

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

March 24, 2005

In Reply Refer To:  
Cheyenne Plains Gas Pipeline Company,  
L.L.C.  
Docket No. RP05-183-000

Cheyenne Plains Gas Pipeline Company, L.L.C.  
Two North Nevada Avenue  
Colorado Springs, Colorado 80903

Attention: Catherine E. Palazzari, Vice President

Reference: Petition for Limited Case-Specific Waiver

Dear Ms. Palazzari:

1. On February 14, 2005, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains) filed a petition for a limited, case-specific waiver of section 15 of its General Terms and Conditions (GT&C) or, alternatively, the capacity release provisions relating to posting for competitive bidding in section 28.6 of its GT&C. Cheyenne Plains tenders its request in response to one of its anchor shippers wanting to assign its negotiated rate agreement to two purchasers of certain natural gas production assets. Cheyenne Plains requests expedited action on its petition. For the reasons discussed below, the Commission denies Cheyenne Plains' petition. This order benefits the public because it promotes our policy which mandates the competitive bidding process for available capacity to all shippers on a non-discriminatory basis.

2. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. section 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214. Duke Energy Trading and Marketing, L.L.C. and Duke Energy Marketing America, L.L.C. filed a motion to intervene. Yates Petroleum Corporation (Yates) filed a motion to intervene in support of the petition. No protests or comments were filed.

3. Cheyenne Plains wants to waive its assignment of capacity provisions under section 15 to accommodate ConocoPhillips' request to assign its transportation capacity to Yates and Anadarko Energy Services Company, the buyers of certain production acreage which provides gas supply transported on Cheyenne Plains. Section 15 allows a shipper to assign without the pipeline's consent a transportation service agreement to "any person, firm or corporation acquiring all or substantially all of the natural gas business of said party." Other than in the case of such an assignment, an assignment of transportation capacity must be executed under the capacity release provisions of the tariff. Section 28 (f) the GT&C provides that, for all prearranged releases of capacity, other than those at the maximum reservation rate or for terms of thirty-one days or less, such releases must have the capacity posted for competitive bidding in an open season on the Cheyenne Plains' EBB.

4. Cheyenne Plains submits that neither tariff provision permits the transfer of the subject capacity. However, Cheyenne Plains points to two recent cases where the Commission found that "the requirement to reallocate capacity through the capacity release provisions and the competitive bidding process did not apply," citing *North Baja Pipeline, LLC(North Baja)*, 109 FERC ¶ 61,269 (2004) and *Northwest Pipeline Corporation and Duke Energy Trading and Marketing, L.L.C.(Northwest)*, 109 FERC ¶ 61,044 (2004).

5. Commission policy on capacity assignments, as reflected in 18 C.F.R. section 284.8 (2004), generally requires that the capacity assignments at less than maximum tariff rates be subject to posting and bidding procedures to ensure that it will be assigned to the shipper who values it most. In support of its proposal, Cheyenne Plains cites to the Commission's findings in *Northwest* and *North Baja*. We note, however, that both the *Northwest* and *North Baja* cases were unique situations not contemplated by the Commission's regulations. In the *Northwest* case, the Commission granted waiver because the shipper was exiting the natural gas marketing business and was attempting to find buyers for all of its gas supply and transportation contracts. In the *North Baja* case, the Commission granted waiver because it facilitated the Mexican government's contracting for liquefied natural gas (LNG) supplies for electric generation in Mexico and avoided the need for new facility construction. In the instant proceeding, no unique circumstance warrants waiving the Commission's regulations or Cheyenne Plains' tariff. Cheyenne Plains has proposed to release capacity in a manner inconsistent with the Commission's rules of capacity release, and Cheyenne Plains has not demonstrated that such a waiver is in the public interest.

6. Therefore, the Commission rejects Cheyenne Plains' request for a limited, case-specific waiver of the competitive bidding procedures at 18 C.F.R. section 284.8 (2004) in order to allow ConocoPhillips to assign firm capacity rights to Yates and Anadarko.

By direction of the Commission.

Linda Mitry,  
Deputy Secretary.

cc: All Parties