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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Docket No.: RP19-307

South Dakota Public Utilities Commission
Secretary
South Dakota Public Utilities Commission
500 East Capitol
Capitol BLDG
Pierre, SD 57501-

5750185070 CD12



165 FERC ¶ 61,254
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 20, 2018

In Reply Refer To:
Black Hills Utility Holdings, Inc.
Black Hills Service Company, LLC
Docket No. RP19-307-000

Black Hills Utility Holdings, Inc.
Black Hills Service Company, LLC
1102 E. 1st Street
Papillion, NE 68046

Attention: Dari R. Dorman
Associate General Counsel

Dear Ms. Dorman:

I. On November 20, 2018, Black Hills Utility Holdings, Inc. (BHUH) and Black Hills Service Company, LLC (BHSC) (jointly, Petitioners) filed a petition requesting a temporary and limited waiver of the Commission's capacity release regulations and policies, and related natural gas pipeline tariffs for a period beginning no later than December 20, 2018, through April 15, 2019 to facilitate the assignment and permanent release by BHUH to BHSC of certain long-term firm natural gas transportation agreements effective April 1, 2019.¹ For the reasons discussed below, and for good cause shown, the Commission grants Petitioners' request for temporary waiver as requested.

¹ Petitioners have attached "Exhibit I" to the instant petition. Exhibit I sets forth a list of the firm transportation and storage agreements to be assigned/transferred from BHUH to BHSC (BHUH Agreements). Exhibit I also lists the pipelines, the tariff provisions of which Petitioners request waiver. The pipelines in question are Colorado Interstate Gas Company; Enable Gas Transmission, LLC; Natural Gas Pipeline Company of America LLC; Northern Natural Gas Company; Panhandle Eastern Pipeline Co.; Southern Star Central Gas Pipeline, Inc.; Tallgrass Interstate Gas Transmission, LLC; and West Texas Gas.

2. Public notice of the filing was issued on November 26, 2018, with interventions and comments due by November 29, 2018. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,² any notices of intervention and timely filed, unopposed motions to intervene serve to make the filer a party to this proceeding. No party filed a protest or adverse comments. Thus, the request for temporary waiver is uncontested.

3. Petitioners state the requested waiver is necessary to allow Black Hills Corporation (BHC) to undertake a restructuring of its business. Petitioners state that BHC intends to move full time employees, department operation and maintenance and assets from BHUH to BHSC, including gas purchase contracts and related interstate transportation agreements.

4. Petitioners state that in 2005, BHC became a registered Public Utility Holding Company under the Public Utility Holding Company Act (PUHCA). Petitioners state that PUHCA includes provisions regarding the distribution of common corporate costs between the various regulated and unregulated subsidiaries. Petitioners aver that, as is common practice for registered PUHCA holding companies, BHC established a separate service company subsidiary, BHSC, where most common shared service activities would occur. Petitioners state that a second service company subsidiary, BHUH, was created to include more utility specific services, including gas supply purchases and related interstate transportation for the utilities, and to protect the regulated utilities from any risks of subsidizing non-regulated entities of BHC as well as preventing one utility from subsidizing another. Petitioners contend that this approach ensured fair cost treatment between subsidiaries by centralizing common shared services and charging for the shared services at cost to the benefited subsidiaries.

5. Petitioners state that the existing structure requires a complicated, two-step process for cost allocation: allocation of indirect BHSC costs to BHUH, and then to the various subsidiaries. Petitioners state that BHC will eliminate the two-step process by eliminating the allocation from BHSC to BHUH, and then allocate costs directly from BHSC to the various utilities, resulting in a simplification of internal processes. In addition, Petitioners state that the change will improve auditability and understanding for BHC's regulators.

6. Petitioners state that temporary waiver of the Commission's capacity release policies and regulations, and certain related pipeline tariff provisions, is necessary in order to effectuate the permanent release and/or assignment of the firm transportation capacity under the BHUH Agreements from BHUH to BHSC. Petitioners contend that as

² 18 C.F.R. § 385.214 (2018).

its policy has evolved over time,³ the Commission has granted temporary waivers of its capacity release regulations and policies to permit parties to consummate mergers, corporate consolidations, and other similar transactions.⁴ Petitioners submit that the waivers requested herein are consistent with waivers previously granted by the Commission under similar circumstances. Further, Petitioners aver that the waivers requested herein are in the public interest because, following issuance of the waiver, BHC will be able to eliminate complicated processes which will benefit its customers and regulators.

7. Petitioners request a temporary and limited waiver of the Commission's capacity release rules and policies, including the posting and bidding requirements and, to the extent applicable, the prohibition against tying, as well as any other authorizations or waivers deemed necessary to implement the described permanent release and/or assignment of the subject capacity. Petitioners request waiver of section 284.8(b)(2), prohibiting the payment of rates in excess of the maximum rates, to the extent, if any, are applicable. Petitioners request waiver of the applicable provisions of the interstate pipelines' tariff provisions implementing the Commission's capacity release requirements, including the posting and bidding requirements. Petitioners state that BHC has notified the affected interstate pipelines of the waiver request for the associated transfer of the capacity. Petitioners state that Northern Natural Gas Company has authorized Petitioners to state that it does not oppose the proposed temporary and limited waiver, subject to the requirement that BHSC ensure that Northern Natural Gas Company is financially indifferent to the permanent release and/or assignment of the subject capacity.

