

169 FERC ¶ 61,077
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

October 29, 2019

In Reply Refer To:
Peninsula Energy Services Company, Inc.
NJR Energy Services Company
Docket No. RP20-46-000

Peninsula Energy Services Company, Inc.
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NJR Energy Services Company
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Attention: Jennifer Brough, Counsel
William P. Scharfenberg, Counsel

Dear Ms. Brough and Mr. Scharfenberg:

1. On October 7, 2019, Peninsula Energy Services Company, Inc. (PESCO) and NJR Energy Services Company (NJRES) (jointly, Petitioners) filed a joint petition requesting limited temporary waiver of the Commission's capacity release regulations and policies, and the applicable capacity release tariff provisions of Tennessee Gas Pipeline Company, L.L.C.'s (Tennessee) FERC Gas Tariff.¹ Petitioners state that they seek the waivers in order to facilitate the assignment and permanent release of capacity under firm natural gas transportation service agreements as part of a series of transactions involving the sale of assets from PESCO to NJRES.² Petitioners further state that they anticipate the transaction to close on or about November 1, 2019, and thus request that the Commission grant the requested waivers on or before October 30, 2019. Petitioners also request that the waivers remain in effect until 60 days following the transaction closing date to allow

¹ Petition at 1.

² *Id.*

adequate time to fully consummate the transaction.³ Petitioners also request a shortened comment period of seven days and expedited treatment of the request. As discussed below, and for good cause shown, the Commission grants the requested temporary waivers to remain in effect for 60 days from the earlier of November 1, 2019, or the date the transaction closes.

2. Petitioners state that the sale of assets by PESCO to NJRES is pursuant to an assignment and assumption agreement executed by and between PESCO and NJRES dated September 10, 2019 (Agreement).⁴ According to the Petitioners, the Agreement is one of a series of transactions whereby PESCO is selling its business assets and exiting the natural gas marketing business.⁵ Petitioners explain that PESCO is a party to three firm interstate negotiated rate transportation service agreements with Tennessee, and under the Agreement, PESCO will transfer these agreements to NJRES.⁶ According to Petitioners, upon consummation of PESCO's sale of assets to NJRES, NJRES intends to use the capacity under these agreements for the primary purpose of marketing natural gas, just as PESCO currently uses the capacity.⁷ Petitioners also state that they have shared a copy of the Petition with Tennessee, and subject to NJRES' satisfaction of its creditworthiness requirements, Tennessee does not oppose the permanent assignment of the capacity.⁸ Furthermore, the Petitioners state that Tennessee indicated that Tennessee will file with the Commission the negotiated rate agreements that it executes with NJRES.⁹ Petitioners submit that the requested waivers are similar to waivers previously

³ *Id.* at 2-3.

⁴ *Id.* at 2.

⁵ *Id.* at 4. (Petitioners state that PESCO's Florida retail operations will be sold in phased transactions projected to close in late 2019 and early 2020, and that PESCO's other non-Florida retail operations and contracts will be sold in a separate transaction to be finalized by December 31, 2019. Petitioners further state that PESCO's Mid-Atlantic wholesale contracts are being sold to NJRES in an integrated series of transactions. Petitioners state that, in the instant petition, they are seeking the requested waivers as they pertain to the three firm interstate negotiated rate transportation service agreements with Tennessee.)

⁶ *Id.*

⁷ *Id.* at 5.

⁸ *Id.* at 3.

⁹ *Id.* at 7, n.8.

granted by the Commission permitting the release of capacity under similar circumstances.¹⁰

3. To facilitate the permanent release of capacity, Petitioners request waiver of certain Commission regulations and policies, as well as any other waivers or authorizations deemed necessary. Petitioners request that the waivers become effective upon issuance of the instant order and continue until 60 days following the transaction closing date. Specifically, Petitioners request waiver of the capacity release regulations set forth in section 284.8 of the Commission's regulations, including the posting and bidding requirements; the applicable maximum rate provisions; the shipper-must-have-title rule; the prohibition against tying arrangements to permit the capacity to be permanently released; and the prohibition against buy/sell arrangements.¹¹ Petitioners also request that the Commission waive Article VI, section 1 of the General Terms and Conditions of Tennessee's tariff that governs the release of firm capacity.

