

157 FERC ¶ 61,224
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 21, 2016

In Reply Refer To:
CenterPoint Energy Services, Inc.
Atmos Energy Marketing LLC
Docket No. RP17-176-000

Baker Botts, L.L.P.
1299 Pennsylvania Ave., NW
Washington, DC 20004

Attention: Brooksany Barrowes

Reference: Joint Petition for Temporary Waivers of Capacity Release Regulations and Policies and Related Tariff Provisions

Dear Ms. Barrowes:

1. On November 10, 2016, CenterPoint Energy Services, Inc. (CenterPoint) and Atmos Energy Marketing LLC (Atmos) (collectively, Joint Petitioners) filed a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,¹ requesting all necessary approvals and waivers to facilitate CenterPoint's acquisition of the natural gas and marketing business of Atmos (Transaction). Specifically, Joint Petitioners request temporary waiver of (1) the Commission's capacity release posting and bidding regulations set forth in section 284.8 of the Commission's regulations²; (2) the Commission's shipper-must-have-title policy; (3) the prohibition against buy/sell arrangements; (4) the prohibition against tying arrangements in capacity releases; and (5) the capacity release-related FERC Gas tariff provisions of the affected pipelines

¹ 18 C.F.R. § 385.207 (2016).

² *Id.* § 284.8.

(Affected Pipelines)³ that implement the aforementioned policies. For the reasons discussed below and for good cause shown, the Commission grants the requested limited waivers.

2. Joint Petitioners state that CenterPoint will acquire all of the membership interest in Atmos pursuant to the purchase and sale agreement entered into between their parent companies.⁴ After closing, CenterPoint intends to acquire by release, assignment, novation and/or succession the contracts identified in Appendix A of this Petition.⁵ At that time, Joint Petitioners state that they will begin the process of transferring the assets of Atmos to CenterPoint, including Atmos' natural gas purchase and sales agreements, related natural gas transportation and storage agreements, agreements specifying asset management agreements (AMAs), and natural gas commodities, as well as other non-jurisdictional contracts and assets.⁶ They also state that the post-close transition will require the transfer of numerous assets, including jurisdictional natural gas transportation and storage agreements, as well as natural gas currently owned by Atmos and being stored at various locations.

³ The Affected Pipelines on which Atmos holds contracts for firm natural gas transportation and storage service are: American Midstream, LLC; ANR Pipeline Co.; Bobcat Gas Storage; Caledonia Energy Partners, L.L.C.; Cheyenne Plains Gas Pipeline Co., L.L.C.; Columbia Gas Transmission, LLC; Columbia Gulf Transmission, LLC; Dominion Transportation, Inc., East Tennessee Natural Gas, LLC; Egan Hub Storage, LLC; Gulf South Pipeline Co, LP; KPC Pipeline, LLC; Monroe Gas Storage Co., LLC; National Fuel Gas Supply Corp.; Northern Natural Gas Co.; Panhandle Eastern Pipe Line Co., LP; Pine Prairie Energy Center, LLC; Saltville Gas Storage Co., LLC; Southern Natural Gas Co., LLC; Southern Star Central Gas Pipeline, Inc.; Tennessee Gas Pipeline Co, L.L.C.; Texas Eastern Transmission, LP; Texas Gas Transmission, LLC; Transcontinental Gas Pipeline Co., L.L.C.; Tres Palacios Gas Storage, LLC; and Trunkline Gas Co., LLC. Petition at 2 n.4.

⁴ *Id.* at 4.

⁵ In addition to the firm service agreements for which the instant Petition seeks waiver, Joint Petitioners state that Atmos will also transfer or assign to CenterPoint several other interruptible transportation and storage agreements with interstate pipelines and firm and interruptible agreements with pipelines providing service under part 284 of the Commission's regulations. However, according to Joint Petitioners, those agreements are not currently subject to the Commission's capacity release regulations. *Id.* at 2 n.4.

⁶ *Id.* at 4-5.

