

167 FERC ¶ 61,143  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

May 16, 2019

In Reply Refer To:  
Apache Corporation  
Red Wolf Acquisitions, LLC  
Docket No. RP19-996-000

Apache Corporation  
2000 Post Oak Boulevard  
Suite 1000  
Houston, TX 77056

Bracewell LLP  
2001 M Street, NW  
Washington, DC 20036

Thompson & Knight LLP  
811 Main Street  
Suite 2500  
Houston, TX 77002

Thompson & Knight LLP  
98 San Jacinto Blvd.  
Suite 1900  
Austin, TX 78701

Attention: Stephen Williams, Counsel  
D. Kirk Morgan II, Counsel  
Apache Corporation

Hunter H. White, Counsel  
Nicolas A. McTyre, Counsel  
Red Wolf Acquisitions, LLC

Dear Mr. Williams, Mr. Morgan, Mr. White, and Mr. McTyre:

1. On March 28, 2019, Apache Corporation (Apache) and Red Wolf Acquisitions, LLC (Red Wolf) (collectively, Petitioners) filed a joint petition for temporary waiver of the Commission's capacity release regulations and policies and the related tariff

provisions of ANR Pipeline Company (ANR) to facilitate the transfer and release of capacity by Apache to Red Wolf. For the reasons discussed below, and for good cause shown, the Commission grants the requested waivers.

2. Petitioners state that they are parties to a Purchase and Sale Agreement dated March 25, 2019 (PSA), whereby Red Wolf agreed to purchase from Apache approximately 56,000 net acres and natural gas production facilities in Oklahoma (collectively, Assets) and associated natural gas capacity under a firm transportation agreement between Apache and ANR (Transportation Agreement). According to Petitioners, Apache currently uses a portion of the capacity under the Transportation Agreement to transport gas from the Assets to market and the remainder of such capacity to transport gas from other Apache production assets in the area. Petitioners state that, under the PSA, Red Wolf will only obtain the portion of capacity under the Transportation Agreement that is directly related to the Assets that Red Wolf will be acquiring. Petitioners state that they are authorized to represent that ANR is not opposed to the petition.

3. Petitioners state that following the granting of the waivers, Apache will release 10,000 Dekatherms per day (Dth/day) of capacity under the Transportation Agreement in accordance with Section 6.21 of the General Terms and Conditions (GT&C) of ANR's tariff. According to Petitioners, Red Wolf will utilize the released capacity for the same purpose as Apache (i.e., to transport gas from the Assets to market).<sup>1</sup> Petitioners also state that Apache will retain the remaining 12,000 Dth/day of capacity under the Transportation Agreement to transport gas from other Apache production assets in Oklahoma that will not be transferred to Red Wolf.<sup>2</sup> Petitioners state that Red Wolf will execute a new transportation agreement with ANR under the same terms and conditions applicable to the Transportation Agreement. According to Petitioners, the proposed release will be treated as a release of long-term capacity at the maximum tariff rate under the Commission's regulations<sup>3</sup> and will not subject the release to the bidding requirements.

4. To facilitate the permanent release of capacity under the PSA, Petitioners request a temporary, 120-day waiver of certain Commission regulations and policies, as well as any other waiver or authorization deemed necessary. Specifically, Petitioners seek waiver of the Commission's capacity release policies and rules set forth in section 284.8

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<sup>1</sup> Petition at 5 (citing *Total Gas & Power N. Am., Inc.*, 131 FERC ¶ 61,023, at P 11 (2010)).

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

<sup>3</sup> 18 C.F.R. § 284.8(h)(1)(iii) (2018).

(continued ...)

of the Commission's regulations,<sup>4</sup> including (a) the prohibition against tying arrangements; (b) the posting and bidding requirements and restrictions on capacity releases below or above the maximum recourse rate;<sup>5</sup> (c) the shipper-must-have-title policy and prohibition against buy/sell arrangements; and (d) any other policy the Commission deems necessary and appropriate to effectuate the transaction. Petitioners also request that the Commission waive the related capacity release tariff provisions in ANR's tariff.<sup>6</sup>

5. Petitioners claim that the requested temporary waivers are in the public interest because they will allow for the orderly transfer of the capacity necessary for Red Wolf to move natural gas from the Assets it will be acquiring from Apache. As such, Petitioners maintain that the requested waivers are integral to the transfer of the Assets to Red Wolf and will assist in ensuring that ANR is financially indifferent to the release. Petitioners state that the requested temporary waivers will only be used for the limited purpose of consummating the transfer of the relevant capacity under the Transportation Agreement as part of the larger, integrated transaction, thereby allowing for the continued use of such capacity to deliver natural gas from the Assets to market. Petitioners aver that they narrowly tailored the waiver request to ensure that Red Wolf will only obtain the amount of capacity it requires to move natural gas from the Assets it will be acquiring under the PSA.

6. Petitioners anticipate that closing of the PSA will occur on May 16, 2019, or soon thereafter. Petitioners request that the Commission grant the waivers on or before May 16, 2019, to remain in effect until the earlier of 120 days following the date of the Commission's order or the date upon which the capacity release transaction is completed.

7. Public notice of the filing was issued on April 1, 2019. Petitioners requested and were granted a shortened comment period with interventions and protests due on April 5, 2019. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>7</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

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<sup>4</sup> *Id.* § 284.8.

<sup>5</sup> *Id.* §§ 284.8(b)(2), 284.8(d), 284.8(e), 284.8(h)(1)(iii).

<sup>6</sup> Provisions governing the release of firm capacity, the posting and bidding requirements for capacity release transactions, and the prohibition on the release of capacity at a rate above the maximum recourse rate are set forth in Section 6.21 of the GT&C of ANR's FERC NGA Gas Tariff.

<sup>7</sup> 18 C.F.R. § 385.214 (2018).

(continued ...)

stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No adverse comments or protests 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 appears consistent with previous temporary waivers granted by the Commission under similar conditions.<sup>8</sup> In these cases, the Commission has granted temporary, limited waiver of its capacity release regulations and the relevant tariff provisions of the affected pipelines in connection with complex, integrated transactions involving the transfer of natural gas producing 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>9</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 May 16, 2019, 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. The Commission also grants, to the extent necessary, limited and temporary waiver of the applicable capacity release tariff provisions included in ANR's tariff. The Commission will allow

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<sup>8</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 Energy, LLC*, 126 FERC ¶ 61,160 (2009).

<sup>9</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).

these waivers to continue in effect until the earlier of 120 days following the date this order is issued or the date the capacity release transaction is completed.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.