

146 FERC ¶ 61,040
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 24, 2014

In Reply Refer To:
Wyoming Interstate Company,
L.L.C.
Docket No. RP14-349-000

Wyoming Interstate Company, L.L.C.
P.O. Box 1087
Colorado Springs, CO 80944

Attention: Francisco Tarin, Director
Regulatory Affairs

Reference: Temporary Waiver Request

Ladies and Gentlemen:

1. On January 3, 2014, Wyoming Interstate Company, L.L.C. (WIC) filed a request for temporary waivers of certain tariff provisions and Commission regulations relating to capacity release to allow a pre-arranged, non-biddable permanent capacity release transaction to occur at a negotiated rate that differs from maximum tariff rates (Petition). WIC states that the capacity release is part of a transaction in which EnerVest Institutional Fund XIII-A, L.P., EnerVest Institutional Fund XIII-WIB, L.P., EnerVest Institutional Fund XIII-WIC, L.P. (collectively, EnerVest Funds) acquired production acreage, as well as associated assets and contracts from Bill Barrett Corporation (Bill Barrett).
2. WIC requests Commission action on the Petition no later than January 27, 2014, and that the waivers remain in effect for 90 days. As discussed below, the Commission grants the requested waivers.
3. WIC states that Bill Barrett and the EnerVest Funds informed WIC that under an October 22, 2013 Purchase and Sale Agreement, each of the EnerVest Funds acquired an undivided proportionate interest of 43.4 percent, 1.4 percent and 55.2 percent, respectively, of the Bill Barrett production Uinta Basin assets and contracts, including

Bill Barrett's firm transportation service agreement (TSA) with WIC.¹ WIC explains that Bill Barrett wishes to permanently release a portion of the capacity held in its TSA No. 41200000. WIC explains that the TSA provides for 65,000 Dth/day of firm transportation on the Kanda Lateral at a negotiated rate of \$5.2522 per Dth. WIC further states that the TSA is a non-conforming, negotiated rate agreement currently on file with the Commission and included in WIC's tariff.² According to WIC, under the terms of this TSA, it provides transportation to Bill Barrett on its Kanda Lateral and also provides for off-system transportation on Questar Overthrust Pipeline Company (Overthrust). WIC adds that Bill Barrett will retain the portion of the TSA that provides for transportation on Overthrust.

4. As WIC explains further, the existing TSA will be split into two separate service agreements, one related to the Kanda Lateral capacity and the other for off-system transportation on the Overthrust system. Next, states WIC, the existing TSA will be amended and restated to include only the Kanda Lateral capacity so that it can be permanently released to each of the EnerVest Funds, as described above. In addition, WIC states that Bill Barrett will execute a new transportation service agreement with WIC to retain the off-system transportation capacity on Overthrust. WIC adds that, to the extent that the new or revised transportation serviced agreements will incorporate negotiated rate and non-conforming provisions, WIC will file the transportation service agreements with the Commission for its review and acceptance.

5. To facilitate this prearranged permanent capacity release, WIC requests waiver of the Commission's prohibition against tying arrangements. WIC further requests waiver of sections 284.8(b)(2), 284.8(d), and 284.8(e) of the Commission's regulations³ to permit these capacity release transactions to be treated in the same manner as prearranged maximum rate release transactions. WIC also seeks waiver of the Commission's shipper-must-have-title policy and the prohibition on buy-sell arrangements. Finally, WIC asks

¹ WIC states that the EnerVest Funds and Bill Barrett have filed in Docket No. RP14-321-000 a similar request for waivers related to transportation capacity on the Questar Pipeline Company system.

² The Commission accepted the non-conforming, negotiated rate TSA via an unpublished Commission letter order dated October 19, 2010 in Docket No. RP10-1397-000. (Wyoming Interstate Company, L.L.C., FERC NGA Gas Tariff, WIC Tariff; [Part VII: Non-Conforming, Section 2 - Bill Barrett Corporation #41200000, 1.0.0](#); [Part VII: Non-Conforming, Section 2.1 - Bill Barrett Corporation #41200000 Exhibit A, 1.0.0](#); [Part VII: Non-Conforming, Section 2.2 - Bill Barrett Corporation #41200000 Exhibit B, 1.0.0](#).)

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

the Commission to grant the waiver of sections 9.6(a), 9.13(b) and 23 of the General Terms and Conditions of its tariff. WIC contends that it is appropriate for the Commission to grant the requested waivers and that it has granted similar requests for waivers.⁴

6. Public notice of the filing was issued on January 8, 2014. Interventions and protests were due on or before January 10, 2014. 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. The Petition is unopposed.

7. The Commission has reviewed WIC's request for temporary waivers and finds that granting the request is consistent with previous waivers the Commission has granted under similar circumstances. WIC has 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 is in the public interest. Moreover, the subject prearranged permanent capacity release is necessary to facilitate the sale of certain Bill 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 of the business unit. As the Commission has explained:

The 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

⁴ WIC cites *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 Company*, 133 FERC ¶ 61,168 (2010); *Total Gas & Power North America, Inc.*, 131 FERC ¶ 61,023 (2010).

⁵ 18 C.F.R. § 385.214 (2013).

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. WIC states that the EnerVest Funds' acquisition of Bill Barrett's TSA 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 its 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. The Commission also grants waiver of the shipper-must-have-title requirement, as well as the prohibitions on buy-sell arrangements and tying of capacity releases to extraneous conditions, so that WIC and Bill Barrett can complete the transaction in an orderly and efficient manner.

9. Additionally, the Commission grants a limited waiver of the cited WIC tariff provisions only to the extent necessary to accomplish the permanent release of the capacity amount of the TSA specified in the Petition and not for any other permanent or temporary releases. The tariff provisions for which WIC seeks waivers apply generally to capacity release requirements and procedures on the respective pipelines for both temporary and permanent releases. All parties remain obligated to comply with any other applicable provisions of WIC's tariff.

By the direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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).