

153 FERC ¶ 61,319
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 18, 2015

In Reply Refer To:
Talen Energy Marketing, LLC
TransCanada Facility USA, Inc. and
TransCanada Power Marketing, Ltd.
Docket No. RP16-175-000

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Gentlemen:

1. On November 6, 2015, Talen Energy Marketing, LLC (Talen Marketing), TransCanada Facility USA, Inc. (TransCanada), and TransCanada Power Marketing, Ltd. (TCPM and collectively, Petitioners) filed a joint petition (Petition) for limited waivers of the Commission's capacity release regulations and policies and the applicable capacity release provisions of Texas Eastern Transmission, LP's (Texas Eastern) FERC Gas Tariff, as well as any other waivers or authorizations that the Commission may deem necessary to effect the permanent release and assignment of the firm transportation capacity held by Talen Marketing. Petitioners request that the Commission issue an order on the Petition by December 18, 2015. For the reasons discussed below and for good cause shown, the Commission grants the Petitioners' requested temporary waivers.

2. Petitioners state that Talen Marketing's affiliate, Talen Ironwood LLC (Talen Ironwood), currently owns and operates a natural gas-fired, combined-cycle, 660 MW electric generation facility located near Lebanon, Pennsylvania (Generating Facility). Petitioners state that another affiliate of Talen Marketing, Talen Generation, LLC (Talen Generation), owns 100 percent of the membership interests of Talen Ironwood. According to Petitioners, on October 7, 2015, Talen Generation, as "Seller," and TransCanada as "Buyer" entered into a Purchase and Sale Agreement (Agreement) pursuant to which Talen Generation agreed to sell all of its membership interests in Talen Ironwood to TransCanada.¹ Petitioners state that the Agreement requires Talen Marketing to transfer its firm natural gas transportation service agreement with Texas Eastern to TransCanada or its affiliate via a permanent capacity release. Petitioners state TransCanada has designated its affiliate, TCPM, to receive the capacity and associated firm transportation service rights.

3. Petitioners state that Talen Marketing's firm service agreement with Texas Eastern provides for 120,000 Dth/day of transportation service under Texas Eastern's Rate Schedule FT-1 for a term beginning on July 1, 2008, and ending on August 31, 2020. Petitioners state the service agreement provides for transportation on the Ironwood Lateral and is subject to an incremental rate. The Agreement requires the permanent release of the firm service agreement, and TransCanada contemplates that the permanent release will maintain the agreement's current rate (i.e., the maximum incremental rate set forth in Texas Eastern's tariff). Petitioners assert the transfer of the transportation agreement to TCPM is an essential element of the Transaction, because the Generating Facility requires uninterrupted access to natural gas for operations. Petitioners further state that the capacity covered by the firm transportation agreement must continue to be made available to the Generating Facility in order for TransCanada to realize the expected benefits of the Transaction.

4. In order to implement the transaction detailed in this filing, Petitioners request a temporary waiver of the following: (i) the Commission's prohibition against tying the release of pipeline capacity to extraneous conditions; (ii) the Commission's capacity release posting and bidding requirements set out at 18 C.F.R. § 284.8 (2015); (iii) to the extent applicable, Texas Eastern's tariff provisions related to the Commission's capacity release rules and policies; (iv) the shipper must have title rule; and (v) the prohibition of buy-sell transactions. Petitioners state that they will use the requested waivers only for

¹ Petitioners state that they are contemporaneously filing an application, pursuant to Section 203 of the Federal Power Act, seeking Commission authorization to transfer the jurisdictional assets associated with the Generating Facility. We note that Petitioners submitted this filing on November 6, 2015 in Docket No. EC16-30-000, requesting Commission action by January 15, 2016.

the limited purpose of facilitating an efficient and timely transfer of assets set forth in the Agreement. Petitioners state the temporary waivers will be utilized only for the limited purposes of permanently releasing the transportation agreement to TCPM in an efficient and timely manner and consummating the transaction.

5. Public notice of the Petition was issued on November 16, 2015. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.² Pursuant to Rule 214,³ 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.

6. We have reviewed Petitioners' request for temporary waivers and find 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.⁴ The transportation contract included in the transaction appears essential for ensuring that the Generating Facility continues to have uninterrupted access to natural gas fuel supplies. Petitioners state that the transaction will transfer the subject capacity at the current rate. It therefore appears that granting waiver will not harm any third parties.

7. 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.⁵

² 18 C.F.R. § 154.210 (2015).

³ 18 C.F.R. § 385.214 (2015).

⁴ See, e.g., *Union Power Partners, L.P.*, 151 FERC ¶ 61,061 (2015); *Chesapeake Energy Mktg., L.L.C.*, 150 FERC ¶ 61,015 (2015); *Exelon Generation Co., LLC*, 148 FERC ¶ 61,242 (2014); *Entergy Mississippi, Inc.*, 138 FERC ¶ 61,066 (2012); *Entergy Arkansas, Inc.*, 138 FERC ¶ 61,065 (2012); *PPL Generation, LLC*, 133 FERC ¶ 61,122 (2010).

⁵ *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).

8. Accordingly, for good cause shown, the Commission grants the Petitioners' request for a temporary waiver of its capacity release regulations, including the posting and bidding provisions and the prohibitions on tying arrangements, the shipper-must-have-title requirement, and the prohibition on buy/sell arrangements. In addition, the Commission grants, to the extent necessary, a temporary and limited waiver of Texas Eastern's tariff so as to facilitate the capacity release transaction. The Commission will allow the waivers to take effect immediately, and remain in effect for 90 days, or until the date the capacity release transaction is completed, whichever is sooner.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.