

168 FERC ¶ 61,146
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

September 6, 2019

In Reply Refer To:
Southwest Energy, L.P.
Rocky Mountain Midstream LLC
Docket No. RP19-1384-000

Larry Pain
Southwest Energy, L.P.
11926 Gallant Ridge Lane
Houston, TX 77082-6820

Trevor Smith
Rocky Mountain Midstream LLC
One Williams Center
Tulsa, OK 74172

Re: Temporary Waiver of Capacity Release Regulations

Dear Mr. Pain and Mr. Smith:

1. On July 11, 2019,¹ Southwest Energy, L.P. (Southwest) and Rocky Mountain Midstream LLC (Rocky Mountain) (Joint Petitioners) filed a petition (Petition) pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,² requesting temporary and limited waiver of the Commission's capacity release regulations and related policies

¹ Joint Petitioners contemporaneously filed a notice of withdrawal of a petition for waiver filed in Docket No. RP19-1300-000 (Notice of Withdrawal). Joint Petitioners request that the Commission issue an order granting the waivers in the instant Petition no later than 60 days following the date of filing of the Petition, conditioned on the effectiveness of the Notice of Withdrawal. Fifteen days have elapsed and no motion in opposition has been filed nor has the Commission issued an order disallowing the withdrawal. The withdrawal is, therefore, effective pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.216(b) (2019).

² *Id.* § 385.207.

and the applicable implementing provisions set forth in Colorado Interstate Gas Company, LLC's (CIG) FERC Gas Tariff (Tariff) to permit the permanent assignment of firm capacity from Southwest to Rocky Mountain. The capacity subject to the instant waiver request is held on CIG's pipeline pursuant to a firm Interstate Gas Transportation Agreement between Southwest and CIG (Transportation Agreement).³ For the reasons discussed below and for good cause shown, the Commission grants Joint Petitioners' request for temporary and limited waiver, as described below.

2. Joint Petitioners state that the instant request for waiver and assignment of capacity are a result of Rocky Mountain's acquisition of 100 percent of the equity interests in Discovery DJ Services, LLC (Discovery) and its Colorado assets in August of 2018. According to Joint Petitioners, prior to the sale, Discovery entered into a Management Services Agreement,⁴ under which Southwest provides marketing, nominations, and balancing services (Marketing Services) for all of the gas that Discovery acquires from its customers through the operation of its plants. Joint Petitioners state that Southwest will continue to provide the aforementioned Marketing Services to Rocky Mountain through the end of the term of the Management Services Agreement ending on December 31, 2022. In addition, Joint Petitioners state that Southwest, as the exclusive provider of Marketing Services, determines the buyer of the Discovery/Rocky Mountain natural gas. Joint Petitioners state that to facilitate Southwest providing the Marketing Services, Rocky Mountain has sold all of the gas it acquires at its plants to Southwest, which subsequently uses the capacity under the Transportation Agreement to ship the gas acquired from Rocky Mountain on CIG's interstate gas pipeline system.

3. Joint Petitioners state that in order to meet the needs of potential buyers that arose during negotiations for the sale of Discovery and its Colorado assets, Discovery and Southwest entered into a Release Agreement to enable a potential buyer to ship to market the gas it expected to own as part of acquiring the Discovery business using the capacity under the Transportation Agreement. Joint Petitioners state that, following the acquisition of Discovery and pursuant to the terms of the Release Agreement, Rocky Mountain requested that Southwest permanently release the capacity under the Transportation Agreement to Rocky Mountain so that Rocky Mountain will become the shipper under the Transportation Agreement. They explain that Rocky Mountain will own the gas that it ships under the Transportation Agreement to satisfy the Commission's

³ The Transportation Agreement dated June 4, 2018 under Rate Schedule TF-1 of CIG's Tariff, Second Revised Volume No. 1, provides for 50,000 dekatherms (Dth)/day at a discounted rate for a primary term ending November 15, 2026. Transmittal at 1.

⁴ Petitioners state that the Management Services Agreement was consummated on March 30, 2017 and amended in March 2018 between Southwest and Discovery (now Rocky Mountain). *Id.* at 2.

shipper-must-have-title policy. Because service under the Transportation Agreement is provided at a discounted rate, Joint Petitioners request the instant waiver in order for the buyers to receive the benefits they bargained for in acquiring the Discovery business in allowing them to transport their gas under the Transportation Agreement at the existing rate, without prejudice to Southwest's continuing rights to provide Marketing Services for Rocky Mountain's gas under the Management Services Agreement through its term ending December 31, 2022.

