144 FERC ¶ 61,075
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 30, 2013

In Reply Refer To:
ProLiance Energy, LLC
Docket No. RP13-1042-000

Baker Botts LLP
Attention: Gregory S. Wagner
1299 Pennsylvania Ave., NW
Washington, DC 20004-2400

Dear Mr. Wagner:

1. On July 2, 2013, ProLiance Energy, LLC (ProLiance) filed a petition for temporary waiver of the Commission's capacity release regulations and policies, related pipeline tariff provisions, as well as any other authorizations or waivers deemed necessary, to enable ProLiance to transfer via a permanent capacity release its jurisdictional natural gas transportation and storage capacity related to certain natural gas transportation and storage contracts (the Transferred Capacity) to its affiliated utilities.[1] ProLiance asserts that the requested waivers are necessary to permit ProLiance to exit the natural gas marketing business in a prompt and orderly manner.[2] Pursuant to a Purchase and Sales Agreement, ProLiance has already transferred to ETC ProLiance Energy, LLC (ETC ProLiance Energy) all limited liability company interests in its former affiliate as well as all gas marketing assets (including contracts with customers, NYMEX contracts, systems and a real property lease for office space). ProLiance requests that the Commission take expedited action to issue an order granting the requested waiver by August 1, 2013, to allow for ProLiance's expeditious exit from the natural gas marketing

[1] ProLiance's affiliated utilities are (1) Southern Indiana Gas and Electric Company, (2) Indiana Gas Company, and (3) the City of Indianapolis, by and through its Board of Directors for Utilities of the Department of Public Utilities, as Successor Trustee of a Public Charitable Trust, d/b/a Citizens Gas (collectively the Utilities).

[2] The various actions ProLiance is taking to exit the natural gas marketing business constitute a single integrated transaction referred to as the Sale Transaction.

business. ProLiance also requests that the temporary waiver remain in effect for a period of 90 days following the issuance of the order to facilitate an orderly transfer of the Transferred Capacity.

2. ProLiance is a natural gas marketer serving customers throughout the Midwest, primarily in the states of Indiana, Ohio, and Illinois. ProLiance obtains interstate transportation and storage service under agreements with multiple Commission-jurisdictional providers. The capacity affected by the subject waiver is on the following pipelines: ANR Pipeline Company, Texas Eastern Transmission, LP, Midwestern Gas Transmission Company, Panhandle Eastern Pipe Line Company, LP, and Texas Gas Transmission, LLC (the Affected Pipelines). The assets used in ProLiance's natural gas marketing business are used to provide service to both non-affiliated customers[3] and ProLiance's utility affiliates (Utilities). The supply arrangements between ProLiance and its regulated Utilities were approved in a settlement agreement authorized by the Indiana Utility Regulatory Commission (Indiana Commission) which expires in March 2016. In order to fulfill the terms of the Indiana Commission settlement and a related portfolio administration agreement, which expire March 2016, capacity will be permanently released to the Utilities. This will relieve ProLiance of its contractual obligations under the contracts. The Utilities will temporarily release the capacity to ETC ProLiance Energy so that it can serve the utilities under the portfolio administration agreements agreed to by ProLiance as part of the Indiana Commission settlement. These various arrangements will ensure that the Utilities have long-term ownership and control of the Transferred Capacity to meet their customers' natural gas demands. ProLiance states that the waiver requested in this docket along with the previously granted waiver and other actions already taken will accomplish ProLiance's intention of exiting the natural gas marketing business.

3. ProLiance is seeking a temporary waiver of (1) the Commission's capacity release rules set forth in section 284.8 of the Commission's regulations, including the posting and bidding requirements; (2) restrictions on capacity releases at negotiated rates currently in excess of the applicable Affected Pipeline's maximum rate, or which may become so in the future;[4] (3) the Commission's shipper-must-have-title policy; (4) the

[3] ProLiance's petition for waivers concerning capacity to serve non-affiliated customers was granted by the Commission on July 18, 2013, in Docket No. RP13-990-000. *ProLiance Energy, LLC*, 144 FERC ¶ 61,037 (2013).

