

172 FERC ¶ 61,244
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

September 17, 2020

In Reply Refer To:
Aethon United BR LP
Aethon III HV LLC
Docket No. RP20-1105-000

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Dear Messrs. Carpenter and Rich:

1. On August 18, 2020, Aethon United BR LP (Aethon United) and Aethon III HV LLC (Aethon III) (collectively, Joint Petitioners) filed a joint petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,¹ requesting temporary and limited waivers of the Commission's capacity release regulations and related tariff provisions of Gulf South Pipeline Company, LLC (Gulf South) to facilitate the permanent transfer by Aethon United to Aethon III of certain capacity under a firm transportation agreement (TSA) between Aethon United and Gulf South. 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 regulations;² (2) the Commission's shipper-must-have-title policy; (3) the prohibition

¹ 18 C.F.R. § 385.207(a)(5) (2019).

² 18 C.F.R. § 284.8 (2019).

against buy/sell arrangements; (4) the prohibition against tying arrangements in capacity releases; and (5) the capacity release tariff provisions of Gulf South's tariff, including the posting and bidding requirements, maximum recourse rate,³ and any assignment provisions as may be necessary. For the reasons discussed below, and for good cause shown, we grant the requested temporary and limited waivers.

2. Joint Petitioners state that Aethon United holds contractual rights to a maximum daily quantity of 750,000 dekatherms (Dth) per day of firm transportation capacity as the Foundation Shipper on Gulf South's Index 99 Expansion Project (Index 99 Project), which is not yet in-service.⁴ Because the Commission has issued a certificate for the Index 99 Project, and Gulf South is providing service to Aethon United on an interim basis, Aethon United and Gulf South cannot renegotiate or assign a portion of Aethon United's Precedent Agreement capacity to Aethon III. Accordingly, Joint Petitioners state that Aethon United has agreed to enter into a permanent release of capacity to its affiliated investment fund, Aethon III, of 250,000 Dth per day of its contracted firm capacity at Aethon United's negotiated rate and provide the proportionate level of security required under the Precedent Agreement, effective October 1, 2020 (or any later in-service date for the Index 99 Project). Joint Petitioners state that Gulf South is financially indifferent to the transaction and has agreed to the release. The capacity release from Aethon United to Aethon III is referred to herein as the "Transaction."

3. Aethon United and Aethon III submit that the Transaction is a form of internal business reorganization of assets (the firm capacity rights) in which Aethon United is releasing its firm capacity on Gulf South to facilitate the firm transportation of gas owned by its sister investment fund Aethon III. Aethon United does not require the capacity it proposes to release to Aethon III, and Aethon III will use the capacity for the same purpose as did Aethon United.

4. Joint Petitioners state that the Commission has held that an assignment of a transportation service agreement prior to the in-service date of a pipeline and after the issuance of a certificate requires Commission approval and is subject to the

³ Joint Petitioners state that Aethon United and Gulf South have entered into a negotiated rate agreement for the expansion facilities at a firm reservation rate that is less than the firm recourse rate for system-wide service in Gulf South's tariff. However, Joint Petitioners note that at some point in the future, the negotiated rate could exceed Gulf South's maximum firm recourse rate.

⁴ Petition at 2 n.1 (citing *Gulf S. Pipeline Co., LP*, 170 FERC ¶ 61,201, at P 4 (2020)).

Commission's capacity release rules.⁵ Given that the Index 99 Project requires new facilities that are under construction and not yet fully in service, Joint Petitioners state that it is not possible to effectuate the assignment and capacity releases pursuant to Gulf South's tariff or capacity release websites. Joint Petitioners further state that to effectuate the Transaction on Gulf South's internet system, an agreement must be activated. However, according to Joint Petitioners, the Transaction at issue here cannot be activated at this time because the Index 99 Project facilities have not been fully completed and although the full in-service date is expected to be October 1, 2020, Gulf South has not finalized the in-service date by providing notice to Aethon United.⁶

5. Joint Petitioners state that they are seeking all necessary approvals and waivers to facilitate the Transaction. Joint Petitioners state that the Commission has granted such waivers previously in capacity release transactions, both when: (i) the permanent release involves a negotiated rate below the otherwise applicable maximum firm recourse rate;⁷ or (ii) the release is required to implement a business restructuring.⁸ Joint Petitioners

⁵ *Id.* at 6 n.3 (citing *USG Properties Marcellus Holdings, LLC*, 166 FERC ¶ 61,111, at P 4 (2019); *Chief Oil & Gas, LLC*, 162 FERC ¶ 61,284, at P 4 (2018); *MMGS Inc.*, 154 FERC ¶ 61,018, at P 8 (2016)).

