

141 FERC ¶ 61,095
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426
November 5, 2012

In Reply Refer To:
Philadelphia Energy Solutions Refining
and Marketing, LLC
Sunoco, Inc. (R&M)
Docket No. RP13-146-000

Philadelphia Energy Solutions Refining and Marketing, LLC
c/o Buchanan Ingersoll & Rooney, PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357

Sunoco, Inc. (R&M)
1735 Market Street
Philadelphia, PA 19103-7583

Attention: Alan M. Seltzer, Esquire
Attorney for Philadelphia Energy Solutions Refining and Marketing, LLC

Margaret DeSimone, Esquire
Attorney for Sunoco, Inc. (R&M)

Reference: Capacity Release Waiver

Dear Mr. Seltzer and Ms. DeSimone:

1. On October 9, 2012, Philadelphia Energy Solutions Refining and Marketing, LLC (PES) and Sunoco, Inc. (R&M) (Sunoco) (collectively, Petitioners) jointly filed a request for temporary and limited waiver of certain capacity release regulations and policies in order to complete the permanent release of two firm transportation service agreements for service on Texas Eastern Transmission Corporation's (Texas Eastern) natural gas pipeline system. Petitioners request that the waivers be granted no later than November 5, 2012 and be effective for 90 days. For the reasons discussed below and for good cause shown, the Commission grants Petitioners' requested temporary waivers.

2. Petitioners state that PES, Sunoco and Carlyle PES, L.L.C. (Carlyle) entered into a Refining Contribution Agreement on July 12, 2012, under which two-thirds of the equity interests in PES will be owned by Carlyle and one-third will be owned by Sunoco. Petitioners state that, under this agreement, PES would assume from Sunoco and operate a gas refinery and related facilities located in Philadelphia (Transaction). Petitioners further state that, as a result of the Transaction, Sunoco will have no direct involvement in the ownership and operations of the Philadelphia area gas refinery and related assets. In order to allow for the permanent release of transportation capacity on Texas Eastern's system, Petitioners request temporary and limited waiver of the Commission's: (1) capacity release posting and bidding requirements; (2) prohibition against tying; and (3) prohibition on the release of capacity above the maximum recourse rate.¹ In addition, Petitioners request temporary and limited waiver of the Texas Eastern FERC Gas Tariff provisions implementing the Commission's capacity release regulations and policies. Petitioners also state that the requested waivers would be consistent with Commission precedent granting waivers in connection with similar transactions so that the parties requesting waiver could consummate the transfer of an entire business unit.² Petitioners further state the requested waivers would be in the public interest because granting the waivers would permit the Transaction to be fully completed in an orderly and efficient manner and ensure that Texas Eastern is financially indifferent to the permanent release of capacity.³

3. Public notice of the petition was issued on October 9, 2012. Interventions and protests were due on or before October 16, 2012. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)),⁴ all timely filed motions to intervene and any unopposed motions to

¹ Petitioners state that, under one of the transportation agreements between Texas Eastern and Sunoco, Sunoco has a fixed, negotiated rate which is currently lower than the applicable maximum recourse rate for transportation service under Texas Eastern's Rate Schedule FT-1. However, Petitioners note that if Texas Eastern's rates were to be reduced before the end of the term of that agreement, the negotiated rate could exceed the applicable recourse rate.

² Petition at 4-5 (citing *Macquarie Cook Energy, LLC, Constellation Energy Commodities Group, Inc.*, 126 FERC ¶ 61,160 (2009) (*Macquarie*); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008); *Barclays Bank PLC and UBS AG*, 125 FERC ¶ 61,383 (2008)).

³ Petition at 7 (citing *Total Gas & Power North America, Inc. and Chesapeake Energy Marketing, Inc.*, 131 FERC ¶ 61,023 (2010)).

⁴ 18 C.F.R. § 154.210 (2012).

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 the proceeding or place additional burdens on existing parties. No adverse comments or protests were filed.

4. The Commission has reviewed Petitioners' request for temporary waivers and finds that the request is adequately supported and consistent with previous temporary waivers granted by the Commission under similar conditions.⁵

5. Petitioners have 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 are in the public interest. Moreover, the Commission has previously granted temporary waivers of the identified capacity release regulations and policies permitting parties to consummate complex corporate transactions similar to those intended here. Specifically, granting the requested temporary waivers is consistent with our decisions in other proceedings where we granted waivers of various policies and regulations relating to the transfer of interstate pipeline transportation capacity to facilitate the transfer of natural gas supply and transportation contracts and other assets as a result of various types of corporate restructurings, including corporate mergers and sales of entire business units.⁶ As to the permanent release of capacity at a discounted rate, the Commission has recognized that, even in situations where a negotiated rate is currently less than the pipeline's maximum recourse rate, it is possible that the negotiated rate could be above the maximum recourse rate later.⁷ Therefore, the pipeline could conclude that a continuation of the existing negotiated rate is necessary for it to be financially indifferent to a permanent release of a negotiated rate agreement, whether or not the negotiated rate is currently above or below the maximum recourse rate. Finally, the Commission has also waived its capacity release regulations as necessary to permit permanent releases of negotiated rate agreements in order to avoid unnecessarily inhibiting the use of permanent releases to transfer capacity the releasing shipper no longer needs or wants.

⁵ See, e.g., *Distrigas of Massachusetts, LLC, GDR SUEZ Gas NA LLC*, 135 FERC FERC ¶ 61,028 (2011).

⁶ See, e.g., *Macquarie*, 126 FERC ¶ 61,160.

⁷ *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082, at P 14 (2009).

6. Accordingly, for good cause shown, the Commission grants a limited, temporary waiver of section 284.8 of its regulations, including capacity release posting and bidding requirements, the prohibitions on tying arrangements and the maximum applicable rate requirements. In addition, the Commission grants temporary and limited waiver of section 3.14 of Texas Eastern's FERC Gas Tariff. This limited waiver is effective for 90 days from the date of this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.