[4] ProLiance states that although some of the negotiated rates are below the pipeline's maximum recourse rate, it is possible they could be above the maximum rates in the future. ProLiance states that Commission has recognized that continuation of an existing negotiated rate is necessary for a pipeline to be financially indifferent to a

(continued…)

prohibition against buy/sell arrangements; and (5) the prohibition against tying arrangements to permit the Transferred Capacity to be permanently released to the Utilities. To the extent applicable, ProLiance also requests that the Commission waive the relevant tariff provisions of the Affected Pipelines implementing the capacity release regulations and policies for which ProLiance is seeking waiver.

4. ProLiance asserts that granting the waivers requested in this petition would be consistent with the public interest and previous Commission decisions in similar circumstances. ProLiance contends that requiring it to post the permanent release of each of its jurisdictional transportation and storage contracts with the Affected Pipelines would unnecessarily increase the transaction costs and would frustrate the purpose of the Sale Transaction, which represents an efficient transfer of ProLiance's natural gas marketing assets used to serve ProLiance's customers and provides an orderly means for ProLiance to exit the natural gas marketing business. ProLiance submits that waiver of the prohibition against tying is necessary because the requirement that the Utilities temporarily release the Transferred Capacity to ETC ProLiance Energy could be viewed as a violation of this policy. ProLiance argues that waiver of the shipper-must-have-title policy and the prohibition against buy/sell arrangements is necessary to eliminate the risk that the Utilities or ETC ProLiance Energy could commit technical violations of these policies (and tariff provisions implementing these policies) in connection with the transactions contemplated by the Sale Transaction, and to enable ProLiance to conduct its business in a prudent manner prior to its exit from the natural gas marketing business.

5. Public notice of ProLiance's filing was issued on July 3, 2013, providing a comment date of July 9, 2013. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), all timely filed 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 the proceeding or place additional burdens on existing parties. Panhandle Eastern Pipe Line Company, LP (Panhandle) filed a comment stating that it does not oppose the waiver requests and submits the comment only to note that certain service agreements between Panhandle and ProLiance are discounted rate agreements or maximum rate agreements and not negotiated rate agreements as ProLiance inadvertently noted. ProLiance filed an answer deferring to Panhandle's categorization of the service agreements. ProLiance notes, however, that the information

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permanent release of a negotiated rate agreement, whether or not the negotiated rate is currently above or below the maximum recourse rate. *See*, *North Baja Pipeline*, *LLC*, 128 FERC ¶ 61,082, at P 14 (2009); *Philadelphia Energy Solutions Refining and Marketing*, *LLC*, 141 FERC ¶ 61,095, at P 5 (2012).

presented by Panhandle does not affect the relief requested in ProLiance's petition or the justification for such relief set forth in the petition

6. In its petition for waiver ProLiance has requested, and argued in support of, waiver of various capacity release rules and policies, as well as the capacity release provisions of the Affected Pipelines' tariffs, so that it may exit the natural gas marketing business. The Commission finds good cause to grant the requested waivers to permit the permanent release of ProLiance's transportation and storage capacity to the Utilities and the subsequent temporary release of such capacity to ETC ProLiance Energy. The waivers will enable ProLiance's successor in interest, ETC ProLiance Energy, to fulfill the obligations of the Indiana Commission settlement and ensure the natural gas demands of the Utilities' customers, while allowing ProLiance to exit the natural gas marketing business. The Commission will also grant ProLiance's requested waivers for a period of 90 days from the date of this order to facilitate an orderly transition of the Transferred Capacity. The waivers granted here are similar to those the Commission has previously granted to facilitate other complex, integrated transactions where an entity exited the natural gas marketing business and the required transactions involved the transfer of contracts and other assets as the result of corporate restructuring, including mergers and sales of entire business units.[5] Accordingly, for good cause shown, and in the absence of any objection, the ProLiance petition is granted.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

[5] *See, e.g., Macquarie Cook Energy LLC,* 126 FERC ¶ 61,160 (2009).