

146 FERC ¶ 61,021
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 14, 2014

In Reply Refer To:
EnerVest Energy Institutional
Fund XIII-A, L.P.
EnerVest Energy Institutional
Fund XIII- WIB, L.P.
EnerVest Energy Institutional
Fund XIII-WIC, L.P.
Bill Barrett Corporation
Docket No. RP14-321-000

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Attention: Kenneth G. Hurwitz, Esq.
Attorney for EnerVest Funds

Reference: Temporary Waiver Request

Ladies and Gentlemen:

1. On December 20, 2013, EnerVest Energy Institutional Fund XIII-A, L.P.; EnerVest Energy Institutional Fund XIII-WIB, L.P.; EnerVest Energy Institutional Fund XIII-WIC, L.P. (collectively, EnerVest Funds); and Bill Barrett Corporation (Bill Barrett)¹ filed a petition seeking temporary waivers of the Commission's capacity release regulations and certain Questar Pipeline Company (Questar) tariff provisions to facilitate the prearranged permanent release of two firm transportation service agreements from Bill Barrett to each of the EnerVest Funds (Petition). Petitioners state that release of the firm transportation agreements is part of a transaction by which the EnerVest Funds

¹ In this order, EnerVest Funds and Bill Barrett are referred to jointly as Petitioners.

acquired certain oil and natural gas leases, producing wells, and associated assets from Bill Barrett. Petitioners request that the waivers remain in effect for 90 days from the date of this order. As discussed below, the Commission grants the requested waivers.

2. Petitioners state that Bill Barrett and the EnerVest Funds entered into a Purchase and Sale Agreement under which each of the EnerVest Funds acquired, as of August 1, 2013, an undivided proportionate interest of 43.4 percent, 1.4 percent and 55.2 percent, respectively, of portions of certain oil and gas leases associated with assets owned by Bill Barrett. Petitioners explain that, as part of the transaction, Bill Barrett will transfer to each of the EnerVest Funds its proportionate share of firm transportation rights on Questar's system under two firm transportation agreements, at the rates set forth in the existing agreements.

3. Petitioners further state that Questar Agreement No. 3711 provides for 25,000 Dth/day of firm transportation under Questar Rate Schedule T-1 at a discounted rate of \$3.56879 Dth/Month. Questar Agreement No. 3727 provides for 25,000 Dth/day of Southern System Expansion (SSXP) service under Questar Rate Schedule T-1 at Questar's maximum SSXP rate.² Petitioners state they have been authorized by Questar to state that it does not oppose the release of the subject firm transportation agreements, subject to the Commission's approval of this Petition and subject to the satisfaction of the creditworthiness standards of Questar's tariff by the EnerVest Funds.

4. To facilitate this prearranged permanent capacity release, Petitioners request limited waivers of certain Commission regulations and policies, as well as certain provisions of Questar's FERC Gas Tariff. Specifically, Petitioners request waiver of the Commission's prohibition against tying arrangements. Petitioners further request waiver of sections 284.8(b)(2), 284.8(d), 284.8(e) and 284.8(h)(1)(iii) of the Commission's regulations³ to allow these capacity release transactions to be treated similarly to prearranged maximum rate release transactions, which can be implemented without posting for bids from other shippers and to allow the release of the Questar agreements to occur at the current contract rates. Petitioners also seek waiver of sections 6.6, 6.8, 6.9(a) through 6.9(c), 6.9(e) through 6.9(f), 6.11, and 6.12(a) through (h) of Questar's General Terms and Conditions (GT&C). In addition, Petitioners request waiver, to the extent

² The current maximum applicable rate for firm SSXP service under Rate Schedule T-1 is \$7.82712 Dth/Month. Questar Pipeline Company, FERC NGA Gas Tariff, Tariffs, [Statement of Rates, Statement of Rates, 8.0.0](#).

³ 18 C.F.R. §§ 284.8(b)(2), 284.8(d) and (e), 284.8(h)(1)(iii) (2013).

necessary, of the Commission's shipper-must-have-title policy, the prohibition on buy-sell arrangements and any other policies the Commission deems necessary to facilitate this transaction. Petitioners assert that granting these waivers is appropriate, and that the Commission has granted previous petitions for waiver under similar circumstances.⁴ Finally, Petitioners ask the Commission grant the requested waivers on or before January 20, 2014, but no later than January 30, 2014, to facilitate EnerVest Fund's scheduling of the released capacity for the month of February 2014.

