

153 FERC ¶ 61,262
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 1, 2015

In Reply Refer To:
Apache Corporation and
Navitas Midstream Midland
Basin, LLC
Docket No. RP16-153-000

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Dear Mr. Knight and Mr. Morgan:

1. On October 30, 2015, Apache Corporation (Apache) and Navitas Midstream Midland Basin, LLC (Navitas) (collectively, the Petitioners) filed a joint petition requesting temporary waiver of the Commission's capacity release regulations and policies, and waiver of the related tariff provisions of El Paso Natural Gas Company, L.L.C. (El Paso) as necessary to effectuate a permanent release and assignment to Navitas of a portion of a firm transportation contract held by Apache on El Paso. As described in more detail below, this is part of a larger transaction involving Apache's sale of the Crane Plant, a natural gas processing facility and associated gas gathering system to Navitas. Petitioners request a shortened comment period and expedited issuance of an order granting the petition no later than December 1, 2015, so that they may complete the releases and related transactions by the December 1, 2015 anticipated closing day. Petitioners also ask that the requested waivers remain in effect until the earlier of 120 days following issuance of the Commission's order, or the date the described transaction is complete. For the reasons discussed below, and for good cause shown, the Commission grants the requested temporary waivers.

2. Petitioners state that, pursuant to a purchase and sale agreement reached on October 23, 2015, Navitas agreed to purchase the Crane Plant, an associated gas gathering system, and 6,000 Dth/d of associated capacity under a firm transportation agreement between Apache and El Paso from ZPZ Delaware I LLC, a limited liability company of which Apache is the sole member (the Transaction). Petitioners state that they have contacted El Paso and are authorized to represent that the pipeline does not oppose their petition. Petitioners state that an integral part of the transaction is the permanent release to Navitas of the 6,000 Dth/d of capacity under the El Paso firm transportation agreement, which Apache currently uses to transport gas to market from the Crane Plant and other Apache production assets. According to Petitioners, Navitas will utilize the 6,000 Dth/d of capacity under the El Paso firm transportation agreement for the same purpose, and Navitas will only obtain the portion of capacity under the El Paso firm transportation agreement that is directly related to the asset it will be acquiring, thereby ensuring that Navitas will not obtain capacity that is unrelated to the subject transaction. Petitioners assert that Apache will retain the remainder of the capacity that it requires under the El Paso firm transportation agreement to continue to move natural gas from the production assets that it will not be conveying to Navitas. The current rate for transportation pursuant to the assigned capacity under the El Paso firm transportation agreement is a discounted rate. Petitioners state that, due to the payment by Navitas for acquisition of the Crane Plant and associated gas gathering system, the consideration for the released capacity may be greater than the maximum recourse rate.

3. To facilitate the permanent prearranged release and assignment of specified portions of the assigned contract as part of the Purchase and Sale Agreement, Petitioners request a limited, case-specific, temporary waiver of the Commission's capacity release regulations and policies, the applicable capacity release provisions in El Paso's tariff, and any other waivers necessary to facilitate the transaction. Specifically, Petitioners request that the Commission grant all authorizations necessary for (1) the permanent release of the assigned contract, without bidding; (2) a waiver of the prohibition of tying the release of capacity to other transactions; (3) a waiver of the posting and bidding requirements; (4) a waiver of prohibition on the release of capacity above the maximum recourse rate; and (5) a waiver of the Commission's shipper-must-have-title policy and the Commission's policy prohibiting buy-sell arrangements.

4. Petitioners assert that granting these waivers and authorizations is in the public interest because granting them will facilitate the orderly transfer of capacity that is used to transport processed natural gas from the Crane Plant, and will ensure El Paso is financially indifferent to the release of the capacity, which will provide Navitas with the firm transportation rights necessary to move their production to market. Petitioners explain that the assigned capacity cannot be separated from the overall transaction, and the transaction cannot be fully effectuated without the requested temporary waivers to facilitate the planned transfer of the assigned capacity.

5. Public notice of the joint petition was issued on November 2, 2015. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2015)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2015)), 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. No protests or adverse comments were filed.

6. The Commission has reviewed the Petition and finds that the waiver request is adequately supported and consistent with previous temporary waivers that the Commission has granted to permit the release of capacity,¹ particularly when the transfers are a result of various types of corporate restructurings, including corporate mergers, and sales of entire business units.

7. 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.²

8. Accordingly, for good cause shown, the Commission grants Petitioners' joint request for temporary, limited waiver of its capacity release regulations, including prohibitions on buy/sell and tying arrangements, as well as the posting and bidding provisions and shipper-must-have-title requirements only to the extent necessary to facilitate the Transaction. In addition, the Commission grants, to the extent necessary, a

¹ 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.*, 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).

² *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).

temporary and limited waiver of related provisions in El Paso's FERC gas tariff so as to facilitate the transaction. The Commission will allow the waivers to remain in effect until the earlier of 120 days following the date of this letter order, or the date the capacity release transaction described herein is completed.

By direction of the Commission

Nathaniel J. Davis, Sr.,
Deputy Secretary.