

148 FERC ¶ 61,066
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 25, 2014

In Reply Refer To:
Chesapeake Energy Marketing, Inc.
Chief Oil & Gas LLC
Tug Hill Marcellus, LLC
Enerplus Resources (USA)
Corporation
Docket No. RP14-1044-000

Chesapeake Energy Marketing, Inc.
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006-1101

Attention: David I. Bloom

Dear Mr. Bloom:

1. On June 11, 2014, Chesapeake Energy Marketing, Inc. (CEMI), Chief Oil & Gas LLC (Chief Oil), Tug Hill Marcellus, LLC (Tug Hill) and Enerplus Resources (USA) Corporation (Enerplus) (collectively, Petitioners) filed a joint petition requesting a limited, waiver of the Commission's capacity release regulations and policies, waiver of the applicable tariff capacity release provisions of certain pipelines as well as any other waivers or authorizations necessary to effectuate a permanent release and assignment of specific portions of certain firm transportation contracts held by CEMI (Joint Petition). Petitioners request a shortened comment period of ten days and expedited issuance of an order granting the Joint Petition no later than 45 days after filing. For the reasons discussed below, and for good cause shown, the Commission grants the requested limited waivers.

2. Petitioners state that, pursuant to a Purchase and Sale Agreement reached on October 15, 2013, Chesapeake Appalachia, LLC, a subsidiary of Chesapeake Energy Corporation and affiliate of CEMI, sold 100 percent of its membership interests in MKR Holdings LLC (MKR) to a buyer group consisting of Chief Exploration & Development LLC, Tug Hill Marcellus, LLC and Enerplus (the Transaction). MKR produces natural gas in the Marcellus Shale and, in the past, has sold its production to

CEMI, which transported the natural gas using firm transportation agreements. The Transaction closed on November 21, 2013. The Transaction requires that CEMI transfer to Chief Oil, Tug Hill and Enerplus the firm transportation capacity currently used by CEMI to transport production previously purchased from MKR to markets, and that the purchasers will sell their production to their affiliated marketing companies. Petitioners state that an integral part of the Transaction is the transfer of relatively minor portions of larger contracts held by CEMI¹ (Assigned Contracts). Petitioners further state that CEMI will remain obligated under the portions of the contracts that are not released.

3. Petitioners assert that the Assigned Contracts are subject to a negotiated rate. Petitioners state that the negotiated rates are not currently equal to the applicable maximum recourse rates and, over the term of the Assigned Contracts, the rates may be less than or greater than the then-effective maximum recourse rates. Finally, Petitioners assert that the negotiated rates are also subject to specified adjustments that may cause them to fluctuate during their respective remaining terms.

4. To facilitate the permanent prearranged release and assignment of specified portions of the Assigned Contracts as part of the Purchase and Sales Agreement, Petitioners request a limited, case-specific waiver of the Commission's capacity release regulations and policies, the applicable capacity release provisions in the tariffs of Tennessee Gas Pipeline Company (Tennessee), Texas Eastern Transmission, LP (Texas Eastern), and Central New York Oil and Gas Company, LLC (CNYOG), and any other waivers or authorizations deemed necessary by the Commission. Specifically, Petitioners request that the Commission grant all waivers and authorizations necessary for: (1) the permanent release of the Assigned Contracts, without bidding;² (2) a waiver of prohibition on the release of capacity above the maximum recourse rate;³ (3) a 90-day waiver of the prohibition on buy/sell arrangements; and (4) a waiver of the prohibition of tying the release of capacity to other transactions.

5. Petitioners assert that granting the requested waivers requested herein is in the public interest. Petitioners state that the granting the requested waivers will facilitate the continued production of the transferred properties in the Marcellus Shale because Chief Oil, Tug Hill and Enerplus will each have the firm transportation rights necessary to move their production to markets. Petitioners also assert that the Assigned Capacity cannot be separated from the overall Transaction, and the Transaction cannot be fully effectuated without the transfer of the Assigned Capacity. Lastly, Petitioners state that the granting of the requested waivers will allow the Transaction to be fully consummated.

¹ Contract Nos. 77504, 101781, 910952, 103034 and FTS-CHK-0004.

² 18 C.F.R. § 284.8(e) (2013).

³ 18 C.F.R. § 284.8(b)(2) (2013).

6. Public notice of the joint petition was issued on June 12, 2014. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁴ Pursuant to Rule 214,⁵ all timely motions to intervene and any unopposed motions 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.

7. We have reviewed the Petitioners' request for temporary waivers and find that the request is adequately supported and consistent with previous waivers that the Commission has granted to permit the release of capacity under similar circumstances.⁶ Petitioners have also 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.⁷

8. Accordingly, for good cause shown, the Commission grants Petitioners' request for temporary, limited waiver of its capacity release regulations, including the prohibition on buy/sell arrangements, the posting and bidding provisions and shipper-must-have-title requirements. In addition, the Commission grants, to the extent necessary, a temporary and limited waiver of the above-referenced provisions of the pipelines' tariffs so as to

⁴ 18 C.F.R. § 154.210 (2013).

⁵ 18 C.F.R. § 385.214 (2013).

⁶ See, e.g., *Big Sandy Pipeline, LLC*, 141 FERC ¶ 61,151 (2012); *Antero Resources Corp.*, 139 FERC ¶ 61,258 (2012); *Salmon Resources, LTD*, 138 FERC ¶ 61,059 (2012); *Big Sandy Pipeline, LLC*, 136 FERC ¶ 61,130 (2011); *BHP Billiton Petroleum (Fayetteville LLC)*, 135 FERC ¶ 61,088 (2011); *Wisconsin Electric Power Co.*, 131 FERC ¶ 61,104 (2010); *EnergyMark, LLC*, 130 FERC ¶ 61,059 (2010); *Total Gas & Power North America, Inc.*, 131 FERC ¶ 61,023 (2010); *Sequent Energy Mgmt., L.P., et al.*, 129 FERC ¶ 61,188 (2009); *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082 (2009); *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008).

⁷ *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).

facilitate the capacity release transaction. The Commission will allow the waivers to remain in effect for a 90-day period following issuance of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.