

169 FERC ¶ 61,153  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

November 25, 2019

In Reply Refer To:  
Peninsula Energy Services Company, Inc.  
United Energy Trading, LLC  
Docket No. RP20-95-000

Peninsula Energy Services Company, Inc.  
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United Energy Trading, LLC  
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Attention: Jennifer Brough, Counsel  
Kenneth B. Thomson, Vice President of Operations and General  
Counsel

Dear Ms. Brough and Mr. Thomson:

1. On October 25, 2019, Peninsula Energy Services Company, Inc. (PESCO) and United Energy Trading, LLC (UET) (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 Eastern Shore Natural Gas Company (Eastern Shore), Dominion Energy Transmission, Inc. (DETI) and Transcontinental Gas Pipe Line Company, LLC (Transco) that implement the Commission's capacity release regulations and policies.<sup>1</sup> 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

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<sup>1</sup> Petition at 1-2.

involving the sale of assets from PESCO to UET.<sup>2</sup> Petitioners further state that they anticipate the transaction to close on or about December 1, 2019, and thus request that the Commission grant the requested waivers on or before November 25, 2019. Petitioners also request that the waivers remain in effect until 60 days following the transaction closing date to allow adequate time to fully consummate the transaction.<sup>3</sup> Petitioners 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 the issuance date of this order, or the date the transaction closes.

2. Petitioners state that the sale of assets by PESCO to UET is pursuant to an asset purchase agreement executed by and between PESCO and UET dated September 13, 2019 (Agreement).<sup>4</sup> According to Petitioners, the Agreement is one of a series of transactions whereby PESCO is selling its business assets and exiting the natural gas business.<sup>5</sup> Petitioners explain that PESCO is a party to two firm interstate transportation service agreements with DETI, one firm interstate transportation agreement with Transco resulting from a temporary capacity release transaction, and two firm transportation service agreements with Eastern Shore, one of which results from a temporary capacity release.<sup>6</sup> According to Petitioners, upon consummation of PESCO's sale of assets to UET, UET intends to use the capacity under the transportation service agreements for the primary purpose of marketing natural gas, just as PESCO currently uses the capacity.<sup>7</sup> Petitioners also state that they shared a copy of the Petition with DETI, Transco, and

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 2-3.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *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 is selling its other non-Florida retail operations and contracts to UET under the Agreement. Petitioners further state that PESCO is in the process of selling its producer services portfolio and is targeting to close the transaction by the end of 2019. Further, Petitioners state that PESCO is selling its Mid-Atlantic wholesale contracts to NJR Energy Services Company in an integrated series of transactions as described in the Petition for Waiver filed in Docket No. RP20-46-000, which was granted by the Commission (*Peninsula Energy Services Company, Inc.*, 169 FERC ¶ 61,077 (2019)).

<sup>6</sup> *Id.* at 4-5.

<sup>7</sup> *Id.* at 5.

Eastern Shore and subject to UET's satisfaction of creditworthiness requirements, DETI, Transco, and Eastern Shore do not oppose the permanent assignment of the capacity that is the subject of this Petition.<sup>8</sup> Petitioners submit that the Commission has granted similar waivers of its capacity release rules and policies in the context of the transfer of assets to enable a party to exit the natural gas marketing business.<sup>9</sup>

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.<sup>10</sup> Petitioners request the Commission grant temporary waiver of the General Terms and Conditions of DETI's, Transco's, and Eastern Shore's FERC Gas tariffs to facilitate the release of the capacity.

4. Petitioners identify the pipeline capacity to be released to UET under the five existing firm transportation agreements with DETI, Transco, and Eastern Shore,<sup>11</sup> and note that granting of the waiver will permit the transaction to proceed in an orderly and efficient fashion.<sup>12</sup> Moreover, Petitioners note that the temporary waiver 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

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<sup>8</sup> *Id.* at 3.

<sup>9</sup> *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 [Utility Holdings, Inc.] will transfer substantially all of its assets...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 Merchants, LLC's exit from the wholesale natural gas marketing business)).

<sup>10</sup> 18 C.F.R. § 284.8 (2019).

<sup>11</sup> Petition at 8.

<sup>12</sup> *Id.*

market.<sup>13</sup> Petitioners further assert that the conveyance of PESCO's interstate pipeline capacity is an integral part of the integrated transaction between PESCO and UET that cannot be removed or disaggregated from the overall transaction and be separately posted for bidding, and that the waivers are necessary to complete this transaction.<sup>14</sup>

5. Petitioners contend that granting waiver of the Commission's prohibition of tying arrangements will allow PESCO to permanently release capacity to UET in an orderly manner and serve the public interest by allowing a critical fuel source to be marketed in various market centers.<sup>15</sup> Additionally, Petitioners state that their request for waiver of the rules and regulations pertaining to shipper-must-have title and the prohibition against buy/sell arrangements will ensure that, while the transportation capacity under the Agreement is being transferred to UET along with the other legal responsibilities and obligations required under the Agreement, there will be no violations of the pertinent Commission rules and regulations.<sup>16</sup>

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 that are the subject of the Agreement, the consideration for the release includes the assumption of UET's rights and obligations therein.<sup>17</sup> Thus, according to 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, Petitioners seek waiver of section 284.8(b)(2) of the Commission's regulations,<sup>18</sup> prohibiting the payment of rates in excess of the maximum rate.<sup>19</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 9-10.

<sup>15</sup> *Id.* at 10.

<sup>16</sup> *Id.* at 11.

<sup>17</sup> *Id.* at 11.

<sup>18</sup> 18 C.F.R. §284.8(b)(2).

<sup>19</sup> Petition at 11.

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.<sup>20</sup>

8. Notice of the Petition was issued on October 28, 2019, and Petitioners' request for a shortened comment period was granted. Interventions and protests were due on or before November 4, 2019. Pursuant to Rule 214,<sup>21</sup> 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 reviewed 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.<sup>22</sup> Specifically, we find that Petitioners 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.<sup>23</sup>

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

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<sup>20</sup> *Id* at 12.

<sup>21</sup> 18 C.F.R. § 385.214 (2019).

<sup>22</sup> *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).

<sup>23</sup> *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 Petitioners' request for expedited action here, we remind Petitioners 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.

the requested waiver of the applicable capacity release tariff provisions of DETI's, Transco's, and Eastern Shore's FERC Gas tariffs. We grant these waivers to remain in effect for 60 days from the earlier of the issuance date of this order, or the date the transaction closes, and only to the extent necessary to facilitate the described transaction. Granting the requested waiver will allow Petitioners an orderly and efficient transfer of ownership of assets.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.