152 FERC ¶ 61,159
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

August 28, 2015

In Reply Refer To:
Washington Gas Light Company
Energy Corporation of America
Docket No. RP15-1136-000

Randall S. Rich
Pierce Atwood LLP
900 17th Street, NW, Suite 350
Washington, DC 20006

Phillip G. Lookadoo
Haynes and Boone, LLP
800 17th Street, NW, Suite 500
Washington, DC 20006

Dear Messrs. Rich and Lookadoo:

1. On July 28, 2015, Washington Gas Light Company (Washington Gas) and Energy Corporation of America (ECA) (jointly, Petitioners) filed a joint petition (Joint Petition) for limited waiver of the Commission's capacity release regulations and policies, and related pipeline tariff provisions, to enable ECA to transfer its jurisdictional natural gas transportation capacity related to certain natural gas production assets to Washington Gas. Petitioners request issuance of an order on this Joint Petition no later than August 30, 2015. For the reasons discussed below and for good cause shown, the Commission grants the requested waivers.

2. Washington Gas provides natural gas retail sales and distribution service to customers in various areas of the Commonwealth of Virginia, and elsewhere. The Virginia State Corporation Commission (VSCC) regulates Washington Gas' services in Virginia. Section 56-609 of the Code of Virginia permits a natural gas utility to request that the VSCC approve a natural gas supply investment plan, including investment in natural gas reserves.

3. Petitioners state that Washington Gas has filed an application with the VSCC, seeking approval of a proposed natural gas supply investment plan under which ECA will transfer to Washington Gas a 96 percent working interest in certain Pennsylvania

gas production assets for a period of 20 years. At the end of this 20-year period, Washington Gas' working interest will revert to ECA. According to Petitioners, Washington Gas calculates that the investment plan will save Virginia ratepayers a total of $84 million on an "as spent" basis and $21 million on a net present value basis over the life of the 20-year investment. Petitioners assert that this transaction will reduce Washington Gas' overall portfolio price volatility and overall supply risk for base gas volumes.

4. Under this agreement, ECA will transfer several transportation capacity agreements related to these producing assets to Washington Gas. These include three separate items of capacity. First, ECA will permanently transfer to Washington Gas 5,000 Dth per day of capacity under a firm transportation service agreement with Columbia Gas Transmission, LLC (Columbia Gas). Second, ECA will permanently transfer 1,900 Dth per day of capacity to Washington Gas which it currently holds under a firm transportation agreement with Dominion Transmission, Inc. (DTI). Third, ECA will transfer as a temporary and recallable release for a period of 20 years, 18,129 Dth per day of capacity under a firm transportation agreement with Columbia Gas to Washington Gas.[1] ECA pays the maximum transportation rate under all three transportation agreements, and all three releases will be at the maximum rate.

[1] Specifically, the first item of capacity is a maximum rate transportation service agreement between ECA and Columbia Gas for firm transportation service under Columbia Gas' Rate Schedule FTS from Primary Receipt Point 640569 ECA Vecchio, with a Maximum Daily Quantity of 5,000 Dth per day, to Primary Delivery Point 801 Columbia Gas-Leach, with a Maximum Daily Delivery Obligation of 5,000 Dth per day, with a specified Begin Date of August 1, 2014 and a specified End Date of July 31, 2017, Service Agreement No. 142036. The second item of capacity is a maximum rate transportation service agreement between ECA and Columbia Gas for firm transportation service under Columbia Gas' Rate Schedule FTS from Primary Receipt Point 640569 ECA Vecchio, to Primary Delivery Point 801 Columbia Gas-Leach, with a Maximum Daily Delivery Obligation of 18,129 Dth per day, with a specified Begin Date of June 27, 2014 and a specified End Date of July 31, 2021, Service Agreement No. 29738. The third item of capacity is a maximum rate transportation service agreement between ECA and DTI for firm transportation service under DTI's Rate Schedule FT from Primary Receipt Point Mid 5192401 ECA Interconnection in Clearfield County, Pennsylvania, to Primary Delivery Point Transco Leidy (Meter Number 40301) in Clinton County, Pennsylvania, with a Maximum Daily Transportation Capacity of 1,900 Dth per day and a Maximum Annual Transportation Capacity of 693,500 Dth per day, dated

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5. With regard to the third amount of capacity, Petitioners assert that Washington Gas expects that it will need a declining portion of the capacity as the subject gas reserves decline during the term of the 20-year agreement. As a result, Washington Gas and ECA will maintain certain release back and recall rights, on a semi-annual basis during this 20-year period. Under the agreement, at the end of the 20-year period, Washington Gas will release back to ECA on a permanent basis, at the maximum recourse rates, all the remaining capacity under this third unit of capacity which has not been recalled by ECA.

6. To facilitate the release of these transportation contracts, Petitioners request waiver of certain Commission regulations and policies, as well as related capacity release provisions in pipeline tariffs and such authorizations deemed necessary to facilitate the Agreement. Specifically, Petitioners request a limited transaction-specific waiver, to be effective for the full 20-year term of the 20-year interest, of the Commission's policy prohibiting tying the release of pipeline capacity to extraneous conditions, any other capacity release regulations under the Commission's regulations, 18 C.F.R. § 284.8 (2015), for which waiver is necessary to complete the transaction described in this Joint Petition. The Petitioners also request a limited transaction-specific waiver of Columbia Gas's and DTI's respective tariff provisions related to the Commission's capacity release rules to be effective for the term of the 20-year interest and for the time period reasonably necessary thereafter to permanently release-back to ECA all the remaining portion of the released capacity still held by Washington Gas upon the expiration of the 20-year interest.

