

145 FERC ¶ 61,165
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 25, 2013

In Reply Refer To:
Southern Union Company
Docket No. RP14-88-000

Schiff Hardin LLP
901 K Street, NW
Suite 700
Washington, DC 20001

Attention: Debra Ann Palmer, Esquire

Dear Ms. Palmer:

1. On October 30, 2013, Southern Union Company (Southern Union) requested a temporary, 90-day waiver of the Commission's capacity release regulations and policies in order to enable the transfer of assets from Southern Union to a subsidiary of Liberty Utilities Co. (Liberty). Southern Union also seeks a temporary and limited waiver of certain provisions of the FERC Gas Tariffs of Algonquin Gas Transmission, LLC (Algonquin) and Texas Eastern Transmission, LP (Texas Eastern) to permit the transfer of transportation and storage contracts. Southern Union requests that the Commission act on its request no later than November 25, 2013. For good cause shown, the Commission grants Southern Union's requested temporary waivers.

2. On December 14, 2012, Southern Union, Plaza Massachusetts Acquisition, Inc. (Plaza) and the Laclede Group Inc. (Laclede) entered into an agreement for the sale of Southern Union's New England Gas Company division (New England) to Plaza. Subsequent to the execution of this agreement, Plaza, Laclede and Algonquin Power & Utilities Corp., on behalf of its subsidiary Liberty, entered into a Stock Purchase Agreement wherein Liberty agreed to purchase all of the issued and outstanding shares of Plaza before Plaza purchased all of New England's assets. Accordingly, Southern Union asserts that upon the closing of the agreement, Liberty will own Plaza, which will ultimately be called by the name of Liberty Utilities (New England Natural Gas Company) Corporation.

3. Southern Union states that in order to ensure that Liberty will be able to continue to provide service to New England's retail customers, Southern Union seeks a 90-day

(from the date the agreement closes), waiver of the Commission's capacity release posting and bidding requirements (18 C.F.R. § 284.8 (2013)) and associated interstate pipeline tariff provisions implementing such requirements to permit Southern Union to transfer its Part 284 open access transportation and storage agreements to Liberty. Southern Union also seeks approval of the transfers of two Natural Gas Act (NGA) Section 7(c) contracts. Southern Union and Liberty assert that they intend to consummate the agreement on or about December 1, 2013.

4. Southern Union states that the Commission has granted temporary waivers of its capacity release regulations to permit parties to consummate transactions similar to its proposed transaction.¹ Southern Union states that, consistent with Commission policy regarding waivers of capacity release rules and regulations, the instant request (1) provides a sufficient description of the overall transaction and its claimed benefits to permit the Commission and other interested parties to analyze whether granting the requested waivers is in the public interest; (2) identifies the pipeline and storage capacity at issue; (3) identifies the regulations and policies for which a waiver is sought; and (4) is filed as much in advance of the requested action date as possible.

5. Public notice of the Southern Union's petition was issued on October 31, 2013. Interventions and protests were due on or before November 6, 2013. Pursuant to Rule 214,² 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. Comments in support of the petition were filed by Liberty and Laclede.

6. The Commission's review of Southern Union's request for temporary waivers finds that the request is adequately supported and, as Southern Union has pointed out, consistent with previous waivers that the Commission has granted to permit the release of capacity under similar circumstances.³ Accordingly, for good cause shown, the

¹ Southern Union Transmittal Letter at P 6.

² 18 C.F.R. § 385.214 (2013).

³ *Laclede Gas Co. and Southern Union Co.*, 145 FERC ¶ 61,067 (2013); *Proliance Energy, LLC*, 144 FERC ¶ 61,154(2013); *Atmos Energy Corp.*, 140 FERC ¶ 61,073 (2012); *Big Sandy Pipeline, LLC*, 114 FERC ¶ 61,151 (2012); *Iberdrola Renewables, Inc.*, 138 FERC ¶ 61,201 (2012); *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008); *see also Request for Clarification of Policy Regarding Waiver 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 a part of a corporate restructuring, including the transfer of transportation contracts, supply contracts, employees, data systems and technology).

Commission grants a temporary, limited waiver of its capacity release regulations set forth in section 284.8 of the Commission's regulations,⁴ including any posting and bidding requirements and restrictions on capacity release below the maximum rate, and to the extent necessary, the relevant provisions of the FERC Gas Tariffs of Algonquin and Texas Eastern for the limited purpose of transferring Southern Union's rights and obligations under the service agreements listed in Appendix A. The waivers shall remain in effect for 90 days from the date Southern Union's transaction closes.

7. In addition, Southern Union requests approval for transfer to Liberty of two transportation contracts which New England has with Texas Eastern which the Commission individually certificated pursuant to NGA section 7(c). Southern Union states that both contracts contain language at Article VII which states that "[a]ny company which shall succeed by purchase, merger, or consolidation to the properties, substantially as an entirety, of Customer or Pipeline, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Service Agreement." Southern Union also asserts that upon transfer, Liberty will use these contracts to provide service in a seamless manner to New England's customers and requests that to the extent necessary, given the language of the contracts, that the Commission approves the transfer of these contracts from Southern Union to Liberty.

8. Since the express language of the contracts anticipates and permits the transfer of the 7(c) contracts and Southern Union has assured the Commission that Liberty will use the capacity to serve customers in the same manner as New England currently serves such customers, the Commission finds that the transfer of the subject contracts is acceptable.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁴ 18 C.F.R. § 284.8 (2013).

Appendix A

Pipeline	Contract Number	Rate Schedule
Algonquin	510026	AFT-1
Algonquin	93405	AFT-1
Algonquin	9B104	AFT-1
Algonquin	93007EC	AFT-E
Algonquin	99053	AFT-1
Algonquin	96003SC	AFT-IS
Algonquin	93003ESC	AFT-ES
Algonquin Hubline	510054	AFT-1H
Dominion	100018	FTNN
National Fuel	E00531	EFT
Texas Eastern	800430	CDS Zn3-3
Texas Eastern	331702	FTS-7
Texas Eastern	800463	CDS Zn1-3
Texas Eastern	800109	CDS Zn1-3
Texas Eastern	80434	CDS Zn3-3
Texas Eastern	330843	FTS
Texas Eastern	800352	FT-1 Zn1-2
Texas Eastern	800302	CDS Zn1-3
Texas Eastern	800433	CDS Zn1-3
Transco	6432	FT
Transco	7734	FT
Dominion	600041	GSS-TE
Dominion	600007	GSS-TE
National Fuel	G000542	ESS
Texas Eastern	400510	FSS-1
Texas Eastern	400187	SS-1
Texas Eastern	400220	SS-1
Texas Eastern	400512	FSS-1
Texas Eastern	330843-R2	FTS
Texas Eastern	331702	FTS-7