

156 FERC ¶ 61,038
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 15, 2016

In Reply Refer To:
GDF SUEZ Energy North America, Inc.
GDF Suez Energy Marketing NA, Inc.
ANP Fuel Services, Inc.
Atlas Power Finance, LLC
Docket No. RP16-971-000

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Dear Mr. Morgan and Mr. Estes:

1. On May 25, 2016, GDF SUEZ Energy North America, Inc. (GSENA), and its wholly-owned subsidiaries GDF Suez Energy Marketing NA, Inc. (GSEMNA) and ANP Fuel Services, Inc. (together, the GSENA Natural Gas Entities) and Atlas Power Finance, LLC (Atlas) (jointly, the Petitioners) filed a Joint Petition requesting temporary waivers of the Commission's capacity release regulations and certain other Commission policies related to the release of capacity on several interstate pipelines and storage providers (Affected Pipelines).¹ The Petitioners request that the Commission issue an order on the

¹ The Affected Pipelines are Natural Gas Pipeline Company of America LLC and Columbia Gas Transmission LLC. Petitioners also are seeking, to the extent necessary, with respect to the Affected Pipelines, temporary waiver of the tariff provisions governing (for instance) capacity release, posting and bidding requirements, and title requirements, and the like necessary to implement the transaction (as defined below).

Petition no later than July 15, 2016, to facilitate an expeditious closing of the transaction, as described below. For the reasons discussed below, and for good cause shown, the Commission grants the requested limited waivers.

2. The Petitioners state that these waivers are requested to enable the GSENA Natural Gas Entities to transfer, via permanent capacity release, their natural gas transportation and storage capacity (Transferred Capacity) used to supply natural gas to GSENA's gas-fired electric generation facilities to Atlas or its affiliates as part of a larger integrated transaction. Petitioners state that they have contacted each of the Affected Pipelines and none have expressed opposition to this Petition with the understanding that necessary credit arrangements will be made before the releases are effectuated.

3. The Petitioners request a temporary, one-hundred twenty day waiver of the Commission's capacity release regulations set forth in section 284.8 of the Commission's regulations, including: (1) the posting and bidding requirements; (2) restrictions on capacity releases at rates in excess of the Affected Pipelines' maximum rate; (3) the Commission's shipper-must-have-title policy; (4) the prohibition against buy-sell arrangements; and (5) the prohibition against tying arrangements, in each case to permit the Transferred Capacity to be permanently released as part of the transaction. To the extent applicable, Petitioners also request that the Commission waive the capacity release-related tariff provisions of the Affected Pipelines. Finally, Petitioners seek a waiver of any other Commission regulation or policy, or any other pipeline tariff provision, deemed necessary to accomplish the permanent release of the Transferred Capacity as described in this Petition.

4. The Petitioners state that the temporary waivers requested in this Petition are necessary in order to facilitate Atlas's acquisition of GSENA. The Petitioners state that granting the requested waivers is consistent with Commission policy and precedent. The Petitioners state that the transaction "goes beyond a simple transfer of interstate pipeline capacity from one company to another, or even a transfer of pipeline capacity together with related gas purchase and sales agreements."² The Petitioners further state that the Commission has found that the capacity release mechanism is not well-suited for transferring pipeline capacity subject to "complex, integrated deals that do not permit the disaggregation of assets."³ Instead the Petitioners state that it is intended to "reallocate

² Joint Petition at 9 (citing *Sempra Energy Trading LLC*, 133 FERC ¶ 61,128, at P 23 (2010)).

³ *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).

unnneeded firm capacity to those who need it and promote efficient load management by the pipeline and its customers.”⁴ The Petitioners state that on many occasions, the Commission has provided waivers of its capacity release rules and regulations to facilitate transactions similar to this transaction.⁵

5. The Petitioners request that the Commission act on the waiver requests by July 15, 2016, and allow the waivers to remain in effect until one-hundred twenty days from the date the transaction closes.

6. Public notice of the filing was issued on June 7, 2016. Interventions and protests were due on or before June 9, 2016, as provided by the notice. 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.

7. The Commission has reviewed the Petitioners’ request for waivers and finds that the request is adequately supported and consistent with previous waivers that the Commission has granted to permit the transaction under similar circumstances.⁶ Accordingly, the Commission will grant temporary, limited waiver of its capacity release regulations, and the related polices and tariff provisions of the Affected Pipelines’ policies as identified above, only to the extent necessary to facilitate the described transaction. Granting these waivers will allow the Petitioners to implement the transaction in an orderly and efficient manner. The Commission will allow the waivers

⁴ *Id.*

⁵ *See, e.g., SWN Energy Servs.*, 155 FERC ¶ 61,245 (2016); *Ark. Elec. Coop. Corp.*, 140 FERC ¶ 61,026 (2012); *PPL Generation, LLC*, 133 FERC ¶ 61,122 (2010); *Conectiv Energy Supply, Inc.*, 132 FERC ¶ 61,247 (2010); *Nexen Mktg. U.S.A. Inc.*, 131 FERC ¶ 61,282 (2010); *Conectiv Energy Supply, Inc.*, 131 FERC ¶ 61,261 (2010); *Total Gas & Power North America, Inc.*, 131 FERC ¶ 61,023 (2010); *Wis. Elec. Power Co.*, 131 FERC ¶ 61,104 (2010); *EnergyMark, LLC*, 130 FERC ¶ 61,059 (2010); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008); *Barclays Bank PLC*, 125 FERC ¶ 61,383 (2008); *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009); *Integritys Energy Servs., Inc.*, 129 FERC ¶ 61,188 (2009); *Tenn. Gas Pipeline Co.*, 111 FERC ¶ 61,509 (2005).

⁶ *See supra* note 5.

to enter into effect on the date that this order issues, and remain in effect until one-hundred twenty days from the date that the transaction closes.

By direction of the Commission.

Kimberly D. Bose,
Secretary.