

153 FERC ¶ 61,294
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 15, 2015

In Reply Refer To:
Range Resources – Appalachia, LLC
Range Resources – Pine Mountain, Inc.
EnerVest Energy Institutional Fund XIV, L.P.
Docket No. RP16-214-000

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Dear Mr. Downey and Mr. Goldberg:

1. On November 20, 2015, Range Resources – Appalachia, LLC (Appalachia) and Range Resources – Pine Mountain, Inc. (Pine Mountain) (together know as Range Companies), and EnerVest Energy Institutional Fund XIV, L.P. (EnerVest) (collectively, Petitioners) filed a joint petition for a temporary waiver (Joint Petition) of the Commission’s capacity release regulations and policies, related pipeline tariff provisions, and any other authorizations or waivers deemed necessary, in order to enable the Range Companies to transfer their jurisdictional natural gas transportation capacity related to certain natural gas production assets, and their interest in the supporting gas gathering system (Transferred Capacity), to EnerVest. Petitioners request an expedited order on this Joint Petition no later than December 15, 2015, with waivers effective immediately upon issuance of a Commission Order and in effect for 90 days. For the reasons discussed below and for good cause shown, the Commission grants the requested limited waivers.

2. Petitioners state the requested waivers are necessary to complete a transaction involving the sale of natural gas production and related assets (the Transaction).

Petitioners state the permanent transfer of the Transferred Capacity to EnerVest is integral to the Transaction, in which EnerVest will make a cash payment to the Range Companies and the Range Companies will transfer to EnerVest all of their natural gas assets in the Nora Field in Virginia.

3. Petitioners state that under their agreement, the Range Companies will transfer ownership of their operated interest in approximately 3,500 wells and about 460,000 net acres located primarily in southwestern Virginia, and their interest in 1,500 miles of gathering pipelines and compression in the Nora Field of Virginia. EnerVest will pay the Range Companies \$876 million for such assets.

4. According to the Petition, the Range Companies currently hold transportation capacity on East Tennessee Natural Gas, LLC (East Tennessee) through two transportation capacity agreements held by Appalachia and five transportation capacity agreements held by Pine Mountain. Petitioners state that Appalachia also holds five transportation contracts on Columbia Gas Transmission, LLC (Columbia). Petitioners further state that the Range Companies are the releasing shippers with respect to temporary capacity releases to unaffiliated third parties. According to the Petition, the Range Companies will transfer their respective transportation capacity agreements to EnerVest. Petitioners also state that with respect to the temporary capacity releases, EnerVest will step into the shoes of the Range Companies, leaving the current capacity rights in the hands of the replacement shippers through at least the term of the existing temporary releases.

5. According to the Petition, the Transaction is scheduled to close no later than December 31, 2015. Accordingly, Petitioners request that the Commission issue the requested waivers as expeditiously as possible and no later than December 15, 2015, so that other administrative requirements can be met. Petitioners request that the waivers remain in effect for a period of 90 days following the issuance thereof to facilitate an orderly transfer of the Transferred Capacity.

6. To permit the Range Companies to complete the transfer of their production and gathering assets in the Nora Field in an efficient and expeditious manner, the Petitioners request a temporary waiver of the Commission's capacity release rules and policies, as well as related East Tennessee and Columbia tariff provisions, and any other waivers or authorizations deemed necessary. Specifically, the Petitioners seek a waiver of: (1) the Commission's capacity release rules set forth in section 284.8, including the posting and bidding requirements;¹ (2) restrictions on capacity releases at negotiated rates currently in excess of East Tennessee's and Columbia's maximum rate, or which may become so in

¹ 18 C.F.R. § 284.8(c)-(e) (2015).

the future;² (3) the Commission's shipper-must-have-title policy; (4) prohibition on buy/sell arrangements; and (5) prohibition against tying, to the extent applicable. The Petitioners also request a temporary and limited waiver of the specific tariff provisions implementing these regulations and policies in the FERC Gas Tariff of East Tennessee and Columbia.

7. The Petitioners state that granting the waivers requested in this petition is consistent with the public interest and previous Commission decisions in similar circumstances. Petitioners assert that if it were instead to post the Transferred Capacity for permanent release, it would unnecessarily increase the transaction costs and would frustrate the purpose of the Transaction, which represents an efficient transfer of the Range Companies' natural gas production and interests in gathering assets in the Nora Field in Virginia. Petitioners argue that strict adherence to the Commission's posting and bidding requirements would neither benefit the natural gas market nor serve the Commission's regulatory goals, which the Commission has stated are focused upon "permit[ting] shippers to reallocate unneeded firm capacity to those who need it and promote efficient load management by" pipelines and customers.³

8. Public notice of the Joint Petition was issued on November 24, 2015, allowing for protests to be filed on or before November 27, 2015.⁴ On November 30, 2015, East Tennessee filed a motion to intervene out-of-time and limited protest. 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.

