

167 FERC ¶ 61,253  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

June 20, 2019

In Reply Refer to:  
Apache Corporation  
Presidio Investment Holdings LLC  
Docket No. RP19-1222-000

Apache Corporation  
c/o D. Kirk Morgan II  
Bracewell LLP  
2001 M Street, NW  
Washington, DC 20036

Presidio Investment Holdings LLC  
c/o Emily Mallen  
Sidley Austin, LLP  
1501 K Street, NW  
Washington, DC 20005

Re: Petition for Capacity Release Waiver

Dear Mr. Morgan and Ms. Mallen:

1. On May 15, 2019, Apache Corporation (Apache) and Presidio Investment Holdings LLC (Presidio) (together, Petitioners) filed a petition requesting temporary and limited waiver of the Commission's capacity release regulations and policies and the related tariff provisions of the pipelines affected by the underlying transaction. Petitioners request waiver to facilitate the transfer and release by Apache to Presidio of pipeline capacity under three transportation agreements with the affected pipelines, as part of a sale of production assets, including production acreage and associated natural gas production and gathering facilities. For the reasons discussed below, and for good cause shown, the Commission grants the requested waivers, until the earlier of 120 days following the date on which the transaction closes or the date the capacity release transactions and assignments described in the petition are complete.

2. Petitioners state that Apache agreed to sell to Presidio oil and natural gas production assets, described as approximately 400,000 acres in Kansas, Oklahoma, and Texas (collectively, Acreage) and associated natural gas production and gathering facilities. Petitioners state that the sale will include associated capacity under three firm natural gas transportation agreements with the affected pipelines: ANR Pipeline Company (ANR), Enable Gas Transmission, LLC (Enable), and Natural Gas Pipeline Company of America LLC (Natural).<sup>1</sup> Currently, Petitioners state, Apache utilizes the transportation agreements to transport natural gas from the Acreage to market. Petitioners request Commission action by June 24, 2019, prior to the anticipated July 8, 2019 closing date for the transaction.

3. Petitioners state that following the receipt of the requested waivers, Apache will release 12,000 dekatherms per day (Dth/d) of capacity under the transportation agreement with ANR in accordance with Section 6.21 of the General Terms and Conditions (GT&C) of the ANR tariff, 14,500 Dth/d of capacity under the transportation agreement with Enable in accordance with Section 19 of the GT&C of the Enable tariff, and 10,000 Dth/d of capacity under the transportation agreement with Natural in accordance with Section 19 of the GT&C of the Natural tariff. According to Petitioners, consistent with the affected pipelines' tariff provisions, Presidio will execute new transportation agreements with the affected pipelines under the same terms and conditions applicable to the currently effective transportation agreements.<sup>2</sup> Petitioners request a temporary waiver of sections 284.8(b)(2), 284.8(d), 284.8(e) and 284.8(h)(1)(iii) of the Commission's regulations to permit the proposed capacity release transactions to be treated similarly to prearranged maximum rate release transactions, which can be implemented without posting for bids from other shippers, and to allow the release of the capacity under the Transportation Agreements to occur at the existing maximum rates. Thus, the release will be considered at existing maximum rates and not subject to such bidding requirements, notwithstanding the effect of other consideration involved in the larger transaction.

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<sup>1</sup> Petitioners identify the transportation agreements and related pipeline transportation tariff provisions in the petition (at 4). Petitioners note that a portion of the capacity under the ANR transportation agreement is the subject of a separate transaction and waiver. *See Apache Corp.*, 167 FERC ¶ 61,143 (2019) (granting waiver).

<sup>2</sup> Petitioners state that Presidio intends to assign its rights under the sales agreement, including the transportation capacity, to a wholly-owned subsidiary to be identified. Petitioners state that the subsidiary will satisfy legal, contract, and credit requirements, including ensuring that the affected pipelines are financially indifferent to the release.

4. In order to effectuate the transfer of capacity under the transportation agreements, Petitioners therefore request a temporary waiver of the applicable Commission policies, capacity release regulations, and the associated natural gas company tariff provisions. According to Petitioners, the temporary waivers requested will only be used for the limited purpose of consummating the transfer of the capacity under the transportation agreements as part of the larger, integrated transaction associated with the sale of the Acreage, thereby allowing for the continued use of such capacity to deliver natural gas to market.

