

145 FERC ¶ 61,006
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

October 1, 2013

In Reply Refer To:
Cheyenne Plains Gas Pipeline
Company, L.L.C.
Docket No. RP13-1303-000

Cheyenne Plains Gas Pipeline Company, L.L.C.
PO Box 1087
Colorado Springs, CO 80944

Attention: Francisco Tarin, Director
Regulatory Affairs

Dear Mr. Tarin:

1. On August 30, 2013, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains) filed a request for waiver of its tariff requirements concerning the rate application and liability associated with a prearranged permanent release of capacity under a transportation service agreement (TSA).¹ Cheyenne Plains states that Riley Natural Gas Company (Riley) recently notified it of the plan to sell certain natural gas assets to Caerus WashCo LLC (Caerus). Cheyenne Plains further states Riley has requested a permanent release to Caerus of the capacity subject to the TSA between Cheyenne Plains and Riley. As discussed below, the Commission grants the requested waiver.

2. To facilitate the transfer of the TSA to Caerus, Cheyenne Plains requests a waiver of section 9.6(a)(i) of its General Terms and Conditions (GT&C).² Cheyenne Plains explains that, although the release of Riley's TSA would meet the term requirement, the

¹ TSA No. 21021000 has a negotiated rate, a maximum daily quantity of 5,000 dekatherms, and a term expiring on December 31, 2016.

² Section 9.6(a) provides that an open season for a prearranged capacity release is not required if the release is for more than one year at the maximum reservation rate under the applicable tariff rate schedule. Cheyenne Plains states this section is consistent with 18 C.F.R. § 284.8(h)(1)(iii) of the Commission's regulations.

TSA is subject to a negotiated rate rather than the maximum reservation rate established in its tariff. Additionally, Cheyenne Plains requests a waiver of section 9.13(b) of its GT&C³ to allow Caerus to assume all liability for payment on the released transportation capacity and not to hold Riley financially responsible following the completed permanent release transaction. Cheyenne Plains states that the sale of the assets by Riley to Caerus was completed as of June 18, 2013, and Riley desires to relinquish all financial ties to the transportation capacity associated with the TSA.

3. Cheyenne Plains states that approval of its request to waive GT&C section 9.6(a)(i) will afford Caerus the ability to “step into the shoes” of Riley and keep Cheyenne Plains financially neutral to the transaction. Cheyenne Plains further states that approval of its request to waive GT&C section 9.13(b) would support the Commission’s objective of not unnecessarily inhibiting the permanent release of capacity that a shipper no longer needs or wants.⁴

4. Public notice of the filing was issued on September 4, 2013. Interventions and protests were due as provided in section 154.210 of the Commission’s regulations (18 C.F.R. § 154.210 (2013)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2013)), all timely filed motions to intervene and any unopposed motion 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.

5. The Commission finds that Cheyenne Plains has sufficiently supported its requested waivers which are similar to those previously granted in like circumstances, in order to permit capacity to be released on a permanent basis at the same rates that the releasing shipper is currently paying.⁵ As the Commission explained in *North Baja*, a pipeline is only required to allow a permanent capacity release if it will be financially indifferent to the release. If the Commission were to require that Cheyenne Plains’ permanent release be posted for bidding subject to the maximum recourse rate, as

³ Section 9.13(b) provides that the releasing shipper is bound and liable for payment of the reservation charge unless the replacement shipper is paying the maximum reservation rate.

⁴ See *Cheyenne Plains Gas Pipeline Co., L.L.C.*, 142 FERC ¶ 61,153 (2013); *Questar Overthrust Pipeline Co.*, 141 FERC ¶ 61,175 (2012); *Kerr McGee Energy Services Corp.*, *Kerr McGee Nevada LLC*, *Western Gas Resources, Inc.*, and *Anadarko Energy Services Co.*, 139 FERC ¶ 61,175 (2012).

⁵ See, e.g., *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082, at P 14 (2009) (*North Baja*).

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 ensure 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. Further, the Commission's policy in recent years has been to grant temporary waivers of its capacity release regulations and policies to permit parties to consummate mergers, the sale of entire business units, and similar transactions.⁶

6. Accordingly, for good cause shown, the Commission grants a limited, temporary waiver of section 284.8 of its regulations,⁷ with respect to the posting and bidding requirements applicable to capacity release transactions. In addition, the Commission grants limited, temporary waiver of sections 9.6(a)(i) and 9.13(b) of the GT&C of Cheyenne Plains' tariff to permit the permanent release of the TSA to Caerus, as proposed. 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.

⁶ See *Request for Clarification of Policy Regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Businesses*, 127 FERC ¶ 61,106, at P 8 (2009) (capacity release posting and bidding requirements would not necessarily apply in the cases of the merger or sale of entire business units as part of a corporate restructuring, including the transfer of transportation contracts, supply contracts, employees, data systems and technology).

⁷ 18 C.F.R. § 284.8 (2013).