

150 FERC ¶ 61,013
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 14, 2015

In Reply Refer To:
WPX Energy Appalachia, LLC
WPX Energy Keystone, LLC
WPX Energy Marketing, LLC
Southwestern Energy Services Co.
Docket No. RP15-240-000

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Dear Ms. Brooks and Mr. Dixon:

1. On December 3, 2014, WPX Energy Appalachia, LLC, WPX Energy Keystone, LLC, WPX Energy Marketing, LLC, and Southwestern Energy Services Co. filed a Joint Petition requesting waiver of the Commission's capacity release regulations and policies.¹ Petitioners request a 90-day waiver for the limited purpose of facilitating a

¹ For simplicity, this order will refer to the selling production corporations, WPX Energy Appalachia, LLC and WPX Energy Keystone, LLC, and their marketing affiliate, WPX Energy Marketing, LLC, collectively as WPX; and will refer to the buying production corporation, SWN Production Company, LLC, and its marketing affiliate, Southwestern Energy Services Co., collectively as Southwestern. WPX and Southwestern will also be referred to jointly as the Petitioners.

permanent prearranged capacity release as part of a deal to sell WPX's Pennsylvania and New York production assets to Southwestern. The Petitioners request a Commission order granting the requested waivers by January 15, 2015, and that such waivers be effective immediately. For the reasons discussed below, and for good cause shown, the Commission grants the requested limited waivers.

2. The Petitioners state that on December 1, 2014, they entered into a Purchase and Sales Agreement under which Southwestern acquired from WPX substantially all of WPX's natural gas production assets in five counties located in Pennsylvania and New York, in the Marcellus Shale region. The Petitioners state that the assets sold under the Purchase and Sales Agreement include the oil, gas, and other interests in the lands identified in the Purchase and Sale Agreement, the machinery and other production assets on those lands, and all of the contracts to which WPX is a party relating to the subject assets. Relevant to the instant request for waiver, the referenced contracts include six negotiated rate agreements between WPX and Millennium Pipeline, and one tariff-rate agreement between WPX and National Fuel. Both Millennium Pipeline and National Fuel operate under the Commission's Natural Gas Act jurisdiction.

3. To facilitate the permanent prearranged release of capacity as part of the Purchase and Sales Agreement, the Petitioners request waivers of the following regulations, policies, and provisions:

- a. the Commission's prohibition against tying arrangements;
- b. the applicable maximum rate provisions set forth in sections 284.8(b)(2) of the Commission's regulations;
- c. the notification for bidding provisions set forth in section 284.8(d);
- d. the bidding provisions set forth in section 284.8(e);
- e. the related provisions set forth in the General Terms and Conditions of the National Fuel and Millennium Pipeline tariffs;
- f. the Commission's shipper-must-have-title policy;
- g. the Commission's prohibition against buy-sell arrangements; and
- h. any other waivers the Commission deems necessary and appropriate.

4. The Petitioners argue that allowing the limited waivers requested herein is in the public interest. They argue that the waivers will allow Southwestern to use the capacity on National Fuel and Millennium Pipeline in the same manner that WPX would have.² The Petitioners also explain that the transaction and waivers will facilitate WPX's effort to reinvest the proceeds from the transaction into new production areas.³ They contend that granting the requested waivers would be consistent with waivers previously granted by the Commission under similar circumstances.⁴ The Petitioners argue that they have structured both the Purchase and Sales Agreement and this Petition so as to keep the pipelines economically whole, as required by Commission policy.⁵

5. Public notice of the filing was issued on December 8, 2014, allowing for protests to be filed as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214,⁶ 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 this proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

6. The Commission has reviewed the Joint Petition and finds it to be adequately supported and consistent with previous waivers that the Commission has granted to permit the prearranged permanent release of capacity under similar circumstances.⁷ Accordingly, the Commission will grant temporary, limited waiver of the capacity release regulations and policies as identified above, as well as the implementing provisions set forth in National Fuel's and Millennium Pipeline's tariffs, for the limited purpose of facilitating a permanent prearranged capacity release as part of the Purchase and Sales Agreement described in this docket. Granting these waivers will allow the Petitioners to

² Joint Petition at 7.

³ Joint Petition at 2.

⁴ Joint Petition at 3, 7 (citing, *inter alia*, *Wyoming Interstate Company, L.L.C.*, 146 FERC ¶ 61,040 (2014) (*WIC*)).

⁵ Joint Petition at 11-12 (citing, *inter alia*, *Total Gas & Power North America, Inc., et al.*, 131 FERC ¶ 61,023 (2011) (*Total*)).

⁶ 18 C.F.R. § 385.214 (2014).

⁷ *E.g.*, *PDC Energy, Inc. and Alliance Petroleum Corp.*, 145 FERC ¶ 61,177 (2013); *WIC*, 146 FERC ¶ 61,040; *Total*, 131 FERC ¶ 61,023.

execute their Purchase and Sales Agreement and transfer the assets in an orderly and efficient manner, without unduly harming any third parties. The Commission will allow the waivers to enter into effect on the date that this order issues, and remain in effect for 90 days, as requested.

By direction of the Commission. Commissioner Honorable is not participating.

Nathaniel J. Davis, Sr.,
Deputy Secretary.