125 FERC ¶ 61,383
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 30, 2008

In Reply Refer To:
Barclays Bank PLC and UBS AG
Docket No. RP09-157-000

McDermott Will & Emery LLP
600 Thirteenth Street, N.W.
Washington, DC 20005

Attention: Paul J. Pantano, Jr.
Attorney for Barclays Bank PLC

Reference: Request for Temporary Waiver

Dear Mr. Pantano:

1. On December 15, 2008, Barclays Bank PLC (Barclays) and UBS AG (UBS) (collectively Applicants) filed a request for a temporary waiver of the Commission's capacity release policies and regulations in order to facilitate the acquisition by Barclays of UBS' natural gas trading portfolio in the United States. Applicants state that the acquisition by Barclays of UBS' natural gas agreements is part of a larger transaction in which UBS seeks to exit the commodity trading business in the United States and Barclays seeks to acquire the energy and natural gas trading assets of UBS. In light of the administrative and operational challenges presented by the acquisition and integration by Barclays of UBS' energy and natural gas agreements, which include both natural gas purchase and sale agreements, as well as natural gas transportation and storage agreements, Applicants seek expedited treatment of their request. For the reasons discussed below, and for good cause shown, the Commission grants the requested waivers.

2. Public notice of the Applicants' filing was issued on December 18, 2008, providing for interventions and protests to be filed by December 22, 2008. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2008)), all timely filed motions to intervene and any 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 the proceeding or place additional burdens on existing parties. No interventions or protests were filed.

3. As part of its repositioning of its investment banking division, and in light of the downturn in the financial markets, UBS is exiting the commodities business, in the United States, excluding precious metals. Because UBS intends to discontinue its energy and natural gas trading operations by the end of 2008, Applicants are working to close their transaction by December 31, 2008. UBS selected Barclays to acquire its energy and natural gas portfolio after conducting a sales process in which several potential purchasers were invited to submit bids through an auction process.

4. As part of their agreement, Barclays (or one or more wholly-owned subsidiaries designated by Barclays) will succeed to UBS' rights under natural gas transportation and storage agreements, and rights under numerous natural gas purchase and sale agreements. Applicants state that the jurisdictional transportation and storage agreements are intended to be transferred from UBS to Barclays by means of permanent, maximum rate releases in accordance with the tariff provisions of each transportation or storage provider. As a consequence, initially Barclays or its wholly-owned subsidiary Barclays Capital Energy, Inc. may have natural gas purchase or supply obligations to UBS' customers, as well as hold interstate transportation and storage capacity rights. Barclays states that following consummation of the transaction all the assets acquired from UBS will be integrated into Barclays' existing business operations. Applicants state that the current transaction schedule and UBS' desire to exit the natural gas trading business by December 31, 2008, may not allow for the complete development and implementation of that integration plan to coincide with execution of their agreement. Accordingly, Applicants state that following the closing of their transaction, the alignment of natural gas purchase and sale obligations and the natural gas transportation and storage agreements could lead to instances in which inadvertent violations of the Commission's policies or regulations occur.

5. Because of the expedited nature of the negotiations leading to their agreement, as well as the difficult environment facing U.S. and international credit and capital markets, the Applicants request a temporary waiver of the Commission's capacity release policies and regulations, including the shipper-must-have-title policy, the prohibition on buy-sell arrangements, and the prohibition on tying arrangements. Applicants state that the temporary waiver will only be used for the limited purpose of completing their transaction and integrating UBS' natural gas agreements into Barclays.

6. Consistent with the waivers granted in similar circumstances, Applicants seek a waiver for a 90-day period following the closing of their transaction on December 31, 2008.[1] Applicants state that the transfer of UBS' natural gas portfolio of purchase and

[1] *Citing, Bear Energy LP*, 123 FERC ¶ 61,219 (2008).

supply agreements together with transportation and storage agreements may also be viewed as contrary to the Commission's prohibition against tying the release of interstate pipeline capacity to any extraneous condition, or the Commission's restrictions for capacity releases below or above the maximum rate. Applicants assert that since UBS has determined to exit the wholesale natural gas trading business (as well as the wholesale energy trading business), the circumstances presented here are analogous to circumstances in which the Commission has previously granted waivers of its natural gas policies and regulations.[2]

7. For good cause shown and to allow Barclays and UBS to consummate their transaction, the Commission will grant waiver of the applicable regulations and policies, including the shipper-must-have-title policy, the prohibition on buy-sell arrangements, and the prohibition on tying arrangements. The waivers will be in effect for a limited transition period until 90 days after the closing of the transaction between Barclays and UBS. Such waivers shall only be used for the limited purpose of completing Barclays' acquisition and integration of UBS' natural gas trading assets.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All Parties

Kenneth W. Irvin
McDermott Will & Emery LLP
600 Thirteenth Street, N.W.
Washington, DC 20005

Charles H. Shoneman
Bracewell & Giuliani LLP
2000 K Street, N.W.
Washington, D.C. 20006

---

[2] *Citing, Tennessee Gas Pipeline Co. and Dartmouth Power Associates Ltd. P'ship*, 111 FERC ¶ 61,509 (2005); *Northwest Pipeline Corp. and Duke Energy Trading and Marketing*, 109 FERC ¶ 61,044 (2004); *Wasatch Energy, LLC and Northwest Pipeline Corp.*, 118 FERC ¶ 61,173 (2007); *Sempra Energy Trading Corp.*, 121 FERC ¶ 61,005 (2007); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008).