

151 FERC ¶ 61,164
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

May 20, 2015

In Reply Refer To:
WPX Energy Marketing, LLC
Morgan Stanley Capital Group Inc.
Docket No. RP15-966-000

Katherine B. Edwards, Esq.
Attorney for WPX Energy Marketing, LLC
Edwards & Floom
1409 King Street
Alexandria, VA 22314

Kenneth W. Irvin, Esq.
Attorney for Morgan Stanley Capital Group Inc.
Sidley Austin LLP
1501 K Street NW
Washington, DC 20005

Dear Ms. Edwards and Mr. Irvin:

1. On May 4, 2015, WPX Energy Marketing, LLC (WPX) and Morgan Stanley Capital Group Inc. (MSCG) (collectively, Petitioners) filed a joint petition (Petition) for temporary waivers of the Commission's capacity release and certain other regulations and policies, and of certain provisions of the FERC Gas Tariff of Transcontinental Gas Pipe Line Company, LLC (Transco). Granting the requested waivers will allow the permanent release to MSCG of WPX's transportation capacity under a negotiated rate firm transportation agreement with Transco (Transco Agreement), and an assignment of related Asset Management Agreements (AMAs) and gas purchase and sales agreements from WPX to MSCG. Petitioners request that the Commission issue an order approving the waivers on or before May 22, 2015, and that the waiver remain effective for 120 days. Petitioners also seek reconfirmation of the approval of a non-conforming provision in the existing Transco Agreement. For the reasons discussed below and for good cause shown, the Commission grants Petitioners' requested temporary waivers, and confirms its approval of the non-conforming provision in the Transco Agreement.

2. Petitioners state that the waivers are necessary in order to effectuate a larger comprehensive transaction involving the sale of WPX's remaining gas sales and purchase agreements and associated interstate capacity to MSCG (Transaction). Petitioners state that pursuant to the Transaction, which has an expected closing date of May 26, 2015, WPX has agreed to sell and MSCG has agreed to buy, WPX's right, title, and interest in WPX's Transco transportation capacity, as well as associated AMAs, and gas purchase and sales agreements.¹

3. Petitioners specifically request temporary waivers of:

- a. The prohibition against tying arrangements;
- b. The maximum rate ceiling for releases of greater than one year (18 C.F.R. § 284.8 (b)(2));
- c. Notification for bidding (18 C.F.R. §284.8(d));
- d. Bidding (18 C.F.R. § 284.8 (e));
- e. The prohibitions against buy-sell arrangements;
- f. The shipper-must-have-title policy;
- g. Related provisions set forth in the General Terms and Conditions (GT&C) of Transco tariff, specifically:
 - i. Section 42.5 – Prearranged Releases Subject to Prior Notice;
 - ii. Section 42.7 – Submission of Offers and Bids;
 - iii. Section 42.9 – Posting Periods;
 - iv. Section 42.11 – Seller's Criteria for Best Bid of Remaining Capacity, and Tie-Breaking Methodology;
 - v. Section 42.14 – Permanent Releases; and
- h. Any other waivers the Commission deems necessary and appropriate.

4. Petitioners argue that allowing the temporary waivers is in the public interest because once granted MSCG will administer the gas purchase and sales in the same manner that WPX did, using the Transco Agreement capacity. Petitioners state that the temporary waivers will allow them to complete the Comprehensive Transaction, whereby MSCG will acquire WPX's remaining interstate transportation assets in the Marcellus region. Petitioners also argue that the temporary waivers are consistent with waivers previously granted by the Commission under similar circumstances. Petitioners state that the temporary waivers will only be used for the limited purpose of consummating the release and assignment of firm transportation capacity under the Transco Agreement and the AMAs as part of the larger, integrated Comprehensive Transaction.

¹ For list of agreements, *see* Appendix A.

