

133 FERC ¶ 61,122
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 4, 2010

In Reply Refer To:
PPL Generation, LLC, PPL EnergyPlus,
LLC, and Harbor Gen Holdings, LLC
Docket No. RP11-37-000

King & Spalding LLP
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Attention: Charles H. Shoneman
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Reference: Temporary Waiver Request

Dear Sirs:

1. On October 5, 2010, PPL Generation, LLC (PPL Generation), PPL EnergyPlus, LLC (PPL EnergyPlus), and Harbor Gen Holdings, LLC (Gen Holdings) (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 a firm natural gas transportation agreement from PPL EnergyPlus to Gen Holdings (Petition). The Petitioners state this release of capacity would be an essential part of a transaction by which Gen Holdings would acquire a portion of PPL Generation's wholesale power generation business, 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.¹ 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, Gen Holdings will acquire from PPL Generation a 240-MW natural gas-fired facility in Wallingford, Connecticut.² As part of that acquisition, the Petitioners state, PPL EnergyPlus, PPL Corporation's energy marketing and trading subsidiary, will assign and permanently release to Gen Holdings a firm interstate natural gas transportation agreement with Algonquin Gas Transmission, LLC (Algonquin).³ The Petitioners state that the transfer of this transportation agreement is essential for ensuring that the natural-gas fired plant in Wallingford continues to have uninterrupted access to natural gas fuel supplies and that the closing of the transaction is contingent upon the transfer of the firm service agreement from PPL EnergyPlus to Gen Holdings.

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, Algonquin's tariff provisions related to the Commission's capacity release rules. The Petitioners assert the waiver would be temporary and would only be used for the limited purpose of consummating 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

¹ Petitioners state that they intend the closing date to be on or around December 1, 2010, and that they will notify the Commission of the exact date of the closing. Petition at 2 & n.2.

² In addition, Gen Holdings will acquire a 504-MW natural gas-fired facility in University Park, Illinois, and a one-third share of the capital stock in Safe Harbor Water Power Corporation, which owns a 417-MW hydroelectric station in Conestoga, Pennsylvania.

³ Algonquin AFT-1 Contract No. 510069 (Feb. 18, 2003), which has a Maximum Daily Quantity of 10,000 MMBtu per day.

related natural gas transportation agreements, similar to the waiver they request here.⁴ 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.⁵

5. Public notice of the filing was issued on October 8, 2010. Interventions and protests were due on or before October 15, 2010. Pursuant to Rule 214,⁶ 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. The affected pipeline, Algonquin, intervened but did not file comments.

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 contract included in the transaction appears essential for ensuring that the Wallingford gas-fired generator 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.⁷

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 a firm transportation service agreement from PPL EnergyPlus to Gen Holdings. Specifically, the Commission grants a limited, temporary waiver of section 284.8 of its regulations. The Commission also grants a

⁴ Petitioners cite, among others, *Conectiv Energy Supply, Inc.*, 132 FERC ¶ 61,247 (2010); *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*).

⁵ *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).

⁶ 18 C.F.R. § 385.214 (2010).

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

limited waiver of the prohibition on tying, the posting and bidding requirements for capacity release transactions, and to the extent necessary, Algonquin's tariff provisions related to the Commission's capacity release rules, so that Petitioners can complete their transaction in an orderly and efficient manner within their time constraints.

The Commission orders:

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

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

By direction of the Commission.

Kimberly D. Bose,
Secretary.