Agreement and transfer the assets in an orderly and efficient manner. It will also ensure uninterrupted access to natural gas in the Gulf of Mexico shelf. The Commission will allow the waivers to remain in effect until the earlier of 90 days following the date that the asset purchase transaction closes, or the date the capacity release transactions and assignments are completed. The Petitioners state that the expected closing date of the transaction will be September 30, 2013; we direct them to file an informational notice in this docket once the actual closing date of the transaction has been established.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.