5. In addition, Petitioners request reconfirmation of the approval of a non-conforming provision in a negotiated rate agreement with Transco, which was approved by letter order on October 24, 2013.² The non-conforming provision gives the shipper the right to extend its contract with step-down (i.e., the right to reduce the contract quantity in the extended term(s)). For ease of reference, Petitioners attached a redline version of the revised Transco Agreement (Replacement Transco Agreement) reflecting the non-conforming language that deviates from the form of service agreement for use under Transco's Rate Schedule FT.³ Petitioners state that there have been no substantive changes to the terms and conditions in the Replacement Transco Agreement from the Transco Agreement. They state that the only changes are that the shipper will be MSCG instead of WPX, and the term will reflect the effective date of the permanent release of the firm transportation capacity under the Transco Agreement. Finally, Petitioners state that Transco has authorized them to state that it does not oppose the permanent release of the firm transportation capacity under the Transco Agreement, subject to satisfaction by MSCG of tariff and contract creditworthiness requirements. Transco has also authorized Petitioners to state that it supports the process outlined by Petitioners, and that it will make an administrative filing to include the negotiated rate non-conforming Replacement Transco Agreement in its tariff (reflecting MSCG replacing WPX as the shipper) after the Commission reconfirms its approval of the non-conforming provision in the Transco Agreement.

6. Public notice of the Petition was issued on May 5, 2015. Interventions and protests were due on or before May 11, 2015.⁴ Pursuant to Rule 214,⁵ all timely filed 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 the proceeding or place additional burdens on existing parties. On May 11, 2015, Anadarko Energy Services Company (Anadarko) filed a motion to intervene and for extension of time to file comments from May 11, 2015 until May 18, 2015. On May 12, 2015, the Commission granted Anadarko's request in part and extended the deadline to May 14, 2015. On May 13, 2015 Anadarko filed a notice of withdrawal of its motion for extension, stating that based on discussions with WPX, Anadarko does not oppose the Petition.

² See *Transcontinental Gas Pipe Line Company, LLC*, Docket No. RP13-1363-000 (October 24, 2013) (unpublished letter order).

³ Petitioners assert that Transco will refile the Replacement Transco Agreement for Commission approval after the Petition is granted. Application at 14.

⁴ 18 C.F.R. § 154.210 (2014).

⁵ 18 C.F.R. § 385.214 (2014).

7. The Commission has reviewed the Petition and finds that the requests are adequately supported and consistent with previous temporary waivers granted by the Commission under similar conditions.⁶ In these cases, the Commission has granted temporary limited waivers of its capacity release regulations and the relevant tariffs of the affected pipelines in cases involving the transfer of jurisdictional transportation and storage agreements and related commodity purchase and sales agreements. In addition, the Commission finds that Petitioners have provided the information required for the granting of such waivers, including: (1) the 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) the 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 Accordingly, for good cause shown, the Commission grants temporary waivers of the capacity release regulations and policies as identified above, including the prohibition against tying arrangements, the maximum rate ceiling, bidding provisions, prohibitions against buy-sell arrangements, and the shipper-must-have-title policy.

8. In addition, the Commission grants, to the extent necessary, temporary and limited waivers of the provisions set forth in the GT&C of Transco's tariff that implement the above policies and regulations necessary to facilitate the capacity release transaction. Granting these waivers will allow Petitioners to effectuate the permanent release of the firm transportation capacity under the Transco Agreement from WPX to MSCG, along with other gas purchase and sales agreements and AMAs, within the time frames and closing date specified in the Comprehensive Transaction. These waivers are effective for 120 days from the date of this order.

9. Finally, as noted above, Petitioners state that Transco will refile the Replacement Transco Agreement for Commission approval. Based on this statement and the Petitioners' representation that there have been no substantive changes to the terms and

⁶ See e.g., *Rockies Express Pipeline LLC.*, 147 FERC ¶ 61,063 (2014), *Gavilon, LLC et. al.*, 146 FERC ¶ 61,219 (2014), *Virginia Power Energy Marketing, Inc.*, 145 FERC ¶ 61,066 (2013), *Rockies Express Pipeline LLC.*, 141 FERC ¶ 61,061 (2012), *North Baja Pipeline LLC.*, 128 FERC ¶ 61,082 (2009), *Northern Natural Gas Co.*, 117 FERC ¶ 61,354 (2006).

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).

conditions of that agreement, the Commission reconfirms the approval of the non-conforming provision in the Transco Agreement.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

<u>Pipeline</u>	<u>Contract No.</u>
Transco	9144665
WPX	604973
WPX	604275
WPX	47888
WPX	608249
WPX	608295
WPX	606900
WPX	608246
WPX	606846
WPX	608402
WPX	607024
WPX	607904
WPX	607927