

167 FERC ¶ 61,254  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

June 20, 2019

In Reply Refer to:  
AVAD Operating, LLC and  
Urban Fund III, LP  
Docket No. RP19-1241-000

Jennifer Brough  
Locke Lord LLP  
701 8th St., NW, Suite 700  
Washington, DC 20001

Sandra E. Safro  
K&L Gates LLP  
1601 K Street, NW  
Washington, DC 20006

Reference: Petition for Capacity Release Waiver

Dear Ms. Brough and Ms. Safro:

1. On May 23, 2019, AVAD Operating, LLC (AVAD) and Urban Fund III, LP (Urban Fund) (collectively, Petitioners) filed a petition requesting a limited and temporary waiver of the Commission's capacity release regulations and policies, and also waiver of related capacity release provisions in the FERC Gas Tariff of the affected pipeline, Dominion Energy Questar Pipeline, LLC (Questar).<sup>1</sup> Petitioners request waiver to facilitate the assignment and permanent release of capacity under a long-term firm natural gas transportation service agreement as part of a larger transaction involving the sale by AVAD of oil and natural gas production assets and other related assets to Urban Fund. For the reasons discussed below and for good cause shown, the Commission grants the requested temporary waivers, effective on the date of this order and extending 120 days past the transaction closing date.

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<sup>1</sup> Specifically, the capacity release and assignment provisions in Questar's FERC Gas Tariff, General Terms and Conditions, Part 1, Section 6.

2. Petitioners state that AVAD will sell all of its oil and natural gas production and related assets located in the Uinta Basin near Price, Utah to Urban Fund and/or its affiliates, including oil, gas, and mineral leases and mineral interests, interests in the related production acreage, wells, gathering facilities, rights of way, contract and production equipment, and machinery. In addition, AVAD will sell its interest in hydrocarbons attributable to the properties after a designated time.<sup>2</sup> Petitioners state that AVAD is also transferring additional gathering assets located in Carbon County and neighboring Emery County, Utah.

3. Petitioners state that AVAD intends to transfer one firm interstate transportation service agreement with Questar for 24,700 Dth/day of natural gas capacity that it uses to transport natural gas from Uinta Basin. After the sale, state Petitioners, Urban Fund intends to use the capacity for the same purpose.

4. To effectuate the transaction, Petitioners seek waiver of the Commission's posting and bidding requirements,<sup>3</sup> the applicable maximum rate provisions,<sup>4</sup> the prohibition against tying to the extent applicable, the shipper-must-have title rule, the prohibition against buy-sell arrangements, as well as any other authorizations or waivers deemed necessary in order to permit the transaction. Petitioners also seek temporary and limited waiver of Questar's tariff provisions that implement the Commission's capacity release regulations and policies. Petitioners state that they seek waiver for the limited purpose of effectuating the release of capacity described in the petition. Petitioners state that Questar does not oppose the permanent assignment of transportation capacity that is the subject of the petition, subject to Urban Fund or its affiliate satisfying credit requirements.<sup>5</sup>

5. Petitioners state that the Commission has granted waiver in similar circumstances.<sup>6</sup> Petitioners request that the Commission act on this petition no later than June 24, 2019, in light of the July 1, 2019 anticipated closing date.

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<sup>2</sup> Petition at 5.

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

<sup>4</sup> *Id.* §§ 284.8(b)(2) and 284.8(h)(1)(iii).

<sup>5</sup> Petition at 3.

<sup>6</sup> *Id.* at 7 (citing cases).

6. Petitioners assert that the requested waiver is consistent with numerous cases granting essentially identical waivers of capacity release rules and policies to facilitate the transfer of natural gas assets as part of larger transactions, involving related assets, including releases of pipeline transportation capacity for electric generation fueling.<sup>7</sup> Petitioners note that the proposed capacity release would be at the maximum tariff rate for longer than one year. Petitioners state that while the terms of this release would qualify for an exemption from the Commission's bidding requirements,<sup>8</sup> given the overall transaction presented in this petition and out of an abundance of caution, the parties request temporary waiver of the Commission's bidding requirements.

7. Public notice of the filing was issued on May 31, 2019. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.<sup>9</sup> Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 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.<sup>10</sup> 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 consistent with previous waiver requests that the Commission has granted to permit the release of capacity under similar circumstances.<sup>11</sup> Specifically, the Commission finds that Petitioners have appropriately provided the information required for approval of such waivers by (1) identifying the regulations and policies for which waiver is sought; (2) identifying the pipeline service agreements and capacity to be transferred; (3) describing the overall transaction and its claimed benefits, with sufficient detail to permit the Commission and other interested parties to determine whether

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<sup>7</sup> *Id.* at 11.

<sup>8</sup> 18 C.F.R. § 284.8(h)(1)(iii).

<sup>9</sup> 18 C.F.R. § 154.210 (2018).

<sup>10</sup> 18 C.F.R. § 385.214 (2018).

<sup>11</sup> *See supra* note 6.

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>12</sup>

9. For good cause shown, the Commission grants Petitioners' request for temporary, limited waiver of the Commission's capacity release regulations, including the posting and bidding requirements and, to the extent applicable, the prohibition against tying, the shipper-must-have title rule, the prohibition against buy-sell arrangements, the applicable maximum rate provisions, and Questar's tariff provisions on capacity release. The Commission only requires a pipeline to allow a permanent capacity release where the pipeline will be financially indifferent to the release. The Commission has granted requests for waiver of the capacity release regulations in order to permit the use of permanent releases to transfer capacity that the acquiring shipper intends to use in the same manner as the releasing shipper.<sup>13</sup> The Commission will allow the waivers to remain in effect until 120 days past the transaction closing date to allow adequate time to consummate the transaction.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>12</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).

<sup>13</sup> *Total Gas & Power North America, Inc.*, 131 FERC ¶ 61,023, at P 11 (2010) (granting waivers based, in part, on the fact that the replacement shipper will use the "subject capacity in the same manner as the releasing shipper, that is, to transport natural gas from the [. . .] production area to various market centers").