

170 FERC ¶ 61,286
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 30, 2020

In Reply Refer To:
Lucid Energy Delaware, LLC
Devon Gas Services, L.P.
Docket No. RP20-545-000

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Dear Ms. Rancilio & Mr. John:

1. On February 24, 2020, Lucid Energy Delaware, LLC (Lucid) and Devon Gas Services, L.P. (Devon) (collectively, Petitioners) filed a Petition requesting limited, temporary waiver of certain of the Commission's capacity release regulations and policies, as well as the related tariff provisions of Natural Gas Pipeline Company of America LLC (Natural). Petitioners request these waivers to enable Lucid to enter into a prearranged permanent capacity release to Devon of a portion of Lucid's firm jurisdictional natural gas transportation capacity under an agreement with Natural for firm transportation service (FTS) on Natural's pipeline system. For the reasons discussed below and for good cause shown, we grant Petitioners' requested temporary waivers.

2. Petitioners aver that Lucid entered into a long-term negotiated rate agreement for firm service on Natural's Lockridge Lateral through September 30, 2028 (Agreement). The Agreement sets Lucid's firm maximum daily quantity (MDQ) entitlement at a level that ramps up during the early years of the Agreement, commencing with an MDQ of 200,000 dekatherms per day (Dth/day) on January 1, 2019 and culminating in an MDQ of 460,000 Dth/day on April 1, 2021. The Agreement contemplates construction of an

extension of the Lockridge Lateral southward (Lockridge Extension) and provides Lucid the right to amend the Agreement prior to the in-service date of the Lockridge Extension to modify the MDQ at the existing primary delivery point and transfer some or all of the contract MDQ to an additional delivery point.¹ Petitioners state that the negotiated rate under the Agreement is fixed at a level below Natural's otherwise applicable maximum recourse rate for service under the System Wide Option.

3. Petitioners state that under the terms of the processing agreements Lucid has entered into with certain producers behind its Red Hills processing plant in Lea County, New Mexico, including a producing affiliate of Devon, producers are entitled to retain in-kind ownership of their production and make their own downstream commercial arrangements for the marketing of their production, including arrangements with their affiliates. Further, Petitioners aver that Lucid has committed to assist those producers electing to do so with downstream transportation arrangements on interstate pipelines, which may take the form of temporary or permanent releases of capacity controlled by Lucid in accordance with section 284.8 of the Commission's regulations.

4. Petitioners represent that Devon has made arrangements with its producing affiliates to purchase its affiliate's natural gas volumes being processed at Lucid's Red Hills plant. Accordingly, Lucid and Devon have agreed to the permanent release of a portion of Lucid's capacity rights under the Agreement on an iterative basis.² Petitioners state that this arrangement is designed to track natural gas volumes made available to Devon by its producing affiliate at Lucid's Red Hills plant, and that Lucid will enter into a permanent release with Devon for these volumes and dates at Lucid's negotiated rates.

5. In the instant filing, Petitioners request waiver of the following Commission regulations and policies: (a) the prohibition against tying arrangements, (b) notification for bidding,³ (c) bidding,⁴ (d) the shipper-must-have-title rule, and (e) the prohibition on buy/sell arrangements. Petitioners also request waiver of the capacity release provisions in Natural's tariff, in addition to any other policies, rules, regulations, or tariff provisions the Commission deems necessary to effectuate the transaction. Petitioners request that

¹ Petitioners note that the Commission authorized the construction of the Lockridge Expansion Project on October 17, 2019. *Natural Gas Pipeline Co. of Am. LLC*, 169 FERC ¶ 61,050 (2019).

² Effective July 1, 2020, the cumulative release volume will be 20,000 Dth/day. Effective January 1, 2021, the cumulative release volume will be 55,000 Dth/day. Effective October 1, 2021, the cumulative release volume will be 80,000 Dth/day.

³ 18 C.F.R. § 284.8(d) (2019).

⁴ 18 C.F.R. § 284.8(e).

the temporary waiver described above be granted effective as of the date of the Commission's order in the instant proceeding and continue in effect for 60 days following October 1, 2021, in order to complete the orderly transfer of the capacity.

6. Petitioners state that they seek waiver to facilitate the orderly transfer of contracted firm capacity in a manner consistent with the objectives of the underlying transactions related to the capacity. Petitioners state that the requested waiver will enable Lucid to release its firm capacity on Natural to Devon and other producers or shippers behind the Red Hills plant that desire to market their available residue gas volumes and ship the gas on Natural. Petitioners state that the requested waiver will allow for the permanent release of the capacity at the negotiated rates set forth in the FTS Agreement between Lucid and Natural. Petitioners aver that the requested waiver is necessary to enable Devon, the replacement shipper, to step into the shoes of Lucid as the releasing shipper, and to ensure that Natural is financially indifferent to the release.⁵

7. Petitioners note that the Commission has previously granted waiver of the capacity release regulations and policies to permit a firm shipper to release a portion of its firm capacity as part of a larger, integrated transaction.⁶ Petitioners also note that the Commission has granted waiver requests in circumstances analogous to those in the instant proceeding.⁷

8. Public notice of the filing was issued on February 25, 2020. Interventions and protests were due on or before March 2, 2020. Pursuant to Rule 214,⁸ all timely filed motions to intervene and any unopposed motion 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 comments or protests were filed. The Petition is therefore uncontested.

9. We have reviewed Petitioners' request for temporary waiver and find that the request is adequately supported and appears consistent with previous waivers the

⁵ Petitioners report that Natural has authorized them to state that it does not oppose the requested waivers, so long as Natural remains financially indifferent to the release. Petition at 2.

⁶ *Id.* at 7 (citing *Dogwood Energy, LLC*, 161 FERC ¶ 61,239, at PP 4-5 (2017)).

⁷ *Id.* at 8 (citing *Lucid Energy Delaware, LLC*, 165 FERC ¶ 61,216 (2018); *WPX Energy Holdings, LLC*, 154 FERC ¶ 61,221 (2016)).

⁸ 18 C.F.R. § 385.214 (2019).

Commission has granted to permit the release of capacity under similar circumstances.⁹ Specifically, we find that Petitioners provided the information required for approval of such waiver, which includes (a) identification of the regulations and policies for which waiver is sought, (b) identification of the pipeline service agreement and capacity to be transferred, (c) 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 (d) filing the petition as much in advance of the requested date as possible.¹⁰

10. Accordingly, for good cause shown, we grant Petitioners' request for temporary, limited waiver of the specified capacity release regulations and policies, including the posting and bidding requirements, the prohibition against tying, the prohibition on buy/sell arrangements and the shipper-must-have-title rule. We also grant the requested waiver of the applicable capacity release tariff provisions of Natural's FERC gas tariff. Granting the requested waivers will allow Petitioners to transfer the contracted capacity in an orderly and efficient manner. The temporary waivers shall become effective on the date of the Commission's order in the instant proceeding and remain effective for 60 days from October 1, 2021, and only to the extent necessary to facilitate the described transaction.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁹ See, e.g., *Anadarko Energy Serv. Co.*, 169 FERC ¶ 61,006 (2019); *Black Hills Gas Distrib., LLC*, 168 FERC ¶ 61,218 (2019); *HG Energy II Appalachia, LLC*, 167 FERC ¶ 61,100 (2019); *GenOn Wholesale Generation, LP*, 167 FERC ¶ 61,113 (2019); *Encana Mktg. (USA) Inc.*, 166 FERC ¶ 61,185 (2019). See also *Lucid Energy Delaware LLC*, 165 FERC ¶ 61,216.

¹⁰ *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).