

167 FERC ¶ 61,221
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

June 14, 2019

In Reply Refer To:
CNE Gas Supply, LLC
Constellation New Energy – Gas Division, LLC
Exelon Generation, LLC
Docket No. RP19-1160-000

CNE Gas Supply, LLC
Constellation New Energy – Gas Division, LLC
Exelon Generation, LLC
c/o Exelon Corporation
1310 Point Street, 8th Floor
Baltimore, MD 21231

Attention: Susan B. Bergles
Assistant General Counsel

Dear Ms. Bergles:

1. On April 29, 2019, CNE Gas Supply, LLC (CNEGSA), Constellation New Energy – Gas Division, LLC (CNEG), and Exelon Generation, LLC (ExGen) (collectively, Petitioners) filed a joint petition requesting a limited and temporary waiver of the Commission’s capacity release regulations and policies, and the related capacity release tariff provisions of numerous pipelines.¹ Petitioners state that they are requesting waiver

¹ Petitioners identify 28 affected interstate pipelines: Algonquin Gas Transmission, LLC; ANR Pipeline Co.; Columbia Gas Transmission LLC; Columbia Gulf Transmission LLC; Crossroads Pipeline Co.; Dominion Energy Transmission, Inc.; El Paso Natural Gas Co., L.L.C.; Enable Gas Transmission, LLC; Great Lakes Gas Transmission Limited Partnership; Guardian Pipeline, L.L.C.; Iroquois Gas Transmission System, L.P.; Midwestern Gas Transmission Co.; Millennium Pipeline Co., L.L.C.; National Fuel Gas Supply Corp.; Natural Gas Pipeline Co. of America LLC; Northern Natural Gas Co.; Panhandle Eastern Pipe Line Co., LP; Portland Natural Gas Transmission; Southern Natural Gas Co. L.L.C.; Southern Star Central Gas Pipeline, Inc.; Tallgrass Interstate GT, LLC; Tennessee Gas Pipeline Co., L.L.C.; Texas Eastern Transmission, LP; Texas Gas Transmission, LLC; Transcontinental Gas Pipe Line Co.,

to effectuate the assignment and/or permanent release by CNEGSA and CNEG of firm capacity agreements² on multiple pipelines to ExGen in order to facilitate an internal corporate consolidation and restructuring. For the reasons discussed below, and for good cause shown, the Commission grants Petitioners' request for temporary waiver.

2. Petitioners state that Exelon Corporation (Exelon), the ultimate owner of CNEGSA, CNEG, and ExGen, is in the process of a corporate consolidation, anticipated to be effective on July 1, 2019. As part of the corporate consolidation and restructuring, Petitioners state that the transportation and storage capacity held by CNEGSA and CNEG will be transferred to ExGen.³ Petitioners explain that, as a legal entity, CNEGSA will be collapsed and consolidated so that ExGen will be the remaining legal entity that enters into natural gas sale, purchase, and transportation transactions. Petitioners further state that CNEG will be transferring its transportation and storage contracts through the assignment or permanent release of capacity to ExGen so that ExGen will be the entity holding those contracts.

3. Petitioners state that the Commission has granted temporary waiver of the capacity release regulations and policies to permit parties to consummate internal reorganizations, corporate consolidations, and other similar transactions.⁴ Petitioners further state that the Commission has granted requests for waivers in circumstances similar to their request to facilitate corporate consolidations where a corporate consolidation resulted in an affiliate exiting the natural gas business.⁵ Moreover, Petitioners state that the Commission has

LLC; Transwestern Pipeline Co., LLC; Trunkline Gas Co., LLC; and Viking Gas Transmission Co.

² Petitioners state that the number of contracts impacted by this petition is approximately 424 contracts.

³ Petition at 2.

⁴ *Id.* at 4 (citing *Eco-Energy, LLC*, 166 FERC ¶ 61,110 (2019); *ENGIE S.A.*, 162 FERC ¶ 61,289 (2018); *Kerr McGee Energy Services Corp.*, 139 FERC ¶ 61,175 (2012); *Salmon Resources LTD and Shell Energy North America (US), L.P.*, 138 FERC ¶ 61,059 (2012) (*Salmon Resources*); *Wisconsin Electric Power Co.*, 131 FERC ¶ 61,104 (2010); *EnergyMark, LLC*, 130 FERC ¶ 61,059 (2010); *Sequent Energy Management, L.P.*, 129 FERC ¶ 61,188 (2009); *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008)).

