

169 FERC ¶ 61,060
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

October 18, 2019

In Reply Refer To:
Exelon Generation Company, LLC
Summit Natural Gas of Maine, Inc.
Boston Gas Company
Docket No. RP19-1644-000

Exelon Generation Company, LLC
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Boston Gas Company
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Re: Petition for Capacity Release Waivers and Amendment of 2015 Waiver Order

Dear Mses. Bergles and Gilman and Messrs. Tarmey and Hirsch:

1. On September 30, 2019, Exelon Generation Company, LLC (ExGen), Summit Natural Gas of Maine, Inc. (Summit), and Boston Gas Company d/b/a National Grid (herein referred to as National Grid) (collectively, Petitioners) filed a joint petition requesting temporary and limited waiver of the Commission's capacity release regulations and policies and the related pipeline tariff provisions necessary to facilitate the assignment and permanent release of capacity under a portion of certain firm

transportation service agreements entered into with Algonquin Gas Transmission, LLC (Algonquin) and Maritimes & Northeast Pipeline, LLC (Maritimes) (collectively, Pipelines) that are part of the Atlantic Bridge Project.¹ Petitioners also request temporary and limited waiver, as applicable, of any specific FERC Gas Tariff provisions of the Pipelines and a request for an amendment to the 2015 Waiver Order² to reflect the transactions contained in this waiver request as well as a shortened comment period and expedited treatment of the Petition. For the reasons discussed below, and for good cause shown, the Commission grants the requested waivers.

2. The Petitioners state that on October 23, 2015, ExGen and Summit filed a request for temporary and limited waivers of certain of the Commission's capacity release regulations and other applicable policies as well as applicable pipeline tariff provisions to facilitate the permanent assignment of capacity from ExGen to Summit of long-term firm natural gas transportation agreements on the Atlantic Bridge Project (the 2015 Petition), as contemplated by a precedent agreement originally between Summit and the Pipelines (the Precedent Agreement), which is assigned by Summit to ExGen.³ Petitioners note that the 2015 Waiver Order granted the requested waivers for the limited purpose of facilitating the permanent prearranged capacity release of the firm capacity by ExGen back to Summit once Summit complied with the Pipelines' creditworthiness standards.⁴

3. Petitioners state that on February 17, 2017, ExGen entered into firm transportation service agreements (Firm Transportation Agreements) with the Pipelines but the agreements have not been activated on the management systems used by the Pipelines because among other things, the Atlantic Bridge facilities associated with the agreements have not been completed, and the in-service date is not yet known.⁵ The Joint Petitioners

¹ *Algonquin Gas Transmission, LLC*, 158 FERC ¶ 61,061 (2017).

² *See, Exelon Generation Company, LLC*, 153 FERC ¶ 61,282 (2015). By a letter order, *inter alia*, the Commission granted the requested waivers for the limited purpose of facilitating the permanent prearranged capacity release of the firm capacity by Exelon Generation back to Summit once Summit complied with the Pipelines' creditworthiness standards; however, subsequent to such Commission approval, the capacity amounts previously agreed to have been reduced, thus, to the extent this reduction requires an amendment to this order (designated as the 2015 Waiver Order), Exelon and Summit request that any such amendment be included in this order.

³ Joint Petition at 3.

⁴ *Id.* at 4.

⁵ *Id.*

also assert that they and the Pipelines have discussed further release or assignment by ExGen to National Grid of a portion of the capacity that is the subject of the Precedent Agreement, the Firm Transportation Agreements, and the 2015 Waiver Order.⁶

4. Petitioners further state that in addition to a reduction based on the amounts released or assigned to National Grid, ExGen and the Pipelines have discussed and intend that the maximum daily transportation quantity under ExGen's Precedent Agreement and the Firm Transportation Agreements will be further amended to reflect a capacity reduction, and thus, in regard to the arrangement between ExGen and Summit, it would be amended such that on meeting the applicable creditworthiness requirements, ExGen would permanently release or assign the Firm Transportation Agreements back to Summit at the reduced capacity amounts. The Petitioners request that to the extent this further capacity reduction requires an amendment to the 2015 Waiver Order, ExGen and Summit request that amendment be included in the order requested by this Petition. Petitioners note that they have been authorized by the Pipelines to state that they do not oppose the waivers and the potential need to amend the 2015 Waiver Order.

