

168 FERC ¶ 61,001
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

July 1, 2019

In Reply Refer To:
GenOn REMA, LLC;
Gilbert Power, LLC;
Shawville Power, LLC
Docket No. RP19-1307-000

White & Case LLP
701 Thirteenth Street, NW
Washington, DC 20005

GenOn Holdings, Inc.
1360 Post Oak Blvd.
Suite 2000
Houston, TX 77056

Attention: Jane E. Rueger; Harold W. Bulger, III; and Daniel McDevitt

Dear Ms. Rueger and Messrs. Bulger and McDevitt:

1. On June 5, 2019, GenOn REMA, LLC (GenOn REMA), Gilbert Power, LLC (Gilbert Power),¹ and Shawville Power, LLC (Shawville Power)² (collectively, Petitioners) filed a Joint Petition for Temporary Waivers (Petition) requesting temporary, 180-day waivers of the Commission's capacity release regulations and policies, the related FERC gas tariff provisions of PennEast Pipeline Company, LLC (PennEast) and Greylock Pipeline, LLC (Greylock) (collectively, the Affected Pipelines), and any other authorizations or waivers deemed necessary for the transfer of Commission-jurisdictional gas transportation agreements from GenOn REMA to its affiliates, Gilbert Power and Shawville Power (the Proposed Transfer). Petitioners requested a shortened comment period of seven days and that the Commission issue an order granting the waivers

¹ Petitioners note that effective May 17, 2019, Gilbert Power, LLC changed its name from GenOn Holdco 4, LLC.

² Petitioners note that effective May 17, 2019, Shawville Power, LLC changed its name from GenOn Holdco 1, LLC.

by July 1, 2019. For the reasons discussed below, the Commission grants the Petitioners' joint request for temporary waivers.

2. Petitioners state that they are requesting these waivers to complete the Proposed Transfer pursuant to a pending internal corporate reorganization. Petitioners state that such waivers will allow them to consummate an internal corporate reorganization whereby GenOn REMA will (a) transfer a lease interest in the Shawville Generating Station to Shawville Power, and (b) transfer ownership of the Gilbert Generating Station and its related interconnection facilities, and associated books and records to Gilbert Power. Petitioners state that they are indirect subsidiaries of GenOn Holdings, Inc. and that GenOn REMA owns and operates the Gilbert Generating Station and also leases and operates the Shawville Generating Station. Petitioners state that upon consummation of the internal corporate reorganization, Gilbert Power will acquire the Gilbert Generating Station from GenOn REMA and Shawville Power will acquire a lease interest in the Shawville Generating Station from GenOn REMA. Petitioners state that to effectuate the transfer of the Gilbert Generating Station and Shawville Generating Station, the Petitioners must complete the Proposed Transfer, whereby GenOn REMA will permanently release and assign to Gilbert Power and Shawville Power two agreements for firm transportation service on the Affected Pipelines.³

3. Petitioners specifically request a temporary, 180-day waiver of the following regulations and policies: (a) restrictions on capacity releases above or below the applicable maximum rate, (b) notification for bidding of capacity releases, (c) bidding of capacity releases, (d) shipper-must-have-title policy, (e) prohibition against buy-sell transactions, and (f) prohibition of tying arrangements, and to the extent required, any other waivers or authorizations necessary to permit GenOn REMA to complete the Proposed Transfer consistent with the Natural Gas Act and the Commission's regulations and policies.⁴ Petitioners additionally request waiver of the related tariff provisions of the Affected Pipelines. Petitioners maintain that the Commission has previously granted the waivers requested in the instant filing under similar circumstances involving corporate restructurings.⁵

³ Petitioners note that while PennEast is not yet providing firm transportation service for GenOn REMA pursuant to the PennEast Service Agreement, Commission precedent suggests that the Commission's capacity release regulations may apply to executed transportation agreements for firm service, before a pipeline has a tariff on file and before the initial in-service date occurs. Petition at 6.

⁴ Petition at 2.

⁵ Petition at 2. See e.g. *Eco-Energy, LLC, et al.*, 166 FERC ¶ 61,110 (2019); *Mercuria Energy America, Inc., et al.*, 155 FERC ¶ 61,253 (2016); *Rice Drilling B LLC*,

4. Petitioners aver that the temporary waivers are necessary in order to facilitate the Proposed Transfer as part of the Petitioners' internal corporate reorganization and that they will only utilize said waivers for the limited purpose of effectuating the Proposed Transfer. Petitioners state that the reorganization will require the transfer of many other agreements relating to ownership and operation of the Gilbert Generating Station and Shawville Generating Station in addition to the Service Agreements. Petitioners anticipate this process will require the consent of many parties over a period of time and believe that the requested waivers will eliminate the risk that they inadvertently violate the Commission's policies.