5. Petitioners generally seek waiver of the Commission's capacity release policies and rules, including (a) the posting and bidding requirements in section 284.8(d) and (e) of the Commission's regulations,<sup>3</sup> (b) restrictions in sections 284.8(b)(2) and 284.8(h)(iii) of the Commission's regulations on capacity releases below or above the maximum recourse rate,<sup>4</sup> (c) the prohibition against tying pipeline transportation capacity to any extraneous condition,<sup>5</sup> (d) the shipper-must-have-title policy, (e) the prohibition against buy/sell arrangements, and (f) any other policy the Commission deems necessary and appropriate to effectuate the transfer of the applicable capacity under the transportation agreements. Petitioners also request waiver of the affected pipelines' natural gas tariff provisions implementing the Commission's capacity release requirements.<sup>6</sup>

6. Petitioners claim that the requested temporary waivers will assist Petitioners in achieving the transfer and ensuring that the affected pipelines are financially indifferent to the release. According to Petitioners, the permanent release of capacity to Presidio is an integral part of the transfer of the Acreage to Presidio, and Presidio will utilize the capacity for the same purpose as Apache, to transport gas from the Acreage to market.<sup>7</sup> Petitioners assert that the requested temporary waivers are consistent with waivers

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<sup>3</sup> 18 C.F.R. § 284.8(d) and (e) (2018).

<sup>4</sup> 18 C.F.R. § 284.8(b)(2) and 284.8(h)(1)(iii) (2018).

<sup>5</sup> Petition at 6, 8 (citing *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160, at PP 13, 14 (2009)).

<sup>6</sup> See ANR Tariff, GT&C Section 6.21; Enable Tariff, GT&C Section 19; and Natural Tariff, GT&C Section 19.

<sup>7</sup> Petition at 5 (citing *Total Gas & Power N. Am., Inc.*, 131 FERC ¶ 61,023, at P 11 (2010)).

previously granted by the Commission under similar circumstances.<sup>8</sup> Petitioners state that they are authorized to represent that the affected pipelines do not oppose the petition.

7. Public notice of the filing was issued on May 16, 2019. Petitioners requested and were granted a shortened comment period with interventions and protests due on May 22, 2019. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>9</sup> 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 adverse comments or protests were filed.

8. The Commission has reviewed the petition and finds that the request is adequately supported and appears consistent with previous temporary waivers granted by the Commission under similar conditions.<sup>10</sup> In these cases, the Commission has granted temporary, limited waiver of its capacity release regulations and the relevant tariff provisions of affected pipelines in connection with complex, integrated transactions involving the transfer of natural gas production assets and transportation agreements. In addition, the Commission finds that Petitioners have provided the information required for granting such waiver, including (1) identification of the regulations and policies for which waiver is sought; (2) identification of the pipeline service agreements and capacity to be transferred; (3) a description of the overall transaction and its claimed benefits, with sufficient detail to permit the Commission and other interested parties to determine whether granting the requested waiver is in the public interest; and (4) filing the petition as much in advance of the requested date as possible.<sup>11</sup>

9. Accordingly, and for good cause shown, the Commission grants temporary waiver of the applicable Commission capacity release regulations and policies, to be effective on the date of this order, including the posting and bidding requirements, the prohibition of capacity release transactions below or above the maximum rate, the shipper-must-have-title rule, and the prohibitions against buy/sell and tying arrangements, and only for the

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<sup>8</sup> *Id.* at 2.

<sup>9</sup> 18 C.F.R. § 385.214 (2018).

<sup>10</sup> *See, e.g., EQT Prod. Co.*, 164 FERC ¶ 61,063 (2018); *Pioneer Nat. Res. USA, Inc.*, 163 FERC ¶ 61,215 (2018); *CNX Gas Co. LLC*, 163 FERC ¶ 61,143 (2018); *Apache Corp.*, 153 FERC ¶ 61,262 (2015); *Marathon Oil Co.*, 133 FERC ¶ 61,168 (2010); *Total Gas & Power N. Am., Inc.*, 131 FERC ¶ 61,023; *Macquarie Cook*, 126 FERC ¶ 61,160.

<sup>11</sup> *Request for Clarification of Policy Regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Businesses*, 127 FERC ¶ 61,106, at P 10 (2009).

limited purpose of consummating the proposed transaction. The Commission also grants, to the extent necessary, limited and temporary waiver of the applicable capacity release tariff provisions included in the affected pipelines' tariffs. The waiver shall remain in effect until the earlier of 120 days following the date that the asset purchase transaction closes or the date the capacity release transactions and assignments are complete.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.