144 FERC ¶ 61,231
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 25, 2013

In Reply Refer To:
Direct Energy Business, LLC
Hess Corporation
Hess Energy Marketing, LLC
Docket No. RP13-1251-000

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Dear Ms. Heeg and Mr. O'Donnell:

1. On August 15, 2013, Direct Energy Business, LLC (Direct Energy), Hess Corporation (Hess) and Hess Energy Marketing, LLC (Hess Energy) (jointly, Petitioners) filed a joint petition (Joint Petition) requesting temporary waivers of the Commission's capacity release regulations and related policies for the transfer of certain of Hess' Commission-jurisdictional gas transportation and storage agreements to Hess Energy (or possibly Direct Energy, as described below). Specifically, Petitioners request a temporary, 182-day waiver of the capacity release regulations and policies to effectuate the proposed transfer and also temporary and limited waiver of the specific FERC Gas Tariff provisions of the Affected Pipelines governing capacity release to effectuate the

transfer.[1] Finally, Petitioners ask that the requested 182-day waiver be granted no later than September 25, 2013. For the reasons discussed below, and for good cause shown, the Commission grants the Petitioners' requested temporary waivers.

2. Petitioners state that on July 29, 2013, Hess and Direct Energy entered into an agreement (Purchase Agreement) under which Hess agreed to transfer directly or indirectly to Direct Energy all of Hess' assets for the purchase, sale, and transport of natural gas related to Hess' natural gas marketing business, including certain jurisdictional agreements for which Petitioners seek waivers herein. According to Petitioners, the transaction will take place in two parts, whereby Hess will first consolidate the assets being transferred into a single subsidiary, Hess Energy, and second, Direct Energy will acquire all of the equity interest in Hess Energy. Petitioners assert that, while it does not appear at this stage that Direct Energy will directly acquire the jurisdictional storage and transportation contracts (and thus would not need to release capacity or obtain waivers for that part of the transaction), the Purchase Agreement does contemplate the possibility that assets could be directly transferred from Hess to Direct Energy (instead of to Hess Energy). Thus, Petitioners state that, while the most likely course of action is that the assets will be transferred directly to Hess Energy in the first step of the proposed transaction, it is possible that some may be transferred directly to Direct Energy in the second step instead. Finally, Petitioners claim that the Commission has approved waivers for transfers to affiliates such as those requested in the instant Joint Petition.[2]

3. To effectuate the proposed transfer, Petitioners assert that Hess has agreed to permanently release to Hess Energy (or Direct Energy as the case may be) all of its Commission-jurisdictional firm natural gas transportation and storage agreements related to its gas marketing business, as well as to assign or otherwise transfer Asset Management Agreements that include the management of Commission-jurisdictional

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[1] The pipelines affected by this request for waiver are: Algonquin Gas Transmission, LLC (Algonquin); ANR Pipeline Company; Carolina Gas Transmission Corporation; Columbia Gas Transmission, LLC; Columbia Gulf Transmission, LLC; Dominion Transmission, Inc.; Eastern Shore Natural Gas Company; Empire Pipeline, Inc.; Enterprise Texas Pipeline LLC; Equitrans, LP; Iroquois Gas Transmission System, LP; Midwestern Gas Transmission Company; Millennium Pipeline Company LLC; National Fuel Gas Supply Corporation; Panhandle Eastern Pipe Line Company, LP; Tennessee Gas Pipeline Company LLC; Texas Eastern Transmission, LP (Texas Eastern); Texas Gas Transmission, LLC; Transcontinental Gas Pipe Line Corp.; and Trunkline Gas Company, LLC (Affected Pipelines).

[2] Joint Petition at 6 (citing *Husky Gas Mktg, Inc.*, 141 FERC ¶ 61,062 (2012)).

transportation or storage agreements. Petitioners state that they will provide a status report to the Commission as an informational filing within 90 days of closing regarding the contract transfer and novation process.

