141 FERC ¶ 61,062
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 25, 2012

In Reply Refer To:
Husky Gas Marketing Inc. and
Husky Marketing and Supply Company
Docket No. RP12-1034-000

Jones Day
51 Louisiana Avenue
Washington, DC 20001

Attention: James C. Beh and Jonathan F. Christian
Attorneys for Husky Gas Marketing Inc. and Husky Marketing and Supply Company

Reference: Joint Petition for Temporary Waiver of Capacity Release Regulations and Policies

Ladies and Gentlemen:

1. On September 13, 2012, you filed on behalf of Husky Gas Marketing Inc. (HGMI) and Husky Marketing and Supply Company (HMSC), (collectively "Petitioners") a request for temporary waivers of certain capacity release and other Commission rules, regulations, and policies (Joint Petition), to facilitate the assignment and permanent release of several long-term firm transportation service agreements (FTSA) at existing rates as part of corporate reorganization pursuant to which HGMI will exit the natural gas trading and marketing business and will transfer all of its relevant operations to HMSC (the "Reorganization"). The Petitioners request that the waivers be effective commencing November 1, 2012 and continuing effective for a 120-day period, in order to allow adequate time to consummate the Reorganization. The Petitioners request expedited treatment, requesting that the Commission act on this Joint Petition no later than October 25, 2012, and state that they envision consummating the Reorganization on November 1, 2012. For the reasons discussed below, and for good cause shown, the Commission grants the requested temporary waivers, as proposed.

2. The Petitioners state that HGMI is a wholly-owned subsidiary of Husky U.S.A., which is a wholly-owned, indirect subsidiary of Husky Oil Operations Limited (HOOL), a Canadian corporation. HGMI owns and markets commodities, including refined crude oil products and natural gas, in the United States, and is a shipper of FERC-jurisdictional natural gas pipelines. The Petitioners state that HMSC is a wholly-owned, indirect subsidiary of Husky Refining Company, which is a wholly-owned subsidiary of HOOL. HMSC participates in the crude oil and natural gas markets in the United States and provides a variety of services that support the operation of various Husky affiliates that own and operate a crude oil refinery and engage in the marketing of natural gas and refined crude oil products. After the Reorganization, HGMI will exit the natural gas trading and marketing business and will transfer all of its relevant operations to HMSC.

3. As part of the Reorganization, Petitioners state they will transfer the following FTSAs from HGMI to HMSC: On Alliance Pipeline L.P. (Alliance) FT1 agreement through November 30, 2012 with a maximum daily quantity (MDQ) of 50,624 Mcf (Contract #US5022); On Gas Transmission Northwest LLC (GTN) FTS-1 agreement through October 31, 2023 with a MDQ of 11,624 Dth (Contract #05265); On Northern Border Pipeline Co. (Northern Border) three T-1 agreements ending October 31, 2015: (1) MDQ of 92,000 Mcf (Contract #T6629F); (2) MDQ of 25,000 Mcf beginning April 1, 2014 (Contract #T7863F); and (3) MDQ of 31,369 Mcf beginning April 1, 2014 (Contract #T7864F). The Petitioners state that the GTN and Northern Border FTSAs listed above are at the maximum tariff rate, and the FTSA with Alliance is a negotiated rate contract. The Petitioners state that, pursuant to the Reorganization, the above FTSAs will be transferred pursuant to the governing provisions of each pipeline’s tariff, and the natural gas purchase and sale agreements and other non-jurisdictional agreements (approximately 150) will be transferred pursuant to contractual assignment provisions consistent with the individual agreements.

4. To facilitate the transfers of the FTSAs, the Petitioners request temporary and limited waivers of the Commission’s capacity release rules and policies, including the posting and bidding requirements and the Commission’s prohibition on buy-sell arrangements, the prohibition against tying, the prohibition on capacity release transactions above the maximum tariff rate, and temporary waiver of individual pipeline tariff provisions implementing one or more of these requirements and policies, as well as any other authorizations or waivers deemed necessary to implement the assignment and permanent release of FTSAs described above. The Petitioners assert that the waivers it seeks here will be used solely for the limited purpose of facilitating the Reorganization.

5. The Petitioners request the Commission issue an order no later than October 25, 2012, making the waivers effective November 1, 2012, and continuing in effect for 120 days. The Petitioners state that they have discussed this Joint Petition with Alliance, Northern Border and GTN, and that all of the pipelines have authorized the Petitioners to state that they do not oppose this Joint Petition.

6. The Petitioners argue that the waivers requested are in the public interest because they will facilitate the orderly implementation of the Reorganization, while enabling HMSC to continue service to HGMI's existing customers without incurring any additional costs or risking service interruptions. The Petitioners assert that the Commission's policy 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.[1]

7. Public notice of the filing was issued on September 14, 2012. Interventions and protests were due on or before September 20, 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(s) is(are) currently paying.[2] 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

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[1] The Petitioners cite *Salmon Resources,* 138 FERC ¶ 61,059 (2012), where two affiliated subsidiaries of Royal Dutch Shell, PLC, were granted waiver of the Commission's capacity release rules and policies to enable one affiliate to transfer a Firm Transportation Service Agreement to the other as part of a corporate reorganization resulting in one affiliate exiting the natural gas business; *Iberdrola Renewables, Inc.*, 138 FERC ¶ 61,201 (2012) where Iberdrola Renewables, Inc.(IRI), a gas and power marketer and an affiliate, Iberdrola Energy Services LLC (IES) were granted waiver of the Commission's capacity release rules and policies to enable IRI to transfer its natural gas business to IES as part of a corporate reorganization; and *Wisconsin Electric Power Co.*, 131 FERC ¶ 61,104 (2010), where the Commission granted waivers to facilitate the merger of Wisconsin Gas into its affiliate, Wisconsin Power, as part of an internal corporate consolidation pursuant to which Wisconsin Gas was to exit the natural gas business and cease to exist.

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

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, and thus to avoid inhibiting the use of a permanent release to transfer capacity the releasing shipper no longer needs or wants. Further, granting the requested waiver of the tying prohibition will allow the Petitioners to consolidate, and allow HGMI to exit the natural gas business in an orderly and efficient fashion, consistent with Commission policy.[3]

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 jurisdictional pipeline transportation agreements described above. Specifically, the Commission grants limited, temporary waiver of section 284.8 of its regulations, which governs the release of firm capacity; the prohibition on tying; the posting and bidding requirements for capacity release transactions; and the prohibition on the release of capacity at a rate above the maximum recourse rate. In addition, the Commission grants limited, temporary waiver of those sections of Alliance's, GTN's and Northern Border's tariffs that implement the above policies, in order to allow for the permanent releases of the agreements to HMSC. We will allow the waivers to become effective on November 1, 2012, and to remain in effect for 120 days.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

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[3] *E.g.*, *Constellation NewEnergy – Gas Div., LLC*, 130 FERC ¶ 61,059 (2010); *Sequent Energy Mgmt., L.P., et al.*, 129 FERC ¶ 61,188 (2009); *Macquarie Cook Energy, LLC and Constellation Energy Commodities Group, Inc.*, 126 FERC ¶ 61,160 (2009); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008); *Barclays Bank PLC and UBS AG*, 125 FERC ¶ 61,383 (2008); *Wasatch Energy, LLC and Northwest Pipeline Corp.*, 118 FERC ¶ 61,173 (2007); *Sempra Energy Trading Corp.*, 121 FERC ¶ 61,005 (2007); *Northwest Pipeline Corp. and Duke Energy Trading and Mktg., L.L.C.*, 109 FERC ¶ 61,044 (2004).