

140 FERC ¶ 61,073  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

July 25, 2012

In Reply Refer To:  
Atmos Energy Corporation  
Docket No. RP12-782-000

Atmos Energy Corporation  
PO Box 650205  
Dallas, TX 75265-0205

Attention: Kevin C. Frank  
Attorney, Atmos Energy Corporation

Reference: Petition for Temporary Waiver of Capacity Release Regulations and  
Policies

Dear Mr. Frank:

1. On May 31, 2012, Atmos Energy Corporation (Atmos) filed a petition for temporary waivers of certain capacity release regulations and policies, as well as certain related FERC pipeline tariff provisions (Petition). Atmos states that it seeks this action to facilitate the assignment and permanent release to Liberty Utilities (Midstates) (Liberty) of a variety of agreements related to its natural gas distribution business. Specifically, Atmos states that these releases are necessary to allow it to complete the sale of certain natural gas distribution assets to Liberty (Asset Sale), after which Atmos will exit the natural gas distribution business in Illinois, Iowa and Missouri.
2. Atmos requests expedited action on the Petition so that it can complete the Asset Sale on or around August 1, 2012, and it also requests that the waivers remain in effect until fifteen (15) days following the effective date of the Asset Sale. For the reasons discussed below, and for good cause shown, the Commission grants the requested temporary waivers for the limited purpose of consummating the Asset Sale.
3. Atmos states that it is currently engaged in the natural gas distribution business in Colorado, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Missouri, Mississippi, Tennessee, Texas, and Virginia. Atmos states that, as a distributor it is currently a

shipper with effective transportation and storage service agreements with numerous Commission-jurisdictional interstate pipelines and storage providers.

4. Atmos explains that, pursuant to an Asset Sale and Purchase Agreement dated May 12, 2011, it has agreed to sell its natural gas distribution assets in Illinois, Iowa, and Missouri to Liberty, and as part of that Asset Sale, it will transfer, release, and/or assign to Liberty all of Atmos' natural gas purchase and sales agreements, natural gas transportation and storage agreements, asset management agreements (AMAs), and financial agreements, including agreements associated with exchange-cleared transactions, over-the-counter transactions, and other financial transactions necessary to provide natural gas distribution services in Illinois, Iowa and Missouri.<sup>1</sup>

5. To facilitate the transfer of the contracts, Atmos requests temporary and limited waivers of the Commission's capacity release rules in section 284.8, including the posting and bidding requirements and restrictions on capacity releases below the maximum rate, as well as other Commission requirements and policies associated with the release of interstate natural gas transportation and storage capacity, including the shipper-must-have-title policy, the prohibition on buy/sell arrangements, and the prohibition against tying. Additionally, to the extent applicable, Atmos seeks waiver of the relevant tariff provisions of affected transportation and storage providers, including those specifying the timing of postings and the requirement of releasing rather than assigning contracts. Atmos asserts that the waivers it seeks here will be used for the limited purpose of consummating the Asset Sale to Liberty.

6. Atmos requests that the waivers become effective at the earliest possible time, but in no event later than July 20, 2012, and that they continue for 15 days after the effective date of the Asset Sale because of the size and complexity of the Asset Sale.

7. Atmos states that Iowa and Missouri have issued final orders approving the Asset Sale, and that Illinois' approval is pending and anticipated soon. Atmos explains that its request for waivers is to avoid any inadvertent or unavoidable deviation from the Commission's policies or regulations or deviations from pipeline tariffs while completing the Asset Sale. Atmos maintains that the requested waivers are consistent with Commission policy and in the public interest because they will facilitate the completion of the Asset Sale to Liberty with the minimum possible disruption to existing counterparty transactions in which Atmos is involved. Atmos

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<sup>1</sup> See Appendix A of Atmos' Petition, which contains a list of 61 contracts with eight interstate pipelines, including the rate schedule, contract number, expiration date, maximum daily quantity and/or maximum storage quantity.

asserts that the Commission's policy<sup>2</sup> in recent years has been to grant temporary waivers of its capacity release regulations and policies to permit parties to consummate transactions similar to the Asset Sale.<sup>3</sup>

8. Public notice of the filing was issued on June 6, 2012. Interventions and protests were due on or before June 12, 2012, as provided by the notice. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2012), 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.

9. Texas Eastern Transmission, LP (Texas Eastern), Ozark Gas Transmission, L.L.C. (Ozark), and Liberty filed timely motions to intervene and comments supporting the Petition. Texas Eastern and Ozark seek certain clarifications from the Commission.

