

155 FERC ¶ 61,024
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

April 11, 2016

In Reply Refer To:
CenterPoint Energy Services, Inc.
Continuum Energy Services, L.L.C.
Docket No. RP16-721-000

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

Attention: Michael J. Manning,
Attorney for CenterPoint Energy Services, Inc.

Dear Mr. Manning:

1. On March 11, 2016, as amended March 23, 2016,¹ CenterPoint Energy Services, Inc. (CenterPoint) and Continuum Energy Services, L.L.C. (Continuum) (collectively, Petitioners) filed a joint petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,² requesting all necessary approvals and waivers to permit Continuum to transfer or assign to CenterPoint its rights to various interstate pipeline transportation and storage contracts. Specifically, Petitioners request the issuance of an order granting temporary waiver for 90 days of: (1) the Commission's capacity release posting and bidding regulations set forth in section 284.8 of the Commission's regulations³ and related interstate pipeline FERC Gas tariff provisions implementing such regulations; (2) the Commission's shipper-must-have-title policy; (3) the prohibition against buy/sell

¹ On March 23, 2016, Petitioners filed an amendment revising Attachment A to correct certain minor errors.

² 18 C.F.R. § 385.207 (2015).

³ *Id.* § 284.8.

arrangements; (4) the prohibition against tying arrangements in capacity releases; and (5) the capacity release-related tariff provisions of the affected pipelines that implement the aforementioned policies. In addition, Petitioners state that Continuum also plans to assign its rights to two contracts for transportation pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) to CenterPoint as part of the transaction. For the reasons discussed below and for good cause shown, the Commission grants the requested limited waivers.

2. Petitioners state that on January 28, 2016, CenterPoint, Continuum, and Continuum's parent company, Continuum Energy, L.L.C., entered into a Purchase and Sale Agreement (PSA) for the sale and transfer of the wholesale jurisdictional assets of Continuum to CenterPoint (Asset Sale).⁴ Petitioners state that in order to ensure that CenterPoint will be able to provide the services covered under the transportation and storage agreements following the consummation of the Asset Sale, and listed in Attachment A to the petition, they seek a temporary 90-day waiver of the Commission's capacity release posting and bidding requirements in 284.8 of the Commission's regulations⁵ and associated interstate pipeline tariff provisions implementing such requirements to permit Continuum to transfer its Part 284 open access transportation agreements to CenterPoint. Petitioners state that the petition is being filed in advance of the date upon which the Asset Sale will be consummated in order to ensure that any required Commission authorizations are received in a timely fashion. Petitioners expect to consummate the Asset Sale as soon as possible on or after April 1, 2016 and before May 1, 2016. Therefore, Petitioners request that the Commission issue an order granting the requested waivers no later than April 11, 2016.

3. Petitioners state that the transfer of Continuum's rights and obligations under its pipeline service agreements will not result in any change in the terms of transportation and storage services governed by those agreements. Petitioners state that CenterPoint will succeed to Continuum's rights under the jurisdictional natural gas transportation and storage agreements that are listed in Attachment A to the petition, as well as to Continuum's rights under the two NGPA section 311 service agreements with non-jurisdictional natural gas transportation and storage service providers, also listed in Attachment A.

4. Petitioners state the requested waiver will only be used for the limited purpose of completing the transaction, thereby allowing Continuum's sale and transfer of its wholesale jurisdictional assets to CenterPoint. Petitioners claim the Commission has recognized that

⁴ Petitioners state that under the PSA, Continuum is also transferring all of its membership interests in its retail gas marketing subsidiary, Continuum Retail Energy Services, LLC.

⁵ 18 C.F.R. § 284.8.

such temporary waivers serve a vital function in facilitating complex transactions.⁶ In particular, Petitioners assert the requested waiver will eliminate the risk that Petitioners will inadvertently violate the Commission's policies while effectuating the transaction which involves the assignment and/or novation of several transportation and storage agreements. Petitioners contend that the Commission has granted waivers of its regulations and policies governing the use and release of interstate capacity to allow parties to consummate transactions such as mergers, corporate consolidations, and the sale of an entire business unit and Petitioners believe that the proposed Asset Sale is consistent with those types of transactions for which the Commission has granted waivers in the past.

5. Moreover, Petitioners assert that granting the temporary waivers requested in this Petition will permit the interstate gas pipeline transportation and service agreements listed in Attachment A to continue to be used to obtain gas supplies for the retail customers of CenterPoint and Continuum. Petitioners believe that granting this petition is consistent with recent precedent, in which the Commission has granted waivers to a number of petitioners in similar circumstances.⁷

6. Pending Commission action on this petition for waiver, Petitioners state that they plan to enter into an asset management agreement (AMA) pursuant to which Continuum will release its rights under the contracts listed in Attachment A to CenterPoint. Petitioners state that Continuum will retain the right to recall all such capacity while the AMA with CenterPoint is in effect. Petitioners further state that upon approval of this petition and the transfer of all rights contemplated in this petition from Continuum to CenterPoint, Petitioners will terminate the AMA.

7. Public notice of the filing was issued on March 17, 2016. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁸ Pursuant to

⁶ *Request for Clarification of Policy Regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Businesses*, 127 FERC ¶ 61,106, at P 8 (2009).

⁷ Petition at 6 n.6 (citing *see, e.g. Southern Union Co.*, 145 FERC ¶ 61,165 (2013), *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*, 141 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)).

⁸ 18 C.F.R. § 154.210.

Rule 214,⁹ 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 interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No adverse comments or protests were filed.

8. The Commission has reviewed Petitioners' request for all needed temporary waivers and approvals to complete the Asset Sale, and finds that the request is adequately supported and appears generally consistent with previous waivers that the Commission has granted to permit the release of capacity under similar circumstances, particularly when the transfers are a result of various types of corporate restructurings, including corporate mergers and sales of entire business units.¹⁰ Moreover, no party objected to the requested waivers.

9. Accordingly, for good cause shown, the Commission grants Petitioners' request for temporary, limited waiver of the Commission's capacity release regulations, including prohibitions on buy/sell and tying arrangements, posting and bidding provisions, and "shipper-must-have-title" requirements. In addition, the Commission grants limited waiver of the affected pipelines' tariff provisions implementing those policies, only to the extent necessary to effectuate the permanent releases of capacity in the amounts specified in the petition. 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.

⁹ *Id.* § 385.214.

¹⁰ *E.g.*, *Big Sandy Pipeline, LLC*, 141 FERC ¶ 61,151; *Big Sandy Pipeline, LLC*, 136 FERC ¶ 61,130 (2011); *Total Gas & Power North America, Inc.*, 131 FERC ¶ 61,023 (2010); *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082 (2009); *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009).