4. Petitioners identify the pipeline capacity to be released to NJRES under the three existing firm transportation agreements with Tennessee,¹² and note that granting of the waivers will permit the transaction to proceed in an orderly and efficient fashion.¹³ Moreover, they note that the temporary waivers will only be used for the limited purpose of consummating the transfer of capacity identified which will allow for continued use of the capacity to deliver natural gas production to the market.¹⁴ They further assert that the conveyance of PESCO's interstate pipeline capacity is an integral part of the integrated transaction between PESCO and NJRES, and cannot be removed or disaggregated from

¹⁰ *Id.* at 10 and n.13 (citing, *e.g.*, *Pivotal Utility Holdings, Inc.*, 162 FERC ¶ 61,286 (2018) (granting waivers for the "purpose of facilitating a pending asset sale, wherein Pivotal will transfer substantially all of its assets to ETG and exit the natural gas business."); *Shell Energy North America (US), L.P.*, 155 FERC ¶ 61,032 (2016) (granting waivers in connection with BG Energy's exit from the wholesale natural gas marketing business)).

¹¹ 18 C.F.R. § 284.8 (2019).

¹² Petition at 7-8.

¹³ *Id.* at 8.

¹⁴ *Id.*

the overall transaction and be separately posted for bidding, and that the waivers are necessary to complete this transaction.¹⁵

5. Petitioners also contend that granting waiver of the Commission's prohibition of tying arrangements will allow PESCO to permanently release capacity to NJRES in an orderly manner and serve the public interest by allowing a critical fuel source to be marketed in various market centers.¹⁶ Additionally, Petitioners request waiver of the rules and regulations pertaining to shipper-must-have title and prohibition against buy-sell arrangements to ensure that, while the transportation capacity under the Agreement is being transferred to NJRES along with the other legal responsibilities and obligations required under the Agreement, there will be no violations of the pertinent Commission rules and regulations.¹⁷

6. Further, Petitioners maintain that they seek waiver of the rules and regulations associated with bidding and posting to ensure that there are no violations concerning the bidding and posting of the capacity, including maximum rate ceiling limitations. Petitioners state that, in light of the fact that the capacity is tied to the purchase and sale of the assets made subject of the Agreement, the consideration for the release includes the assumption of NJRES' rights and obligations therein.¹⁸ Thus, according to the Petitioners, to the extent that such consideration can be deemed to be compensation that would cause the release to be greater than the maximum recourse rate, the Petitioners seek waiver of section 284.8(b)(2),¹⁹ prohibiting the payment of rates in excess of the maximum rate.²⁰

7. Finally, Petitioners request that the Commission grant waiver of any other rules and regulations that it may deem necessary or appropriate to permit the release of capacity provided for under the Agreement.²¹

¹⁵ *Id.* at 9.

¹⁶ *Id.* at 10.

¹⁷ *Id.*

¹⁸ *Id.* at 11.

¹⁹ 18 C.F.R. §284.8(b)(2).

²⁰ Petition at 11.

²¹ *Id.*

8. Notice of the Petition was issued on October 8, 2019, and Petitioners' request for a shortened comment period was granted. Interventions and protests were due on or before October 15, 2019. Pursuant to Rule 214,²² 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 adverse comments or protests were filed.

9. We have reviewed the Petitioners' request for temporary waivers and find 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.²³ Specifically, we find that Petitioners have provided the information required for approval of such waivers, which includes (a) identification of the regulations and policies for which waiver is sought; (b) identification of the pipeline service agreement 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.²⁴

10. Accordingly, for good cause shown, we grant Petitioners' request for temporary, limited waiver of the Commission's capacity release regulations and policies, including the posting and bidding requirements, maximum rate provisions, shipper-must-have-title requirements, and the prohibition against buy/sell and tying arrangements. We also grant the requested waiver of the applicable capacity release tariff provisions of Tennessee's tariff. We grant these waivers to remain in effect for 60 days from the earlier of November 1, 2019, or the date the transaction closes, and only to the extent necessary to

²² 18 C.F.R. § 385.214 (2019).

²³ See, e.g., *Anadarko Energy Services Co.*, 169 FERC ¶ 61,006 (2019); *Black Hill Gas Distribution, LLC*, 168 FERC ¶ 61,218 (2019); *HG Energy II Appalachia, LLC*, 167 FERC ¶ 61,100 (2019); *GenOn Wholesale Generation, LP*, 167 FERC ¶ 61,113 (2019); *Encana Marketing (USA) Inc.*, 166 FERC ¶ 61,185 (2019).

²⁴ *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). While we are granting the Petitioners' request for expedited action here, we remind parties that in the future they should file at least 30 days in advance of their requested order date to allow the Commission time to properly process waiver requests.

facilitate the described transaction. Granting these waivers will allow the Petitioners an orderly and efficient transfer of ownership of assets.

By direction of the Commission.

Kimberly D. Bose,
Secretary.