

136 FERC ¶ 61,053
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 22, 2011

In Reply Refer To:
BHP Billiton Petroleum (Fayetteville)
LLC and Chesapeake Energy Marketing,
Inc.
Docket No. RP11-1940-001

Morgan Lewis & Bockius, LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004

Attention: Mark R. Haskell
Counsel for BHP Billiton Petroleum (Fayetteville) LLC

Reference: Request for Extension of Waivers

Dear Mr. Haskell:

1. On July 11, 2011, BHP Billiton Petroleum (Fayetteville) LLC (BHPB) and Chesapeake Energy Marketing, Inc. (CEMI) (collectively, the Petitioners) filed a request for a 35-day extension of the limited, 90-day waivers that the Commission previously granted Petitioners, in order to allow a permanent release of CEMI's firm transportation agreements as part of a larger transaction.¹

2. The Petitioners filed their original waiver request on March 31, 2011, seeking waiver of certain of the Commission's capacity release regulations and policies and the corresponding tariff provisions of Ozark Gas Transmission, LLC (Ozark), Texas Gas Transmission, LLC (Texas Gas), and Fayetteville Express Pipeline, LLC (Fayetteville). The Petitioners stated that this release of capacity is an essential part of a Purchase and

¹ *BHP Billiton Petroleum (Fayetteville) LLC and Chesapeake Energy Marketing, Inc.*, 135 FERC ¶ 61,088 (2011).

Sale Agreement transaction by which BHPB would acquire all of the upstream and midstream production and gathering assets in the Fayetteville shale area in Arkansas from Chesapeake Exploration and Arkansas Midstream Gas Services Corporation (AMG), two wholly-owned subsidiaries of CEMI. In addition, BHPB will acquire minority interests in other leaseholds. The Petitioners requested the waivers to become effective April 29, 2011, and continue for 90 days following the issuance of a Commission order granting waivers.

3. The Commission issued the order granting waivers on April 29, 2011, with the waivers expiring 90 days later, or July 28, 2011. Specifically, the Commission granted a limited, temporary waiver of section 284.8(b)(2) of our regulations requiring that long-term releases not exceed the maximum recourse rate, as well as sections 284.8(d) and (e) regarding notice and bidding of capacity releases. The Commission also granted a limited, temporary waiver of the prohibition on tying, the shipper-must-have-title policy, and the prohibition on buy-sell arrangements, so that the Petitioners can complete their transaction in an orderly and efficient manner within their time constraints. The Commission also granted a limited, temporary waiver of the relevant tariff provisions, only to the extent necessary to effectuate the permanent releases of capacity amounts specified in the original petition for the agreements described therein.

4. In the instant filing, the Petitioners request that their waivers be extended 35 days until September 1, 2011. Petitioners explain that while most of the assets described in the original filing have been transferred, the transfer of some interstate pipeline transportation contracts was delayed. Petitioners state that their representatives have met with representatives of the pipelines and all the agreements are ready to be transferred, but state that for a smooth transition, it would be preferable to implement the change on the first day of a calendar month. Accordingly, Petitioners request the extension so that they may complete their transfers on August 1, 2011, or if any unforeseen difficulties arise, on September 1, 2011.

5. Public notice of the request for extension was issued on July 12, 2011. Interventions and protests were due on or before July 18, 2011. Pursuant to Rule 214,² all timely filed motions to intervene and any unopposed motion 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.

² 18 C.F.R. § 385.214 (2011).

6. For good cause shown, the Commission grants the Petitioners' request for a 35-day extension of the limited, 90-day waivers that the Commission previously granted. Absent further action, the waivers shall now expire at the end of the day on September 1, 2011.

The Commission orders:

(A) The temporary, limited waivers requested by Petitioners are extended until September 1, 2011, as discussed more fully above.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.