

168 FERC ¶ 61,218
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

September 30, 2019

In Reply Refer To:
Black Hills Gas Distribution, LLC
Black Hills Northwest Wyoming Gas
Utility Company, LLC
Cheyenne Light Fuel and Power Company
Black Hills Power, Inc.
Black Hills Service Company, LLC
Docket No. RP19-1504-000

Dari R. Dornan
Associate General Counsel
Black Hills Energy
1102 E. 1st Street
Papillion, NE 68046

Dear Ms. Dornan:

1. On August 29, 2019, Black Hills Gas Distribution, LLC, Black Hills Northwest Wyoming Gas Utility Company, LLC, Cheyenne Light Fuel and Power Company, Black Hills Power, Inc. (collectively, the BH Companies), and Black Hills Service Company, LLC (BHSC, and together with the BH Companies, Petitioners) filed a petition requesting a temporary and limited waiver of the Commission's capacity release regulations and policies, as well as related natural gas pipeline tariff provisions, to be effective October 1, 2019, for a period through November 2019. Petitioners request this waiver to allow the BH Companies to assign and permanently release certain pipeline capacity and related long-term firm transportation and storage agreements to BHSC effective October 1, 2019, as part of a corporate reorganization. For the reasons discussed below and for good cause shown, the Commission grants Petitioners' request for temporary waiver.

2. Petitioners state that the requested waiver is necessary to allow Black Hills Corporation (BHC) to continue the restructuring of its business. Petitioners state that BHC is in the process of simplifying its corporate structure by consolidating all of its interstate transportation service under one legal entity, BHSC. Petitioners explain that certain interstate pipeline transportation and storage agreements serving Wyoming

(Agreements) are currently managed by and in the names of the BH Companies.¹ Petitioners state that the BH Companies will assign or release the Agreements to BHSC, after which BHSC will manage the Agreements. Petitioners state that the Commission granted similar waivers in Docket Nos. RP19-307-000² and RP19-1205-000.³

3. Petitioners state that the BH Companies will release the Agreements to BHSC effective October 1, 2019. Petitioners explain that transferring the Agreements effective October 1, 2019, prior to the start of the heating season, will lessen any potential disruption and minimize the impact to customers.⁴

4. Petitioners assert that temporary waiver of the Commission's capacity release policies and regulations, and related pipeline tariff provisions, is necessary to effectuate the permanent release and/or assignment of the firm transportation capacity under the Agreements. Petitioners state that, as the Commission's policy has evolved over time, the Commission has granted temporary waivers of its capacity release regulations and policies to permit parties to consummate mergers, corporate consolidations, and other similar transactions.⁵ Petitioners submit that the waivers they request are consistent with waivers that the Commission has previously granted under similar circumstances. Furthermore, Petitioners aver that the requested waivers are in the public interest because they will allow BHC to eliminate complicated processes, which will benefit its customers and regulators.

5. Petitioners request a temporary and limited waiver of the Commission's capacity release rules and policies, including the posting and bidding requirements and, to the extent applicable, the shipper-must-have-title policy, the prohibitions against buy/sell and tying arrangements, and any other authorizations or waivers deemed necessary to implement the permanent release and/or assignment of the subject capacity. Petitioners

¹ The Agreements are listed in Exhibit 1 to the petition.

² See *Black Hills Util. Holdings, Inc.*, 165 FERC ¶ 61,254 (2018).

³ See *Black Hills Gas Distribution, LLC*, 167 FERC ¶ 61,167 (2019).

⁴ Petition at 3.

⁵ *Id.* (citing *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); *Mercuria Energy Am., Inc.*, 155 FERC ¶ 61,253 (2016); *Rice Drilling B LLC*, 150 FERC ¶ 61,014 (2015); *Kerr McGee Energy Servs. Corp.*, 139 FERC ¶ 61,175 (2012); *Iberdrola Renewables, Inc.*, 138 FERC ¶ 61,201 (2012); *Salmon Res., LTD*, 138 FERC ¶ 61,059 (2012); *Duke Energy Ohio, Inc.*, 134 FERC ¶ 61,230 (2011); *Wisconsin Elec. Power Co.*, 131 FERC ¶ 61,104 (2010)).

also request waiver of section 284.8(b)(2) of the Commission's regulations,⁶ which prohibits the payment of rates in excess of the maximum rates, to the extent applicable. Finally, Petitioners request that the Commission waive the related capacity release tariff provisions of the interstate pipelines providing service under the Agreements, including the posting and bidding requirements included in those tariffs.⁷

6. Petitioners request that the Commission grant the requested waivers no later than October 1, 2019, so that BHC can work with the interstate pipelines to implement the assignment or release prior to the start of the winter heating season.⁸ Petitioners state that BHC has notified the affected pipelines of the waiver request for the associated transfer of the capacity.

