

157 FERC ¶ 61,170
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 1, 2016

In Reply Refer To:
AEP Generation Resources Inc.
AEP Generating Company
Lightstone Generation LLC
Docket No. RP17-29-000

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Dear Mr. Ross and Mr. Barrowes:

1. On October 14, 2016, AEP Generation Resources Inc. (AEP Generation Resources), AEP Generating Company (AEP Generating) (collectively, AEP) and Lightstone Generation LLC (Lightstone Generation) (collectively, Petitioners) filed a joint petition requesting a temporary waiver of the Commission's capacity release regulations and policies, and the applicable capacity release tariff provisions of Columbia Gas Transmission, LLC (Columbia) and Texas Gas Transmission, LLC (Texas Gas), to permit the transfer and permanent release and assignment of firm pipeline transportation service agreements and capacity. For the reasons discussed below and for good cause shown, the Commission grants the requested limited waivers.

2. Petitioners state the waivers are necessary for a limited transition period in order to facilitate the acquisition of two facilities that are a part of a larger transaction involving the sale of four power plants (the Transaction). Petitioners state that on September 13, 2016, Lightstone Generation, f/k/a Burgundy Power LLC, entered into an agreement with wholly-owned subsidiaries of American Electric Power, the parent of AEP, for the purchase of Darby, Lawrenceburg, and two other generating plants, along with certain

facilities and other assets for \$2.17 billion.¹ Petitioners state that they are only requesting a waiver for the firm pipeline transportation agreements and capacity associated with Darby and Lawrenceburg. According to the Petitioners, the Transaction is anticipated to close in early 2017. Therefore, Petitioners ask the Commission to grant the requested waiver on or before December 30, 2016.

3. According to Petitioners, the agreement between AEP and Lightstone Generation provides that the transportation agreements will be transferred and assigned to Lightstone Generation and Lightstone Generation will continue to use the transportation agreements to deliver natural gas to Darby and Lawrenceburg as fuel supply for electric generation. Petitioners state the transportation agreements and capacity associated with Darby and Lawrenceburg are no-notice services. Specifically, Petitioners state that the service with Columbia provides for 12,000 or 40,000 Dekatherms (Dth) per day (depending on the month) at a discounted rate and the service with Texas Gas provides for 180,000 Dth per day at a discounted rate.

4. Petitioners assert that the acquisition of these agreements and assignment of capacity is an integral part of the Transaction. Petitioners state that the Transaction cannot be fully effectuated in a timely and orderly manner without the transfer of the associated transportation capacity. Therefore, Petitioners request a temporary waiver to be effective for 90 days starting on the closing date of the Transaction. Accordingly, to facilitate the Transaction, Petitioners seek temporary waiver of the following Commission regulations and policies in order to effectuate the transfer of pipeline capacity: (1) the prohibition against tying arrangements; (2) the restrictions on capacity releases above or below the applicable maximum rate;² (3) the capacity release regulations set forth in section 284.8 of the Commission's regulations, including the posting and bidding requirements;³ (4) the prohibition against buy/sell arrangements; and (5) the "shipper must have title" rule. Petitioners also request that the Commission waive

¹ Petitioners state that the Darby plant (Darby), located near Mount Sterling, Ohio, is a six-unit natural gas-fired simple cycle generating station with a summer electric capacity rating of 471 MW that began commercial operation in 2001. Petitioners state that the Lawrenceburg plant (Lawrenceburg), located in the City of Lawrenceburg, Indiana, is a two-unit, natural gas-fired combined-cycle generating station with a summer net electric capacity rating of 1,120 MW that began commercial operation in 2004.

² 18 C.F.R. §§ 284.8(b)(2), 284.8(h)(1)(iii) (2016).

³ 18 C.F.R. §§ 284.8(c)-(e) (2016).

the related capacity release tariff provisions in the General Terms and Conditions (GT&C) of Columbia and Texas Gas.⁴

5. Petitioners state the Commission has granted waiver requests in similar circumstances in order to permit the consummation of complex, integrated transactions, including transactions involving the sale of natural gas-fired generation plants and associated transportation agreements.⁵ Petitioners claim both the Columbia and Texas Gas agreements are used to supply natural gas to Darby and Lawrenceburg, respectively, as fuel for generating electricity and the transfer of these agreements will ensure that the supply of electricity generated using that supply is not interrupted.

6. Public notice of the filing was issued on October 17, 2016. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁶ Pursuant to Rule 214,⁷ 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.

7. The Commission has reviewed Petitioners' request for temporary waiver and finds that the request is adequately supported and appears consistent with previous waivers the Commission has granted to permit the release of capacity under similar circumstances.⁸

⁴ See section 14, Release and Assignment of Service Rights, of the GT&C of the tariff provisions of Columbia and section 6.16, Capacity Release, of the GT&C of the tariff provisions of Texas Gas.

⁵ Joint Petition at 9 (citing *SWN Energy Services Company, LLC*, 155 FERC ¶ 61,245, at P 3 (2016); *GDF SUEZ Energy North American, Inc.*, 156 FERC ¶ 61,038 (2016); and *Dogwood Energy, LLC*, 152 FERC ¶ 61,083, at P 8 (2015)).

⁶ 18 C.F.R. § 154.210 (2016).

⁷ 18 C.F.R. § 385.214 (2016).

⁸ See, e.g., *Barclays Bank PLC*, 152 FERC ¶ 61,069 (2015); *J.P. Morgan Ventures Energy Corp.*, 148 FERC ¶ 61,010 (2014); *Antero Resources Corp.*, 139 FERC ¶ 61,258 (2012); *Salmon Resources, LTD*, 138 FERC ¶ 61,059 (2012); *Big Sandy Pipeline, LLC*, 136 FERC ¶ 61,130 (2011); *BHP Billiton Petroleum (Fayetteville) LLC*, 135 FERC ¶ 61,088 (2011); *Wisconsin Electric Power Co.*, 131 FERC ¶ 61,104 (2010); *EnergyMark, LLC*, 130 FERC ¶ 61,059 (2010); *Total Gas & Power North America, Inc.*, 131 FERC ¶ 61,023 (2010); *Sequent Energy Mgmt., L.P.*, 129 FERC ¶ 61,188 (2009); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008).

Specifically, the Commission finds that the Petitioners have appropriately provided the information required for approval of such waivers, by: (1) identifying the regulations and policies for which waiver is sought; (2) identifying the pipeline service agreements and capacity to be transferred; (3) describing the overall transaction and its claimed benefits, with sufficient detail to permit the Commission and other interested parties to determine whether granting the requested waiver is in the public interest; and by (4) filing the Petition as much in advance of the requested date as possible.⁹

8. Accordingly, for good cause shown, the Commission grants Petitioners' request for temporary, limited waiver of the Commission's capacity release regulations, including the prohibition on buy-sell and tying arrangements, posting and bidding provisions, and shipper-must-have-title requirements but only as necessary to facilitate the described Transaction. Granting these waivers will allow the Petitioner to implement the Transaction in an orderly and efficient manner. In addition, the Commission grants, to the extent necessary, a temporary and limited waiver of the related capacity release tariff provisions of Columbia and Texas Gas.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹ *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).