

141 FERC ¶ 61,142
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 20, 2012

In Reply Refer To:
Brigham Oil & Gas, L.P.
Docket No. OR12-29-000

Bracewell & Giuliani LLP
Attention: Kirstin E. Gibbs
2000 K Street NW, Suite 500
Washington, DC 20006

Reference: Request for Temporary Waiver of Sections 6 and 20 of the Interstate
Commerce Act and Related Commission Regulations

Ladies and Gentlemen:

1. On September 21, 2012, Brigham Oil & Gas, L.P. (Brigham) filed a request for temporary waiver of the filing and reporting requirements of sections 6 and 20 of the Interstate Commerce Act (ICA) and Parts 341 and 357 of the Commission's regulations¹ with respect to the Williams System, the McKenzie System, and the Ross System (together, Brigham Pipelines). As discussed below, the Commission grants Brigham's request for a temporary waiver.

2. Brigham states that it owns and operates gathering pipeline assets in North Dakota that are the subject of the instant request for waiver. Brigham explains that Brigham Exploration Company (Brigham Exploration) is a holding company that is a limited partner in Brigham. Brigham further states that Brigham, Inc, a subsidiary of Brigham Exploration, is the general partner and also the only other limited partner in Brigham. According to Brigham, in December 2011, Statoil ASA (Statoil) acquired 100 percent

¹ See 49 U.S.C. app. §§ 6, 20 (1988) (requiring all interstate oil pipelines to file all rates, fares, and charges for transportation on their systems, to file copies of contracts with other common carriers for any such traffic, and authorizing the Commission to require annual or special reports from carriers subject to the ICA). See also 18 C.F.R. §§ 341, 357 (2012) (implementing the filing and reporting requirements of sections 6 and 20 of the ICA).

ownership of Brigham Exploration, including the Brigham Pipelines. Brigham adds that the Brigham Pipelines and related terminals are in various states of construction and partial operation and that they are located wholly within North Dakota.

3. Brigham states that each of the Brigham Pipelines will collect oil produced from the wells located along the pipeline routes and will transport the oil to a receiving terminal for further transportation to interstate destinations, either via interstate oil pipelines or railroad systems. Brigham emphasizes that all of the oil to be transported on the Brigham Pipelines will be owned by Brigham and/or its affiliate, Statoil Marketing & Trading (Statoil).

4. Brigham describes each of the Brigham Pipelines in considerable detail, including the diameter and length of each line, the origins and terminal destinations (which are owned by Brigham), the connections to interstate pipelines and to an interstate rail system, and the anticipated capacity. The Williams and McKenzie Systems are expected to commence operations in early to mid-November 2012, while the Ross System is expected to commence operations during the first quarter of 2013.²

5. Brigham states that it has an approximately 60 percent working interest ownership in each well connected to the Brigham Pipelines, while numerous third parties have an approximately 40 percent non-working interest. Brigham explains that it has various agreements with the non-working interest owners whereby Brigham is the sole shipper for the purpose of marketing all the oil transported on the Brigham Pipelines. Additionally, continues Brigham, it is negotiating an agreement whereby Statoil will purchase and take title at the wellhead to all oil transported on the Brigham Pipelines; therefore, either Brigham or Statoil will own 100 percent of the throughput on the Brigham Pipelines, and no third-party shipper will have access to the Brigham Pipelines. Brigham does not anticipate that any third-party shipper will request transportation on its gathering systems in the future. Brigham agrees that, if the Commission grants the requested waiver, the waiver will be subject to Brigham's continuing obligation to maintain its books and records consistent with the Commission's Part 352 and 356 recordkeeping requirements, and Brigham will report any material change in the facts presented in its Petition.

6. Brigham contends that the Commission has granted similar requests for temporary waiver of the filing and reporting requirements of its regulations and of sections 6 and 20

² Request of Brigham Oil & Gas, L.P. for Temporary Waiver of Tariff Filing and Reporting Requirements, September 21, 2012, at 3-5.

of the ICA when four criteria are met.³ Brigham cites, *inter alia*, *Saddle Butte Pipeline, LLC*,⁴ in which the Commission listed the criteria as follows:

(1) the pipelines (or their affiliates) own 100 percent of the throughput on the line; (2) there is no demonstrated third-party interest in gaining access to or shipping on the line; (3) no such interest is likely to materialize; and (4) there is no opposition to granting the waivers. In these cases, the Commission determined there were no active third-party shipper interests to protect under the ICA, and therefore temporary waivers of sections 6 and 20 filing and reporting requirements were warranted.⁵

7. However, the Commission made it clear in *Saddle Butte* that it granted such waivers subject to revocation, should the pipelines' circumstances change. It also required the pipelines to keep their books and records in a manner consistent with the Commission's Uniform System of Accounts.

8. Public notice of Brigham's petition was issued September 27, 2012, with interventions and protests due as provided in accordance with Rules 211 and 214 of the Commission's regulations.⁶ No interventions or protests were filed.

9. The Commission concludes that, given the physical characteristics of the facilities and the limited nature of the Brigham Pipelines' operations, Brigham meets the criteria necessary to qualify for a temporary waiver, consistent with the Commission's rulings in *Saddle Butte*, *Jayhawk*, *Enbridge*, *Ciniza*, *Hunt*, and *Sinclair*.

10. Accordingly, the Commission grants Brigham a temporary waiver of the filing and reporting requirements of ICA sections 6 and 20 and the Commission's related regulations with respect to the Brigham Pipelines. Because these waivers are temporary, and based solely on the facts presented in the petition for waiver, the Commission also directs Brigham to report immediately to the Commission any change in the circumstances on which these waivers are based. Specifically, Brigham must report any

³ Brigham cites, *e.g.*, *Jayhawk Pipeline, L.L.C.*, 128 FERC ¶ 61,079 (2009) (*Jayhawk*); *Enbridge Pipelines (NE Texas Liquids) L.P.*, 110 FERC ¶ 61,159 (2005) (*Enbridge*); *Ciniza Pipe Line Inc.*, 73 FERC ¶ 61,377 (1995) (*Ciniza*); *Hunt Refining Co.*, 70 FERC ¶ 61,035 (1995) (*Hunt*); and *Sinclair Oil Corp.*, 4 FERC ¶ 62,026 (1978) (*Sinclair*).

⁴ 136 FERC ¶ 61,071 (2011) (*Saddle Butt*).

⁵ *Saddle Butte*, 136 FERC ¶ 61,071 at P 3.

⁶ 18 C.F.R. §§ 385.211 and 385.214 (2012).

changes including, but not limited to, increased accessibility of other pipelines or refiners to its facilities, changes in the ownership of the facilities, changes in the ownership of the crude being shipped, and shipment tenders or requests for service by any person. Additionally, Brigham must maintain all books and records in a manner consistent with the Uniform System of Accounts for Oil Pipelines, 18 C.F.R. Part 352, and make such books and records available to the Commission or its duly authorized agents upon request.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.