

156 FERC ¶ 61,032
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

July 12, 2016

In Reply Refer To:
Cheyenne Plains Gas Pipeline
Company, L.L.C.
Docket No. RP16-1029-000

Cheyenne Plains Gas Pipeline
Company, L.L.C.
P.O. Box 1087
Colorado Springs, CO 80944

Attention: Francisco Tarin,
Director, Regulatory Affairs

Dear Mr. Tarin:

1. On June 15, 2016, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne) filed a petition requesting waiver of Cheyenne's tariff requirements concerning the rate application and liability associated with a prearranged permanent release of capacity under a currently effective firm non-conforming negotiated rate transportation service agreement (TSA) with Vanguard Operating, LLC (Vanguard). For good cause shown, the Commission grants the requested temporary waiver,¹ effective upon the issuance of this order for 90 days, as discussed below.

2. Cheyenne explains that Vanguard notified Cheyenne of its intent to permanently release its transportation service capacity currently held under TSA No. 21014008 to Mico, Inc. (Mico).² Cheyenne states that both Vanguard and Mico have expressed

¹ Although Cheyenne only requested waiver of its tariff provisions related to capacity release procedures, waiver of the relevant Commission regulations and policies governing such releases is also required, which the Commission also grants.

² TSA No. 21014008 provides a maximum delivery quantity (MDQ) of 9,000 dekatherms (Dth) per day that extends through April 30, 2017. On May 1, 2017, the

(continued...)

their preference to effectuate the permanent capacity release through a prearranged transaction for capacity for the remainder of the term of the agreement (i.e., longer than one year) at the existing negotiated rate stated in the TSA. In order to effectuate such a transaction, Cheyenne states that it seeks waiver of certain provisions of its First Revised Volume No. 1 Tariff.

3. Specifically, Cheyenne requests waiver of sections 9.6(a)(i) and 9.13(b) of its General Terms and Conditions (GT&C) to permit the permanent release at the original negotiated rate rather than the maximum reservation rate and to discharge Vanguard of its financial liability regarding payment associated with the permanently released transportation capacity. Among other things, Cheyenne states that section 9.6 of its GT&C provides that an open season for a prearranged capacity release is not required if the release is for more than one year at the maximum reservation rate under the applicable tariff rate schedule.³ Although the release of Vanguard's TSA meets the minimum term requirement of greater than one year, Cheyenne acknowledges that the TSA is subject to a negotiated rate instead of the maximum reservation rate as required under section 9.6(a)(i) of its tariff. Therefore, Cheyenne requests waiver of its GT&C section 9.6(a)(i) to allow a prearranged capacity release at the negotiated rate provided for in the existing Vanguard TSA. Cheyenne argues that approval of this waiver request will give Miecoco the ability to 'step into the shoes' of Vanguard and keep Cheyenne financially neutral to the transaction.⁴

4. Cheyenne also requests waiver of GT&C section 9.13(b) which states that, "the releasing shipper will remain bound by and liable for payment of the reservation charge under the TSA unless the replacement shipper is paying the maximum reservation rate for the entire contract term, provided that any requisite consent(s) are obtained from

MDQ reduces to 5,000 Dth per day with agreement terminating on April 30, 2018.
Petition at 1 n.1.

³ Petition at 1-2.

⁴ Cheyenne also notes that it has a substantial amount of unsubscribed capacity available and posted on its electronic bulletin board that shippers may acquire through either the request for service timeline or through an open season. It contends that with such a significant amount of unsubscribed capacity available, a request for waiver of the prearranged capacity release bid period would not provide Vanguard or Miecoco preferential treatment as current available capacity levels on Cheyenne can adequately accommodate any new requests for transportation service. Petition at 2 n.3.

applicable financial institution(s).”⁵ Cheyenne states that Vanguard desires to relinquish all financial ties to the transportation capacity under TSA No. 21014008 and in support Cheyenne seeks waiver of GT&C section 9.13(b) to allow Miecoco to assume all liability for payment on the released transportation capacity and to not hold Vanguard financially responsible following the completed permanent release transaction. Cheyenne contends that this is consistent with similar waiver requests previously granted by the Commission and further argues that waiver would support the Commission’s objective of not unnecessarily inhibiting the permanent release of capacity that a shipper no longer needs or wants.⁶

5. Cheyenne states that it will complete the permanent capacity release transactions within 90 days of the issuance of a Commission order approving its waiver request and asks that the Commission issue an order granting the requested waivers no later than July 12, 2016.

