147 FERC ¶ 61,183
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

June 3, 2014

In Reply Refer To:
OXY USA Inc. and Merit Hugoton, L.P.
Docket No. RP14-841-000

OXY USA Inc.
5 E. Greenway Plaza
Suite 110
Houston, Texas 77046

Attention: Neil Patten

Dear Mr. Patten:

1. On May 5, 2014, OXY USA Inc. (OXY) and Merit Hugoton, L.P. (Merit)[1] filed a Joint Petition for temporary waiver of the Commission's prohibition on tying, capacity release regulations, Commission policies, and any relevant tariff provisions of WTG Hugoton, LP's ("WTG Hugoton") and Northern Natural Gas Company's ("Northern Natural") gas tariffs in order to allow a permanent release of OXY's transportation capacity to Merit under firm transportation agreements subject to discounted rates on WTG Hugoton and Northern Natural (collectively, Firm Transportation Agreements). Petitioners state that the transfer of these Firm Transportation Agreements is an integral part of a larger transaction involving the sale of OXY's Hugoton Field assets to Merit. As discussed below, the Commission grants the requested waivers.

2. Petitioners state that they are parties to a Purchase and Sale Agreement (PSA) pursuant to which, Merit agreed to purchase and pay for all of OXY's right, title and interest in and to OXY's Hugoton Field production assets. The assets are comprised of interests in acreage located in natural gas fields spanning from southwestern Kansas, the Oklahoma panhandle and into eastern Colorado, and the related Firm Transportation Agreements with WTG Hugoton and Northern Natural.

[1] In this order, OXY and Merit are referred to jointly as Petitioners.

3. Petitioners contend that the temporary waivers are in the public interest because Merit will continue the development of the Hugoton Field assets while OXY will focus on operations where it has depth and scale in order to better execute its long-term strategy and serve critical energy needs. Petitioners state that the transfer of the Firm Transportation Service Agreements will allow the continued use of capacity to deliver existing natural gas production to market during the transition, thereby avoiding stranded production. Additionally, Petitioners maintain that the requested temporary waivers are consistent with waivers previously granted by the Commission under similar circumstances, as well as waivers to facilitate the permanent release of transportation capacity subject to negotiated rate agreements.[2]

[2] Petitioners cite *Noble Energy, Inc.*, 146 FERC ¶ 61,227 (2014) (granting a temporary waiver of the Commission's capacity release regulations, other Commission policies, and tariff provisions for the purpose of facilitating a transaction whereby the buyer was acquiring the seller's production assets); *Antero Resources Piceance LLC, et al.*, 141 FERC ¶ 61,250 (2012) (granting a temporary waiver of the Commission's capacity release regulations, other Commission policies, and tariff provisions for the purpose of facilitating a transaction whereby the buyer was acquiring the seller's production assets); *Antero Resources Corporation*, 139 FERC ¶ 61,258 (2012) (granting a temporary waiver of the Commission's capacity release regulations, other Commission policies, and tariff provisions for the purpose of facilitating a permanent prearranged capacity release as part of a deal to sell production assets); *Big Sandy Pipeline, LLC*, 136 FERC ¶ 61,130, at P 1 (2011) (granting a temporary waiver of certain of the Commission's policies, capacity release regulations, and tariff provisions to facilitate a transaction whereby the buyer was acquiring certain of the seller's oil and natural gas production assets); *BHP Billiton Petroleum (Fayetteville LLC) and Chesapeake Energy Marketing, Inc.*, 135 FERC ¶ 61,088, at P 2 (2011) ("*BHP Billiton*") (granting a temporary waiver of certain of the Commission's policies, capacity release regulations, and tariff provisions to promote a transaction in which the buyer was purchasing all of the seller's midstream and upstream production assets located in the Fayetteville shale); *Marathon Oil Company*, 133 FERC ¶ 61,168, at P 2 (2010) ("*Marathon Oil*") (granting a temporary waiver of certain of the Commission's policies, capacity release regulations, and tariff provisions to facilitate a transaction in which the buyer was purchasing certain producing properties, facilities, and related contracts from the seller); *Total Gas & Power North America, Inc. and Chesapeake Energy Marketing, Inc.*, 131 FERC ¶ 61,023, at PP 10-12 (2010) ("*Total Gas & Power*") (granting a temporary waiver of certain of the Commission's policies, capacity release regulations, and tariff provisions to facilitate a transaction in which the buyer was purchasing a share of the seller's production).