5. Petitioners seek temporary and limited waiver of the Commission's capacity release rules and policies set forth in 18 C.F.R. § 284.8 (2019), including: (a) the posting and bidding requirements; (b) the applicable maximum rate provisions; (c) the prohibition against tying, to the extent applicable; (d) the shipper-must-have-title rule; (e) the prohibition against buy-sell arrangements; and (f) any other authorizations or waiver deemed necessary in order to permit the transaction described in the Petition. Petitioners also seek, to the extent necessary, temporary and limited waiver of the applicable provisions of the Pipelines' FERC Gas Tariffs that implement the Commission's capacity release regulations and policies.⁷

6. Petitioners explain that the Commission has clarified that the firm capacity refers to transportation agreements for service on expansion projects, such as the Atlantic Bridge Project, that are not yet in-service. Further, under the 2015 Waiver Order, ExGen and Summit received a temporary, limited waiver to facilitate the permanent release of 8,000 dekatherms (Dth) per day of capacity on the Pipelines by ExGen back to Summit when Summit meets the creditworthiness requirements of the Pipelines. Petitioners state they filed the instant Petition because they and the Pipelines have agreed to certain amendments regarding the subject capacity, which they assert adds new circumstances and complexity to the arrangement.⁸

⁶ *Id.*

⁷ Petition at 9.

⁸ *Id.* at 6.

7. Specifically, Petitioners state that the requested relief will facilitate ExGen's permanent prearranged release or assignment to National Grid of a portion of the capacity under the Precedent Agreement and the Firm Transportation Agreements (2,232 Dth per day on Algonquin and 2,203 Dth per day on Maritimes). Additionally, the Petitioners note that ExGen's Precedent Agreement and Firm Transportation Agreements with the Pipelines would be amended to further reduce the capacity amounts to 3,039 Dth per day on Algonquin and 3,000 Dth per day on Maritimes, and that ExGen and Summit's arrangement would be amended such that on meeting applicable creditworthiness requirements, ExGen will permanently release or assign the Firm Transportation Agreements back to Summit at the reduced capacity amounts. In light of the 2015 Waiver Order, the Petitioners note that that order needs to be amended for the reduced capacity amounts, and assert that ExGen and Summit request that the Commission include this amended authorization in the order issued in this matter. The Petitioners further note that because the 2015 Waiver Order recognized that the underlying arrangement between ExGen and Summit was to place Summit in its original contemplated position as party to the Precedent Agreement and primary holder of the Firm Transportation Agreements and the capacity on the Pipelines thereunder, Summit has joined this Petition and notes its agreement to the reduction of ExGen's capacity in the Precedent Agreement and the Firm Transportation Agreements.⁹

8. Petitioners also note that the requested waiver is needed for ExGen to effectuate a partial release or assignment of the Precedent Agreement and the Firm Transportation Agreements because the agreements must be activated on the gas management systems of the Pipelines. The Petitioners state that the Firm Transportation Agreements cannot be activated at this time because among other reasons: (1) the applicable project facilities have not yet been completed; (2) the final project costs associated with the applicable project facilities are not yet known and thus, the maximum recourse incremental project rate (which sets the maximum bid rate for capacity releases for terms greater than one year) could potentially be different than the maximum recourse rates currently on file with the Commission for the project and included in the applicable Pipeline tariff; and (3) the in-service date is unknown.¹⁰ Thus, according to the Petitioners, it is not possible for an offer and any associated bids for a release to specify the appropriate begin and end dates.¹¹

9. Petitioners also note that National Grid's Massachusetts local distribution company requires authorization from its state regulatory agency in order to enter into

⁹ *Id.* at 6-7.

¹⁰ *Id.* at 7-8.

¹¹ *Id.* at 8.

transactions greater than one year, and thus, the Precedent Agreement and Firm Transportation Agreements are bifurcated into two terms: a one-year transaction that does not require approval, and a fourteen year (14-year) permanent assignment that is subject to state regulatory approval.¹² Thus, the Petitioners maintain that National Grid seeks a one-year contract (beginning on the in-service date) and a 14-year contract which would contemplate a one-year temporary release and a 14-year permanent release.¹³ The Petitioners explain that the uncertainty in the in-service date would result in a need to amend both the begin date and the end date of the one-year temporary release which is not supportable by the systems' programming. Further, they note that consistent with Commission policy, temporary replacement contracts are not allowed to alter the terms of the released capacity with the exception of a temporary change to firm receipt/delivery points.¹⁴