10. Texas Eastern and Ozark state that Atmos has requested a general waiver of the Commission's capacity release regulations and the applicable tariff provisions implementing those regulations. Texas Eastern and Ozark request that the Commission clarify in its order that, with respect to waiver of the applicable tariff provisions in Texas Eastern's and Ozark's tariffs, the waiver is limited to the posting and bidding requirements in the applicable tariff provisions and does not apply to the capacity release tariff provisions that are not related to posting and bidding. In particular, Texas Eastern and Ozark cite the Commission's policy that a pipeline may refuse to allow a permanent capacity release if it has a reasonable basis to conclude that it will not be financially indifferent to the release. Texas Eastern and Ozark state that they intend to process the transfer of Atmos' capacity on their systems to Liberty as permanent capacity releases, subject to any waivers granted herein, and to the provisions in their FERC Gas tariffs that are designed to ensure that they are financially indifferent to the releases. Texas Eastern and Ozark also request that, consistent with their permanent capacity release

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<sup>2</sup> See *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) (capacity release posting and bidding requirements would not necessarily apply in the cases of the merger or sale of entire business units as part of a corporate restructuring, including the transfer of transportation contracts, supply contracts, employees, data systems and technology).

<sup>3</sup> See, e.g., *Iberdrola Renewables, Inc.*, 138 FERC ¶ 61,201 (2012); *Wisconsin Electric Power Co.*, 131 FERC ¶ 61,104 (2010); and *Bear Energy LP*, 123 FERC ¶ 61,219 (2008).

provisions,<sup>4</sup> and consistent with the Commission's orders granting similar waiver requests,<sup>5</sup> the Commission's order on this Petition make it clear that the waiver is limited to their posting and bidding requirements.

11. Texas Eastern notes that Appendix A of Atmos' Petition lists interruptible transportation agreements between Atmos and Texas Eastern. Texas Eastern states that, because interruptible transportation agreements are not subject to capacity release, it typically enters into new interruptible contracts with the new shipper that supersede and replace the previous contracts for interruptible service. Texas Eastern explains that Liberty may obtain Rate Schedule IT-1 service agreements through Texas Eastern's LINK® system, and when those IT-1 service agreements become effective, they will supersede and replace the IT-1 service agreements listed in Atmos' Appendix A.

12. In its answer, Atmos responds that it did not intend for the requested waivers to obligate any pipeline to allow the release of capacity not currently releasable pursuant to the pipeline's tariff. Additionally, Atmos states it did not seek to circumvent the Commission's long-standing policies and require any pipeline to allow a permanent capacity release if that pipeline was not financially indifferent to the release. Rather, states Atmos, it intended to: (1) allow it to post non-biddable capacity releases of transportation and storage agreements that expire in more than 31 days but less than a year; (2) allow for any pipeline and Atmos to assign any of the identified transportation and storage agreements without using capacity release processes when mutually agreeable between Atmos and a pipeline;<sup>6</sup> and (3) exempt Atmos from inadvertent violations of the Commission's shipper-must-have-title policy, the prohibition on tying arrangements, and the prohibition on buy/sell arrangements for fifteen (15) days after completion of the Asset Sale, given the complex process of attempting to simultaneously

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<sup>4</sup> *E.g.*, *Texas Eastern Transmission, LP*, FERC Gas Tariff, Eighth Revised Volume No. 1, Part 6 – General Terms and Conditions, Section 3.14(O), Version 2.0.0.

<sup>5</sup> *See*, *Big Sandy Pipeline LLC*, 135 FERC ¶ 61,225, at P 7 (2011) (“The Commission only requires a pipeline to allow a permanent capacity release, where the pipeline will be financially indifferent to the release.”); *see also* *BHP Billiton Petroleum (Fayetteville) LLC*, 135 FERC ¶ 61,088, at P 8 (2011); *Transcontinental Gas Pipe Line Co.*, 134 FERC ¶ 61,184, at P 6 (2011); *Midcontinent Express Pipeline LLC*, 124 ¶ 61,089, at P 123 (2001).

<sup>6</sup> Atmos cites the tariff of Mississippi River Transmission, LLC (MRT) which only allows release, not assignment, of Rate Schedule SCT capacity on MRT, because if SCT capacity gets released, it converts to Rate Schedule FTS, which is fundamentally different in nature from Rate Schedule SCT.

transfer Atmos' transportation, storage, and related gas supply agreements to Liberty on August 1, 2012.

13. Atmos states that it is not attempting to require pipelines to unwillingly assign contracts to Liberty, but rather to enable pipelines to assign contracts to Liberty without fear of violating their own tariffs. Additionally, continues Atmos, the waivers are intended to permit Atmos to complete its transaction with Liberty in an efficient and expeditious manner without undue regulatory risk, and to facilitate the orderly transfer and permanent release of Atmos' jurisdictional natural gas transportation and storage agreements to Liberty as part of the Asset Sale.