4. Petitioners state that the closing for the PSA occurred on April 30, 2014, but that in accordance with an amendment to the February 4, 2014 PSA, dated April 30, 2014, the Petitioners will not complete the assignment of the Firm Transportation Agreements until after the Commission issues an order on the petition. Petitioners state that in the interim, Merit will sell its production to OXY upstream of both of the interstate pipelines, and OXY will market the production under a net-back arrangement, reimbursing Merit for the value of the gas less transportation charges. Petitioners respectfully request that the Commission grant the waivers on or before June 5, 2014, in order to fully complete the transaction.

5. Specifically, Petitioners request a temporary waiver of the following policies of the Commission, capacity release regulations, and to the extent necessary, any relevant tariff provisions of the WTG Hugoton and Northern Natural FERC Gas Tariffs to effectuate the transfer of the Firm Transportation Agreements:

1. Prohibition Against Tying Arrangements;
2. Applicable maximum rate (18 C.F.R. §§ 284.8(b)(2), 284.8(h)(1)(iii));
3. Notification for bidding (18 C.F.R. § 284.8(d));
4. Bidding (18 C.F.R. § 284.8(e));
5. Shipper-Must-Have-Title Policy; and
6. Prohibitions Against Buy-Sell Arrangements.

6. Petitioners state that the Petition satisfies the Commission's procedural requirements for requests for waivers of the capacity release regulations.[3] The Petitioners also state that the temporary waivers requested will be used only for the limited purpose of consummating the transfer of the Firm Transportation Agreements that are an integral part of the larger, integrated transaction between the Petitioners.

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[3] Petitioners maintain that the Commission has stated that requests for such waivers should: (1) identify with as much specificity as possible the regulations and policies for which they seek waiver; (2) identify the pipeline capacity at issue; (3) provide a sufficient description of the overall transaction and its claimed benefits to permit the Commission and other interested parties to analyze whether granting the requested waivers is in the public interest; and (4) be filed as far in advance of the requested action date as possible. *Request for Clarification of Policy Regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Businesses*, 127 FERC ¶ 61,106, at P 10 (2009).

7. Public notice of the filing was issued on May 6, 2014. Interventions and protests were due by May 12, 2014. 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 the proceeding or place additional burdens on existing parties. The Petition is unopposed.

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 the prearranged permanent release of capacity under similar circumstances.[4] Accordingly, the Commission will grant temporary, limited waiver of its capacity release regulations, other policies as identified above, and the posting and bidding provisions set forth in the affected pipelines' tariffs for the limited purpose of facilitating a permanent prearranged capacity release as part of OXY's agreement to sell its production assets to Merit. Granting these waivers will allow the Petitioners to execute the PSA and transfer the assets in an orderly and efficient manner. It will also ensure uninterrupted access to natural gas from the production assets subject to the PSA. The Commission will allow the waivers to remain in effect until the earlier of 90 days following the date of this order, or the date the capacity release transactions and assignments are completed.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All Parties

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[4] *E.g.*, *EnergyMark, LLC and Constellation NewEnergy – Gas Div., LLC*, 130 FERC ¶ 61,059 (2010); *Sequent Energy Mgmt., L.P. and Integrys Energy Services, Inc.*, 129 FERC ¶ 61,188 (2009); *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082 (2009); *Macquarie Cook Energy, LLC and Constellation Energy Commodities Group, Inc.*, 126 FERC ¶ 61,160 (2009); *Barclays Bank PLC and UBS AG,* 125 FERC ¶ 61,383 (2008); *Bear Energy LP, et al.*, 123 FERC ¶ 61,219 (2008); *Sempra Energy Trading Corp., et al.*, 121 FERC ¶ 61,005 (2007); *Wasatch Energy, LLC and Northwest Pipeline Corp.,* 118 FERC ¶ 61,173 (2007); *Northwest Pipeline Corp. and Duke Energy Trading and Marketing, L.L.C.,* 109 FERC ¶ 61,044 (2004).