

169 FERC ¶ 61,055
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

October 17, 2019

In Reply Refer To:
New England NG Supply Limited
Boston Gas Company
Docket No. RP19-1581-000

New England NG Supply Limited
c/o Pierce Atwood LLP
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Washington, DC 20006

Boston Gas Company
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Waltham, MA 02451

Attention: Randall S. Rich, Attorney for New England NG Supply Limited
Patrick J. Tarmey, Senior Counsel for Boston Gas Company

Dear Mr. Rich and Mr. Tarmey:

1. On September 20, 2019, New England NG Supply Limited (NENG) and Boston Gas Company d/b/a National Grid (Boston Gas) (collectively, Petitioners) filed a joint petition requesting temporary waiver of the Commission's capacity release regulations and policies and the applicable capacity release tariff provisions of two interstate pipelines, Algonquin Gas Transmission, LLC (Algonquin) and Maritimes & Northeast Pipeline, L.L.C. (Maritimes). Petitioners state that they are requesting waiver to facilitate the permanent release of capacity from NENG to Boston Gas at a negotiated rate provided for in the firm transportation service agreements between NENG and the interstate pipelines. For the reasons discussed below, and for good cause shown, we grant Petitioners' requested temporary waiver.
2. Petitioners state that the subject firm transportation service agreements provide that NENG has contractual rights to 16,768 dekatherms (Dth) per day of firm transportation capacity on Algonquin under Contract No. 510918-R1 and 16,550 Dth per day of firm transportation capacity on Maritimes under Contract No. 210258-R1.

According to the Petitioners, NENG and the pipelines executed the service agreements pursuant to a precedent agreement for the Atlantic Bridge Project dated October 21, 2015, as amended by a Commission order directing the parties to execute the service agreements prior to commencing construction of the project.¹

3. Petitioners state that the transportation service was set to commence upon the in-service date of the Atlantic Bridge Project. However, according to Petitioners, due to uncertainty with the timing of certain authorizations, the Atlantic Bridge Project has not been completed. Petitioners further state that the pipelines are unable to determine with certainty when the project will be placed in service; therefore, NENG has pursued other gas supply and capacity options. Petitioners state that, after consulting with Algonquin and Maritimes, NENG intends to assign the Atlantic Bridge Project precedent agreement and the two firm transportation service agreements to Boston Gas prior to the commencement of the Atlantic Bridge Project.²

4. Petitioners state that they have contacted and consulted with Algonquin and Maritimes. They are authorized to represent that neither of the interstate pipelines oppose this petition.

5. Petitioners state the Commission has held that an assignment of a transportation service agreement prior to the in-service date of a pipeline and after the issuance of a certificate requires Commission approval and is subject to the Commission's capacity release rules. Given that the Atlantic Bridge Project requires new facilities that are under construction and not yet in service, Petitioners state that it is not possible to effectuate the assignment and capacity releases pursuant to the pipeline's tariffs or capacity release websites. Petitioners further state that to effectuate a release of capacity on LINK©, which is used by both pipelines, an agreement must be activated. However, according to the Petitioners, the transportation service agreements at issue here cannot be activated at this time because (i) the Atlantic Bridge Project facilities have not been completed;

¹ Petition at 3 n1 (citing *Algonquin Gas Transmission, LLC*, 158 FERC ¶ 61,061 (2017)).

² Petitioners state that Boston Gas's agreement for the term beginning November 1, 2020, is predicated on receipt of approval by the Massachusetts Department of Public Utilities. They state that, in order to effectuate such regulatory approval, the replacement service agreements will be broken into a one-year contract and a 14-year contract reflecting this condition precedent. Additionally, Petitioners state that Boston Gas and Maritimes will agree to terminate the Maritimes service agreement contemporaneous with the assignment. *See* Petition at 4 n2.

(ii) the project costs, and therefore the maximum recourse rates, are unknown; and
(iii) the in-service date is unknown, so the contract term is not determinable.

6. Therefore, to facilitate the permanent release of capacity, Petitioners seek temporary waiver of the Commission's capacity release regulations set forth in section 284.8 of the Commission's regulations, including the posting and bidding requirements set forth in sections 284.8(d) and 284.8(e) of the Commission's regulations.³ In addition, to the extent necessary, Petitioners seek waiver of any other regulation the Commission deems necessary to permit the proposed capacity release transaction to occur. Specifically, Petitioners request waiver of the Commission's (a) prohibition in sections 284.8(b)(2)⁴ and 284.8(h)(1)(iii) of the Commission's regulations⁵ against charging replacement shippers a rate that exceeds the applicable maximum rate; (b) shipper-must-have-title rule; (c) prohibition against tying arrangements to permit the capacity to be permanently released; and (d) prohibition against buy-sell arrangements. Petitioners also request waiver of the capacity release tariff provisions of Algonquin and Maritimes and, to the extent necessary, any other necessary tariff provision.