5. Petitioners seek a 180-day duration of the requested temporary waivers in order to ensure sufficient time to complete the Proposed Transfer due to the complexity of the reorganization. Petitioners note that the Commission has previously approved a 180-day temporary waiver under similar conditions.⁶ Petitioners state that they will provide notice to the Commission within one week of the occurrence of the consummation of the internal corporate reorganization⁷ and that they will provide a status report to the Commission as an information filing within ninety (90) days of consummating the reorganization regarding the contract assignment process, including notification of any additional jurisdictional service agreements associated with the Proposed Transfer other than the two explicitly highlighted in its Petition.⁸

6. Petitioners emphasize that they are not seeking to reallocate unneeded firm capacity, but rather transfer capacity to continue to allow natural gas supply to be transported to the Gilbert Generating Station and Shawville Generating Station in the same manner as presently intended. With respect to keeping the Affected Pipelines financially indifferent to the proposed capacity release, Petitioners further assert that the Service Agreements are subject to negotiated rates. Absent a waiver, it would be necessary to post the capacity for bidding subject to the Affected Pipelines' maximum recourse rates. Bidders could then offer to pay less than the existing negotiated rate for

et al., 150 FERC ¶ 61,014 (2015); *Kerr McGee Energy Services Corp., et al.*, 139 FERC ¶ 61,175 (2012); *Iberdrola Renewables, Inc., et al.*, 138 FERC ¶ 61,201 (2012); *Salmon Resources, LTD, et al.*, 138 FERC ¶ 61,059 (2012); *Duke Energy Ohio Inc., et al.*, 134 FERC ¶ 61,230 (2011); *Wisconsin Electric Power Co.*, 131 FERC ¶ 61,104 (2010).

⁶ Petition at 10. *See, e.g., Mercuria Energy America, Inc., et al.*, 155 FERC ¶ 61,253 (2016).

⁷ *Id.*

⁸ *See, e.g., Sempra Energy Trading, LLC, et al.*, 133 FERC ¶ 61,128, at P 21 (2010).

the term of the release because such a rate could violate the maximum rate ceiling in the future.

7. Petitioners request expedited action on the waiver request on or before July 1, 2019, in addition to a shortened comment period of seven days, so that the internal corporate reorganization may take place promptly thereafter. Petitioners argue that consummating said reorganization promptly is essential to close a financing transaction related to the sixteen generating facilities subject to the reorganization in a timely manner.

8. Public notice of the filing was issued on June 6, 2019, with interventions and protests due June 12, 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 out-of-time filed 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 adverse comments or protests were filed. The request for waiver and request for shortened comment period are therefore uncontested.

9. The Commission has reviewed the Petition and finds that the request is adequately supported and appears consistent with previous waivers the Commission has granted to permit the release of capacity under similar circumstances.¹⁰ In these cases, the Commission has granted temporary, limited waiver of its capacity release regulations and the relevant tariff provisions of the affected pipelines involving the transfer of natural gas transportation agreements. 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

⁹ 18 C.F.R. § 385.214 (2018).

¹⁰ See, e.g., *USG Properties Marcellus Holdings, LLC, et al.*, 166 FERC ¶ 61,111 (2019); *BP Energy Co.*, 165 FERC ¶ 61,018 (2018); *CNX Gas Co. LLC*, 163 FERC ¶ 61,143 (2018); *Petrohawk Energy Corp.*, 144 FERC ¶ 61,234 (2013); *Salmon Res. LTD*, 138 FERC ¶ 61,059 (2012); *Wis. Elec. Power Co.*, 131 FERC ¶ 61,104 (2010); *EnergyMark, LLC*, 130 FERC ¶ 61,059 (2010); *Sequent Energy Mgmt., L.P.*, 129 FERC ¶ 61,188 (2009); *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008).

public interest; and (d) filing the petition as much in advance of the requested date as possible.¹¹

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. In addition, the Commission grants, to the extent necessary, a temporary and limited waiver of the related capacity release tariff provisions of the Affected Pipelines. Granting this request for waiver allows the Petitioners to fully implement the described transaction and will facilitate the internal corporate reorganization. This grant of waiver is to remain in effect until the earlier of 180 days following the date of the assignment of the capacity arrangements, or the date that the proposed transaction is completed, and only to the extent necessary to facilitate the described transaction.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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 (2009) and *DCP Midstream LP*, 141 FERC ¶ 61,256, at P 6 (2012).