5. Petitioners state that, subject to the Commission's grant of the requested waivers, and subject to EnerVest Funds' qualification under the creditworthiness standards of Questar's tariff, Questar will effectuate the subject capacity release transactions in accordance with section 6 of its GT&C. Petitioners point out that the releases will be for the entire remaining terms of the agreements and that Bill Barrett will request that Questar amend or terminate its service agreements to reflect the permanent release of the capacity to EnerVest Funds.

6. Public notice of the filing was issued on December 24, 2013. Interventions and protests were due on or before December 30, 2013. Pursuant to Rule 214,⁵ 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 the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

7. The Commission has reviewed Petitioners' request for temporary waivers and finds that granting the request is consistent with previous waivers the Commission has granted under similar circumstances. Petitioners have provided the information required for approval of such waivers: (1) identification of the regulations and policies for which waiver is sought; (2) identification of the pipeline service agreements and capacity to be transferred; and (3) description of the overall transaction and its claimed benefits, with sufficient detail to permit the Commission and other interested parties to determine whether granting the requested waivers are in the public interest. Moreover, the subject prearranged permanent capacity releases are necessary to facilitate the sale of certain Bill

⁴ Petitioners cite *Cheyenne Plains Gas Pipeline Company, L.L.C.*, 145 FERC ¶ 61,006 (2013); *Big Sandy Pipeline, LLC*, 141 FERC ¶ 61,151 (2012); *Big Sandy Pipeline, LLC*, 136 FERC ¶ 61,130 (2011); *Marathon Oil Co.*, 133 FERC ¶ 61,168 (2010); *Total Gas & Power North America, Inc.*, 131 FERC ¶ 61,023 (2010).

⁵ 18 C.F.R. § 385.214 (2013).

Barrett oil and natural gas production properties to the EnerVest Funds. In cases involving transfers of assets other than firm transportation capacity and gas supply contracts, the Commission has granted waiver of the capacity release regulations and tariffs, including posting and bidding, so that the parties could consummate the transfer. As the Commission has explained:

[T]he capacity release mechanism is not suited to these types of complex, integrated deals that do not permit the disaggregation of assets. Order No. 636 adopted the capacity release program in order to permit shippers to “reallocate unneeded firm capacity” to those who need it and promote efficient load management by the pipeline and its customers. The Commission did not contemplate that the capacity release posting and bidding requirements would necessarily apply in cases of the merger or sale of entire business units as part of a corporate restructuring. . . .⁶

8. Petitioners state that the EnerVest Funds’ acquisition of Bill Barrett’s transportation service agreements included in the transaction is an integral part of the overall business transaction. Thus, the transaction at issue here is the type of complex, integrated deal involving assets other than pipeline transportation capacity for which the Commission has waived its capacity release regulations, including posting and bidding. No party has objected that the transaction is unduly discriminatory. Accordingly, for the reasons discussed, the Commission grants temporary 90-day waivers of section 284.8(b)(2) of the regulations requiring that long-term releases not exceed the maximum recourse rate, as well as sections 284.8(d) and (e) regarding notice and bidding of capacity releases. Further, the Commission also grants waiver of the shipper-must-have-title requirement, and the prohibitions on buy-sell arrangements and tying of capacity releases to extraneous conditions, so that Petitioners can complete their transaction in an orderly and efficient manner.

9. The Commission also grants a limited waiver of the Questar tariff provisions cited above only to the extent necessary to effectuate the permanent releases of capacity amounts specified in the Petition for the two agreements as described therein. The tariff provisions for which the Petitioners seek waivers apply generally to capacity release requirements and procedures on the respective pipelines for both temporary and permanent releases. The Commission grants waiver of the provisions only as necessary

⁶ 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) (footnote omitted).

to complete the permanent releases specified in the Petition and not for any other permanent or temporary releases. Petitioners remain obligated to comply with any other applicable provisions of the Questar's tariff.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.