7. Finally, Petitioners request that the Commission issue an order by October 20, 2019, to enable the capacity release to take place effective November 1, 2019. Petitioners ask that the requested waiver remain in effect until the earlier of 120 days from the date of the Commission's order or the date the capacity release transaction is complete.

8. Public notice of the filing was issued September 24, 2019. Interventions and protests were due on or before September 27, 2019. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁶ all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance of this order are granted. Granting late interventions at this stage of the proceeding will not disrupt the

³ 18 C.F.R. §§ 284.8(d), 284.8(e) (2019). Petitioners state that because the service agreements at issue are not active agreements it is not possible to post the capacity release as required by the Commission's rules and regulations or the pipelines' tariff provisions. Petition at 7.

⁴ 18 C.F.R. § 284.8(b)(2) (2019) of the Commission's regulations provides that capacity releases of more than one year may not exceed the applicable maximum rate.

⁵ 18 C.F.R. §§ 284.8(b)(2), 284.8(h)(1)(iii) (2019).

⁶ 18 C.F.R. § 385.214 (2019).

proceeding or place additional burdens on existing parties. No party filed a protest or adverse comments. The request for waiver is therefore uncontested.

9. NENG, Algonquin, and Maritimes have all agreed to assign the precedent agreement, firm capacity, and transportation service agreements to Boston Gas prior to the commencement of service on the Atlantic Bridge Project. Petitioners state the grant of temporary waiver will only be used for the limited purpose of consummating the transfer of the capacity under the transportation service agreements and that waiver of both the Commission's regulations and the tariff provisions of the pipelines is necessary to complete the subject transaction. Petitioners add that transferring the firm capacity of Algonquin and Maritimes to Boston Gas is necessary for Boston Gas to maintain service to its firm gas distribution customers in the coming years. Further, Petitioners state, the Atlantic Bridge Project will benefit Boston Gas by providing additional options to cost effective supply sources.

10. For good cause shown, the Commission grants Petitioners' request for temporary, limited waiver of the Commission's capacity release regulations. The Commission only requires a pipeline to allow a permanent capacity release where the pipeline will be financially indifferent to the release.⁷ Further, the Commission has granted requests for waiver of the capacity release regulations in order to permit the use of permanent releases to transfer a service agreement with negotiated rates that the releasing shipper no longer needs to a shipper that does need it.⁸

11. Here the Commission finds that the grant of temporary waiver will only be used for the limited purpose of consummating the transfer of the capacity from NENG to Boston Gas. Further, all parties (the releasing shipper, the replacement shipper, and the pipelines) agree to the transaction and no other shipper has protested NENG's choice of Boston Gas as its replacement shipper as unduly discriminatory.

12. The Commission has reviewed the Petitioners' request for waiver and finds that the request is adequately supported and consistent with previous waivers the Commission has granted to permit the release of capacity under similar circumstances.⁹ In these cases,

⁷ *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082, at P 14 (2009).

⁸ *Transcontinental Gas Pipe Line Corp.*, 126 FERC ¶ 61,086, at P 7 (2009); *Transcontinental Gas Pipe Line Company, LLC*, 133 FERC ¶ 61,242 (2010); *Transcontinental Gas Pipe Line Company, LLC*, 134 FERC ¶ 61,184, at P 6 (2011).

⁹ See *USG Properties Marcellus Holdings, LLC*, 166 FERC ¶ 61,111 (2019); *Columbia Gas Transmission, LLC*, 157 FERC ¶ 61,006 (2016); *Chief Oil & Gas Company LLC*, 162 FERC ¶ 61,284 (2018); and *MMGS, Inc.*, 154 FERC ¶ 61,018 (2016).

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, including when a pipeline is not yet in service.¹⁰ In addition, the Commission finds that Petitioners have provided the information required for granting such waiver, including (a) the identification for the regulations and policies for which waiver is sought; (b) identification of the pipeline service agreements and capacity to be transferred; (c) the description of the overall transaction and its claimed benefit, with sufficient detail to permit the Commission and other interested parties to determine whether granting the requested waiver is in the public interest;¹¹ and (d) filing the petition as much in advance of the requested date as possible.

13. Accordingly, for good cause shown, we grant temporary and limited waiver of the Commission's capacity release regulations and certain other Commission policies as necessary. This grant of waiver is to remain in effect until the earlier of 120 days from the date of this order or the date the capacity release transactions and assignments are complete.

14. In addition, we grant waiver of the related capacity release tariff provisions of Algonquin and Maritimes and any other necessary tariff provisions, to the extent necessary, to facilitate the capacity release transaction. Granting this request for waiver will allow Petitioners to effectuate the assignment and permanent release of firm transportation capacity under the agreement from NENG to Boston Gas.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹⁰ See *MMGS, Inc.*, 154 FERC ¶ 61,018 at P 8.

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).