

138 FERC ¶ 61,106
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 13, 2012

In Reply Refer To:
Dogwood Energy, LLC
Missouri Joint Municipal Electric
Utility Commission
City of Independence, Missouri
Kansas Power Pool
Kansas City Board of Public Utilities
Docket No. RP12-312-000

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Attention: Deborah A. Carpentier
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Reference: Joint Petition for Temporary Waiver of Capacity Release Regulations and
Policies

Ladies and Gentlemen:

1. On January 13, 2012, Dogwood Energy LLC (Dogwood), Missouri Joint Municipal Electric Utility Commission (MJMEUC), the City of Independence, Missouri (Independence), Kansas Power Pool (KPP), and the Kansas City Board of Public Utilities (KCBPU) (collectively, the Petitioners) filed a request for temporary waivers of certain capacity release and other Commission rules, regulations, and policies, to facilitate a pre-arranged transfer of an interstate firm transportation service agreement (FTSA). The Petitioners request the waivers be effective upon the date of the issuance of a Commission order and continue for a period of ninety (90) days after the date of the final closing of the transfer of ownership interests in an electric generating facility located in Pleasant Hill, Missouri. For the reasons discussed below, and for good cause shown, the Commission grants the requested temporary waivers.

2. The Petitioners state that the request is made in connection with the proposed sale by Dogwood of undivided ownership interests in its 620-MW electric generating facility located near Pleasant Hill, Missouri, and other related assets to MJMEUC, Independence,

KPP and KCBPU (collectively, the Municipalities, or, individually, Municipality).¹ The Petitioners state that Dogwood will transfer and that each Municipality will purchase an undivided ownership interest in the generating facility, entitling each Municipality to a percentage of the facility's output depending on the percentage of the undivided interest that each acquires. Dogwood will retain approximately 38.5 percent of the undivided interest in the facility after all the transactions have closed.

3. As part of these asset transactions, the Petitioners state, Dogwood will permanently release to each Municipality a portion of its FTSA for 35,000 Dth per day of capacity with Southern Star Central Gas Pipeline, Inc. (Southern Star).² The FTSA, which became effective on September 28, 2009, has a term of 4 years and a reservation rate of \$0.137 per Dth, which is the maximum rate allowed under the tariff. The Petitioners state that the capacity of the FTSA will be permanently released to each Municipality in accordance with its pro rata share of the undivided interest.

4. To facilitate the transfer of the FTSA from Dogwood to each Municipality, the Petitioners request temporary and limited waivers of certain Commission regulations and policies. Specifically, the Petitioners seek waiver of the Commission's prohibition on tying arrangements, as well as, to the extent necessary, related capacity release rules and tariff provision of Southern Star.

5. The Petitioners request the waivers remain in effect until 90 days following the closing date of each asset transaction contemplated herein. The Petitioners state that they have discussed their joint proposal with Southern Star, and that Southern Star has expressed no opposition to the petition.³

6. The Petitioners argue that the waivers are in the public interest because they will allow the transfer of ownership interests in the electric generation facility to occur in an orderly and efficient manner. The Petitioners assert that the Commission has granted waivers of its capacity release rules and policies to facilitate the transfer of natural gas assets as part of larger transactions involving other related assets, including electric generating assets.⁴

¹ On January 9, 2012, Dogwood filed for approval of these transactions pursuant to section 203 of the Federal Power Act in Docket No. EC12-57-000.

² Southern Star Contract No. 15421.

³ Joint Petition at p. 7.

⁴ Joint Petition at p. 5 (citing, among others, *PPL Generation* 133 FERC ¶ 61,122 (2010)).

7. Public notice of the filing was issued on January 17, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2011)). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2011), all timely motions to intervene and any unopposed 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.

8. The Commission has reviewed the Petitioners' request for waivers and finds that their request is adequately supported and consistent with previously granted similar waivers of pipeline tariffs and the regulations governing capacity release.⁵ Granting the requested waiver of the Commission's tying prohibition and a temporary waiver of capacity release provisions in the regulations and in Southern Star's tariff will allow the Petitioners to execute the transfer of ownership interests in the electric generating facility and related assets from Dogwood to each Municipality in an orderly and efficient fashion, consistent with Commission policy. Further, the waivers will help ensure uninterrupted access to natural gas for each new owner of the electric generating facility as intended by the coordinated transactions.

9. The Commission will allow the waivers to remain in effect until 90 days following the date of the final closing of the transactions described in this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁵ *E.g.*, *Constellation NewEnergy – Gas Div., LLC*, 130 FERC ¶ 61,059 (2010); *Sequent Energy Mgmt., L.P., et al.*, 129 FERC ¶ 61,188 (2009); *Macquarie Cook Energy, LLC and Constellation Energy Commodities Group, Inc.*, 126 FERC ¶ 61,160 (2009); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008); *Barclays Bank PLC and UBS AG*, 125 FERC ¶ 61,383 (2008); *Wasatch Energy, LLC and Northwest Pipeline Corp.*, 118 FERC ¶ 61,173 (2007); *Sempra Energy Trading Corp.*, 121 FERC ¶ 61,005 (2007); *Northwest Pipeline Corp. and Duke Energy Trading and Mktg., L.L.C.*, 109 FERC ¶ 61,044 (2004).