

142 FERC ¶ 61,037
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 16, 2013

In Reply Refer To:
BP Energy Company,
Plains Exploration & Production
Company, and PXP Offshore LLC
Docket No. RP13-414-000

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

Attention: Mark R. Haskell
Attorney for BP Energy Company, Plains Exploration & Production
Company, and PXP Offshore LLC

Ladies and Gentlemen:

1. On December 21, 2012, you filed on behalf of BP Energy Company (BP Energy), Plains Exploration & Production Company (PXP), and PXP Offshore LLC (PXP Offshore) (collectively "Petitioners") a request for temporary waivers of certain capacity release and other Commission rules, regulations, and policies (Joint Petition), to facilitate the assignment of three negotiated rate transportation service agreements (Service Agreements) as part of a Purchase and Sale Agreement between BP Energy's affiliates, BP Exploration & Production Inc. (BP Exploration) and BP America Production Company, and PXP. The Petitioners ask that the waivers be made effective upon issuance of the Commission's order and continue until 90 days past the transaction closing date in order to allow adequate time to consummate the transaction. The Petitioners request expedited treatment, and ask that the Commission act on this Joint Petition no later than January 16, 2013. For the reasons discussed below, and for good cause shown, the Commission grants the Joint Petition.

2. The Petitioners state that pursuant to a Purchase and Sale Agreement dated September 4, 2012, PXP agreed to purchase various oil and natural gas production properties from BP Exploration. The Petitioners also state that in accordance with the

terms of the Purchase and Sale Agreement, PXP assigned the rights to acquire the ownership interests in the Diana and Hoover fields, located in the Gulf of Mexico, to its subsidiary, PXP Offshore.

3. As part of this transaction, Petitioners state BP Energy will permanently release to PXP Offshore three Service Agreements on ANR Pipeline Company (ANR); Contract Nos. 108248 (ITS Service Agreement dated September 12, 2002), 108249 (ITS Service Agreement dated September 12, 2002) and 108250 (PTS Service Agreement dated September 12, 2002). The Petitioners state that these agreements are negotiated rate agreements at rates below the maximum recourse rate.

4. Petitioners state that on October 1, 2002, ANR filed a Lease Dedication Agreement, which set forth the terms and conditions pursuant to which BP Exploration and BP Energy committed to deliver AC 25 Producer Gas¹ to ANR's system, and three negotiated rate service agreements with BP Energy. The Petitioners state the Commission accepted the Lease Dedication Agreement and the negotiated rate service agreements on October 31, 2002.²

5. To facilitate the transfers of the Service Agreements to PXP, the Petitioners request temporary and limited waivers of the Commission's capacity release rules and policies, including the posting and bidding requirements and, to the extent applicable, the prohibition against tying, as well as any other authorizations or waivers deemed necessary to implement the assignment and permanent release of capacity described above. Additionally, Petitioners request a waiver of Section 21 of the General Terms and Conditions (GT&C) of ANR's FERC Gas Tariff (the provisions implementing the Commission's capacity release rules and regulations) for the limited purpose of effectuating the release of capacity described above. The Petitioners assert that the waivers they seek here will be used solely for the limited purpose of facilitating the Purchase and Sale Agreement. The Petitioners state that they have discussed this Joint Petition with ANR, and state that ANR has authorized the Petitioners to state that it consents to this Joint Petition.

6. The Petitioners assert the waivers are in the public interest as they will enable PXP Offshore to transport the natural gas acquired on the property away from the production

¹ This refers to natural gas produced from specific lands and leaseholds.

² *ANR Pipeline Co.*, 101 FERC ¶ 61,096 (2002).

area. The Petitioners assert that the Commission's policy³ in recent years has been to grant temporary waivers of its capacity release regulations and policies to permit parties to consummate mergers, corporate consolidations, and similar transactions.

7. Public notice of the filing was issued on December 26, 2012. Interventions and protests were due on or before December 28, 2012, as provided by the notice. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2012), all timely motions to intervene and any unopposed 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 this proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

8. The Commission has reviewed the Petitioners' request for waivers and finds that the request is adequately supported and consistent with previous waivers that the Commission has granted to permit capacity to be released on a permanent basis at the same rates as the releasing shipper is currently paying.⁴ As the Commission explained in *North Baja*, a pipeline is only required to allow a permanent capacity release, where it will be financially indifferent to the release. If the Commission were to require that the Petitioner's long-term permanent releases be posted for bidding subject to the maximum recourse rate, as required by the capacity release regulations, bidders could not offer to pay the existing negotiated rate for the entire term of the release, because such a rate could violate the maximum rate ceiling during future periods. Therefore, waiver of the bidding requirement for the permanent release is necessary to assure that the pipeline will be financially indifferent to the release, while facilitating permanent release of capacity the releasing shipper no longer needs or wants.

9. Accordingly, for good cause shown, the Commission grants the Petitioners' request for a temporary waiver of the specified capacity release regulations, policies, and tariff provisions to allow the permanent releases of the Service Agreements described above. Specifically, the Commission grants limited, temporary waiver of section 284.8

³ See *Request for Clarification of Policy Regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Businesses*, 127 FERC ¶ 61,106, at P 8 (2009) (capacity release posting and bidding requirements would not necessarily apply in the cases of the merger or sale of entire business units as part of a corporate restructuring, including the transfer of transportation contracts, supply contracts, employees, data systems and technology).

⁴ See, e.g., *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082, at P 14 (2009) (*North Baja*).

of its regulations, which governs the release of firm capacity; the prohibition on tying; and the posting and bidding requirements for capacity release transactions. In addition, the Commission grants limited, temporary waiver of the sections of ANR's tariffs that implement the above policies, in order to allow for the permanent releases of the Service Agreements to PXP Offshore. The Commission will allow the waivers to become effective on the issuance date of this order, and to remain in effect for 90 days following the closing date of the transaction described in this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.