

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Northwest Pipeline Corporation
Duke Energy Trading and Marketing, L.L.C.

Docket No. RP04-575-002

ORDER GRANTING WAIVER

(Issued December 8, 2006)

1. On July 10, 2006, Duke Energy Trading and Marketing, L.L.C. (DETM) filed a request for clarification of the Commission's order issued on October 8, 2004 in the above-captioned docket.¹ In the alternative, DETM requests that additional waivers be granted to permit Northwest Pipeline Corporation (Northwest) to change the name from "Duke Energy Trading and Marketing, L.L.C." to "Occidental Energy Marketing, Inc." (OEMI) on temporary release contracts currently held by DETM. The Commission's October 8, 2004 Order granted certain waivers to permit DETM to effect a permanent release of its Northwest Pipeline Corporation (Northwest) contracts in one package so that DETM would be able to exit the natural gas market in an orderly fashion. As discussed below, the Commission will grant DETM's request for waiver.

Background

2. On September 1, 2004, DETM and Northwest filed a joint petition seeking (i) several limited waivers of Northwest's capacity release tariff provisions and (ii) waiver of the Commission's Order No. 636-A policy regarding the "tying" of gas delivery contracts to released transportation capacity. The waivers were requested by

¹ *Northwest Pipeline Corp. and Duke Energy Trading and Marketing, L.L.C.*, 109 FERC ¶ 61,044 (2004).

DETM to enable DETM's prearranged "portfolio release" to be posted for competitive bidding under the Commission's capacity release regulations.

3. On October 8, 2004, the Commission granted the proposed waivers stating that the "waivers [were] necessary to permit DETM to effect a permanent release of its collection of Northwest contracts in one package".

4. On June 30, 2005, DETM filed a petition requesting clarification of the Commission's October 8, 2004 Order. DETM requested that the Commission clarify that the October 8, 2004 Order permitted Northwest to change the name from Duke Energy Trading and Marketing, L.L.C. to Occidental Energy Marketing, Inc., (OEMI) on several temporary release contracts held by DETM. DETM stated that this would extinguish DETM's contractual obligations related to these contracts while simultaneously permitting OEMI to directly assume the contracts for their remaining terms, without disrupting any of the sub-releases emanating from those temporary releases. DETM stated that it believed that the scope of the waivers granted by the Commission's October 8, 2004 Order was sufficiently broad to permit this action but, nonetheless sought clarification.

5. On August 16, 2005, the Commission denied DETM's requested clarification.² The Commission reasoned that its October 8, 2004 Order specifically stated that, "while DETM can permanently release its own primary firm capacity, it cannot release capacity for which another shipper holds the primary contract."³ The Commission stated that it realized that the clarification requested by DETM would help effectuate DETM's exit from its gas marketing business. However, the Commission stated that it lacked the information necessary to consider modifying its October 8 Order as requested by DETM.⁴ The Commission stated that:

[i]f DETM desires to resubmit the instant motion properly supported, the Commission would consider the motion based upon the unique circumstances of this proceeding where an entity is attempting to exit the gas trading business. However, such a request must provide the contracts in question, name the holders of the

² *Northwest Pipeline Corp. and Duke Energy Trading and Marketing, L.L.C.*, 112 FERC ¶ 61,187 (2005).

³ 109 FERC at P 15.

⁴ 112 FERC at P 8.

contracts and the current sub-releasers of the capacity. DETM must also inform the Commission whether the holders of the primary capacity were served with the request and whether such primary holders of capacity have acquiesced in the proposal.⁵

Details of the Instant Filing

6. On July 10, 2006, DETM filed the instant request. DETM requests that the Commission clarify that its October 8, 2004 Order allows Northwest Pipeline Corporation (Northwest) to change the name from “Duke Energy Trading and Marketing, L.L.C.” to “Occidental Energy Marketing, Inc.” (OEMI) on several temporary release contracts currently held by DETM but included as part of the portfolio release transaction authorized by the Commission’s October 8, 2004 Order. In the alternative, DETM requests that the Commission grant an additional waiver of its capacity release rules to permit the requested name change.

7. DETM states that this proposed substitution of shippers will have the effect of extinguishing DETM’s contractual obligations on those six contracts while simultaneously permitting OEMI to assume directly those contracts for their remaining terms, without disrupting any of the subreleases emanating from these temporary releases, and will complete the transfer of DETM’s gas portfolio to OEMI, as originally contemplated by all parties in this proceeding.

8. To support its request, DETM has provided copies of the contracts in question,⁶ along with a list of all parties with an interest in these contracts. DETM states that it has provided each of the holders of the primary capacity underlying the capacity release at issue here, as well as each holder of dependent, downstream capacity releases from those releases, with a copy of this renewed request for clarification/waiver for its review and comment, and that all of these contract holders assented to the proposed transfer or redesignation of their contracts.⁷

⁵ 112 FERC at P 9.

⁶ DETM identifies these contracts as: Contract Nos. 110882; 191640; 111640; 132842; 133160; and 133161. DETM notes that Contract Nos. 133160 and 133161 are new contract numbers for capacity originally designated in its September 1, 2004 Petition as Contract Nos. 133105 and 133104 (respectively).

⁷ DETM also asserts that Northwest has authorized it to state that Northwest has no objection to its proposal. DETM July 10 filing at p.6, fn.12.

Discussion

9. At the initiation of this proceeding, in the October 8, 2004 Order, the Commission granted waivers to DETM in order to effectuate its exit from the natural gas industry in a rational and orderly fashion. Subsequently, in denying DETM's first request regarding the subject temporary releases, the Commission determined that it had not, in its October 8, 2004 Order, granted the waivers necessary for DETM to permanently relinquish its temporary capacity. However, the Commission stated that while it realized that DETM's request would help effectuate DETM's exit from its gas marketing business, DETM had not provided the information necessary for the Commission to consider modifying its October 8, 2004 Order.

10. In the instant petition, DETM has provided such information. In particular, DETM has shown that all parties with an interest in the subject contracts do not object to the transfer of the contracts to OEMI as requested by DETM. In light of this fact, and the Commission's view, expressed at length earlier in these proceedings, that a company should be permitted to exit the natural gas business in an orderly and rational fashion, the Commission finds good cause to grant the waivers necessary to permit Northwest Pipeline Corporation (Northwest) to change the name from "Duke Energy Trading and Marketing, L.L.C." to "Occidental Energy Marketing, Inc." (OEMI) on the subject temporary release contracts currently held by DETM.

The Commission orders:

For good cause shown, waiver is granted to permit a name change to the subject contracts as requested by DETM.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.