3. Joint Petitioners request expedited action by the Commission on the instant request for waiver, on or before December 30, 2016, to allow CenterPoint to begin making arrangements with Atmos, the Affected Pipelines, and its other contractual counterparties for the release and/or transfer of the transportation and storage agreements, including AMAs, in anticipation of the closing date.⁷ Joint Petitioners state that the proposed Transaction involves a significant number of agreements, including complex agreements with multiple counterparties; therefore, they ask that the requested waivers remain in effect from the time the order granting waiver is issued and continuing for 120 days following the closing date of the proposed Transaction, which is anticipated on or about January 1, 2017.⁸

4. Joint Petitioners state that waiver of the specified regulations, rules, policies and FERC Gas Tariff provisions will allow a timely, efficient and permanent transfer of Atmos' jurisdictional transportation and storage agreements, along with the associated assets and agreements discussed above.⁹ Further, Joint Petitioners argue that granting the requested waivers will allow the parties to continue to serve Atmos' customers following the close of the proposed Transaction and such continued, uninterrupted service is in the public interest because it reduces unnecessary transaction costs for Atmos and its existing customers. Joint Petitioners maintain that the requested temporary waivers will be utilized for the sole purpose of completing the proposed Transaction.¹⁰ Last, Joint Petitioners pledge to provide notice of the close of the proposed Transaction to the Commission and state that they will notify the Commission of any change to the list of agreements identified in Appendix A of the Petition that occur following the submission of this Petition or during the requested waiver period.¹¹

5. Joint Petitioners state that the Commission has previously granted temporary waivers of its capacity release rules and policies to permit parties to consummate transactions similar to the proposed Transaction.¹² Joint Petitioners argue that the proposed Transaction here is similar to the transaction contemplated in *Sequent*, in that

⁷ *Id.* at 2-3.

⁸ *Id.* at 3.

⁹ *Id.* at 5.

¹⁰ *Id.* at 6.

¹¹ *Id.* at 10.

¹² *Id.* at 6 (citing *Sequent Energy Management, L.P.*, 137 FERC ¶ 61,042 (2011) (*Sequent*); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008)).

it is a complex commercial transaction whereby Atmos' existing contracts and commodities will be assigned to CenterPoint through an internal corporate restructuring, allowing CenterPoint to carry on Atmos' former business once Atmos has been purchased and its assets integrated into CenterPoint.¹³ In addition, Joint Petitioners state that the Commission has recognized that "the capacity release mechanism is not suited to...complex, integrated deals which do not permit the disaggregation of assets."¹⁴ Joint Petitioners therefore believe that their request for waiver of the capacity release rules and regulations is consistent with recent precedent.¹⁵

6. Public notice of the filing was issued on November 15, 2016. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹⁶ Pursuant to Rule 214,¹⁷ 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 Joint Petitioners' request for all needed temporary waivers and approvals to complete the proposed Transaction 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.¹⁸ Moreover, no party has objected to the requested waivers.

¹³ *Id.*

¹⁴ *Id.* (citing *Macquarie Cook Energy, LLC*, 126 FERC 61,160, at P 14 (2009)).

¹⁵ *Id.* at 6-7 & n.11 (citing *see, e.g., Mercuria Energy America, Inc.*, 155 FERC ¶ 61,253 (2016); *CenterPoint Energy Services, Inc.*, 155 FERC ¶ 61,024 (2016); *Eni Petroleum US LLC*, 147 FERC ¶ 61,007 (2014); *ProLiance Energy, LLC*, 144 FERC ¶ 61,037 (2013)).

¹⁶ 18 C.F.R. § 154.210 (2016).

¹⁷ *Id.* § 385.214.

¹⁸ *E.g., Big Sandy Pipeline, LLC*, 141 FERC ¶ 61,151(2012); *Big Sandy Pipeline, LLC*, 136 FERC ¶ 61,130 (2011); *Sequent*, 137 FERC ¶ 61,042; *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.

8. Accordingly, for good cause shown, the Commission grants Joint Petitioners' request for temporary, limited waiver of the Commission's capacity release regulations, prohibitions on buy/sell and tying arrangements, posting and bidding provisions, and "shipper-must-have-title" requirements. In addition, the Commission grants limited and temporary waiver of the Affected Pipelines' tariff provisions implementing those policies. The granting of these waivers is limited to the extent necessary to effectuate the proposed Transaction discussed above and to complete the permanent releases as specified in this Petition. The Commission will allow the waivers to remain in effect for a 120-day period following the close of the Transaction, as requested. The Commission also directs Joint Petitioners to provide notice of the Transaction's close in this docket.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.