

148 FERC ¶ 61,092
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 1, 2014

In Reply Refer To:
Constellation NewEnergy –
Gas Division, LLC
Constellation ProLiance, LLC
Exelon Generation Company, LLC
Docket No. RP14-1055-000

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Dear Messrs. Young and Wilson:

1. On June 19, 2014, Constellation NewEnergy - Gas Division, LLC (NewEnergy), Exelon Generation Company, LLC (Exelon Generation), and Constellation ProLiance, LLC (ProLiance) (collectively, Petitioners) filed a petition for temporary waiver (Joint Petition) of the Commission's capacity release regulations and policies, related pipeline tariff provisions, as well as any other authorizations or waivers deemed necessary. For the reasons discussed below, and for good cause shown, the Commission grants the requested waivers effective August 1, 2014, as requested.
2. Petitioners assert that the requested waivers will allow ProLiance to transfer via a permanent capacity release and/or assignment its jurisdictional natural gas transportation and storage capacity to Exelon Generation and to merge all of its natural gas marketing business with and into NewEnergy, as part of a restructuring of ProLiance's business

functions by Exelon Corporation (Exelon).¹ Petitioners assert that, after the above transactions are completed, ProLiance will exit from the natural gas business and cease to exist.

3. ProLiance is currently a natural gas marketer serving customers throughout the Midwest, primarily in the states of Indiana, Ohio and Illinois. ProLiance obtains interstate transportation and storage service under agreements with multiple Commission-jurisdictional providers. Petitioners state that the capacity affected by the waiver is on the following pipelines: Columbia Gulf Transmission, LLC, KO Transmission Company, Midwestern Gas Transmission Company, Panhandle Eastern Pipe Line Company, LP, Texas Gas Transmission, LLC (Texas Gas) and Trunkline Gas Company, LLC. Petitioners assert that the portfolio of capacity is interrelated with supply arrangements and obligations that Exelon Generation will be providing to NewEnergy to continue to support its retail customers. Moreover, Petitioners state that certain of the contracts are discounts or short term that could not otherwise be assigned without bidding and one Texas Gas contract is a negotiated rate contract. Petitioners state that the specific natural gas transportation and storage contracts to be transferred to Exelon Generation are listed on Appendix A, which is attached to the Joint Petition.

4. Petitioners state that Exelon is currently engaging in a corporate reorganization to better align its structure with the market and internal corporate procedures. Petitioners assert that the requested waivers are necessary to permit Petitioners to proceed with these transactions in an orderly and efficient manner. Specifically, Petitioners seek temporary waiver of the Commission's capacity release rules and policies,² including: (1) the posting and bidding requirements; (2) the prohibition against tying; (3) the shipper-must-have-title requirement; (4) the prohibition on buy/sell arrangements; and (5) the tariff provisions that implement these regulation and policies; and any other waivers of the Commission's capacity release regulations and related rules and policies or other authorizations deemed necessary to implement the above described assignment and/or permanent release of capacity. Petitioners assert that granting the waivers requested in this petition would be consistent with the public interest and previous Commission decisions in similar circumstances. Finally, Petitioners request that the Commission grant the requested waivers as soon as possible but no later than August 1, 2014 and that the Commission allow the temporary waivers to remain in effect for a period of 90 days following the issuance of the order to facilitate an orderly transfer of the contracts.

¹ According to the Joint Petition, Constellation ProLiance, LLC was formerly ETC ProLiance Energy, LLC, which was purchased by Exelon Generation Company, LLC on April 1, 2014. Constellation NewEnergy – Gas Division, LLC and Exelon Generation Company, LLC are subsidiaries of Exelon Corporation.

² See 18 C.F.R. § 284.8 (2013).

5. Public notice of the Joint Petition was issued on June 24, 2014. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.³ Pursuant to Rule 214,⁴ all timely filed motions to intervene and any unopposed motions to intervene out-of-time 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 interventions or adverse comments were filed.

6. The Commission has reviewed the Petitioners' request for temporary waivers and finds that the request is adequately supported and consistent with previous waivers that the Commission has granted to permit the release of capacity under similar circumstances.⁵ Petitioners have also provided the information required for approval of such waivers: (1) identification of the regulations and policies for which waiver is sought; (2) identification of the pipeline service agreements and capacity to be transferred; and (3) description of the overall transaction and its claimed benefits, with sufficient detail to permit the Commission and other interested parties to determine whether granting the requested waivers is in the public interest.⁶

7. Accordingly, for good cause shown, the Commission grants Petitioners' request for temporary, limited waiver of its capacity release regulations, including the prohibition on buy/sell arrangements, the posting and bidding provisions, the prohibition against tying and shipper-must-have-title requirements. In addition, the Commission grants, to the extent necessary, a temporary and limited waiver of the above-referenced provisions

³ 18 C.F.R. § 154.210 (2013).

⁴ 18 C.F.R. § 385.214 (2013).

⁵ See, e.g., *Big Sandy Pipeline, LLC*, 141 FERC ¶ 61,151 (2012); *Antero Resources Corp.*, 139 FERC ¶ 61,258 (2012); *Salmon Resources, LTD*, 138 FERC ¶ 61,059 (2012); *Big Sandy Pipeline, LLC*, 136 FERC ¶ 61,130 (2011); *BHP Billiton Petroleum (Fayetteville LLC)*, 135 FERC ¶ 61,088 (2011); *Wisconsin Electric Power Co.*, 131 FERC ¶ 61,104 (2010); *EnergyMark, LLC*, 130 FERC ¶ 61,059 (2010); *Total Gas & Power North America, Inc.*, 131 FERC ¶ 61,023 (2010); *Sequent Energy Mgmt., L.P., et al.*, 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).

⁶ *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).

of the pipelines' tariffs so as to facilitate the capacity release transaction. The Commission will allow the waivers to remain in effect for a 90-day period following issuance of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.