

170 FERC ¶ 61,190
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

March 12, 2020

In Reply Refer To:
Saavi Energy Solutions, LLC
Sempra Gas & Power Marketing, LLC
Docket No. RP20-513-000

Saavi Energy Solutions, LLC
King & Spalding LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006

Sempra Gas & Power Marketing, LLC
488 8th Avenue
San Diego, CA 92101

Attention: James F. Bowe, Jr., Counsel
Saavi Energy Solutions, LLC

Jerrold L. Harrison, Counsel
Sempra Gas & Power Marketing, LLC

Re: Temporary Waiver of Capacity Release Regulations
and Related Tariff Provisions

Dear Messrs. Bowe and Harrison:

1. On February 10, 2020, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,¹ Saavi Energy Solutions, LLC (Saavi) and Sempra Gas & Power Marketing, LLC (Sempra) (collectively, Petitioners) filed a joint petition requesting temporary and limited waivers of certain regulations and policies governing the release of interstate natural gas pipeline capacity and related capacity release provisions of El Paso Natural Gas Company, L.L.C.'s (El Paso) FERC Gas Tariff (Tariff). For the reasons discussed below and for good cause shown, we grant Petitioners' requested temporary and limited waivers, as described below.

¹ 18 C.F.R. § 385.207 (2019).

2. Petitioners have entered into an agreement that contemplates the permanent release by Saavi to Sempra of certain pipeline capacity defined in El Paso Contract No. 611596, a long-term firm natural gas transportation service agreement (TSA) between Saavi and El Paso (Release Transaction). In order to complete the contemplated Release Transaction at the negotiated rate specified in Saavi's TSA, Petitioners seek a waiver of the Commission's capacity release regulations and policies, as well as related provisions of El Paso's Tariff, for a period commencing with the issuance date of this order and continuing for a period of 90 days following the close of the Release Transaction.

3. Petitioners specifically request temporary waiver of: (1) the Commission's capacity release rules requiring that capacity releases be posted for bidding and the generally applicable limitation that pricing of long-term released capacity shall not exceed the maximum applicable tariff rate;² (2) tariff provisions related to the Commission's capacity release rules and policies requiring that capacity releases be posted for bidding and the generally applicable limitation that the pricing of long-term capacity may not exceed the maximum applicable tariff rate; and (3) tariff provisions that contemplate that permanent releases of capacity specify uniform monthly quantities throughout the release term.³

4. Petitioners state that the capacity to be released will be 50,000 dekatherms (Dth) per day starting with the proposed April 1, 2020 effective date. Petitioners note that the proposed release would specify different combinations of primary receipt and delivery points, which would vary monthly.

5. Petitioners state that Contract No. 611596 originally specified a year-round transportation contract demand of 160,000 Dth per day from receipt points in Texas and New Mexico to delivery points at or in the vicinity of the California border and in Texas. Petitioners state that the negotiated rate agreement specifies a fixed reservation rate of \$12.5875 per Dth per month (Negotiated Rate), which was equivalent to El Paso's applicable Rate Schedule FT-1 maximum recourse rate at the time the parties entered into Contract No. 611596; however, due to a January 1, 2019 decrease in El Paso's rates, the Negotiated Rate now exceeds the relevant recourse rate. Petitioners state that Contract No. 611596 also includes a non-conforming rate provision as part of the Negotiated Rate, which applies the Negotiated Rate to any primary capacity that Saavi successfully re-designates pursuant to the Tariff to another point.⁴ Petitioners state that

² 18 C.F.R. § 284.8 (2019).

³ Transmittal at 6.

⁴ *Id.* at 4 & n.5. Petitioners state that the non-conforming provision in Note 1A of Exhibit B provides that Saavi may re-designate any of its existing primary points to any

the Commission has accepted Contract No. 611596 as both a negotiated rate agreement and a non-conforming agreement.⁵ Petitioners maintain that the release of the Contract No. 611596 capacity at the Negotiated Rate specified in Saavi's El Paso agreement is necessary to ensure that El Paso will be financially indifferent to the permanent release.⁶ Further, Petitioners state that El Paso does not oppose the instant waiver request or the proposed permanent release.

6. Because the Contract No. 611596 Negotiated Rate in the future could either exceed or fall below the relevant maximum recourse rate, Petitioners state that the requested waivers are necessary to ensure that the reservation rate specified in Sempra's TSA with El Paso following consummation of the Release Transaction will reflect the Negotiated Rate established in Contract No. 611596. Petitioners assert that these waivers address the possibility that El Paso's applicable maximum rate might change before Petitioners implement the release or during the term of the release.⁷

7. Petitioners also request waiver of GT&C Sections 9.3(b), 9.4, 9.8, and 9.10 of El Paso's Tariff, which contemplate that permanent releases of capacity specify uniform monthly quantities throughout the release term. Petitioners state that allowing the temporary and limited waivers requested here is in the public interest because they will allow Petitioners to complete the release of a portion of Contract No. 611596 capacity to Sempra permanently and in an efficient manner.

8. Petitioners further seek: (1) reconfirmation of the Commission's previous acceptance of the non-conforming rate provision applying the Negotiated Rate to re-

non-incrementally priced point in accordance with Section 8.1 (f)(iii) of the General Terms and Conditions (GT&C) of El Paso's Tariff, at the contract Negotiated Rate.

