

168 FERC ¶ 61,067
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

July 30, 2019

In Reply Refer To:
Delphi Energy Corp.
Outlier Resources Ltd.
Docket No. RP19-1346-000

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Dear Mr. Junge, Ms. Buchholz, and Mr. Camp:

1. On June 28, 2019, Delphi Energy Corp. (Delphi) and Outlier Resources Ltd. (Outlier) (collectively, Petitioners) filed a joint petition for temporary waiver of the Commission's capacity release regulations and policies and the related tariff provisions of Alliance Pipeline L.P. (Alliance) to facilitate the transfer and release of capacity by Delphi to Outlier. For the reasons discussed below, and for good cause shown, the Commission grants the requested waivers.

2. Petitioners state that Delphi has contractual rights to 23.187 million cubic feet per day (MMcf/day) of firm transportation capacity on Alliance pursuant to contract

number 1000323 (Agreement).¹ Petitioners state that the rate in the Agreement is a negotiated rate that is higher than Alliance's maximum rate for such service. According to Petitioners, Delphi plans to permanently release a portion of the capacity equal to 16 MMcf/day under the Agreement (Assigned Capacity) to Outlier to become effective as of November 1, 2019, at the same negotiated rate specified in the Agreement. Petitioners state that they are authorized to represent that Alliance does not oppose the petition.

3. Petitioners state that upon receipt of the requested waivers, Delphi will permanently release the Assigned Capacity under the Agreement to Outlier at the negotiated rate specified in the Agreement, in accordance with Section 23.9 of the General Terms and Conditions (GT&C) of Alliance's tariff. Petitioners further state that Outlier will execute a new transportation service agreement with Alliance under the same terms and conditions as the Agreement. According to Petitioners, the requested waivers will allow the proposed release to be accomplished without bidding, similar to the exemption from bidding for releases of long-term capacity at the maximum tariff rate set forth in section 284.8(h)(1)(iii) of the Commission's regulations.

4. Petitioners assert that the Commission has routinely granted waivers in similar circumstances to effectuate a capacity release where the negotiated rate is higher than the maximum rate. Petitioners state that the Commission has found that, in situations where the releasing shipper is paying a negotiated rate in excess of the maximum rate, waiver of the maximum rate is necessary to render the pipeline financially indifferent to the release.² Petitioners state, moreover, that the Commission has found that "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."³

5. Petitioners therefore request, to the extent necessary, waiver of certain of the Commission's capacity release regulations, specifically, the posting and bidding requirements of sections 284.8(d) and 284.8(e), waiver of the maximum rate requirements in sections 284.8(b)(2) and 284.8(h)(1), and waiver of any other regulations or policies the Commission deems necessary to permit the proposed capacity release transaction to occur, including the Commission's policies on the prohibition against tying arrangements, the shipper-must-have-title rule, and the prohibition against buy/sell

¹ Petition at 3.

² *Id.* at 4 (citing *Transcontinental Gas Pipe Line Co., LLC*, 133 FERC ¶ 61,242, at P 6 (2010); *Fla. Pub. Utils. Co.*, 160 FERC ¶ 61,143, at P 4 (2017); *Columbia Gas Transmission, LLC*, 157 FERC ¶ 61,245, at P 4 (2016)).

³ *Id.* (quoting *Transcontinental*, 133 FERC ¶ 61,242 at P 6).

arrangements. In addition, Petitioners request that the Commission waive the related capacity release tariff provisions in Alliance's tariff, including the prohibition on capacity release transactions above the maximum rate, the posting and bidding requirements, and any assignment provisions that are necessary.⁴ Petitioners state that the requested temporary waivers will only be used for the limited purpose of consummating the transfer of the Assigned Capacity under the Agreement, thereby allowing Outlier to use the Assigned Capacity beginning November 1, 2019.⁵

6. Petitioners request that the Commission grant the requested waivers no later than August 1, 2019, so that Petitioners can proceed with consummating their contemplated transaction in a timely fashion. Petitioners request that the waivers remain in effect until the later of November 1, 2019, or the date the capacity release transaction is complete.

7. Public notice of the filing was issued on July 2, 2019. Petitioners requested and were granted a shortened comment period with interventions and protests due on July 8, 2019. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁶ all timely filed 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 the proceeding or place additional burdens on existing parties. No adverse comments or protests were filed. The request for waiver is therefore uncontested.

8. For good cause shown, the Commission grants Petitioners' request for temporary, limited waiver of the Commission's capacity release regulations and of Alliance's FERC Gas Tariff provisions in Section 23.2 of its GT&C implementing those regulations. The Commission only requires a pipeline to allow a permanent capacity release where the pipeline will be financially indifferent to the release.⁷ Where, as here, the releasing shipper is paying a negotiated rate in excess of the maximum rate, waiver of the maximum rate ceiling for capacity releases is necessary to render the pipeline financially

⁴ Provisions governing the release of firm capacity, the posting and bidding requirements for capacity release transactions, and the prohibition on the release of capacity at a rate above the maximum recourse rate are set forth in Section 23 of the GT&C of Alliance's FERC NGA Gas Tariff.

⁵ Petition at 6.

⁶ 18 C.F.R. § 385.214 (2018).

⁷ See, e.g., *Black Hills Gas Distribution, LLC*, 167 FERC ¶ 61,167, at P 9 (2019); *Transcontinental Gas Pipe Line Co., LLC*, 134 FERC ¶ 61,184, at P 6 (2011).

indifferent to the release.⁸ Accordingly, the Commission has granted requests for waiver of the capacity release regulations in order to permit the use of permanent releases to transfer capacity which the releasing shipper no longer needs to a shipper that does need it.⁹

9. The Commission finds that the temporary waiver will only be used for the limited purpose of consummating the transfer of the Assigned Capacity under the Agreement from Delphi to Outlier. In addition, the Commission finds that Petitioners have provided the information required for granting such waiver, including: (1) identification of the regulations and policies for which waiver is sought; (2) identification of the pipeline service agreements and capacity to be transferred; (3) 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 (4) filing the petition as much in advance of the requested date as possible.¹⁰

10. Accordingly, and for good cause shown, the Commission grants temporary waiver of the applicable Commission capacity release regulations and policies, to be effective August 1, 2019, including the posting and bidding requirements, the prohibition of capacity release transactions below or above the maximum rate, the shipper-must-have-title rule, and the prohibitions against buy/sell and tying arrangements. The Commission also grants, to the extent necessary, limited and temporary waiver of the applicable capacity release tariff provisions included in Alliance's tariff. The Commission will allow these waivers to continue in effect until the earlier of 120 days following the date this order is issued or the date the capacity release transaction is completed.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁸ See, e.g., *Aux Sable Canada LP*, 166 FERC ¶ 61,166, at P 6 (2019); *NextEra Energy Mktg., LLC*, 165 FERC ¶ 61,175, at P 6 (2018) (quoting *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082, at P 14 (2009)).

⁹ See, e.g., *Transcontinental Gas Pipe Line Co., LLC*, 134 FERC ¶ 61,184 at PP 6-8.

¹⁰ *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).