6. Public notice of the filing was issued on June 20, 2016. Interventions and protests were due as provided in section 154.210 of the Commission’s regulations.⁷ Pursuant to Rule 214,⁸ 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 interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

7. Concord Energy LLC (Concord) notes that it does not protest the petition but filed comments asking for clarification of the Commission’s waiver policy with respect to the competitive bidding requirement for capacity release transactions. According to Concord, Cheyenne’s request does not appear to fit within the circumstances for which the Commission has previously granted exception to its capacity release regulations or exception to implementing pipeline tariff provisions requiring the open competitive bidding of long-term prearranged releases at less than the maximum recourse rate. Concord states that it is unclear from the Petition why a waiver of the tariff bidding

⁵ Petition at 2.

⁶ Petition at 2 & n.4 (citing *Cheyenne Plains Gas Pipeline Co., L.L.C.*, 142 FERC ¶ 61,153 (2013); *Questar Overthrust Pipeline Co.*, 141 FERC ¶ 61,060 (2012) (*Questar*); *Kerr McGee Energy Serv. Corp.*, 139 FERC ¶ 61,175 (2012)).

⁷ 18 C.F.R. § 154.210 (2015).

⁸ *Id.* § 385.214.

requirement is required to effectuate the release as it appears to be a long-term prearranged permanent release at a rate below Cheyenne's maximum tariff rate. Therefore, Concord contends that the existing tariff bidding process is adequate, preserves the replacement shipper's business expectations and allocates the capacity to the party who values it most-- consistent with the Commission's underlying policy goal of maximizing allocative efficiency in the secondary capacity markets.

8. The Commission has reviewed Cheyenne's petition for waiver, and finds that the request is adequately supported and appears generally consistent with previous waivers that the Commission has granted to permit the permanent release of capacity under similar circumstances.⁹ The Commission only requires a pipeline to allow a permanent capacity release where the pipeline will be financially indifferent to the release.¹⁰ Here, the releasing shipper is subject to a negotiated rate and not to the maximum reservation rate as stated in Cheyenne's tariff; therefore, waiver of the maximum rate is necessary to render the pipeline financially indifferent to the release. Denial of a waiver request in these circumstances would unnecessarily inhibit the use of permanent releases to transfer capacity which the releasing shipper no longer needs to a shipper that does need it.¹¹

9. Moreover, as to the permanent release at a discounted rate, the Commission has also recognized that, even in situations where a negotiated rate is currently less than the pipeline's maximum recourse rate, it is possible that the negotiated rate could be above the maximum recourse rate later.¹² Therefore, the pipeline could conclude that a continuation of the existing negotiated rate is necessary for it to be financially indifferent to a permanent release of a negotiated rate agreement, whether or not the negotiated rate is currently above or below the maximum recourse rate. The Commission has waived its capacity release regulations as necessary to permit permanent releases of negotiated rate

⁹ *Questar*, 141 FERC ¶ 61,060; *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082, at P 14 (2009).

¹⁰ *El Paso Natural Gas Co.*, 61 FERC ¶ 61,333, at 62,311-12 (1992); and *Tex. E. Transmission Corp.*, 83 FERC ¶ 61,092 (1998).

¹¹ *Questar*, 141 FERC ¶ 61,060 at P 5; *Transcontinental Gas Pipe Line Co., LLC*, 133 FERC ¶ 61,242 (2010).

¹² *Questar*, 141 FERC ¶ 61,060 at P 6; *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082 at P 14.

agreements in order to avoid unnecessarily inhibiting the use of permanent releases to transfer capacity the releasing shipper no longer needs or wants. Last, no party objected to the requested waivers.

10. Accordingly, the Commission will grant temporary, limited waiver of its capacity release regulations and policies and Cheyenne's tariff provisions to allow the permanent release of the capacity. Specifically, the Commission grants limited, temporary waiver of 18 C.F.R. § 284.8 of its regulations, which govern the release of firm capacity and the posting and bidding requirements for capacity release transactions; and the prohibition on the release of capacity at a rate above the maximum recourse rate. In addition, the Commission grants limited, temporary waiver of GT&C sections 9.6(a)(i) and 9.13(b) of Cheyenne's tariff that implement the above policies, in order to allow for the permanent release of capacity by Vanguard to Mico. The waivers shall remain in effect up to 90 days from the effective date of the Commission's order to allow the parties to complete all necessary contractual obligations.

By direction of the Commission.

Kimberly D. Bose,
Secretary.