⁵ *Id.* (citing *Iberdrola Renewables, Inc.*, 138 FERC ¶ 61,201 (2012); *Constellation Energy Services, Inc.*, 160 FERC ¶ 62,039 (2017); *CNE Gas Supply, LLC and Exelon Generation Co., LLC*, 165 FERC ¶ 61,019 (2018)).

recently granted waiver of its capacity release regulations and policies to CNEGSA and ExGen to facilitate a transfer of two firm interstate natural gas transportation contracts from CNEGSA to ExGen in light of Exelon's planned corporate re-organization.⁶

4. Specifically, Petitioners seek temporary and limited waiver of the Commission's capacity release rules in section 284.8 of the Commission's regulations⁷ and certain Commission policies including: (a) shipper-must-have-title requirements; (b) prohibition against tying; and (c) prohibition against buy-sell arrangements; and any other authorization or waiver deemed necessary to accomplish the corporate reorganization described in the petition. Petitioners also seek temporary and limited waiver of the applicable tariff provisions of the numerous pipelines who are parties to the transportation and storage agreements that are part of this request for waiver.⁸ Petitioners state that they contacted the pipelines listed in Exhibits A and B to the petition and provided them with notice of the corporate reorganization and associated request for waiver. Petitioners further state that because ExGen is already a shipper on most, if not all, of the affected pipelines, Petitioners do not anticipate any issues associated with respect to the applicable pipeline credit requirements.

5. Due to the number of contracts involved on multiple pipelines, Petitioners request expedited Commission action, with an order issued on or before June 15, 2019, in order to facilitate permanent release and/or assignment of the capacity by July 1, 2019. Petitioners request that the waivers remain in effect until 150 days after the anticipated corporate reorganization date of July 1, 2019, to allow sufficient time to address all the assignments and/or permanent releases.

6. Public notice of the filing was issued on May 1, 2019. Interventions and protests were due consistent with section 154.210 of the Commission's regulations.⁹ Pursuant to Rule 214,¹⁰ 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. Northern Natural Gas Company (Northern) filed a motion to intervene and comments.

⁶ *Id.* at 5 (citing *CNE Gas Supply, LLC*, 165 FERC ¶ 61,019 (2018)).

⁷ 18 C.F.R. § 284.8 (2018).

⁸ *See* Petition at 6, n.9.

⁹ 18 C.F.R. § 154.210 (2018).

¹⁰ 18 C.F.R. § 385.214 (2018).

7. Northern states that it has 23 active transportation and storage contracts with CNEGSA, and two active transportation contracts with CNEG as reflected in Exhibit A to the petition. Northern requests: (1) that any order issued in the instant proceeding include a requirement that the waiver of the capacity release policies, regulations and tariff provisions ensures that the pipeline is financially indifferent to the permanent release and/or assignment of the subject agreements; and (2) that any waiver of Northern's tariff provisions contain an acknowledgement that the waiver applies only to the named provisions of the tariff and that Northern specifically retains the right to enforce all other applicable provisions of the law and its tariff. Northern states that, subject to these modifications, it does not oppose the joint petition.

8. The Commission has reviewed the Petitioners' request for temporary waiver of the identified capacity release regulations and related Commission policies and finds that the Petitioners' request is adequately supported and consistent with previous waivers the Commission has granted to permit the release of capacity under similar circumstances.¹¹ Specifically, the temporary waiver will only be used for the limited purpose of facilitating an internal corporate consolidation and restructuring that will be accomplished by the release of capacity from CNEGSA and CNEG to ExGen. In addition, we find that Petitioners have provided the information required for granting waiver, which includes: (a) identification of the regulations and policies for which waiver is sought; (b) identification of the pipeline service agreements 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.¹²

9. However, as the Commission has explained previously, a pipeline is only obligated to allow a permanent capacity release where the pipeline will be financially

¹¹ See, e.g., *Kerr McGee Energy Services Corp.*, 139 FERC ¶ 61,175; *Salmon Resources*, 138 FERC ¶ 61,059; *Wisconsin Electric Power Co.*, 131 FERC ¶ 61,104; *EnergyMark, LLC*, 130 FERC ¶ 61,059; *Sequent Energy Management, L.P.*, 129 FERC ¶ 61,188; *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160; *Bear Energy LP*, 123 FERC ¶ 61,219.

¹² *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).

indifferent to the release.¹³ Accordingly, we clarify that the limited waivers granted in this order do not include waiver of this policy or of any pipeline's tariff provisions that operate to protect the pipeline's prerogative to refuse to allow a permanent capacity release on the basis that the pipeline would not be financially indifferent to the release.¹⁴

10. Accordingly, for good cause shown, the Commission grants temporary and limited waiver of the Commission's capacity release regulations and certain other Commission policies as described above. This grant of waiver is to remain in effect for 150 days following the anticipated corporate reorganization date of July 1, 2019, and only to the extent necessary to facilitate the described transaction.

11. In addition, the Commission grants, as requested and only to the extent necessary to accommodate the corporate reorganization, a temporary and limited waiver of the related capacity release tariff provisions of the 28 pipelines listed in footnote 1. Granting this request for waiver allows the Petitioners to fully implement the transaction and facilitates the described corporate consolidation and reorganization.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹³ *North Baja Pipeline LLC*, 128 FERC ¶ 61,082, at P 11 (2009); *Big Sandy Pipeline LLC*, 141 FERC ¶ 61,151, at P 7 (2012).

¹⁴ *Range Resources – Appalachia, LLC*, 153 FERC ¶ 61,294, at P 13 (2015).