4. To facilitate the temporary release of capacity as part of the Purchase Agreement, the Petitioners request waivers of certain Commission regulations and policies as well as related tariff provisions and other waivers deemed necessary.[3] Petitioners state that the temporary waivers requested herein are necessary in order to facilitate Hess' exit from the natural gas marketing business, and granting the requested waivers is consistent with Commission policy and precedent. Petitioners state that the Purchase Agreement contemplates a transaction that "goes beyond a simple transfer of interstate pipeline capacity from one company to another, or even a transfer of pipeline capacity together with related gas purchase and sale agreements."[4] They state their waiver request satisfies the Commission's procedural requirements for requests for waivers of the capacity release regulations. Petitioners also contend that granting such waivers will facilitate the consummation of the proposed transfer, thus allowing Direct Energy to economically and efficiently acquire Hess' natural gas marketing business and allowing Hess to exit the natural gas marketing business in an orderly fashion.

5. Petitioners further state that, consistent with that precedent and with Commission policy regarding waivers of capacity release rules and regulations, the Joint Petition: (1) provides a sufficient description of the overall transaction and its claimed benefits to permit the Commission and other interested parties to analyze whether granting the requested waivers is in the public interest; (2) identifies the pipeline and storage capacity at issue; (3) identifies the regulations and policies for which a waiver is sought; and (4) is filed as much in advance of the requested action date as possible.

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[3] Specifically, Petitioners request waiver of the: (1) Commission's prohibition against tying arrangements; (2) applicable maximum rate provisions set forth in sections 284.8(b)(2) (18 C.F.R. § 284.8(b)(2) (2013))and 284.8(h)(1)(iii) (18 C.F.R. § 284.8(h)(iii) (2013))of the Commission's regulations; (3) notification for bidding provisions set forth in section 284.8(d) (18 C.F.R. § 284.8(d) (2013); (4)bidding provisions set forth in section 284.8(e) (18 C.F.R. § 284.8(e) (2013); (5) posting and bidding provisions set forth in the tariffs of the Affected Pipelines; (6) Commission's shipper-must-have-title policy; and (7) Commission's prohibition against buy-sell arrangements.

[4] Joint Petition at 11(citing *Sempra Energy Trading, LLC*, 133 FERC ¶ 61,128, at P 19 (2010) (*Sempra II*)).

6. Petitioners request that the Commission act on the Joint Petition by September 25, 2012, consistent with the expedited treatment granted previously in similar proceedings.[5] They state that expedited treatment is necessary to close the transaction under the Purchase Agreement as quickly as possible.

7. Public notice of the filing was issued on August 16, 2013. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[6] Pursuant to Rule 214,[7] 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. On August 27, 2013, Algonquin and Texas Eastern (collectively, Spectra Pipelines) filed a motion to intervene and comments. On September 10, 2013, Hess filed a reply to the Spectra Pipelines' comments.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.213(a)(2) (2013)) prohibits answers unless ordered by the decisional authority. In this case, the Commission will accept Hess' reply because it has assisted the Commission in our decision-making process.

9. In their comments, the Spectra Pipelines assert that they do not oppose the requested waiver. However, the Spectra Pipelines request that any order granting the Joint Petition explicitly limit the waiver of the Spectra Pipelines' tariff provisions to the specific provisions relating to the: (1) capacity release posting and bidding requirements, (2) restrictions on capacity release above the maximum rate, and (3) Commission's prohibition against tying. The Spectra Pipelines state that delineating the waiver in this way will prevent a possible misinterpretation and that the Commission has granted a general waiver of all of the provisions in the Spectra Pipelines' tariffs relating to capacity release requirements. The Spectra Pipelines contend that clarification is necessary because other capacity release provisions in their tariffs, such as those related to the creditworthiness of the replacement shipper and the requirements for the permanent release of the releasing customer, would continue to apply to the proposed release of the Spectra Pipelines' agreements.

10. Next, the Spectra Pipelines assert that Petitioners have incorrectly identified certain contracts on Appendix A to be transferred. As such, the Spectra Pipelines state

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[5] Joint Petition at 2 (citing *Delta Energy, LLC,* 141 FERC ¶ 61,042 (2012) (*Delta*); *Societe Generale Energy Corp.*, 138 FERC ¶ 61,137 (2012); *Sempra Energy Trading Corp.*, 121 FERC ¶ 61,005 (2007) (*Sempra*)).

[6] 18 C.F.R. § 154.210 (2013).

