

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

July 18, 2013

In Reply Refer To:
ProLiance Energy, LLC
Docket No. RP13-990-000

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

Dear Mr. Wagner:

1. On June 18, 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 ProLiance Energy Marketing, LLC (PEM). ProLiance asserts that the requested waivers are necessary to permit ProLiance to exit the natural gas marketing business in a prompt and orderly manner. ProLiance states that the permanent release of the Transferred Capacity to PEM is part of a single integrated, multi-stage transaction in which ProLiance will transfer to PEM substantially all of its natural gas assets (the Sale Transaction). ProLiance states that concurrently with the request for waiver it has entered into a Purchase and Sales Agreement pursuant to which ProLiance has transferred to ETC Marketing, Ltd. (ETC Marketing) all limited liability company interests of PEM and ProLiance has transferred to PEM substantially all of ProLiance's gas marketing assets (including contracts with customers, NYMEX contracts, systems and a real property lease for office space).¹ ProLiance requests that the Commission take expedited action to issue an order granting the requested waiver by mid-July 2013, to allow for ProLiance's expeditious exit from the natural gas marketing 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.

¹ On June 27, 2013, ProLiance filed a letter stating that PEM's name has changed to ETC ProLiance Energy, LLC.

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, KO Transmission Company, Midwestern Gas Transmission Company, 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 and ProLiance's utility affiliates. The supply arrangements between ProLiance and its regulated utility affiliates were approved in a settlement agreement authorized by the Indiana Utility Regulatory Commission (Indiana Commission) which expires in March 2016. As part of the transactions contemplated by the Purchase and Sale Agreement, ProLiance has entered into two asset management agreements with PEM. In the first agreement, the Transferred Capacity on the affected pipelines has been released on a temporary basis to PEM so that various customer contracts transferred by ProLiance to PEM can be serviced. The Transferred Capacity will be permanently released to PEM if the instant waiver is approved. In the second agreement, ProLiance temporarily released to PEM the capacity used to serve and meet the delivery obligations of ProLiance's utility affiliates. The capacity used to serve ProLiance's utility affiliates will be the subject of a future waiver request where the capacity will be permanently released to ProLiance's utility affiliates to fulfill the terms of the Indiana Commission settlement and a related portfolio administration agreement, until they expire March 31, 2016. ProLiance states that the waiver requested in this docket along with the 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;² (3) the Commission's shipper-must-have-title policy; (4) the prohibition against buy/sell arrangements; and (5) the prohibition against tying arrangements; all the waivers are sought in order to permit the Transferred Capacity to be permanently released to PEM as part of the Sale Transaction. To the extent applicable,

² 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 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) and *Philadelphia Energy Solutions Refining and Marketing, LLC*, 141 FERC ¶ 61,095, at P 5 (2012).

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 Sales 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 transfer of ProLiance's other natural gas marketing assets along with the Transferred Capacity 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 ProLiance and PEM 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 June 19, 2013, reflecting a comment date of July 1, 2013, however, an errata notice was issued on June 20, 2013, to shorten the comment due date to June 26, 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. No interventions, protests, or comments were filed.

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 transfer of ProLiance's transportation and storage capacity, gas supply contracts, systems, NYMEX contracts and an office space lease to its affiliate, PEM, which in turn is being sold to ETC Marketing. 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.³ 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.

³ See, e.g., *Macquarie Cook Energy LLC*, 126 FERC ¶ 61,160 (2009).