

169 FERC ¶ 61,005
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

October 3, 2019

In Reply Refer To:
Anadarko Energy Services Company
Pacific Summit Energy LLC
Docket No. RP19-1461-000

Anadarko Energy Services Company
c/o Mark R. Haskell
Blank Rome LLP
1825 Eye Street, NW
Washington, DC 20006

Pacific Summit Energy LLC
c/o Jikja Chung
2010 Main Street, Suite 1200
Irvine, CA 92614

Re: Petition for Capacity Release Waivers

Dear Mr. Haskell and Ms. Chung:

1. On August 7, 2019, Anadarko Energy Services Company (AESC) and Pacific Summit Energy LLC (PSE) (collectively, Petitioners) filed a joint petition requesting temporary and limited waiver of the Commission's capacity release regulations and policies and the related pipeline tariff provisions necessary to facilitate the assignment and permanent release of capacity under a firm transportation service agreement with Transcontinental Gas Pipe Line Company, LLC (Transco), which Petitioners state is the subject of an Asset Management Agreement (AMA) between AESC and PSE. For the reasons discussed below, and for good cause shown, the Commission grants the requested waivers and confirms its previous acceptance of two non-conforming provisions.

2. The Petitioners state that they seek the requested relief to finalize the transfer of assets related to the sale of oil and natural gas production and related assets in the Marcellus Basin by Anadarko E&P Onshore LLC, Kerr-McGee Oil & Gas Onshore L.P., Anadarko Marcellus Midstream LLC, and AESC (collectively, Anadarko) to Alta

Marcellus Development LLC and/or its affiliate(s) (collectively, Alta), pursuant to a purchase and sale agreement executed between Anadarko and Alta, dated December 19, 2016.¹

3. Petitioners state that the aforementioned transaction was the subject of two prior Commission orders granting waiver of the capacity release regulations.² Specifically, the Petitioners state that in Docket No. RP17-324-000, AESC and Alta filed a joint petition (2017 Petition) for waivers to enable AESC to assign and permanently release to Alta or its affiliate(s) seven firm natural gas transportation service agreements, two AMAs, and a precedent agreement for service on Transco's Atlantic Sunrise Project.³ Petitioners state that the Commission granted the request for waivers contingent upon each pipeline's consent to the permanent assignment of the relevant agreements.⁴

4. Petitioners further state that on December 17, 2018, in Docket No. RP19-468-000, AESC and PSE filed a request for temporary and limited waiver of the Commission's capacity release regulations and policies (2018 Petition) to facilitate the permanent release of the Transco Atlantic Sunrise Project capacity by AESC to PSE under a permanent AMA.⁵ The Petitioners state that the Commission granted the requested petition.⁶

5. Petitioners state that AESC believed that the release contemplated in the 2018 Petition was the final step in the sale of oil and natural gas production and related assets by AESC and its affiliates to Alta and/or its affiliates.⁷ However, Petitioners state that they have since identified two additional firm transportation service agreements with Transco that were identified in the 2017 Petition but that have not yet been transferred: (1) Contract No. 9144666, which is subject to an AMA with Sequent Energy Management, L.P. (Sequent), and (2) Contract No. 9178682, which is subject to an AMA

¹ Petition at 1-2.

² *Id.* at 2. *See Anadarko Energy Services Co.*, 158 FERC ¶ 61,130 (2017); *Anadarko Energy Services Co.*, 166 FERC ¶ 61,109 (2019).

³ *Id.* at 2.

⁴ *Id.* (citing *Anadarko Energy Services Co.*, 158 FERC ¶ 61,130).

⁵ *Id.*

⁶ *Id.* (citing *Anadarko Energy Services Co.*, 166 FERC ¶ 61,109).

