

130 FERC ¶ 61,059
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 22, 2010

In Reply Refer To:
EnergyMark, LLC
Constellation NewEnergy – Gas Division, LLC
Docket No. RP10-273-000

Constellation Energy Resources
111 Market Place, Suite 500
Baltimore, MD 21202

Attention: Christopher E. Young, Senior Counsel

Reference: Request for Temporary Waiver

Dear Mr. Young:

1. On December 29, 2009, Applicants¹ filed a request for a temporary waiver of capacity release and other Commission rules, policies, and regulations² for the limited purpose of facilitating the acquisition by EnergyMark of Constellation's portfolio of New York natural gas agreements as part of EnergyMark's larger acquisition (the Transaction) of Constellation's New York assets and employees. Applicants state that the Transaction is essential to Constellation's comprehensive and orderly exit from the New York retail natural gas business. They request the waivers to be effective for three months following the Transaction's closing, which is expected to be on or about February 1, 2010. For the reasons discussed below, and for good cause shown, the Commission grants the requested temporary waivers.

¹ Applicants consist of three selling parties, Constellation NewEnergy – Gas Division, LLC, CNE Gas Supply, LLC, and CNE Gas Holdings, Inc. (collectively, Constellation), and one buying party, EnergyMark LLC (EnergyMark).

² Applicants request waiver of the shipper-must-have-title rule, the prohibitions on buy-sell arrangements and tying arrangements, bidding requirements, and restrictions on capacity releases below or above the maximum rate.

2. Applicants state that they have executed a purchase and sale agreement (PSA) and that an orderly closing of the Transaction depends upon their securing the requested waivers and keeping the package of assets together. They believe the waivers will provide the seller and buyer with flexibility to seamlessly transition the assets without disruption to customers and other counterparties receiving service and supplies under the agreements.
3. According to Applicants, the PSA contemplates that EnergyMark will be successor in rights to Constellation's duties and obligations under the applicable transportation and storage agreements, as well as numerous natural gas purchase and sale agreements. The transportation and storage agreements are intended to be transferred through permanent capacity releases, or by assignment in accordance with the transportation or storage provider's FERC Gas Tariff.
4. Applicants also state that all Constellation's New York employees will become employees of EnergyMark at the close of the Transaction. EnergyMark will also assume control of Constellation's New York office location and physical assets.
5. Public notice of Applicants' filing was issued on January 4, 2010. Interventions and protests were due January 11, 2010, as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2009). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2009), all timely motions to intervene and any 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 this proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.
6. The Commission has reviewed Applicants' request for waivers and finds that the request is adequately supported and consistent with previous waivers that the Commission has granted under similar circumstances.³ Accordingly, for good cause shown the Commission will grant the requested waivers including waivers of the shipper-must-have-title policy, the prohibitions on buy-sell arrangements and tying arrangements, and the restrictions on capacity releases below or above the maximum rate. Our actions here are consistent with those earlier decisions where the Commission granted waivers of various policies and regulations in order to facilitate the transfer of interstate pipeline transportation capacity as part of a larger transaction in which other assets are being transferred as a result of various types of corporate restructurings, including corporate mergers and sales of entire business units.

³ *E.g., Sequent Energy Management, L.P. and Integrys Energy Services, Inc.*, 129 FERC ¶ 61,188 (2009); *Macquarie Cook Energy, LLC and Constellation Energy Commodities Group, Inc.*, 126 FERC ¶ 61,160 (2009).

The Commission orders:

(A) The temporary waivers requested by Applicants are granted for three months following the closing of the Transaction, as requested.

(B) Applicants will provide notice to the Commission in this docket of the closing of the Transaction.

By direction of the Commission

Nathaniel J. Davis, Sr.,
Deputy Secretary.