[7] 18 C.F.R. § 385.214 (2013).

that these contracts are not eligible for permanent release by Hess. Therefore, the Spectra Pipelines request that, if the Commission grants the waivers, the Commission condition such approval on Hess coordinating with the Spectra Pipelines to ensure that all contracts to be transferred are accurately identified.

11. In reply, Petitioners argue that the requested waivers are consistent with previous waivers granted by the Commission to implement the proposed transfer of assets from one entity to another. Petitioners contend that they seek temporary waivers of the Affected Pipelines' tariffs that are no more restrictive than those that have been granted many times in the past under similar circumstances, and the Spectra Pipelines have not provided any reason to depart from Commission precedent. Furthermore, Petitioners state that they are working with the Spectra Pipelines to confirm the creditworthiness of the replacement shipper.

12. Regarding the Spectra Pipelines' request that Hess coordinate with the Spectra Pipelines to identify and confirm the contracts to be transferred, Petitioners argue that Hess is already engaged in such coordination. Petitioners state that, as confirmed in the Joint Petition, Petitioners will submit an informational filing to the Commission within 90 days of closing, which will include notification of any additional jurisdictional service agreements associated with the transfer. Finally, Petitioners assert that, to the extent Hess determines through discussions with the Affected Pipelines that any contracts listed in Appendix A do not require waiver of the capacity release regulations and policies, those contracts will be removed from the revised list in the informational filing.

13. The Commission has reviewed 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 release of capacity under similar circumstances.[8] Accordingly, the Commission will grant the temporary 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 temporary capacity release as part of the Purchase Agreement. Granting such waivers will also allow Hess and Direct Energy to complete the complex transaction whereby Hess will consolidate certain assets in Hess Energy and then transfer control of Hess Energy to Direct Energy, thereby facilitating Hess' orderly exit from the retail and wholesale natural gas marketing business. The Commission will allow the waivers to remain in effect for 182 days following the date that the Purchase Agreement closes.

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[8] *See e.g.*, *Delta*, 141 FERC ¶ 61,042; *Total Gas & Power N. Am., Inc.*, 131 FERC ¶ 61,023 (2010); *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009); *N. Baja Pipeline, LLC*, 128 FERC ¶ 61,082 (2009); *Transcontinental Gas Pipe Line Corp.*, 126 FERC ¶ 61,086 (2009); *Sempra*, 121 FERC ¶ 61,005.

14. The Commission denies the Spectra Pipelines' request that we limit the waiver of the Spectra Pipeline's tariff provisions to the specific provisions relating to the: (1) capacity release posting and bidding requirements, (2) restrictions on capacity release above the maximum rate, and (3) Commission's prohibition against tying. As stated by Petitioners, their request comports with similar waivers granted by the Commission; the requested waivers are limited, temporary and meant only to encompass the sections of each Affected Pipeline's tariff and the Commission's capacity release regulations that are necessary to complete the transfer.[9] Because the waivers granted here are limited in time and to those necessary to implement the transaction, there is little concern that they could be interpreted as a waiver of all the Affected Pipelines' capacity release tariff provisions. Moreover, Petitioners attest that they are working with the Spectra Pipelines to confirm the creditworthiness of the replacement shipper in accordance with the requirements of the Spectra Pipelines' relevant tariff provisions and to identify and confirm that the contracts to be transferred pursuant to the agreement proceeds in an orderly and efficient manner. The waivers granted herein are thus conditioned on making the informational filing discussed above within 90 days of the closing date of the transaction.

15. Accordingly, for good cause shown, the Commission grants a limited, temporary waiver of section 284.8 of its regulations, including the bidding and maximum applicable rate requirements, the shipper-must-have-title policy, and the prohibitions on buy/sell and tying arrangements. In addition, the Commission grants, to the extent necessary, temporary and limited waiver of the specific FERC Gas Tariff provisions related to capacity release of the Affected Pipelines. This limited waiver is effective for 182 days from the date the Purchase Agreement closes. We further direct that Petitioners file an informational notice in this docket detailing the jurisdictional service agreements associated with the transfer within 90 days of the actual closing date of the transaction.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[9] *See e.g., East Tennessee Natural Gas, LLC*, 143 FERC ¶ 61,001, at P 9 (2013).