⁷ *Id.* at 2-3.

with PSE. In the instant Petition, AESC and PSE request temporary and limited waivers to facilitate the permanent release of capacity under Contract No. 9178682.⁸ Petitioners also state that AESC and Sequent will file a separate petition to facilitate the permanent release of capacity under Contract No. 9144666.⁹

6. Petitioners state that subsequent to the Commission's approval of the 2017 Petition, Transco did not provide consent to the transfer of the capacity under Contract No. 9178682 by AESC to Alta, as part of the initial transaction, and as stated above, the Petitioners are now seeking waiver to allow the permanent release of this agreement to PSE.¹⁰ Petitioners state that they contacted Transco, the only affected pipeline, and indicate that Transco has not expressed opposition to the Petition, provided that it determines that it is financially indifferent to the releases including the requirement that PSE satisfies Transco's creditworthiness requirement.¹¹

7. Petitioners contend that current Commission policy allows for the permanent release of capacity to AMAs without the need to obtain the requested waiver.¹² However, they state that in the instant case they are requesting waiver of certain Commission regulations and policies out of an abundance of caution and for full transparency because (i) AESC's affiliates have, as part of a larger transaction with Alta, sold oil and gas interests associated with the referenced firm transportation service agreement; (ii) Transco has not consented to assign AESC's firm transportation agreement to Alta; (iii) Transco has agreed that PSE is a qualified replacement shipper; (iv) PSE has agreed to assume AESC's purchase obligations and to enter into a replacement commodity purchase agreement and sale agreement with Alta, with Alta's consent; (v) PSE has agreed to assume through a permanent capacity release all of AESC's obligations to Transco under Contract No. 9178682; and (vi) AESC desires upon

⁸ *Id.* at 3.

⁹ See Joint Petition of Anadarko Energy Services Company and Sequent for Temporary Waivers of Capacity Release Regulations and Policies, and Related Tariff Provisions, Docket No. RP19-1462-000.

¹⁰ Petition at 4.

¹¹ *Id.* at 3-4.

¹² *Id.* at 9 (citing *Gulf Crossing Pipeline Co. LLC*, 132 FERC ¶ 61,026, at P 4 (2010)).

completion of these transactions and Commission approval, to be relieved of any further liability under its firm transportation service agreement with Transco.¹³

8. Petitioners seek temporary and limited waiver of the Commission's capacity release rules and policies set forth in 18 C.F.R. § 284.8 (2019), including: (a) the posting and bidding requirements; (b) the applicable maximum rate provisions; (c) the prohibition against tying, to the extent applicable (d) the shipper-must-have-title rule, (e) the prohibition against buy-sell arrangements; and (f) any other authorizations or waiver deemed necessary in order to permit the transaction described in the Petition.¹⁴ Petitioners also seek, to the extent necessary, temporary and limited waiver of the applicable provisions of Transco's FERC Gas Tariff that implement the Commission's capacity release regulations and policies.¹⁵

9. Petitioners further note that AESC's firm transportation service agreement with Transco contains two non-conforming provisions that were accepted by the Commission.¹⁶ Therefore, Petitioners request that the Commission reconfirm its previous acceptance of the non-conforming provisions, which will be included in the negotiated rate firm service agreement between PSE and Transco.¹⁷ Specifically, the agreement includes non-conforming language regarding contract extensions that would allow Transco and the shipper to extend the term of a service agreement and maintain the original transportation contract quantity and negotiated rate. Second, the agreement provides that the agreement will be "effective as of the date that all project facilities

¹³ *Id.* at 9-10.

¹⁴ Petitioners maintain that because the capacity release between AESC and PSE is accompanied by a separate purchase and sale agreement between Alta and PSE, waiver of both the tying prohibition and maximum rate limitation is requested and to the extent that such consideration can be deemed to be compensation that would cause the releases to be deemed greater than the maximum recourse rate, the Petitioners seek waiver of 18 C.F.R. § 284.8(b)(2). *Id.* at 11.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 12.

¹⁷ *Id.* at 13 (citing *Transcontinental Gas Pipe Line Co., LLC*, Docket No. RP16-119 (Nov. 24, 2015) (delegated order accepting non-conforming service agreements)).

necessary to provide firm transportation service have been constructed and are ready for service, rather than on a ‘later of’ date as provided in the *pro forma* service agreement.”¹⁸

10. Petitioners ask the Commission to act on the Petition no later than 60 days from the date of filing, and further request that the waiver be made effective as of November 1, 2019, and continue in effect for a period of 150 days. Petitioners state that granting the requested waiver is consistent with Commission precedent under analogous circumstances and will be in the public interest.¹⁹ Petitioners state that Transco authorized them to represent that it does not oppose the request for waiver.