14. Liberty states that the waivers requested by Atmos are in the public interest, are consistent with Commission policy, and should be approved. Liberty states that, in order to be able to continue to serve the retail natural gas customers in Iowa, Missouri and Illinois currently served by Atmos, Liberty needs to be able to step into the shoes of Atmos in a wide variety of Atmos' contractual natural gas supply, transportation and hedging arrangements, including Atmos' natural gas transportation service agreements with upstream interstate natural gas pipelines. Liberty notes that the Commission has approved similar waivers to enable the parties to consummate the sale of physical assets by assigning the related agreements for jurisdictional interstate natural gas transportation service without complying with the requirements of the Commission's capacity release regulations that would otherwise apply to any such assignment.

15. With respect to Rate Schedule IT service agreements with Texas Eastern, Liberty states that it has no objection to the procedure outlined by Texas Eastern so long as the substituted IT-1 service agreements with Liberty enjoy the same priority of service in any IT-service queue as that previously enjoyed by Atmos' replaced IT-1 service agreements and, in all other material respects, are identical in the quality of service to that received by Atmos.

16. The Commission has reviewed Atmos' Petition and finds that the waiver request is adequately supported and consistent with previous waivers that the Commission has granted to permit the prearranged permanent release of capacity under similar circumstances.<sup>7</sup> Accordingly, the Commission will grant temporary, limited waiver of

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<sup>7</sup> E.g., *Constellation NewEnergy – Gas Div., LLC*, 130 FERC ¶ 61,059 (2010); *Sequent Energy Mgmt., L.P.*, 129 FERC 61,188 (2009); *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082 (2009); *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008); *Barclays Bank PLC*, 125 FERC ¶ 61,383 (2008); *Wasatch Energy, LLC*, 118 FERC ¶ 61,173 (2007); *Sempra Energy Trading Corp.*, 121 FERC ¶ 61,005 (2007); *Northwest Pipeline Corp.*, 109 FERC ¶ 61,044 (2004).

its capacity release regulations, other policies as identified above, as well as the posting and bidding provisions set forth in the affected interstate pipeline's tariffs for the limited purpose of facilitating permanent assignment of the identified contracts as part of Atmos' Asset Sale to Liberty of its natural gas distribution facilities. Granting these waivers will allow the Asset Sale and transfer the assets in an orderly and efficient manner. It will also ensure uninterrupted access to natural gas to the customers of Atmos after Liberty takes over. The Commission will allow the waivers to remain in effect until fifteen (15) days following the effective date of the Asset Sale.

17. In response to the concerns of Texas Eastern and Ozark regarding financial indifference, Atmos answered that it is not seeking to circumvent the Commission's long-standing policies and require any pipeline to allow a permanent capacity release if that pipeline was not financially indifferent to the release. The Commission clarifies that nothing in this order should be construed to require any interstate pipeline to allow a permanent release if it is not financially indifferent to the release. Moreover, the grant of a waiver relating to tariff provisions is strictly limited to those necessary to complete the Asset Sale, but not limited to only those provisions relating to the posting and bidding requirements of each pipeline's tariff. As Atmos stated in its Petition and answer, there may be specific tariff provisions in a particular pipeline's tariff that require waiver to allow assignment of the contract to Liberty, such as the provision in MRT's tariff described above.

18. Liberty expresses concern that it be allowed to retain the same priority of service in any IT-service queue. This is an issue between Liberty and the pipeline and is governed by Texas Eastern's tariff and the procedures described therein. A review of Texas Eastern's tariff indicates that Texas Eastern determines priority of service for IT customers based solely on the rate paid by the customer. Thus, Liberty's service priority will be determined by the rate to which it agrees with Texas Eastern for IT service. Liberty has no independent right to a higher priority based on its existing IT contracts when it executes new IT agreements with the pipeline after following the appropriate tariff procedures.

19. Accordingly, for good cause shown, the Commission grants Atmos' Petition for a temporary waiver of the specified capacity release regulations, policies, and tariff provisions to allow the permanent releases of the contracts listed in Appendix A of the Petition. Specifically, the Commission grants limited, temporary waiver of section 284.8 of its regulations, which governs the release of firm capacity; the prohibition on tying; and the posting and bidding requirements for capacity release transactions. In addition, the Commission grants limited, temporary waiver of those sections of the tariffs of Panhandle Eastern Pipeline Company, Texas Eastern, Natural Gas Pipe Line Company of America, LLC, Trunkline Gas Company, LLC, ANR Pipeline Company, Ozark, Southern Star Central Gas Pipeline, and MRT, that implement the above policies,

in order to allow for the permanent releases of the agreements listed in Appendix A of the Petition. These waivers will become effective on the date this order is issued and remain in effect for 15 days following the effective date of the Asset Sale.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.