

144 FERC ¶ 61,234  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

September 26, 2013

In Reply Refer To:  
Petrohawk Energy Corporation  
HK Energy Marketing, LLC  
Docket No. RP13-1286-000

Morgan Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004

Attention: Mark R. Haskell  
Attorney for Petrohawk Energy Corporation and  
HK Energy Marketing, LLC

Reference: Joint Petition for Temporary Waivers of Capacity Release Regulations and  
Policies

Dear Mr. Haskell:

1. On August 29, 2013, Petrohawk Energy Corporation (Petrohawk) and HK Energy Marketing, LLC (HK Energy) (collectively Petitioners) filed a request for temporary waivers of the Commission's capacity release rules, regulations, and policies (Joint Petition), to facilitate the permanent assignment of two negotiated rate service agreements between HK Energy and Gulf South Pipeline Company, LP (Gulf South) at existing rates in accordance with the terms of the service agreements. For the reasons discussed below, and for good cause shown, the Commission grants the requested temporary waivers, as proposed.
2. The Petitioners state that Petrohawk and HK Energy are affiliates under the parent company of BHP Billiton Limited (BHP Billiton). They state that the transaction described in the Joint Petition is part of a corporate reorganization at BHP Billiton. The Petitioners state that HK Energy will assign two negotiated rate service agreements enabling Petrohawk to function in its new role as a BHP Billiton indirect, wholly owned subsidiary.

3. As part of this transaction, Petitioners state, HK Energy will permanently release to Petrohawk its two FT (Firm Transportation) Service Agreements, which provides HK Energy with 125,000 and 100,000, respectively, Dth per day of firm capacity on Gulf South's system.<sup>1</sup> The negotiated rate agreements became effective on April 22, 2010, for a primary term of 15 years, at a fixed, negotiated rate. The Petitioners state that one of the negotiated rate contracts currently exceeds the applicable maximum FT rate set forth in Gulf South's tariff, and the other may exceed the maximum FT rate in the future.

4. To facilitate the transfer of the negotiated rate agreements from HK Energy to Petrohawk, the Petitioners request temporary and limited waivers of certain Commission regulations and policies. Specifically, the Petitioners seek waiver of the Commission's capacity release posting and bidding requirements, prohibition on tying arrangements, restrictions on capacity releases below or above the maximum rate, and any pipeline tariff provisions related to these policies. They also request waiver of section 16 of the General Terms and Conditions of Gulf South's tariff, which reflects the above Commission policies, for the limited purpose of the transfer.

5. The Petitioners request that the waivers remain in effect for 90 days following the date of the order granting the requested waivers. The Petitioners state that they have discussed their joint proposal with Gulf South and that Gulf South has authorized the Petitioners to state that Gulf South supports the petition.

6. The Petitioners argue that the waivers requested on posting and bidding and on tying are in the public interest because they will permit BHP Billiton's corporate reorganization to occur in an orderly and efficient manner and will ensure that Gulf South remains financially indifferent to the permanent release of capacity contemplated in the petition. The Petitioners argue waiver of the restrictions on capacity releases below or above the maximum rate is appropriate because it will allow BHP Billiton to assume the negotiated rate agreements at the same negotiated rate that HK Energy is currently paying, thereby assuring that Gulf South will remain financially indifferent as a result of the release.

7. Public notice of the filing was issued on August 30, 2013. Interventions and protests were due on or before September 7, 2013, as provided by the notice. Pursuant to Rule 214,<sup>2</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.

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<sup>1</sup> Gulf South Contract Nos. 37731 and 37733.

<sup>2</sup> 18 C.F.R. § 385.214 (2013).

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 capacity to be released on a permanent basis at the same negotiated rate as the releasing shipper is currently paying.<sup>3</sup> As the Commission explained in *North Baja*, a pipeline is only required to allow a permanent capacity release, where it will be financially indifferent to the release. If the Commission were to require that HK Energy's 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 during future periods. Therefore, waiver of the bidding requirement for the permanent release is necessary to assure that the pipeline will be financially indifferent to the release, and thus to avoid inhibiting the use of a permanent release to transfer capacity the releasing shipper no longer needs or wants.

9. Accordingly, for good cause shown, the Commission grants the Petitioners' request for a temporary waiver of the specified capacity release regulations, policies, and tariff provisions for the limited purpose of facilitating the permanent release of the two specified Service Agreements from HK Energy to Petrohawk. Specifically, the Commission grants limited, temporary waiver of section 284.8 of its regulations, which governs the release of firm capacity; the prohibition on tying; the posting and bidding requirements for capacity release transactions; and the prohibition on the release of capacity at a rate above the maximum recourse rate. In addition, the Commission grants limited, temporary waiver of those sections of Gulf South's tariff that implement the above policies, in order to allow for the permanent release of the two Service Agreements from HK Energy to Petrohawk. We will allow the waivers to remain in effect until the earlier of 90 days following the date of assignment of the service agreements, or the date that the related capacity release transactions are completed. The Petitioners must file an informational notice in this docket once the actual date of assignment has been established.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>3</sup> See, e.g., *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082, at P 14 (2009) (*North Baja*).