7. Public notice of the filing was issued on September 3, 2019. Petitioners requested and were granted a shortened comment period with interventions and protests due on September 9, 2019. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁹ all timely filed motions to intervene and any unopposed motion to intervene filed out-of-time 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 protests or adverse comments were filed. The request for waiver is therefore uncontested.

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.¹⁰ Specifically, the Commission finds that Petitioners have provided the information required for granting

⁶ 18 C.F.R. § 284.8(b)(2) (2019).

⁷ The interstate pipelines that provide service under the Agreements include Colorado Interstate Gas Company, L.L.C.; Southern Star Central Gas Pipeline, Inc.; WestGas InterState, Inc.; MIGC LLC; Black Hills Shoshone Pipeline, LLC; and Wyoming Interstate Company, L.L.C. Petition, Ex. 1. Petitioners also request that the waivers apply to any other firm transportation or storage agreement with the applicable pipelines that may have been inadvertently omitted. Petition at 3 n.3.

⁸ *Id.* at 4-5.

⁹ 18 C.F.R. § 385.214 (2019).

¹⁰ *See, e.g., Black Hills Gas Distribution, LLC*, 167 FERC ¶ 61,167 at PP 1-3, 8-10; *Black Hills Util. Holdings, Inc.*, 165 FERC ¶ 61,254 at PP 1, 3, 6-12; *Kerr McGee Energy Servs. Corp.*, 139 FERC ¶ 61,175 at PP 1-3, 8-9; *Salmon Res., LTD*, 138 FERC ¶ 61,059 at PP 1-3, 8-9.

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 granting the requested waiver is in the public interest; and (4) filing the petition as much in advance of the requested date as possible.¹¹

9. Accordingly, for good cause shown, the Commission grants Petitioners' request for temporary, limited waiver of the Commission's capacity release regulations and the tariff provisions of the referenced pipelines implementing those policies, including the posting and bidding requirements and, to the extent applicable, the shipper-must-have-title rule and the prohibitions against buy/sell and tying arrangements. The Commission also grants Petitioners' request for a temporary and limited waiver of section 284.8(b)(2)'s prohibition against the payment of rates in excess of the maximum rates, to the extent applicable.¹² The Commission only requires a pipeline to allow a permanent capacity release where the pipeline will be financially indifferent to the release.¹³ Where, as here, "the releasing shipper [may be] paying a negotiated rate [potentially] in excess of the maximum rate, waiver of the maximum rate is necessary to render the pipeline financially indifferent to the release."¹⁴ Accordingly, 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 releasing shipper no longer needs to a shipper that does need it.¹⁵ Moreover, the Commission finds that the temporary waiver will only be used for the limited purpose of consummating the transfer of the capacity from the BH Companies to BHSC.

10. Accordingly, the Commission grants, to the extent necessary to facilitate the described transaction, Petitioners' request for temporary, limited waiver of the Commission's capacity release policies and regulations and of related natural gas pipeline tariffs implementing those policies, as described above. The Commission grants all

¹¹ *Request for Clarification of Policy Regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Businesses*, 127 FERC ¶ 61,106 at P 10.

¹² 18 C.F.R. § 284.8(b)(2).

¹³ See, e.g., *Black Hills Gas Distribution, LLC*, 167 FERC ¶ 61,167 at P 9; *Transcontinental Gas Pipe Line Co., LLC*, 134 FERC ¶ 61,184, at P 6 (2011).

¹⁴ *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082, at P 14 (2009).

¹⁵ See, e.g., *Transcontinental Gas Pipe Line Co., LLC*, 134 FERC ¶ 61,184 at PP 6-8; *Transcontinental Gas Pipe Line Corp.*, 126 FERC ¶ 61,086, at P 7 (2009).

waivers to be effective October 1, 2019, and to continue until the earlier of November 30, 2019, or until all of the Agreements have been assigned or released.

By direction of the Commission.

Kimberly D. Bose,
Secretary.