

169 FERC ¶ 61,245
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 23, 2019

In Reply Refer To:
Peninsula Energy Services Company, Inc.
Aspire Energy of Ohio, LLC
Docket No. RP20-240-000

Peninsula Energy Services Company, Inc.
Locke Lord LLP
701 8th Street, NW
Suite 700
Washington, DC 20001

Aspire Energy of Ohio, LLC
300 Tracy Bridge Road
Orville, OH 44667

Attention: Jennifer Brough, Counsel
Douglas Ward, Vice President

Dear Ms. Brough and Mr. Ward:

1. On November 21, 2019, Peninsula Energy Services Company, Inc. (PESCO) and Aspire Energy of Ohio, LLC (Aspire Energy) (jointly, Petitioners) filed a joint petition (Petition) requesting temporary, limited waiver of the Commission's capacity release regulations and policies, and the applicable capacity release tariff provisions of Columbia Gas Transmission, LLC (Columbia) that implement the Commission's capacity release regulations and policies. Petitioners state that they are seeking waiver to facilitate the assignment and release of capacity under four firm natural gas transportation service agreements as part of a series of transactions involving the sale of assets from PESCO to Aspire Energy, which will ultimately result in PESCO exiting the natural gas business.¹ As discussed below, and for good cause shown, the Commission grants the requested temporary waiver effective the date of the issuance of this order, to remain in effect for 60 days from the anticipated transaction completion date of January 1, 2020.

¹ Petition at 1-2.

2. Petitioners state that the sale of assets by PESCO to Aspire Energy is pursuant to an agreement executed by and between PESCO and Aspire Energy dated November 14, 2019 (Agreement).² 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.³ Petitioners state that PESCO's four firm interstate transportation service agreements with Columbia total 5,450 dekatherms per day. Petitioners further state that upon consummation of the sale, Aspire Energy 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.⁴ 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.⁵

3. To facilitate the permanent release of capacity, Petitioners request waiver of certain Commission regulations and policies, as well as any other waiver or authorizations deemed necessary. Petitioners request that the waiver become effective upon issuance of the instant order and continue until 60 days following the transaction's anticipated closing date of January 1, 2020. Specifically, Petitioners request waiver of the capacity release regulations set forth in section 284.8 of the Commission's

² *Id.* at 2.

³ *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 as well as its Mid-Atlantic wholesale contracts in separate transactions. Petitioners state that PESCO is selling its non-Florida retail operations and contracts to United Energy Trading, LLC as described in the Petition for Waiver filed in Docket No. RP20-95-000, which was granted by the Commission (*Peninsula Energy Services Company, Inc.*, 169 FERC ¶ 61,153 (2019)). Furthermore, 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)).

⁴ *Id.* at 4-5.

⁵ *Id.* at 9 and n.11 (citing *Pivotal Utility Holdings, Inc.*, 162 FERC ¶ 61,286 (2018) (granting waiver for the "purpose of facilitating a pending asset sale, wherein Pivotal 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 waiver in connection with BG Energy Merchants, LLC's exit from the wholesale natural gas marketing business)).

regulations, which includes the posting and bidding requirements as well as the maximum rate ceiling provisions. Petitioners also request waiver of the Commission's: (a) shipper-must-have-title rule; (b) prohibition against tying arrangements to permit the capacity to be permanently released; and (c) prohibition against buy/sell arrangements.⁶ Petitioners also request that the Commission waive the capacity release and assignment provisions set forth in Section 14.1 of the General Terms and Conditions of Columbia's FERC gas tariff to facilitate the release of firm capacity.

4. Further, Petitioners state that waiver of the rules and regulations associated with bidding and posting is necessary to ensure that there are no violations concerning the bidding and posting of the capacity, including maximum rate ceiling limitations. Petitioners state that, because 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 Aspire Energy's rights and obligations therein. 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, prohibiting the payment of rates in excess of the maximum rate.⁷

5. Petitioners identify the pipeline capacity to be released to Aspire Energy under the four existing firm transportation agreements with Columbia and note that granting the waiver will permit the transaction to proceed in an orderly and efficient fashion. 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 market. Petitioners assert that the conveyance of PESCO's interstate pipeline capacity is an integral part of the integrated transaction between PESCO and Aspire Energy 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.⁸ Petitioners state they anticipate the transaction will close on or about January 1, 2020, and therefore request that the Commission grant the requested waiver no later than December 27, 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.⁹

⁶ 18 C.F.R. § 284.8 (2019).

⁷ Petition at 10.

⁸ *Id.* at 7-8.

⁹ *Id.* at 2-3.

6. Public notice of the filing was issued on November 25, 2019. Interventions and protests were due on or before November 29, 2019. Pursuant to Rule 214,¹⁰ 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. The request for waiver is therefore uncontested.

7. We have reviewed Petitioners' request for temporary waiver 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.¹¹ 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.¹²

8. Accordingly, for good cause shown, we grant Petitioners' request for temporary, limited waiver of the Commission's capacity release regulations, including the posting and bidding requirements and maximum rate provisions, as well as the Commission's policies on the prohibition against tying, buy/sell arrangements and the shipper-must-have-title rule. We also grant the requested waiver of the applicable capacity release tariff provisions of Columbia's FERC gas tariff. We grant these waivers effective the date of the issuance of this order, to remain in effect for 60 days from the anticipated transaction completion date of January 1, 2020 and only to the extent necessary to

¹⁰ 18 C.F.R. § 385.214 (2019).

¹¹ 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).

¹² *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).

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

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.