

131 FERC ¶ 61,282
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 29, 2010

In Reply Refer To:
Nexen Marketing U.S.A. Inc.
J. Aron & Company
Docket No. RP10-753-000

John & Hengerer
1730 Rhode Island Avenue, NW,
Suite 600
Washington, DC 20036-3116

Attention: Douglas F. John
Attorney for Nexen Marketing U.S.A. Inc.

Reference: Request for Temporary Waiver

Ladies and Gentlemen:

1. On May 21, 2010, Nexen Marketing U.S.A. Inc. (Nexen) and J. Aron & Company (J. Aron) (collectively, the Petitioners) filed a joint petition for temporary waivers (Petition). The Petitioners seek waiver of several of the Commission's capacity release regulations and related policies, and of certain related tariff provisions of affected pipelines, in order to allow Nexen to permanently release transportation and storage service agreements to J. Aron to facilitate Nexen's exit from the natural gas marketing and trading business. The Petitioners request Commission action by June 21, 2010, and ask that the waivers remain in effect for a 120-day period from the date of the order granting the waivers. For the reasons discussed below, we grant the requested waivers.

2. The Petitioners state that Nexen, a gas marketer, plans to exit the natural gas marketing and trading business and transfer its assets related to that business to J. Aron. The assets to be transferred include firm transportation and storage service agreements, natural gas purchase and sale agreements, gas held in storage at the time of transfer, as well as books, records, and office space. The Petitioners also state that certain Nexen employees have already accepted offers of employment from J. Aron. In the Petition, and as corrected by their May 28, 2010 supplemental filing, the Petitioners identify the interstate pipelines associated with the transportation agreements to be transferred, and

list the specific contracts with each pipeline.¹ The Petitioners also identify which of those transportation contracts are under asset management arrangements and note that the transportation agreements involve service under negotiated rates, maximum rates, and discounted rates. In its supplemental filing, the Petitioners also identify the interstate pipelines and storage companies associated with the storage contracts, and list the specific storage contracts.² The Petitioners state that on May 17, 2010, they sent letters to all affected interstate pipelines informing them of the subject Petition, and that to date none have registered with Nexen any objection to the temporary waivers.

3. In order to facilitate the transfer of the transportation and storage contracts as part of the larger, integrated transaction, the Petitioners seek temporary waivers of the Commission's capacity release regulations, as well as the Commission's shipper-must-have-title policy, the prohibition on buy-sell arrangements, the prohibition on tying, the posting and bidding requirements for capacity release transactions, and the restrictions on capacity releases above or below the maximum rate. The Petitioners also request waivers of certain pipeline tariff provisions implementing these regulations and policies, to the extent the waivers are necessary to facilitate the transfer. The Petitioners assert the waivers would be temporary and would only be used for the limited purpose of consummating the referenced transaction. The Petitioners further state that the transfer of assets from Nexen to J. Aron is to become effective on the closing date of the transaction, which is scheduled for August 1, 2010, but may be pushed back if certain conditions are not met. Accordingly, the Petitioners request that the waivers remain in effect for a 120-day period from the date of the Commission order granting the requested waivers.

4. The Petitioners state that the Commission has previously granted temporary waivers of the capacity release regulations to permit parties to consummate complex

¹ The affected transportation providers are: Alliance Pipeline, L.P.; ANR Pipeline Company; Colorado Gas Interstate Company; Dominion Transmission, Inc.; Great Lakes Gas Transmission, L.P.; Iroquois Gas Transmission, LP; Kern River Gas Transmission Company; National Fuel Gas Supply Corporation; Natural Gas Pipeline Company of America, LLC; Northern Border Pipeline Company; Panhandle Eastern Pipeline Corporation; Ruby Pipeline, LLC; Gas Transmission – Northwest Corporation; Tennessee Gas Pipeline Company; Vector Pipeline, L.P.; Viking Gas Transmission Company; White River Hub, LLC; and Wyoming Interstate Company, LLC.