8. Petitioners request expedited action on the waiver request in order to allow BHC to work with the interstate pipelines to take the appropriate steps to implement the release prior to the April 1, 2019 effective date. Accordingly, Petitioners request that the Commission grant the waiver request on or before December 20, 2018.

9. For good cause shown, the Commission grants Petitioners' request for temporary, limited waiver of the Commission's capacity release regulations and the tariff provisions of the referenced pipelines implementing those policies. The Commission only requires a

³ Petitioners cite *Request for Clarification of Policy Regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Mktg. Bus.*, 127 FERC ¶ 61,106, at P 10 (2009).

⁴ Petitioners cite *Mercuria Energy America, Inc.*, 155 FERC ¶ 61,253 (2016); *Rice Drilling B LLC*, 150 FERC ¶ 61,014 (2015); *Kerr McGee Energy Services Corp.*, 139 FERC ¶ 61,175 (2012); *Iberdrola Energy Serv. LLC*, 138 FERC ¶ 61,201 (2012); *Salmon Resources LTD*, 138 FERC ¶ 61,059 (2012); *Duke Energy Ohio, Inc.*, 134 FERC ¶ 61,230 (2011); *Wisconsin Electric Power Co.*, 131 FERC ¶ 61,104 (2010).

pipeline to allow a permanent capacity release where the pipeline will be financially indifferent to the release.⁵ Where, as here, “the releasing shipper is paying a negotiated rate [potentially] in excess of the maximum rate, waiver of the maximum rate is necessary to render the pipeline financially indifferent to the release.”⁶ 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 that the releasing shipper no longer needs to a shipper that does need it.⁷

10. The Commission finds that the temporary waiver will only be used for the limited purpose of consummating the transfer of the capacity from BHUH to BHSC. Further, all parties (the releasing shipper, the replacement shipper, and the pipelines) agree to the transaction and no other shipper has protested that BHUH’s choice of BHSC as its replacement shipper is unduly discriminatory. Finally, there is no reason to post this release for third parties to submit higher bids because the Commission would not waive the applicable maximum rate to permit a release at a rate in excess of the negotiated rate the releasing shipper is currently paying. The Commission is only willing to waive the maximum rate as necessary to render the pipeline economically indifferent to the permanent release, and thereby avoid inhibiting the permanent release of the capacity. Allowing the release to take place at an even higher negotiated rate than the releasing shipper is currently paying is unnecessary for that purpose.⁸

11. The Commission has reviewed the petition and finds that the request is adequately supported and consistent with previous waiver requests that the Commission has granted to permit the release of capacity under similar circumstances.⁹ Specifically, the Commission finds that Petitioners have appropriately provided the information required

⁵ *Algonquin Gas Transmission, LLC*, 112 FERC ¶ 61,262 (2005); *Transcontinental Gas Pipe Line Co., LLC*, 134 FERC ¶ 61,184, at P 6 (2011) (*Transco*).

⁶ *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082, at P 14 (2009).

⁷ *Transcontinental Gas Pipe Line Corp.*, 126 FERC ¶ 61,086, at P 7 (2009); *Transcontinental Gas Pipeline Co., LLC*, 133 FERC ¶ 61,242 (2010); *Transco*, 134 FERC ¶ 61,184 at P 6.

⁸ See *Transco*, 134 FERC ¶ 61,184 at P 7; *Columbia Gas Transmission, LLC*, 154 FERC ¶ 61,162, at P 7 (2016).

⁹ See, e.g., *Kerr McGee Energy Services Corp.*, 139 FERC ¶ 61,175; *Salmon Resources*, 138 FERC ¶ 61,059; *Wisconsin Electric Power Co.*, 131 FERC ¶ 61,104; *EnergyMark, LLC*, 130 FERC ¶ 61,059 (2010); *Sequent Energy Management, L.P.*, 129 FERC ¶ 61,188 (2009); *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008).

for approval of such waivers by (1) identifying the regulations and policies for which waiver is sought; (2) identifying the pipeline service agreements and capacity to be transferred; (3) describing 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

12. Accordingly, for good cause shown, the Commission grants Petitioners’ request for temporary, limited waiver of the Commission’s capacity release regulations and of related natural gas pipeline tariffs implementing those policies. The Commission grants the waiver petition, with all waivers to be effective upon issuance of this order and continuing through April 15, 2019, as requested.

By direction of the Commission. Commissioner McIntyre is not voting on this letter order.
Commissioner McNamee is voting present.

Kimberly D. Bose,
Secretary.

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.