9. East Tennessee protests the Joint Petition to the extent that it seeks waiver of section 17.1 of the General Terms and Conditions (GT&C) of East Tennessee's FERC Gas Tariff. That section provides that East Tennessee may refuse to allow a permanent capacity release if it has a reasonable basis to conclude that it would not be financially

² 18 C.F.R. §§ 284.8(b)(2), 284.8(h)(1)(iii) (2015).

³ Joint Petition at 6 (citing Request for *Clarification of Policy Regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Businesses*, 127 FERC ¶ 61,106, at P 8 (2009)).

⁴ See 18 C.F.R. § 154.210 (2015).

⁵ 18 C.F.R. § 385.214 (2015).

indifferent to the release.⁶ East Tennessee argues that this tariff provision is consistent with the Commission's long-standing policy that the Commission will only require a pipeline to allow a permanent capacity release where the pipeline will be financially indifferent to the release.⁷

10. East Tennessee states it has been in discussions with EnerVest with respect to the status of EnerVest's creditworthiness. To date East Tennessee states it has not been provided sufficient information to confirm that East Tennessee would be financially indifferent to the permanent release of capacity that has been requested. East Tennessee requests that the Commission reject the portion of the Joint Petition requesting the necessary waivers for the Range Companies to permanently release the capacity on East Tennessee to EnerVest without complying with the Commission's regulations and the applicable provisions of East Tennessee's FERC Gas Tariff. Alternatively, East Tennessee requests that the Commission's order on the Joint Petition make it clear that, notwithstanding any other waivers that may be granted, waiver of section 17.1 of East Tennessee's GT&Cs allowing East Tennessee to remain financially indifferent to the permanent release has not been granted.

11. The Commission has reviewed Petitioners' request for temporary waivers and finds 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, particularly when the transfers are a result of various types of corporate restructurings, including corporate mergers and sales of entire business units.⁸

12. 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;⁹ and

⁶ See East Tennessee Natural Gas, LLC, FERC NGA Gas Tariff, East Tennessee Database 1, [17., Release of Rights to Firm Transportation Service, 4.0.0.](#)

⁷ East Tennessee Protest at n.9 (citing, among others, *Big Sandy Pipeline, LLC*, 135 FERC ¶ 61,225, at P 7 (2011) (*Big Sandy 2011*) ("The Commission only requires a pipeline to allow a permanent capacity release, where the pipeline will be financially indifferent to the release") and *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082, at P 14 (2009) (*North Baja*)).

⁸ See, e.g., *Big Sandy Pipeline, LLC*, 141 FERC ¶ 61,151 (2012) (*Big Sandy 2012*); *Big Sandy Pipeline, LLC*, 136 FERC ¶ 61,130; *Total Gas & Power North America, Inc.*, 131 FERC ¶ 61,023 (2010) (*Total*); *North Baja*, 128 FERC ¶ 61,082.

⁹ The contracts subject to the waiver are listed in Appendix A of the Petitioner's filing.

(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.¹⁰

13. However, as the Commission has explained previously, a pipeline is only obligated to allow a permanent capacity release where the pipeline will be financially indifferent to the release.¹¹ Accordingly, we clarify that the limited waivers granted in this order do not include waiving tariff language, including specifically section 17.1 of East Tennessee's GT&C, that operate to protect the pipeline's prerogative to refuse to allow a permanent capacity release on the basis that it would not be financially indifferent to the release.

14. Accordingly, for good cause shown, the Commission grants Petitioners' request for temporary, limited waiver of its capacity release regulations, including prohibitions on buy/sell and tying arrangements, posting and bidding provisions, and shipper-must-have-title requirements. In addition, the Commission grants limited waiver of the tariff provisions implementing those policies, only to the extent necessary to effectuate the permanent releases of capacity amounts specified in the Joint Petition. 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.

¹⁰ *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).

¹¹ *E.g.*, *North Baja*, 128 FERC ¶ 61,082 at P 14; *Total*, 131 FERC ¶ 61,023 at P 11; *Big Sandy 2011*, 135 FERC ¶ 61,225 at P 7; *Big Sandy 2012*, 141 FERC ¶ 61,151 at P 7.