7. The Petitioners states that in the instant transaction, each release or recall of all or any portion of the released capacity is pre-arranged, will be in effect for a year or more, and will be implemented at the maximum recourse rates in effect from time to time for, as applicable, DTI or Columbia Gas. The Petitioners accordingly assert that all of the proposed releases of the Released Capacity described herein are exempt from the Commission's bidding requirements.[2] Therefore, Petitioners assert that they do not seek, waiver of the posting and bidding requirements of the Commission's regulations or the pipelines' tariffs for the instant transaction.

8. Petitioners state that they will utilize the transaction-specific waivers requested in this Joint Petition only for the limited purpose of completing the transfers of pipeline the capacity as contemplated by the exchange transaction. Petitioners state that they have

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December 31, 2010 and a specified End Date of October 31, 2022, FT Contract No. 200572.

[2] Joint Petition at 11, citing, 18 C.F.R. § 284.8(h)(1)(iii) (2015).

contacted each of the affected pipelines and none have expressed opposition to the Joint Petition. Petitioners state that the waivers will allow Washington Gas to provide substantial benefits to its ratepayers by providing for an orderly transfer of working interest and transportation of supplies to Washington Gas' distribution facilities. As a result, Petitioners state that granting the requested waivers is in the public interest and the Joint Petition satisfies the Commission's procedural requirements for such requests for waiver of capacity release regulations and related requirements.[3]

9. Public notice of the filing was issued on July 29, 2015. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2015)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2015)), 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.

10. The Commission has reviewed the Joint Petition and finds that the waiver request is consistent with the Commission's *Policy Regarding Capacity Release Waivers* and is consistent with previous temporary waivers that the Commission has granted to permit the release of capacity in circumstances such as corporate restructurings, mergers, and

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[3] The Petitioners assert that the Commission directed applicants for capacity release waivers to include the following in their petitions:

> . . . (1) identify with as much specificity as possible the regulations and policies for which they seek waiver; (2) identify the pipeline capacity at issue; (3) provide 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 are in the public interest based upon the factors discussed above; and (4) file the request as much in advance of the requested action date as possible. Joint Petition at 13, *citing*, *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) (*Policy Regarding Capacity Release Waivers*).

The Petitioners assert that they have met each of these requirements.

sales of business units or assets.[4] In particular, the Commission finds that the waivers requested, including the waiver of the prohibition on tying arrangements, are consistent with and necessary to accomplish the sale of production related assets contemplated by the instant transaction.[5] In addition, the subject permanent and temporary capacity releases are exempt from the capacity release bidding requirements pursuant to section 284.8(h)(iii), because each release or recall of all or any portion of the Released Capacity is pre-arranged, will be in effect for a year or more, and will be implemented at the applicable maximum recourse rates.[6]

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[4] *See, e.g., Antero Resources Corp*, 139 FERC ¶ 61,258 (2012); EnergyMark, LLC and *Constellation NewEnergy – Gas Div., LLC*, 130 FERC ¶ 61,059 (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 and Constellation Energy Commodities Group, Inc.*, 126 FERC ¶ 61,160 (2009); *Bear Energy LP, et al.*, 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.*, et al., 121 FERC ¶ 61,005 (2007); *Northwest Pipeline Corp. and Duke Energy Trading and Mktg., L.L.C.*, 109 FERC ¶ 61,044 (2004).

[5] *See, e.g., BP Canada Energy Mktg. Corp. and Apache Corp.*, 133 FERC ¶ 61,173 (2010) (granting waiver of capacity release regulations and policies for transaction involving transfer of production assets and transportation service agreement used to deliver natural gas from the production assets to market), *Quicksilver Resources Inc.*, 143 FERC ¶ 61,079 (2013) (granting waiver to facilitate sale of production related assets), *Total Gas & Power North America, Inc. and Chesapeake Energy Marketing, Inc.*, 131 FERC ¶ 61,023 (2010) (granting waiver to facilitate sale of production related assets), *BP Energy Co., Plains Exploration & Production Co., and PXP Offshore LLC*, 142 FERC ¶ 61,037 (2013) (granting waiver to facilitate sale of production related assets), *Transcontinental Gas Pipe Line Corp. LLC*, 126 FERC ¶ 61,086 (2009) (finding that to deny waiver of maximum rate regulation would unnecessarily inhibit the use of permanent releases to transfer capacity which the releasing shipper no longer needs to a shipper that does need it.)

[6] *Statoil Natural Gas LLC and La Société Nationale pour la Recherche, la Production, le Transport, la Transformation et la Commercialisation des Hydrocarbures s.p.a.*,128 FERC ¶ 61,240 at n.18 (2009) ("The fact that the release at issue is at the maximum rate distinguishes this case from the Commission's order in *North Baja Pipeline, LLC,* 128 FERC ¶ 61,082 (2009), where we denied a waiver of the

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11. Accordingly, for good cause shown, the Commission grants Petitioners' request for limited waiver of its capacity release regulations, including tying arrangements and, to the extent necessary, related provisions in the FERC gas tariffs of Columbia Gas and DTI, as necessary to facilitate the instant transaction.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

Commission's capacity release bidding requirements for a temporary release at less than the pipeline's maximum recourse rate.")