

153 FERC ¶ 61,282
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 7, 2015

In Reply Refer To:
Exelon Generation Company, LLC
Summit Natural Gas of Maine, Inc.
Docket No. RP16-70-000

Exelon Business Services Group, LLC
100 Constellation Way,
600C
Baltimore, MD 21202

Attention: Christopher D. Young
Assistant General Counsel

Reference: Joint Petition for Limited Waivers

Dear Mr. Young:

1. On October 23, 2015, Exelon Generation Company, LLC, (Exelon) and Summit Natural Gas of Maine, Inc., (Summit) (jointly, the Petitioners) filed a Joint Petition requesting a temporary and limited waiver of certain of the Commission's capacity release regulations, the capacity release provisions of certain pipelines' tariffs, and other related Commission policies. The Petitioners state that granting waiver would facilitate a permanent release to Summit of a long-term firm natural gas transportation agreement which Exelon will initially enter into for service on the Atlantic Bridge Project. The Petitioners also seek clarification of one element of the Commission's Asset Management Agreement (AMA) policy. As discussed below, the Commission grants the requested limited waivers for good cause shown, and provides the requested clarification.

2. According to the Petitioners, Summit is a local distribution company (LDC) operating in central and southern Maine. The Petitioners state that Summit commenced operations in April 2014 and currently provides sales service to over 1,900 residential and commercial customers and transportation service to five industrial customers. According to the Petitioners, Summit plans to participate in the Atlantic Bridge Project under development by Algonquin Gas Transmission, LLC, (Algonquin) and Maritimes & Northeast Pipeline, L.L.C., (Maritimes), which will increase firm pipeline capacity in the

state of Maine. As part of the project, Summit entered into a Precedent Agreement with Algonquin and Maritimes for 8,000 Dths per day for a 15-year term, commencing on the in-service date of the project. Summit has agreed to pay a negotiated rate under the terms of the Precedent Agreement.

3. The Petitioners further state that Summit does not meet the creditworthiness standards of Algonquin and Maritimes for the Atlantic Bridge Project as currently set forth in the Precedent Agreement. They contend that Summit's credit situation is due primarily to the relatively short period in which Summit has been in existence, and to its corresponding lack of an external credit rating. Petitioners also state that Summit expects to be able to meet the creditworthiness standards at some time in the future.

4. The Petitioners state that to address Summit's credit situation, Exelon and Summit have agreed that Summit will assign its Precedent Agreement to Exelon and the two parties will execute a gas sales agreement under which Exelon will sell an equivalent amount of natural gas supply to Summit at its city-gate. Petitioners assert that this arrangement would allow Summit to continue to serve its growing customer base until it is able to meet the pipelines' credit requirements. Petitioners further state that once Summit meets the creditworthiness standards of Algonquin and Maritimes, Exelon will then permanently release the capacity under the transportation agreement back to Summit. Petitioners state that Summit then intends to re-release the capacity on a temporary basis back to Exelon as part of an AMA under which Exelon will serve as the asset manager for the remainder of the term of the parties' gas sales agreement. The Petitioners state that this arrangement will place Summit in the originally contemplated position as primary holder of the capacity under the transportation agreement, and will allow Summit to be in the position to exercise all rights under that capacity, including the right of first refusal. The Petitioners also state that they have been authorized by Algonquin and Maritimes to state that Algonquin and Maritimes do not oppose the requested waivers.

5. To facilitate Exelon's permanent release of the subject capacity to Summit as part of the above-described arrangement, the Petitioners seek limited waivers of: (1) the Commission's capacity release posting and bidding requirements set forth in section 284.8 of the Commission's regulations;¹ (2) the capacity release provisions set forth in the tariffs of Algonquin and Maritimes; (3) the Commission's prohibition on tying other elements to a release of capacity; and (4) the Commission's shipper-must-have-title policy and prohibition on buy-sell arrangements, to the extent necessary. The Petitioners assert that each of these regulations could prohibit or make infeasible the permanent release of capacity contemplated in the petition.

¹ 18 C.F.R. § 284.8 (2015).

6. The Petitioners state that good cause exists to grant the limited waivers. They contend that it is in the public interest that Summit hold the capacity on Algonquin and Maritimes, because doing so will provide its customers with assurances of long-term access to the capacity required to serve those customers. They further state that having Summit be the permanent holder of the capacity will allow Summit to control the upstream transportation arrangements for its natural gas supply upon the expiration of its gas sales agreement with Exelon, which will protect its shippers. The Petitioners assert that, without the requested waivers, Summit will not have the benefits of an AMA with Exelon, which will allow Summit to reduce its upstream pipeline costs by optimizing the value of the transportation capacity on Algonquin and Maritimes, to the benefit of Summit's ratepayers. They further assert that this flexibility is vital to Summit successfully serving a cold-weather region which has historically had little access to natural gas and is a low load-factor purchaser of natural gas.

7. The Petitioners assert that the waivers requested are limited and case-specific, applicable only to Exelon's permanent release to Summit when Summit is capable of meeting the creditworthiness standards of Maritimes and Algonquin, and only applicable to the specific capacity under the transportation agreement held by Exelon on the two pipelines. They state that parties will comply with the Commission rules, policies, and orders, as well as Algonquin's and Maritime's tariffs, at all times, except to the extent permitted by the limited waivers, and then only as necessary to effectuate the permanent assignment of capacity from Exelon to Summit. The Petitioners also state that, once Exelon permanently releases the capacity under the transportation agreement to Summit, both Algonquin and Maritimes will make the necessary postings to reflect Summit as the firm holder of that capacity.