11. Public notice of the filing was issued on August 8, 2019. Interventions and protests were due as provided in section 154.210 of the Commission’s regulations.²⁰ Pursuant to Rule 214,²¹ 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 protest or adverse comments were filed.

12. The Commission has reviewed the Petition and finds that the request is adequately supported and consistent with previous temporary waivers granted by the Commission under similar conditions.²² In these cases, the Commission has granted temporary, limited waiver of its capacity release regulations and the relevant tariffs of the affected pipelines involving the transfer of natural gas transportation agreements. In addition, the Commission finds that Petitioners have provided the information required for granting waiver, including: (1) the identification of the regulations and policies for which waiver is sought; (2) identification of the pipeline service agreements and capacity to be transferred; (3) the description of the overall transaction and its claimed benefits, with sufficient detail to permit the Commission and other interested parties to determine

¹⁸ *Id.* at 12-13.

¹⁹ *Id.* at 7.

²⁰ 18 C.F.R. § 154.210 (2019).

²¹ 18 C.F.R. § 385.214 (2019).

²² *See, e.g., 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).

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.²³

13. The transfer of capacity at issue here involves a negotiated rate. The Commission only requires a pipeline to allow a permanent capacity release where the pipeline will be financially indifferent to the release.²⁴ The Commission has determined that whether the releasing shipper is paying a discounted or 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.²⁵ Further, the Commission has granted requests for waiver of its capacity release regulations where discounted or negotiated rates are involved in order to permit the permanent release of capacity that the releasing shipper no longer needs to a shipper who needs it.²⁶ Here, the Commission finds that the temporary waiver will only be used for the limited purpose of consummating the transfer of the capacity from AESC (who no longer needs the capacity) to PSE (who needs the capacity). Further, no shipper has protested that AESC's choice of PSE as its replacement shipper is unduly discriminatory.

14. Accordingly, and for good cause shown, the Commission grants temporary and limited waiver of the Commission's applicable capacity release regulations and policies, to the extent necessary, contingent upon Transco's consent to the permanent assignment of its agreement at issue,²⁷ to be effective November 1, 2019. The Commission will allow the waiver to continue in effect for a period of 150 days and only to the extent necessary to facilitate the described transaction.

15. In addition, the Commission grants temporary and limited waiver of the applicable Transco tariff provisions. Granting waiver allows the Petitioners to implement the described transaction in an orderly and efficient manner. The Commission also confirms

²³ *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).

²⁴ *Algonquin Gas Transmission, LLC*, 112 FERC ¶ 61,262 (2005); *Transcontinental Gas Pipeline Co., LLC (Transco)*, 134 FERC ¶ 61,184, at P 6 (2011).

²⁵ *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082, at P 14 (2009).

²⁶ *Transco*, 126 FERC ¶ 61,086, at P 7 (2009); *Transco*, 133 FERC ¶ 61,242 (2010); *Transco*, 134 FERC ¶ 61,184 at P 6.

²⁷ In the event that Transco does not consent to a permanent release, this order does not constitute approval of a temporary release of capacity.

its prior approval of the two non-conforming provisions²⁸ in the replacement contract between PSE and Transco, subject to Transco making an administrative tariff filing with the Commission to include in its tariff the replacement contract with PSE that contains the non-conforming provisions, together with a tariff record to include the PSE contract on the list of non-conforming agreements.²⁹ The Commission previously approved the non-conforming provisions and nothing in the proposed transaction changes the reasoning for that approval.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

²⁸ See *Transco*, Docket No. RP16-119-000 (delegated order approving the non-conforming provisions).

²⁹ See *SWN Energy Services Company, LLC*, 165 FERC ¶ 61,028, at P 17 (2018).