² The affected storage providers are: ANR Pipeline Company; ANR Storage Company; Egan Hub Storage, LLC; Central New York Oil and Gas Company, LLC, (Stagecoach Storage); Panhandle Eastern Pipeline Company; Trunkline Gas Company, LLC; National Fuel Gas Supply Corporation; and ANR Pipeline Company (non-permanent assignment to Citigroup energy).

transactions, similar to the waivers they request here.³ The Petitioners assert that granting the waivers will facilitate Nexen's orderly and efficient exit from the natural gas marketing and trading business. They add that the subject transaction qualifies for the requested waivers because the transaction goes beyond the mere transfer of transportation and/or storage capacity and involves the sale of an entire business.

5. Public notice of the filing was issued on May 25, 2010. Interventions and protests were due on or before June 2, 2010. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2010)), all timely filed motions to intervene and any 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 protests or adverse comments were filed.

6. The prearranged permanent capacity release transactions at issue are necessary to facilitate the transfer of Nexen's natural gas marketing and trading business assets to J. Aron, consistent with Nexen's interest to exit completely from the natural gas marketing and trading business. In cases involving transfers of assets other than firm transportation capacity and gas supply contracts, including the sale of entire business units, the Commission has granted waiver of the capacity release regulations and tariffs, including posting and bidding, so that the parties could consummate the transfer of an entire business unit. As the Commission has explained:

The capacity release mechanism is not suited to these types of complex, integrated deals that do not permit the disaggregation of assets. Order No. 636 adopted the capacity release program in order to permit shippers to "reallocate unneeded firm capacity" to those who need it and promote efficient load management by the pipeline and its customers. The Commission did not contemplate that the capacity release posting and bidding requirements would necessarily apply in cases of the merger or sale of entire business units as part of a corporate restructuring.⁴

³ The Petitioners cite *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009); *Sempra Energy Trading Corp.*, 121 FERC ¶ 61,005 (2007); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008); and *Barclays Bank PLC and UBS AG*, 125 FERC ¶ 61,383 (2008).

⁴ *Request for Clarification of Policy regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Businesses*, 127 FERC ¶ 61,106, at P 8 (2009), and cases cited.

7. The Commission has reviewed the Petitioners' request for a temporary waiver and finds that the request is adequately supported and consistent with previous waivers that the Commission has granted under similar circumstances. Accordingly, for good cause shown, the Commission grants the Petitioners' request for temporary waivers of the specified capacity release regulations, policies, and tariff provisions to allow the permanent release of the firm transportation and storage service agreements identified by Petitioners from Nexen to J. Aron. Specifically, the Commission grants temporary waivers of section 284.8 of its regulations requiring that long-term releases not exceed the maximum recourse rate,⁵ as well as sections 284.8(d) and (e) regarding notice and bidding of capacity releases. The Commission also grants waivers of the shipper-must-have-title requirement, and the prohibitions on buy-sell arrangements and tying of capacity releases to extraneous conditions, so that Petitioners can complete their transaction in an orderly and efficient manner.

8. The Commission also grants limited waivers of applicable tariff provisions of the affected pipelines implementing the regulations and policies for which we grant waivers above. The waivers of these tariff provisions applies only to the extent necessary to effectuate the permanent releases of capacity amounts specified in the Petition for the relevant agreements, and not for any other permanent or temporary releases. Petitioners remain obligated to comply with any other applicable provisions of the pipelines' tariffs.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: All Parties

Diane Cameron
Vice President, Regulatory
Nexen Marketing U.S.A., Inc.
801 – 7th Avenue, SW
Calgary, Alberta T2P 3P7
Canada

⁵ See 18 C.F.R. § 284.8(b)(2)(2010).

Daniel Feit
Legal Department
Goldman, Sachs & Co.
200 West Street
New York, NY 10282-2198

Kristin E. Gibbs
Michael Brooks
Sutherland Asbill & Brennan LLP
1275 Pennsylvania Avenue, NW
Washington, DC 20004-2415