

138 FERC ¶ 61,065  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

January 30, 2012

In Reply Refer To:  
Entergy Arkansas, Inc. and KGen  
Hot Springs LLC  
Docket No. RP12-79-000

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Attention: Deborah A. Carpentier  
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Attention: Andrea Weinstein  
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Reference: Temporary Waiver Request

Ladies and Gentlemen:

1. On October 31, 2011, Entergy Arkansas, Inc (EAI) and KGen Hot Springs LLC (KGen Hot Springs) (collectively, the Petitioners) filed a request for temporary waiver of certain of the Commission's capacity release regulations and policies in order to facilitate the prearranged permanent release of certain firm natural gas transportation agreements from KGen Hot Springs to EAI. The Petitioners state this release of capacity would be an essential part of a transaction by which EAI would acquire KGen Hot Springs' interests in an electric generating station and certain related assets, as discussed below. The Petitioners request the waiver become effective upon the issuance of this order, and

continue for 90 days past the closing date of the transaction.<sup>1</sup> For the reasons discussed below, and for good cause shown, we grant the requested temporary waiver.

2. The Petitioners state that pursuant to the subject transaction, EAI will acquire from KGen Hot Springs a 620-MW (summer rating) natural gas-fired electrical generation plant in Hot Springs County, Arkansas (Hot Springs Plant). As part of that acquisition, the Petitioners state, KGen Hot Springs will permanently release to EAI firm interstate natural gas transportation agreements with CenterPoint Energy Gas Transmission Company, LLC, Texas Eastern Transmission, LP and Ozark Gas Transmission, L.L.C. (Pipelines).<sup>2</sup> The Petitioners state that the transfer of these transportation agreements is essential for ensuring that the Hot Springs Plant continues to have uninterrupted access to natural gas fuel supplies.

3. In order to permit the transaction, the Petitioners seek temporary waiver of the Commission's capacity release rules set forth in section 284.8 of the Commission's regulations, as well as the prohibition on tying, the posting and bidding requirements for capacity release transactions, and to the extent necessary, the respective pipeline's tariff provisions related to the Commission's capacity release rules. The Petitioners state that they seek only a temporary waiver, limited to enabling the Petitioners to effectuate the referenced transaction. The Petitioners request that the waiver become effective upon the issuance of this order and continue until 90 days past the transaction closing date in order to allow adequate time to consummate the transaction.

4. The Petitioners state that the Commission has previously granted temporary waivers of the capacity release regulations to permit parties to consummate complex transactions involving, for example, transfers of gas-fired electric generating plants and related natural gas transportation agreements, similar to the waiver they request here.<sup>3</sup>

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<sup>1</sup> Petitioners state that they intend to close the transaction in the second quarter of 2012.

<sup>2</sup> CenterPoint Energy Gas Transmission Company, LLC FT Contract Nos. 1002755 and 1002908, Texas Eastern Transmission, LP FT-1 Contract Nos. 910756-R1 and 910757-R1 and Ozark Gas Transmission, L.L.C. FTS Contract No. 820095-R1.

<sup>3</sup> Petitioners cite, among others, *Conectiv Energy Supply, Inc.*, 132 FERC ¶ 61,247 (2010) (*Conectiv Energy*); *Nexen Marketing U.S.A. Inc. and J. Aron & Co.*, 131 FERC ¶ 61,282 (2010) (*Nexen*); *Macquarie Cook Energy, LLC and Constellation Energy Commodities Group, Inc.*, 126 FERC ¶ 61,160 (2009) (*Macquarie*); and *Barclays Bank PLC and UBS AG*, 125 FERC ¶ 61,383 (2008) (*Barclays*).

They contend that the Commission has also stated that its policy is to permit broad waiver of its capacity release requirements so that the parties can consummate the transfer of an entire business unit.<sup>4</sup>

5. Public notice of the Petitioners waiver request was issued on November 1, 2011. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.<sup>5</sup> Pursuant to Rule 214,<sup>6</sup> all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance 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 Commission has reviewed 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. The transportation contracts included in the transaction appear essential for ensuring that the Hot Springs Plant continues to have uninterrupted access to natural gas fuel supplies. Our actions here are consistent with those decisions where the Commission granted similar limited, temporary waivers in order to facilitate the transfer of interstate pipeline transportation capacity as part of a larger transfer of entire business units.<sup>7</sup>

7. Accordingly, for good cause shown, the Commission grants the Petitioners' request for a temporary waiver of the specified capacity release regulations, policies, and tariff provisions to allow the permanent release of firm transportation service agreements from KGen Hot Springs to EAI. Specifically, the Commission grants a limited, temporary waiver of section 284.8 of its regulations. The Commission also grants a limited waiver of the prohibition on tying, the posting and bidding requirements for capacity release transactions, and to the extent necessary, respective pipeline's tariff provisions related to the Commission's capacity release rules, so that Petitioners can

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<sup>4</sup> *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) (Notice Terminating Proceeding).

<sup>5</sup> 18 C.F.R. § 154.210 (2011).

<sup>6</sup> 18 C.F.R. § 385.214 (2011).

<sup>7</sup> *E.g.*, *Conectiv Energy*, 132 FERC ¶ 61,247; *Nexen*, 131 FERC ¶ 61,282; *Macquarie*, 126 FERC ¶ 61,160; and *Barclays*, 125 FERC ¶ 61,383.

complete the specified transaction in an orderly and efficient manner within their time constraints. Petitioners remain obligated to comply with any other applicable provisions of the Pipelines' tariffs.

The Commission orders:

(A) The temporary waivers requested by Petitioners are granted for 90 days following the closing of the Transaction, as discussed more fully above.

(B) Petitioners 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.