

128 FERC ¶ 61,277
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 25, 2009

In Reply Refer To:
Tidal Energy Marketing (U.S.) LLC and
Enbridge Gas Services (U.S.) Inc.
Docket No. RP09-919-000

Pierce Atwood LLP
1875 I Street, NW
Washington, DC 20006

Attention: Randall S. Rich
Attorney for Tidal Energy and Enbridge

Reference: Request for Temporary Waiver

Dear Mr. Rich:

1. On August 21, 2009, Tidal Energy Marketing (U.S.) LLC (Tidal) and Enbridge Gas Services (U.S.) Inc. (Enbridge Gas Services) (Applicants) filed a request for a temporary waiver of the Commission's capacity release regulations and related transportation policies in order to facilitate the merger of Enbridge Gas Services into its affiliate Tidal, and Tidal's assumption of Enbridge Gas Services' natural gas marketing business, including Enbridge Gas Services' portfolio of natural gas transportation, storage, purchase, and sales agreements (the Merger). Applicants state that upon closing of the Merger, Enbridge Gas Services will cease to exist and will exit the natural gas business. The Merger was originally scheduled to close on October 1, 2009, and Applicants requested action prior to that date. However, on September 10, 2009, Applicants filed a letter with the Commission stating that they were informed that the Merger will now become effective January 1, 2010. For the reasons discussed below, and for good cause shown, the Commission grants the requested waivers.

2. Public notice of the Applicants' filing was issued on August 28, 2009. Interventions and protests were due on or before September 2, 2009. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2009)), all timely filed 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 the proceeding or place additional burdens on existing parties. No protests were filed.

3. Applicants state that Enbridge Gas Services and Tidal will execute a merger agreement that, among other conditions, requires the Applicants to secure the waiver requested herein from the Commission. The Merger is a result of the planned internal restructuring of Enbridge (U.S), Inc.'s (Enbridge) energy marketing businesses in the United States. Under the Merger agreement, Tidal will succeed to Enbridge Gas Services' rights under certain firm natural gas transportation agreements with Alliance Pipeline L.P., ANR Pipeline Company, Great Lakes Transmission Limited Partnership, Northern Border Pipeline Company, and Vector Pipeline L.P., and Enbridge Gas Services (U.S.) LLC (Enbridge Gas Services U.S.), a new subsidiary of Tidal, will succeed to Enbridge Gas Services' rights under certain firm natural gas transportation agreements with ANR and Northern. Applicants state that the jurisdictional transportation agreements will be transferred from Enbridge Gas Services to Tidal and Enbridge Gas Services U.S. either by assignment under each pipeline's tariff assignment provisions, where applicable, or through permanent capacity releases. Applicants state that Enbridge Gas Services utilizes its interstate capacity to ship gas it purchases and sells under approximately 175 agreements, including approximately 125 gas sales agreements. Applicants state that Enbridge Gas Services also must assign or otherwise transfer such purchase and sale agreements, pursuant to their terms, to Tidal and Enbridge Gas Services U.S.

4. Applicants state that the timing of any assignments and capacity releases required to effectuate the Merger may not coincide with the assignment of related gas purchase and sale agreements. For example, Applicants state that Tidal may hold interstate firm capacity rights used to receive gas from suppliers that will not have agreed, at the time of closing, to assign an Enbridge Gas Services gas purchase agreement to Tidal. Applicants assert that absent the requested waiver, the misalignment of gas purchase and sales obligations and interstate gas transportation agreements could lead to the inadvertent violation of the Commission's capacity release regulations or other transportation policies such as the shipper-must-have-title policy or the prohibition against buy/sell arrangements. In addition, to the extent capacity releases may be required to transfer interstate capacity from Enbridge Gas Services to Tidal or Enbridge Gas Services U.S., the corresponding assignments of gas supply or purchase and sale agreements could be viewed by the Commission as prohibited tying arrangements.

5. Applicants submit that in light of Enbridge Gas Services' planned exit of the natural gas business and termination of operations as a result of the Merger, and Applicants' desire to consummate the Merger promptly, Enbridge Gas Services and Tidal respectfully request a temporary waiver of the Commission's capacity release regulations and related transportation policies, including, but not limited to, the shipper-must-have-title policy, the prohibition of buy/sell arrangements, and the prohibition of tying

arrangements. Applicants believe a temporary waiver will be sufficient to facilitate the timely transfer of all necessary agreements. Accordingly, consistent with similar waivers granted previously, Applicants request a waiver extending for 90 days from the date of closing of the Merger.

6. For good cause shown and to allow an orderly and rational merger, the Commission grants a waiver of the applicable Commission regulations and policies, including the shipper-must-have-title policy, the policy against buy/sell arrangements, and the prohibition of tying arrangements.¹ The waiver will be in effect for a limited transition period until 90 days after the formal closing of the Merger between Enbridge Gas Services and Tidal. Such waiver shall only be used for the limited purpose of completing the consolidation of Enbridge Gas Services' and Tidal's natural gas marketing and supply functions.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc:

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¹ See, e.g., *Bear Energy LP, J.P. Morgan Chase Ventures Energy Corp., and JPMorgan Chase Bank, N.A.*, 123 FERC ¶ 61,219 (2008).