February 15, 2018

In Reply Refer To:
Chesapeake Energy Marketing, L.L.C.
Territory Resources LLC
Docket No. RP18-354-000

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Dear Mr. Floom and Mr. Gallegos:

1. On January 16, 2018, Chesapeake Energy Marketing, L.L.C. (Chesapeake) and Territory Resources LLC (Territory Resources) (collectively, Joint Petitioners) filed a petition pursuant to Rule 207 of the Commission’s Rules of Practice and Procedure,\(^1\) requesting all necessary approvals and waivers to effectuate a permanent release and assignment to Territory Resources of portions of Chesapeake’s transportation capacity on Enable Gas Transmission, LLC (Enable) and Midcontinent Express Pipeline LLC (Midcontinent), which Chesapeake uses to transport its production and that of its affiliates. Specifically, Joint Petitioners request temporary waiver of (1) the Commission’s capacity release posting and bidding regulations set forth in section 284.8 of the Commission’s regulations;\(^2\) (2) the Commission’s shipper-must-have-title policy; (3) the prohibition against buy/sell arrangements; (4) the prohibition against tying arrangements in capacity releases; and (5) the capacity release-related FERC Gas tariff provisions of Enable and Midcontinent (the Pipelines) that implement the aforementioned

\(^{1}\) 18 C.F.R. § 385.207 (2017).

\(^{2}\) Id. § 284.8.
policies. For the reasons discussed below and for good cause shown, the Commission grants the requested temporary limited waivers.

2. Joint Petitioners state that on December 19, 2017, wholly-owned subsidiaries of Chesapeake Energy Corporation, the parent of Chesapeake, entered into a purchase and sale agreement with Territory Resources to sell oil and gas assets and mineral leases located in Caddo, Carter, Comanche, Garvin, Grady, and Stephens Counties, Oklahoma, known as the Hoxbar/Colt Trend area, as well as appurtenant facilities (Transaction). Joint Petitioners state that under the proposed Transaction, Chesapeake will transfer to Territory Resources all of the related capacity, which Chesapeake uses to transport natural gas from the Hoxbar/Colt Trend area to downstream markets. The rights to all of the related capacity are being transferred to Territory Resources in order for current production to be transported from the Hoxbar/Colt Trend area to downstream markets in the same manner for Territory Resources, as it has been for Chesapeake. Joint Petitioners state that the transfer of the related capacity is an integral part of the Transaction.

3. Joint Petitioners note that the negotiated rate under the Midcontinent contract is not equal to the corresponding maximum recourse rate, and in effectuating the permanent release of the related capacity contracts, Joint Petitioners desire to maintain the commercial arrangements reflected in the contract rates for the remainder of the terms of the related capacity. Joint Petitioners further state that Chesapeake will retain 2,200 Dekatherms (Dth)/day of capacity on Enable and will retain 265,000 Dth/day of capacity on Midcontinent, which Chesapeake uses to transport production that is not located in the Hoxbar/Colt Trend area.³ Petitioners state that this will preserve the benefits of the bargains struck for Enable and Midcontinent, as the pipelines, and Territory Resources, as the shipper, under the existing firm transportation contracts for the related capacity.

4. Joint Petitioners state that the requested waivers are necessary to allow the transaction to be fully implemented and allow adequate time for Chesapeake to permanently release and assign all of the related capacity to Territory Resources.⁴ Joint Petitioners maintain that the requested temporary waivers will facilitate the continued production of the transferred properties in the Hoxbar/Colt Trend area, where the assets are located, because Territory Resources will have the firm transportation rights necessary to move such production to markets. In addition, according to Joint Petitioners, the related capacity cannot be separated from the overall Transaction, and the Transaction cannot be fully effectuated without the transfer of the firm transportation rights to the related capacity.

³ Petition at 5 nn.7-8.

⁴ Id. at 4 n.6 (citing Anadarko Energy Services Co., 153 FERC ¶ 61,124, at PP 5, 9 (2015)).
5. Joint Petitioners request expedited action by the Commission and ask that the requested waivers remain in effect for 120 days from the date of issuance. They contend that the requested waivers will facilitate the consummation of a complex transaction between Chesapeake’s affiliates and Territory Resources, and will support the continued development of natural gas supplies.

6. Joint Petitioners state that the waivers requested are consistent with past Commission action on similar petitions. Joint Petitioners argue that the Commission has allowed the permanent release of only a portion of the releasing party’s firm transportation contract to match the interests in production properties being transferred. In addition, Joint Petitioners state that the Commission has allowed permanent releases, without posting for bidding, even if the negotiated rates applicable to the released capacity are above the bidding applicable maximum recourse rates. Finally, Joint Petitioners state that the Commission has recognized that a failure to grant similar requested waivers would inhibit the transfer of capacity from a shipper that no longer requires the capacity to a shipper that requires it as a part of an overall, complex commercial transaction. Joint Petitioners therefore believe that their request for waiver of the capacity release rules and regulations is consistent with recent precedent.

7. Public notice of the filing was issued on January 17, 2018. Joint Petitioners requested and were granted a shortened comment period with interventions and protests


6 Petition at 7 & n.13 (citing Total Gas & Power, 131 FERC ¶ 61,023 at PP 3, 12).

7 Id. at 7-8 & n.14 (citing Transcontinental Gas Pipe Line Corp., 126 FERC ¶ 61,086, at PP 7-8 (2009)).

8 Id. at 8 n.15 (citing Macquarie Cook Energy, LLC, 126 FERC ¶ 61,160 at PP 14-15).
due January 23, 2018 via an errata issued on January 18, 2018. Pursuant to Rule 214,\(^9\) 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 interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No adverse comments or protests were filed.

8. The Commission has reviewed Joint Petitioners’ request for all needed temporary waivers and approvals to complete the proposed Transaction and finds that the request is adequately supported and appears consistent with previous waivers that the Commission granted to permit the release of capacity under similar circumstances. Moreover, no party has objected to the requested waivers.

9. Accordingly, for good cause shown, the Commission grants Joint Petitioners’ request for temporary, limited waivers as set forth in the petition and discussed above. The waivers are limited to the extent necessary to effectuate the Transaction discussed above and to complete the permanent releases of capacity specified in the petition. The waivers shall remain in effect for a 120-day period following the issuance of this order, as requested. The Commission directs Joint Petitioners to provide notice of the Transaction’s close in this docket.

   By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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