10. To the extent the reduction in the amount of capacity to be permanently released or assigned back to Summit requires any additional waivers, the Petitioners submit that the request is in the public interest for the reasons stated in the 2015 Waiver Petition. Petitioners also maintain that, as the capacity holder of the permanently released or assigned capacity, Summit will be able to preserve the rights under the agreements for the benefit of its local distribution company's customers in Maine.¹⁵ Similarly, they note that the releases and permanent assignments will enable National Grid to acquire additional capacity to serve the needs of its local distribution company's customers and enable it to preserve its rights under the agreements for the benefit of its customers.¹⁶ Finally, the Petitioners maintain that in addition to benefit of the aforementioned customers, the granting of the waiver request will effectuate the capacity release on the Pipelines' gas management systems.¹⁷

11. Further, the Petitioners state that they request expedited action to allow sufficient time for ExGen and the Pipelines to amend, *inter alia*, the Precedent Agreement and the Firm Transportation Agreements prior to the expiration of the condition precedent in the Precedent Agreement that the Atlantic Bridge Project be completed and in service on or

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 9-10.

¹⁶ *Id.* at 10.

¹⁷ *Id.*

before November 1, 2019.¹⁸ Additionally, they note that the expedited action is necessary to allow time for National Grid to take the necessary steps with the Pipelines to be able to schedule the capacity to be released or assigned to National Grid for use as of the start of the Gas Day on November 1, 2019, as this portion of the Atlantic Bridge Project will be in-service and available for use.¹⁹

12. Finally, the Petitioners request that the Commission shorten the comment period to seven days and that an order be issued on or before October 18, 2019. Petitioners also request waiver of section 154.207²⁰ of the Commission's regulations which requires at least 30 days written notice of a proposed change to a tariff requirement. Further, the Petitioners request that the waivers remain in effect for a period of 150 days from the date of the order.

13. Public notice of the filing was issued on October 3, 2019. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.²¹ Pursuant to Rule 214,²² all timely filed motions to intervene and any unopposed motion 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 protests or adverse comments were filed.

14. We have reviewed the Petition and find that the request is adequately supported and consistent with previous temporary waivers granted under similar conditions.²³ In these cases, the Commission has granted temporary, limited waiver of its capacity release regulations and the relevant tariffs of the affected pipelines involving the transfer of natural gas transportation agreements. The request is also consistent with previous

¹⁸ *Id.* at 10-11.

¹⁹ *Id.* at 11.

²⁰ 18 C.F.R. § 154.207 (2019).

²¹ 18 C.F.R. § 154.210 (2019).

²² 18 C.F.R. § 385.214 (2019).

²³ *See, e.g., BP Energy Co.*, 165 FERC ¶ 61,018 (2018); *CNX Gas Co. LLC*, 163 FERC ¶ 61,143 (2018); *Petrohawk Energy Corp.*, 144 FERC ¶ 61,234 (2013); *Salmon Res., LTD*, 138 FERC ¶ 61,059 (2012); *Wis. Elec. Power Co.*, 131 FERC ¶ 61,104 (2010); *EnergyMark, LLC*, 130 FERC ¶ 61,059 (2010); *Sequent Energy Mgmt., L.P.*, 129 FERC ¶ 61,188 (2009); *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008).

Commission orders involving the transfer of natural gas transportation service agreements when a pipeline is not yet in service.²⁴ In addition, we find that Petitioners have provided the information required for granting waiver, including: (1) the identification of the regulations and policies for which waiver is sought; (2) identification of the pipeline service agreements and capacity to be transferred; (3) the 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.²⁵

15. Accordingly, and for good cause shown, we grant temporary and limited waiver of the applicable capacity release regulations and policies, to the extent necessary,²⁶ to be effective October 18, 2019. We will allow the waiver to continue in effect for a period of 150 days and only to the extent necessary to facilitate the described transaction.

16. In addition, we grant temporary and limited waiver of the applicable tariff provisions. Granting waiver allows the Petitioners to implement the described transaction in an orderly and efficient manner. We also confirm the prior approval as set forth in the 2015 Waiver Order, and to the extent necessary, hereby amend said order to effectuate the transaction described herein.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

²⁴ See, e.g., *USG Properties Marcellus Holdings, LLC*, 166 FERC ¶ 61,111 (2019); *MMGS, Inc.*, 154 FERC ¶ 61,018 (2016).

²⁵ *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). While we are granting the Petitioners' request for expedited action here, we remind parties that in the future they should file at least 30 days in advance of their requested order date to allow the Commission time to properly process waiver requests. See, also *Munich RE Trading, LLC*, 166 FERC ¶ 61,212 (2019).