

156 FERC ¶ 61,037
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

July 15, 2016

In Reply Refer To:
WPX Energy Marketing, LLC
and Citadel NGPE LLC
Docket No. RP16-989-000

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Dear Ms. Edwards and Mr. Bowe:

1. On May 27, 2016, WPX Energy Marketing, LLC (WPX) and Citadel NGPE LLC (Citadel) (collectively, 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 FERC Gas Tariffs of Kern River Gas Transmission Company (Kern River), Northwest Pipeline LLC (Northwest), Questar Overthrust Pipeline Company (Overthrust), and Wyoming Interstate Company, L.L.C. (WIC), as well as any other waivers or authorizations necessary to effectuate a permanent release and assignment of portions of WPX's firm transportation capacity. The Petitioners request issuance of an order on this Joint Petition no later than July 15, 2016, as closing of the larger transaction is expected to take place on or about July 18, 2016. For the reasons discussed below, the Commission grants the limited temporary waiver requested by the Petitioners.

2. Petitioners state that WPX entered into an agreement (Proposed Transaction) in which Citadel will assume by permanent releases and/or assignments from WPX all of

the rights and obligations that WPX holds in the WPX Agreements, which are a group of firm transportation agreements.¹

3. The permanent releases are a result of the Proposed Transaction enacted between the Petitioners on May 23, 2016. The Proposed Transaction is a complex commercial arrangement involving thirteen transportation agreements on four pipelines.² WPX contracted for the firm capacity under the WPX Agreements in order to transport to various markets the natural gas produced from its affiliate's Piceance Basin production assets. Petitioners argue the permanent releases and/or assignments of the firm transportation capacity under the WPX Agreements is the final step in WPX's exit from business activities associated with WPX's former affiliate's Piceance Basin production, which affiliate and production assets were sold in April 2016. After the closing of the Proposed Transaction, Citadel will utilize the released and/or assigned firm capacity to offer transportation and marketing services for Piceance Basin production and other Rocky Mountain supplies.³

4. Petitioners state that following the consummation of the Proposed Transaction, Citadel will furnish services that will permit Piceance Basin and other Rockies production to continue to be transported to market, while WPX will be relieved of firm transportation financial obligations pertaining to interstate natural gas pipeline capacity for which it no longer has need in light of the sale of its affiliate's production assets. Petitioners state the Proposed Transaction is an important part of a complex commercial transaction whereby WPX will be relieved of the obligation to continue to pay for interstate capacity it no longer needs and Citadel will acquire all of WPX's remaining transportation capacity rights and obligations related to its former affiliate's Piceance Basin production business.⁴

5. To facilitate the transaction, the Petitioners request waiver of certain Commission regulations and policies, as well as related capacity release provisions in WPX's tariff. Specifically, the Petitioners seek waiver of the following: (1) the Commission's capacity

¹ The firm transportation agreements subject to the transaction are WIC Contract Nos. 41137A, 41146B, and 41172B; Overthrust Contract No. 4850; Northwest Contract Nos. 137678, 137679, and 138172; and Kern River Contract Nos. 1526, 1527, 1089, 20017, 20019, and TBD.

² Joint Petition at 2.

³ *Id.* at 7.

⁴ *Id.* at 3.

release policies and rules set forth in section 284.8 of the Commission's regulations, including but not limited to, the notice, posting and bidding requirements, and restrictions on capacity releases below or above the maximum rate; (2) tariff provisions of Kern River, Northwest, Overthrust, and WIC, related to Capacity Releases, to the extent necessary to allow the Proposed Transaction; (3) prohibition against Tying Arrangements; (4) the Shipper-Must-Have-Title Policy and Policy Prohibiting Buy/Sells, to the extent applicable; and (5) any other waivers the Commission deems necessary and appropriate to effectuate the Proposed Transaction.⁵

6. The Petitioners state that the Commission has granted waivers, on a case-by-case basis, such as those requested in this Petition, "in order to facilitate the transfer of interstate pipeline transportation capacity as part of various types of corporate restructurings, including corporate mergers and transfers of entire business units."⁶ Petitioners state that similar cases involved the sale of production assets and transportation contracts together as one package,⁷ and others have specifically involved assignments of a group of transportation contracts on several different pipelines.⁸

⁵ Petitioners state that they do not believe that the Proposed Transaction will require waiver of the Shipper-Must-Have Title Policy or the Policy Prohibiting Buy/Sell Arrangements, but are requesting these waivers out of an abundance of caution.

⁶ Joint Petition at 7 (quoting *Iberdrola Renewables, Inc.*, 138 FERC ¶ 61,201, at P 5 (2012) (citing *Duke Energy Ohio, Inc., et al.*, 134 FERC ¶ 61,230 (2011)); *Conectiv Energy Supply, Inc.*, 132 FERC ¶ 61,247 (2010); *Macquarie Cook Energy, LLC, et al.*, 126 FERC ¶ 61,160 (2009); and *Barclays Bank PLC and UBS AG*, 125 FERC ¶ 61,383 (2008)).

⁷ *Id.* at 7, (citing *Anadarko Energy Services Co., et al.*, 153 FERC ¶ 61,124 (2015) (allowing waiver for temporary capacity release transaction tied to sale of production assets); *BP Energy Co., et al.*, 142 FERC ¶ 61,037 (2013) (allowing waiver for transaction involving sale of production assets and assignment of negotiated rate contracts to third party); and *Marathon Oil Co.*, 133 FERC ¶ 61,168 (2010) (granting a temporary waiver to facilitate a transaction in which the buyer was purchasing certain production properties, facilities, and related contracts)).

⁸ *Id.* at 8 (citing *CenterPoint Energy Services, Inc., et al.*, 155 FERC ¶ 61,024 (2016) (providing waivers involving transfer of transportation and storage contracts); *Southern Union Co.*, 145 FERC ¶ 61,165 (2013) (providing waivers to permit the transfer of transportation and storage contracts); *Laclede Gas Co., et al.*, 145 FERC ¶ 61,067 (2013) (providing waivers of pipeline service agreements on several pipelines resulting from a corporate acquisition); *ProLiance Energy, LLC*, 144 FERC ¶ 61,154 (2013)

(continued...)

Petitioners argue that all of these waiver cases involved complex transactions representing significant business restructurings in which a combination of various production, marketing, transportation, and/or utility assets have been sold to a third party as a package. Therefore, the complexity of such transactions make it impossible or impractical to accomplish the overarching business restructuring goal of the complex transaction, if each of the transportation contract components embedded in the transaction were required to be subjected to the capacity release and other applicable regulations and policies.

7. Public notice of the filing was issued on June 1, 2016. Interventions and protests were due on June 3, 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 circumstances.⁹ 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

(granting waivers to allow assignment of transportation contracts rather than permanent release); and *Atmos Energy Corp.*, 140 FERC ¶ 61,073 (2012) (granting waivers to allow assignment and permanent release of transportation contracts related to a utility's sale of its natural gas distribution business)).

⁹ 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).

public interest; and by (4) filing the Petition as much in advance of the requested date as possible.¹⁰

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, and the related pipelines' tariff provisions as specified above, as well as waiver of the prohibition of buy/sell arrangements and the shipper-must-have-title rule, 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 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.

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).