4. Joint Petitioners state that the temporary waiver sought in this Petition is in the public interest because it will allow for the orderly transfer of the capacity that is used to transport processed natural gas from the plants Rocky Mountain acquired from Discovery in a way that is consistent with the Release Agreement that was part of the larger transaction involved in the sale of Discovery. Joint Petitioners state that the capacity subject to the Transportation Agreement is directly related to the assets that were the subject of the sale of Discovery and they contend that part of the benefit to Rocky Mountain in purchasing Discovery was the value associated with the rights to structure, long term, how the capacity at the current discounted rates could be best used to provide Rocky Mountain and its customers with downstream residue gas takeaway services out of the Denver-Julesberg Basin. They further contend that Southwest is not attempting to reallocate unneeded capacity; rather, Joint Petitioners argue that Southwest is honoring an agreement that was made in anticipation of a potential transaction to sell Discovery's assets that occurred within a few months following the date of the Release Agreement. Rocky Mountain pledges to use the capacity in the same way that Southwest historically has in order to transport the gas acquired at its processing plants to market. Last, Joint Petitioners are authorized by CIG to advise the Commission that CIG is economically indifferent to, and does not oppose, the instant permanent release transaction.

5. Specifically, Joint Petitioners request temporary waiver of the Commission's capacity release regulations set forth in section 284.8 of the Commission's regulations,⁵ including the posting and bidding requirements, the prohibition against tying to the extent applicable, as well as any other authorizations or waivers deemed necessary to implement the assignment and permanent release of the Transportation Agreement from Southwest to Rocky Mountain. To the extent applicable, Joint Petitioners also request waiver of Section 9 of the General Terms and Conditions (GT&C) of CIG's Tariff, including Section 9.14(a), which governs the permanent release of capacity at less than maximum rates. Last, Joint Petitioners request that the Commission issue an order granting the requested waivers no later than 60 days following the date of filing of this Petition, i.e., September 9, 2019.

⁵ 18 C.F.R. § 284.8 (2019).

6. Joint Petitioners argue that the waivers requested herein are consistent with Commission precedent and further state that the Commission has, in recent years, granted temporary waivers of its capacity release regulations and policies and related tariff provisions to permit parties to consummate mergers, corporation consolidations and similar transactions.⁶

7. Public notice of the Petition was issued on July 15, 2019. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁷ Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁸ all timely filed motions to intervene and any unopposed motions to intervene out-of-time 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 adverse comments or protests were filed. The waiver is therefore uncontested.

8. The Commission has reviewed the Petition and finds that the limited and temporary waiver request is adequately supported and consistent with previous waivers granted by the Commission under similar conditions.⁹ The Commission finds that Joint Petitioners have provided the information required for granting such waiver, including (1) the identification of the regulations and policies for which waiver is sought, (2) identification of the pipeline service agreements and capacity to be transferred, (3) the 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 waiver is in the public interest, and (4) filing the petition as much in advance of the requested action date as possible.¹⁰ Moreover, no party has objected to the requested waiver. Accordingly, for good cause shown, the Commission grants limited and temporary waiver of the capacity release regulations and policies as identified above, and the bidding provisions, to be effective upon the date of issuance of this order

⁶ Transmittal at 5 & n.1.

⁷ 18 C.F.R. § 154.210 (2019).

⁸ *Id.* § 385.214.

⁹ *See, e.g., BP Energy Co.*, 165 FERC ¶ 61,018 (2018); *CNX Gas Co. LLC*, 163 FERC ¶ 61,143 (2018); *Mitsui & Co. Energy Mktg. and Services (USA) Inc. and Alta Energy Mktg. LLC*, 158 FERC ¶ 61,104 (2017).

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).

and to continue in effect for 120 days thereafter, and only to the extent necessary to effectuate the described transaction.

9. In addition, the Commission grants, to the extent necessary, temporary and limited waiver of the provisions set forth in CIG's Tariff that implement the above policies and regulations necessary to facilitate the capacity release transaction and the Commission also grants waiver of Section 9.14(a) of the GT&C of CIG's Tariff, which governs the permanent release of capacity at less than maximum rates. Granting the request for waiver will allow Joint Petitioners to effectuate the permanent release of the firm transportation capacity under the Transportation Agreement from Southwest to Rocky Mountain.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.