8. In addition, the Petitioners state that, at such time as Summit satisfies the creditworthiness standards of Algonquin and Maritimes, limited waivers are also requested to enable Exelon to permanently release the Algonquin and Maritimes pipeline capacity back to Summit (1) at the end of the natural gas supply agreement the parties have entered into (if it is not superseded by the AMA noted above) or (2) if Exelon were to default in its obligations under the natural gas supply agreement or the AMA. The Petitioners assert that these additional limited waivers, consistent with the reasons set forth above, are necessary to ensure that Summit and its customers are fully protected in obtaining their gas supply, and to manage the upstream pipeline capacity from the Atlantic Bridge Project that will be a critical part of Summit's natural gas supply arrangements.

9. The Petitioners also seek clarification on one element of the Commission's AMA policy. Section 284.8(h)(3)(ii) of the Commission's regulations provides that, for any AMA:

If the capacity release is for a period of more than one year, the asset manager's delivery or purchase obligation must apply on any day during a minimum period of five months (or 155 days) of each twelve-month period of the release, and on five-twelfths of the days of any additional period of the release not equal to twelve months.

The Petitioners note that, in Order No. 712,² the Commission stated that the posting required to implement an AMA "should specify the volumetric levels of the replacement shipper's delivery or purchase obligation and the time periods during which that obligation is in effect."³

10. The Petitioners request that the Commission clarify that at any time prior to the beginning of each month, the releasing shipper may relieve the asset manager of its full natural gas supply obligation under a long-term asset management agreement for all or part of the month – as long as the asset manager is not relieved of its full natural gas supply obligation for more than seven months (or 210 days) in any 12-month period and the pertinent pipeline(s) posts the months, or parts thereof, for which the asset manager's full natural gas supply obligation is relieved. The Petitioners contend that this clarification is consistent with the Commission's AMA policy since it explicitly satisfies the five-month rule.

11. Public notice of the filing was issued on October 26, 2015. Interventions and protests were due on or before August 13, 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.

² *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 123 FERC ¶ 61,286 (2008) (Order No. 712), *order on reh'g*, Order No. 712-A, 125 FERC ¶ 61,216 (2008), *order on reh'g*, Order No. 712-B, 127 FERC ¶ 61,051 (2009).

³ Order No. 712 at P 175.

12. The Commission has reviewed the Petitioners' request for waivers and finds that, as discussed above, the request is adequately supported and consistent with the basis for previous similar waivers that the Commission has granted to permit the prearranged permanent release of capacity.⁴ Granting these waivers will allow the Petitioners to execute their agreement, transfer and acquire the assets in an orderly and efficient manner, and ensure uninterrupted access to a new natural gas service. Accordingly, for good cause shown, the Commission will grant temporary, limited waivers of its capacity release regulations and policies, as well as the provisions set forth in the tariffs of Algonquin and Maritimes, as requested, for the limited purpose of facilitating the permanent prearranged capacity release between Exelon and Summit, once Summit complies with the creditworthiness standards set forth by Algonquin and Maritimes, as described above.

13. In addition, the Commission grants the Petitioners' requested clarification that at any time prior to the beginning of a given month, the releasing shipper may relieve the asset manager of its delivery obligation under a long-term asset management agreement for all or part of the month – as long as the asset manager is not relieved of its full delivery obligation for more than seven months (or 210 days) in any 12-month period. The five-month rule for a release to qualify as an AMA requires that during any 12-month period, the asset manager under a long-term capacity release must stand ready to deliver natural gas to the releasing shipper for at least five months (or 155 days) during any 12-month period.⁵ As discussed, the Petitioners seek clarification that a releasing shipper may notify an asset manager at the beginning of any month during the term of the AMA that the asset manager is relieved of its delivery obligation under the AMA for all or a part of that month provided the asset manager is not relieved of its full delivery obligation under the agreement. We grant the clarification requested by the Petitioners only to the extent that such notification is limited so that the capacity release otherwise

⁴ *E.g.*, *Eni Petroleum US LLC, et al.*, 152 FERC ¶ 61,174 (2015); *Antero Resources Corp.*, 139 FERC ¶ 61,258 (2012); *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.*, 121 FERC ¶ 61,005 (2007); *Northwest Pipeline Corp. and Duke Energy Trading and Mktg., L.L.C.*, 109 FERC ¶ 61,044 (2004).

⁵ 18 C.F.R. § 284.8(h)(3)(ii) (2015).

meets the requirements to qualify as an AMA under the Commission's regulations. Additionally, we clarify that the delivery or purchase obligation under an AMA must be met on an annual basis, that is, a releasing shipper may only relieve an asset manager of its delivery or purchase obligation at the beginning of a given month if the asset manager remains subject to the requirement to deliver or purchase gas at least 155 days in any 12 month period. In other words, a releasing shipper is not allowed to relieve an asset manager of its delivery or purchase obligation for the first year of a 3 year agreement figuring the asset manager would still be liable for the total number of days under the original agreement in the final year of the contract.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.