⁵ *El Paso Natural Gas Co., L.L.C.*, Docket No. RP19-23-000 (Oct. 18, 2018) (delegated order).

⁶ Transmittal at 7 & n.13 (citing *Algonquin Gas Transmission, LLC*, 112 FERC ¶ 61,262 (2005), *order on reh'g*, 114 FERC ¶ 61,149 (2006); *Transcontinental Gas Pipe Line Co., LLC*, 134 FERC ¶ 61,184, at P 6 (2011)).

⁷ Petitioners note that if El Paso's Rate Schedule FT-1 recourse reservation rate were to increase before the Release Transaction is implemented, the Negotiated Rate could be below the applicable recourse rate and Petitioners would need a waiver of the requirement that releases at less than the maximum applicable rate be posted for bidding. Similarly, if El Paso's recourse rate were to remain at its current level, decrease, or increase to a level still below the Negotiated Rate before the Release Transaction is implemented, Petitioners would need a waiver of the maximum rate ceiling applicable to long-term releases. *Id.* at 7 & n.14 (citing 18 C.F.R. § 284.8(b)(2)).

designated primary points in Contract No. 611596 to provide the necessary certainty to Petitioners regarding their pre-arranged deal;⁸ and (2) any waivers that the Commission may deem necessary to allow the release to include the Contract No. 611596 contractual right of first refusal. Petitioners claim that granting the requested waivers would be consistent with the Commission's decisions in numerous cases in which it has granted similar waivers of capacity release rules and related tariff provisions.⁹

9. Petitioners request that the Commission grant the requested waivers on or before March 13, 2020.

10. Public notice of the petition was issued on February 12, 2020. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹⁰ Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹¹ all timely filed motions to intervene and any unopposed motions 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.

11. We have reviewed the petition and find that the limited and temporary waiver requests are adequately supported and consistent with previous waiver requests that the Commission has granted to permit the release of capacity under similar circumstances.¹² In addition, we find that Petitioners have appropriately provided the information required for approval of such waivers by: (1) identifying the regulations and policies for which waiver is sought; (2) identifying the pipeline service agreements and capacity to be transferred; (3) describing the overall transaction and its claimed benefits, with sufficient

⁸ *Id.* at 8 & n. 15 (citing *Saavi Energy Solutions, LLC*, 169 FERC ¶ 61,017, at P13 (2019); *Saavi Energy Solutions, LLC*, 167 FERC ¶ 61,092, at P 21 (2019); *Mitsui & Co. Energy Marketing and Servs. (USA) Inc.*, 158 FERC ¶ 61,104 (2017); *NJR Energy Servs. Co.*, 160 FERC ¶ 61,032 (2017)).

⁹ *Id.* at 8 & n.16 (citing *Anadarko Energy Servs. Co.*, 166 FERC ¶ 61,109 (2019); *Eco-Energy, LLC*, 166 FERC ¶ 61,110 (2019); *Black Hills Utility Holdings, Inc.*, 165 FERC ¶ 61,254 (2018)).

¹⁰ 18 C.F.R. § 154.210 (2019).

¹¹ 18 C.F.R. § 385.214 (2019).

¹² *Transcontinental Gas Pipe Line Co., LLC*, 133 FERC ¶ 61,242 (2010); *Mitsui & Co. Energy Mktg. and Servs. (USA) Inc.*, 158 FERC ¶ 61,104; *CNX Gas Co. LLC*, 163 FERC ¶ 61,143 (2018); *Fla. Pub. Utils. Co.*, 160 FERC ¶ 61,143 (2017); *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082, at P 14 (2009).

detail to permit the Commission and other interested parties to determine 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.¹³ Accordingly, for good cause shown, we grant limited and temporary waiver of the capacity release regulations and policies as identified above, the maximum rate ceiling, and the bidding provisions.

12. In addition, we grant, to the extent necessary, temporary and limited waiver of the provisions set forth in the GT&C of El Paso's Tariff that implement the above policies and regulations necessary to facilitate the Release Transaction and also grant waiver, as necessary, of Sections 9.3(b), 9.4, 9.8, and 9.10 of the GT&C of El Paso's Tariff, which contemplate that permanent releases of capacity specify uniform monthly quantities throughout the release term. Granting these waivers, effective the date of this order, will allow Petitioners to implement Saavi's permanent release of the firm transportation capacity under the TSA to Sempra. These waivers shall remain effective until 90 days following the close of the Release Transaction.

13. As noted by Petitioners, the Commission previously accepted the non-conforming provisions in Contract No. 611596.¹⁴ Therefore, we confirm the continuing permissibility of the non-conforming provisions and Petitioners' understanding that the replacement TSA will contain the same contractual right of first refusal as was present in the underlying Contract No. 611596. To complete the Release Transaction, El Paso should file with the Commission to include in its Tariff the replacement contract with Sempra, and to include the replacement TSA with Sempra on the list of non-conforming agreements¹⁵ consistent with section 154.112 of the Commission's regulations.¹⁶

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹³ *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).

¹⁴ *El Paso Natural Gas Co., L.L.C.*, Docket No. RP19-23-000 (Oct. 18, 2018) (delegated order).

¹⁵ This requirement is consistent with the Commission's requirement in *WPX Energy Marketing, LLC*, 151 FERC ¶ 61,164 (2015).

¹⁶ 18 C.F.R. § 154.112(b) (2019).