

155 FERC ¶ 61,092  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

April 22, 2016

In Reply Refer To:  
Chesapeake Energy Marketing, L.L.C.  
and FourPoint Energy, LLC  
Docket No. RP16-744-000

John Paul Floom  
c/o Edwards & Floom, LLP  
1409 King Street  
Alexandria, VA 22314

Shemin V. Proctor  
c/o Andrews Kurth LLP  
1350 I Street, NW  
Suite 1100  
Washington, DC 20005

Dear Mr. Floom and Ms. Proctor:

1. On March 24, 2016, Chesapeake Energy Marketing, L.L.C. (CEM) and FourPoint Energy, LLC (FourPoint) (jointly, the Petitioners) filed a Joint Petition for limited temporary waiver of the Commission's capacity release regulations and policies, the applicable capacity release provisions in the tariffs of Enable Gas Transmission, LLC (Enable), Midcontinent Express Pipeline LLC (MEP), and Natural Gas Pipeline Company of America LLC (NGPL), as well as any other waivers or authorizations necessary to effectuate a permanent release and assignment of portions of CEM's firm transportation capacity. The Petitioners request issuance of an order on this Joint Petition no later than April 25, 2016, as closing of the larger transaction is expected to take place in late April 2016. For the reasons discussed below, the Commission grants the limited temporary waiver requested by the Petitioners.

2. Specifically, the Petitioners state that CEM seeks to permanently release and assign to FourPoint 25,000 Dth/d of the firm transportation capacity on MEP;<sup>1</sup> 20,000 Dth/d of firm transportation capacity on NGPL; and 65,000 Dth/d of firm transportation capacity on Enable (the Assigned Contracts), without posting and bidding, as well as a temporary waiver of the prohibition of buy/sell transactions and the shipper must have title rule.

3. The Petitioners explain that on February 23, 2016, wholly-owned subsidiaries of Chesapeake Energy Corporation, the parent of CEM, entered into a purchase and sale agreement pursuant to which they sold more than 470,000 acres in the Western Anadarko Basin in Western Oklahoma and the Texas Panhandle to FourPoint (Transaction). The Transaction requires that CEM transfer to FourPoint, among other assets, the firm transportation capacity currently used by CEM to transport natural gas production that is part of the Transaction from the Western Anadarko Basin to downstream markets. The Assigned Contracts are being transferred to FourPoint in order for current production to be transported from the Western Anadarko Basin to downstream markets in the same manner for FourPoint. The Petitioners also state that FourPoint subsequently may enter into a qualified asset management agreement on either a temporary or a permanent basis with an asset manager of its choosing.

4. The Petitioners state that the transfer of the Assigned Contracts is an integral part of the Transaction and that the approvals requested in the Joint Petition will allow the Transaction to be fully implemented and allow adequate time for CEM to permanently release the Assigned Contracts to FourPoint. The Petitioners state that the Assigned Contracts are for negotiated and discounted rates, which are not currently equal to the applicable maximum recourse rates. Over the term of the Assigned Contracts, the Petitioners further contend that the negotiated rates may be less than or greater than the then-effective maximum recourse rates. The Petitioners seek to maintain the commercial arrangements reflected in the negotiated and discounted rates for the remainder of the term of the Assigned Contracts. Petitioners state that this will preserve the bargain for the benefit of Enable, MEP, NGPL, as the pipelines, and FourPoint, as the shipper, under the existing firm transportation contracts.

5. The Petitioners claim that the assignment of capacity is a necessary component of the Transaction, which cannot be fully effectuated without the transfer of the Assigned Contracts. The Petitioners specifically request that the Commission grant all

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<sup>1</sup> The firm transportation agreements subject to the transaction are Enable discounted contract No. 96186, NGPL discounted contract no. 96235 and 25,000 Dth/d of capacity under MEP negotiated contract no. 96007. Chesapeake will retain the remaining capacity under the MEP contract.

authorizations necessary for: (1) the permanent release of the Assigned Contracts, without bidding, and at the negotiated rates (even to the extent that the negotiated rates are, or may be, above the corresponding maximum recourse rates), and discounted rates of the Assigned Contracts; (2) a 120-day waiver of the prohibition on buy/sell arrangements and the shipper must have title rule, in order to allow the parties to handle any transitional issues as the Assigned Capacity is transferred; and (3) a waiver of the prohibition of tying the release of capacity to other transactions, recognizing the permanent release of the Assigned Contracts is part of the larger Transaction. The Petitioners state that the requested waivers will be limited to the Transaction.

6. The Petitioners explain that the Commission has granted temporary waivers of its capacity release regulations and policies to permit parties to consummate similar transactions.<sup>2</sup> The Petitioners also state that the consummation of the transaction between CEM's affiliates and FourPoint will support the continued development of natural gas supplies.

7. Public notice of the filing was issued on March 28, 2016. Interventions and protests were due on April 4, 2016, 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 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.

8. The Commission has reviewed the Petitioners' request for temporary waiver and finds that the request is adequately supported and consistent with previous waiver requests that the Commission has granted to permit the release of capacity under similar

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<sup>2</sup> Joint Petition at 5 (citing *WPX Energy Appalachia, LLC*, 150 FERC ¶ 61,013 (2015); *Wyoming Interstate Company, L.L.C.*, 146 FERC ¶ 61,040 (2014); *Cheyenne Plains Gas Pipeline Company, L.L.C.*, 145 FERC ¶ 61,006 (2013); *ProLiance Energy, LLC*, 144 FERC ¶ 61,155 (2013); *Big Sandy Pipeline, LLC*, 141 FERC ¶ 61,151 (2012); *Antero Resources Corp.*, 139 FERC ¶ 61,258 (2012); *Kerr McGee Energy Services Corporation*, 139 FERC ¶ 61,175 (2012); *Salmon Resources, LTD*, 138 FERC ¶ 61,059 (2012); *Big Sandy Pipeline, LLC*, 136 FERC ¶ 61,130 (2011); *Wisconsin Electric Power Co.*, 131 FERC ¶ 61,104 (2010); *EnergyMark, LLC*, 130 FERC ¶ 61,059 (2010); *Sequent Energy Management, L.P.*, 129 FERC ¶ 61,188 (2009); *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008)).

circumstances.<sup>3</sup> Specifically, the Commission finds that the Petitioners have appropriately provided the information required for approval of such waivers, by: (1) identifying the regulations and policies for which waiver is sought; (2) identifying the pipeline service agreements and capacity to be transferred; (3) describing the overall transaction and its claimed benefits, with sufficient detail to permit the Commission and other interested parties to determine whether granting the requested waiver is in the public interest; and by (4) filing the Petition as much in advance of the requested date as possible.<sup>4</sup>

9. Accordingly, for good cause shown, the Commission grants the Petitioners' request for temporary, limited waiver of the Commission's capacity release regulations and policies as specified above, so that Petitioners can complete their transaction in an orderly and efficient manner within their time constraints. The temporary, limited waivers requested by Petitioners are granted, effective on the date that this order is issued, and waiver of the prohibition of buy/sell arrangements and the shipper-must-have-title rule shall continue for 120 days thereafter, to allow resolution of any transitional issues involving the Assigned Capacity.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>3</sup> See, e.g., *Barclays Bank PLC*, 152 FERC ¶ 61,069 (2015); *J.P. Morgan Ventures Energy Corp.*, 148 FERC ¶ 61,010 (2014); *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); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008).

<sup>4</sup> *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).