⁶ *Id.* at 7.

⁷ *Id.* at 9 n.4 (citing *Wyo. Interstate Co., L.L.C.*, 147 FERC ¶ 61,062, at P 6 (2014) (“Where, as here, the releasing shipper is paying negotiated rates that are higher and lower than the maximum rate in its tariff, waiver of the maximum rate is necessary to render the pipeline financially indifferent to the release. Therefore, denial of a waiver request in these circumstances would unnecessarily inhibit the use of permanent releases to transfer capacity which the releasing shipper no longer needs to a shipper that does need it.”); *Noble Energy, Inc.*, 146 FERC ¶ 61,227 (2014) (granting waiver to allow permanent capacity release at negotiated rate lower than the maximum firm recourse rate as part of a larger transaction); *Total Gas & Power N. Am., Inc.*, 131 FERC ¶ 61,023, at P 11 (2010) (“[I]f we were to require that the proposed long-term permanent releases be posted for bidding subject to the maximum recourse rate as required by the capacity release regulations, bidders could not offer to pay the existing negotiated rate for the entire term of the release because such a rate could violate the maximum rate ceiling in the future”).

⁸ *Id.* at n.5 (citing *Eco-Energy, LLC*, 166 FERC ¶ 61,110 (2019) (Eco-Energy) (granting waivers to effectuate an internal corporate reorganization); *Mercuria Energy America, Inc.*, 155 FERC ¶ 61,253 (2016) (Mercuria) (same); *Rice Drilling B LLC*, 150 FERC ¶ 61,014 (2015) (same); *Kerr McGee Energy Services Corporation*, 139 FERC ¶ 61,175 (2012) (same); *Iberdrola Renewables, Inc.*, 138 FERC ¶ 61,201

respectfully request that the Commission issue an order by September 17, 2020, to enable the release to take effect before Gulf South places the Index 99 Project in service, which is expected to be on October 1, 2020. Joint Petitioners further request that the Commission grant the requested waivers to remain in effect until the earlier of 120 days following the date of the Commission's order granting the waivers or the date the Transaction described herein is complete.⁹

6. Public notice of the filing was issued on August 19, 2020. Joint Petitioners requested and were granted a shortened comment period with interventions and protests due August 25, 2020. Pursuant to Rule 214,¹⁰ all timely motions to intervene and any unopposed motions to intervene filed out-of-time 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 received.

7. Joint Petitioners assert that granting the requested waivers is in the public interest because the temporary waivers requested herein will only be used for the limited purpose of consummating the transfer of the capacity under the TSA. They state that the firm capacity on Gulf South is necessary for Aethon III to deliver its natural gas production to the interstate market. Joint Petitioners assert that the Index 99 Project will provide increased access to Haynesville shale gas, and it will benefit consumers by providing additional options to select cost-effective supply sources. In addition, although Joint Petitioners expect an October 1, 2020 in-service date, it is not possible to release the capacity under the TSA pursuant to Gulf South's tariff or websites, as the Index 99 Project is not yet fully in service and the in-service date is unknown, making it impossible to specify the appropriate commencement and end dates that are required for the releases to be posted.

8. We have reviewed Joint Petitioners' request for all needed temporary and limited waivers and approvals to complete the proposed Transaction and find that the request is adequately supported and appears consistent with previous waivers that the Commission granted to permit the release of capacity under similar circumstances. Specifically, we find that Joint Petitioners provided the information required for approval of such waiver, which includes: (a) identification of the regulations and policies for which waiver is

(2012) (same); *Salmon Resources, LTD*, 138 FERC ¶ 61,059 (2012) (same); *Duke Energy Ohio, Inc.*, 134 FERC ¶ 61,230 (2011) (same); *Wisconsin Electric Power Co.*, 131 FERC ¶ 61,104 (2010) (same)).

⁹ *Id.* at 2, 11.

¹⁰ 18 C.F.R. § 385.214 (2019).

sought; (b) identification of the pipeline service agreement and capacity to be transferred; (c) a 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 waiver is in the public interest; and (d) filing the petition as much in advance of the requested date as possible.¹¹

9. Accordingly, for good cause shown, we grant Joint Petitioners' request for temporary, limited waivers as set forth in the petition and discussed above. The waivers shall be in effect on the date of issuance of this order and remain in effect for 120 days following the close of the Transaction, as requested, and only to the extent necessary to facilitate the described Transaction.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹¹ *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).