

143 FERC ¶ 61,001
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 1, 2013

In Reply Refer To:
East Tennessee Natural Gas, LLC
Murray I and II LLC,
Oglethorpe Power Corporation
Docket No. RP13-696-000

East Tennessee Natural Gas, LLC
P.O. Box 1642
Houston, TX 77251-1642

Attention: Christine M. Pallenik, Associate General Counsel

Dear Ms. Pallenik:

1. On March 20, 2013, East Tennessee Natural Gas, LLC (East Tennessee), Murray I and II LLC (Murray) and Oglethorpe Power Corporation (Oglethorpe) (collectively, Petitioners) filed a request for temporary, limited waivers of certain capacity release and other Commission rules, regulations, and policies (Petition), to facilitate Murray's transfer of three transportation service agreements (TSAs) to Oglethorpe as part of a corporate reorganization that involves Murray's dissolution and absorption into Oglethorpe. The Petitioners request the waivers remain in effect until 90 days following the date of the order granting the requested waivers. For the reasons discussed below, and for good cause shown, the Commission grants the requested temporary waivers, as proposed.

2. The Petitioners state that Murray is the owner-operator of two natural gas-fired combined cycle units. In order to serve these units Murray holds three TSAs with East Tennessee, totaling 218,000 dekatherms per day. Contracts 410018 and 410098, totaling 215,000 dekatherms per day, are at a negotiated rate; Contract 410057, totaling 3,000 dekatherms per day, is set at the lesser of a discounted rate and East Tennessee's recourse rate. According to the Petitioners, Murray is now a wholly owned subsidiary of Oglethorpe, having been acquired from KGen Power in April 2011.

3. Petitioners state that Oglethorpe intends to absorb all of Murray's assets and then dissolve the LLC, leaving Oglethorpe as the sole owner-operator of the Murray facilities

and the sole replacement shipper under Murray's transportation contracts. As part of this transaction, Petitioners state, Murray will permanently release to Oglethorpe its TSAs on East Tennessee.

4. To facilitate the transfer of the TSAs, the Petitioners request temporary and limited waivers of certain Commission regulations and policies. Specifically, the Petitioners seek waiver of the Commission's capacity release posting and bidding requirements, prohibition on tying arrangements, restrictions on capacity releases below or above the maximum rate, and any pipeline tariff provisions related to these policies. They also request waiver of section 17 of the General Terms and Conditions of East Tennessee's tariff for the limited purpose of the transfer. The Petitioners request the waivers remain in effect until 90 days following the date of the order granting the requested waivers.

5. The Petitioners argue that the waivers requested on posting and bidding and on tying are in the public interest because they will permit Oglethorpe's corporate reorganization to occur in an orderly and efficient manner. The Petitioners note that the waiver request is limited to contracts held with East Tennessee, which has joined the Petition. The Petitioners assert that the Commission has granted waivers of these policies in similar circumstances.

6. The Petitioners, filing on March 20, 2013, request that the Commission act expeditiously, no later than April 1, 2013. The Petitioners argue that expedited treatment is appropriate because the facts presented are neither complex nor significantly different from those in similar requests for waiver that the Commission has approved.

7. Public notice of the filing was issued on March 21, 2013. Interventions and protests were due on or before March 26, 2013, as provided by the notice. Pursuant to Rule 214,¹ 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 the request is adequately supported and consistent with previous waivers that the Commission has granted to permit capacity to be released on a permanent basis at the same negotiated rate as the releasing shipper is currently paying.² As the Commission

¹ 18 C.F.R. § 385.214 (2012).

² See, e.g., *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082, at P 14 (2009) (*North Baja*).

explained in *North Baja*, a pipeline is only required to allow a permanent capacity release, where it will be financially indifferent to the release. If the Commission were to require that Murray's long-term permanent release be posted for bidding subject to the maximum recourse rate, as required by the capacity release regulations, bidders could not offer to pay the existing negotiated rate for the entire term of the release, because such a rate could violate the maximum rate ceiling during future periods. Therefore, waiver of the bidding requirement for the permanent release is necessary to assure that the pipeline will be financially indifferent to the release, and thus to avoid inhibiting the use of a permanent release to transfer capacity the releasing shipper no longer needs or wants. Further, granting the requested waiver of the tying prohibition will allow Murray to exit the natural gas business and dissolve in an orderly and efficient fashion, consistent with Commission policy.³

9. 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 the TSAs from Murray to Oglethorpe. 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; the posting and bidding requirements for capacity release transactions; and the prohibition on the release of capacity at a rate above the maximum recourse rate. In addition, the Commission grants limited, temporary waiver of those sections of East Tennessee's tariff that implement the above policies, in order to allow for the permanent release of the TSAs. We will allow the waivers to remain in effect until the earlier of 90 days following the issuance date of this order, or the date on which the capacity release transaction described in this order is completed.

10. While we have acted expeditiously as requested, we remind the Petitioners that the Commission does not grant waivers as a matter of right, but rather reviews the requests "on a case-by-case basis, because they turn on the specific circumstances of individual cases."⁴ As the Commission has previously stated, one of the factors in

³ 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).

⁴ *Request for Clarification of Policy Regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Businesses*, 127 FERC ¶ 61,106, at P 10 (2009).

determining whether to grant waiver is whether the parties “file the request as much in advance of the requested action date as possible,”⁵ and thus the Commission may deny future requests where the facts presented are, unlike in the instant proceeding, either complex or significantly different from those in similar requests for waiver that the Commission has approved.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁵ *Id.*