146 FERC ¶ 61,219
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 21, 2014

In Reply Refer To:
Gavilon, LLC
Tenaska Marketing Ventures
Docket No. RP14-516-000

Cadwalader, Wickersham, & Taft LLP
700 6th Street, NW
Washington, DC 20001

Attention: Terence T. Healy, Counsel for Gavilon, LLC

Dear Mr. Healy:

1. On February 25, 2014, Gavilon, LLC (Gavilon) and Tenaska Marketing Ventures (Tenaska) (collectively, Petitioners) filed a request for temporary waivers of certain capacity release and other Commission rules, regulations, and policies (Petition), to facilitate Gavilon's sale to Tenaska of several transportation agreements as part of an integrated transaction, resulting in Gavilon's exit from the wholesale natural gas marketing business. The Petitioners request the waivers remain in effect until 90 days following the date of the order granting the requested waivers. For the reasons discussed below, and for good cause shown, the Commission grants the requested temporary waivers, as proposed.

2. Petitioners state Gavilon and Tenaska are separate marketing companies, both based in Omaha, Nebraska. Petitioners state they are in the process of executing an Asset Purchase Agreement, under which Tenaska and its affiliates will succeed to Gavilon's rights as a shipper under several firm natural gas transportation, storage, and park and loan agreements, with both jurisdictional and non-jurisdictional transportation and storage service providers. The natural gas transportation and storage contracts underlying the agreement are on ANR Pipeline Company, Arlington Storage Company, LLC, Leaf River Energy Center, LLC, Midcontinent Express Pipeline, LLC and Perryville Gas Storage, LLC. Petitioners seek waivers of certain capacity release policies in order facilitate this transaction. Specifically, the Petitioners request temporary waiver of:

a. section 284.8 of the Commission's regulations, which governs the release of firm capacity, including the posting and bidding requirements for capacity release transactions;

b. the prohibition on the release of capacity at a rate above the maximum recourse rate;

c. the shipper-must-have-title policy;

d. the prohibition against buy/sell arrangements;

e. the prohibition on tying arrangements to the transfer of capacity; and

f. the affected pipelines' tariff provisions that implement the above policies.

3. Petitioners argue that the Commission typically grants waivers of these capacity release policies in situations similar to the present one, where the seller is seeking to exit from the wholesale natural gas marketing business.[1] Petitioners argue that granting these waivers would not harm any party, while failing to grant waiver would unnecessarily increase the transaction costs of a complex, integrated deal, and could possibly prevent the Petitioners from continuing existing commercial relationships after Gavilon's exit.

4. Public notice of the filing was issued on February 27, 2014. Interventions and protests were due on or before March 3, 2014, as provided by the notice. Pursuant to Rule 214,[2] all timely 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 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 or discounted rate as the releasing shipper is currently paying.[3] As the

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[1] *E.g., AEP Generation Resources, Inc.*, 145 FERC ¶ 61,211 (2013); *Virginia Power Energy Marketing, Inc.*, 145 FERC ¶ 61,066 (2013) (granting in part the requested waivers to permit permanent capacity releases as part of larger transactions necessary to exit the natural gas marketing business); *Direct Energy Business, LLC, et al.*, 144 FERC ¶ 61,231 (2013); *ProLiance Energy, LLC,* 144 FERC ¶ 61,037 (2013).

[2] 18 C.F.R. § 385.214 (2013).

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

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 Gavilon'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 rate for the entire term of the release, because such a rate might 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. Further, granting the requested waiver of the tying prohibition will allow Gavilon to exit the natural gas business and dissolve in an orderly and efficient fashion, consistent with Commission policy.[4]

6. 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 to allow the permanent release of the transportation and storage agreements from Gavilon to Tenaska. Specifically, the Commission grants limited, temporary waiver of:

a. section 284.8 of its regulations, which governs the release of firm capacity, including the posting and bidding requirements for capacity release transactions;

b. the prohibition on the release of capacity at a rate above the maximum recourse rate;

c. the shipper-must-have-title policy;

d. the prohibition against buy/sell arrangements; and

e. the prohibition on tying arrangements to the transfer of capacity.

[4] *E.g., Constellation NewEnergy – Gas Div., LLC*, 130 FERC ¶ 61,059 (2010); *Sequent Energy Mgmt., L.P., et al.*, 129 ¶ FERC 61,188 (2009); *Macquarie Cook Energy, LLC and Constellation Energy Commodities Group, Inc.*, 126 FERC ¶ 61,160 (2009); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008); *Barclays Bank PLC and UBS AG*, 125 FERC ¶ 61,383 (2008); *Wasatch Energy, LLC and Northwest Pipeline Corp.*, 118 FERC ¶ 61,173 (2007); *Sempra Energy Trading Corp.*, 121 FERC ¶ 61,005 (2007); *Northwest Pipeline Corp. and Duke Energy Trading and Mktg., L.L.C.*, 109 FERC ¶ 61,044 (2004).

7. In addition, the Commission grants limited, temporary waiver of the affected pipelines' tariff provisions that implement the above policies, in order to allow for the permanent release of the contracts. We will allow the waivers to remain in effect until the earlier of 90 days following the issuance date of this order, or the date on which the capacity release transaction described in this order is completed.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.