

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

NEW ENGLAND NG SUPPLY LIMITED)	
)	
AND)	DOCKET NO. RP19-____-000
)	<u>EXPEDITED ACTION</u>
THE BOSTON GAS COMPANY)	<u>REQUESTED</u>
D/B/A NATIONAL GRID)	
)	

**JOINT PETITION FOR TEMPORARY WAIVER OF
CAPACITY RELEASE REGULATIONS AND RELATED TARIFF PROVISIONS
AND REQUEST FOR EXPEDITED ACTION AND SHORTENED COMMENT PERIOD**

Pursuant to Rule 207(a)(5) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. § 385.207(a)(5) (2019), New England NG Supply Limited (“NENG”) and The Boston Gas Company d/b/a National Grid (“Boston Gas”) (jointly, “Petitioners”) hereby submit this Joint Petition for Temporary Waivers of Capacity Release Regulations and Related Tariff Provisions and Request for Expedited Action and Shortened Comment Period (“Petition”). As more fully described herein, Petitioners request that the Commission grant a waiver of its capacity release regulations in order to facilitate a permanent transfer by NENG to Boston Gas of the capacity under two firm transportation service agreements (“TSAs”) between NENG and Algonquin Gas Transmission, LLC (“Algonquin”) and NENG and Maritimes & Northeast

Pipeline, L.L.C. (“Maritimes”) that are associated with the pending Atlantic Bridge Project.

Petitioners respectfully request that the Commission issue an order by October 20, 2019, to enable the release to take place effective November 1, 2019. Petitioners further request that the Commission grant the requested waiver to remain in effect until the earlier of one-hundred and twenty (120) days following the date of the Commission’s order granting the waiver or the date the transaction described herein is complete. To permit the Commission to process the Petition within the requested time, Petitioners request a shortened comment period of seven (7) days.

I.
BACKGROUND

Pursuant to its TSA with Algonquin (Contract No. 510918-R1), dated February 27, 2017, NENG has contractual rights to 16,768 Dth/day of firm transportation capacity on Algonquin under Rate Schedule AFT-1 with a primary receipt point of Mahwah, NJ (Meter No. 00201) and a primary delivery point of Beverly, MA (Meter No. 01215). Pursuant to its TSA with Maritimes (Contract No. 210258-R1), dated February 27, 2017, NENG has contracted rights to 16,550 Dth/day of firm transportation capacity on Maritimes under Rate Schedule MN365

with a primary receipt point of Beverly – Essex Co., MA (Meter No. 30035) and a primary delivery point of Baileyville, ME (Meter No. 30012). NENG and Algonquin and NENG and Maritimes executed the TSAs as required (i) under a precedent agreement for the Atlantic Bridge Project dated October 21, 2015, as amended, and (ii) by the Atlantic Bridge certificate order which directs the parties to execute transportation agreements prior to the commencement of construction.¹ NENG and Algonquin and NENG and Maritimes entered into negotiated rates under the TSAs at rates lower than the firm recourse rates in Algonquin’s and Maritimes’ tariffs. Service under the TSAs was set to commence upon the in-service date of the Atlantic Bridge Project.

Because of uncertainty with the timing of state permitting, the Atlantic Bridge Project, including facilities applicable to NENG’s agreements with Algonquin and Maritimes, has not been completed and the pipelines are unable to determine with certainty when the project will be placed in service. Accordingly, NENG has pursued other gas supply and capacity options and, after consultation with Algonquin and Maritimes, intends to assign its Atlantic Bridge Project precedent

¹ *Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, L.L.C.*, 158 FERC ¶ 61,061 (2017) at Ordering Paragraph (E).

agreement and the TSAs to Boston Gas prior to the in-service date of the Atlantic Bridge Project.

As a result, NENG, Algonquin and Maritimes agreed to assign the precedent agreement, firm capacity, and service agreements to Boston Gas prior to the commencement of the Atlantic Bridge Project.² Upon assignment, Boston Gas also will enter into an amended precedent agreement. The assignments to Boston Gas and NENG's withdrawal from the Atlantic Bridge Project are referred to herein as the "Transaction." The Petitioners have determined that an assignment of the Precedent Agreement and the TSAs is preferable to a future permanent release as doing so will provide Boston Gas with greater certainty that it is afforded all the rights and privileges under the Precedent Agreement. For example, an assignment will remove any uncertainty regarding whether a permanent capacity release at rates different than the recourse rates in a pipeline's tariff can be accomplished absent a future Commission waiver of the posting and bidding requirements.

The Commission has held that "firm capacity", as referenced in § 284.8 of the Commission's regulations,³ refers to any executed natural gas transportation

² Boston Gas's agreement for the term beginning November 1, 2020 is predicated on receipt of approval by the Massachusetts Department of Public Utilities; in order to effectuate such regulatory approval, the replacement TSAs will be broken into a one-year contract and a 14-year contract reflecting this condition precedent. Additionally, Boston Gas and Maritimes will agree to terminate the Maritimes' TSA contemporaneous with the assignment.

³ 18 C.F.R § 284.8.

service agreement for firm service under a Natural Gas Act tariff, including a firm service agreement with a future effective date such as NENG's service agreements with Algonquin and Maritimes.⁴ Thus, the capacity release regulations apply to the transfer of firm capacity under the TSAs in the same manner as they do to any other executed service agreement for jurisdictional service. Accordingly, Petitioners are hereby filing this Petition seeking the waiver needed to effectuate the transfer of firm capacity.

Petitioners have contacted and consulted with Algonquin and Maritimes and are authorized to represent that neither interstate pipeline opposes this Petition. In support of the Petition, Petitioners state the following:

II. **PETITIONERS**

The exact legal name of NENG is New England NG Supply Limited. NENG is a corporation organized under the laws of the Province of New Brunswick, Canada and has its principal place of business at 300 Union Street, Saint John, NB E2L4M3. NENG is a wholly owned subsidiary of J.D. Irving, Limited. NENG purchases and sells natural gas at wholesale in the U.S. and Canada.

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

The exact legal name of Boston Gas is The Boston Gas Company d/b/a National Grid. Boston Gas is a corporation existing under the laws of the Commonwealth of Massachusetts and has its principal place of business at 40 Sylvan Rd., Waltham, MA 02145. Boston Gas is a natural gas local gas distribution company that serves approximately 712,786 natural gas customers in Massachusetts.

III. COMMUNICATIONS

Petitioners request that service of all communications and pleadings in this proceeding be addressed to:

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*Persons designed to receive service pursuant to Rule 2010 of the Commission's Rules of Practice and Procedures, 18 C.F.R. §385.2010 (2019).

IV. REQUEST FOR WAIVER

The Commission has held that an assignment of a TSA prior to the in-service date of a pipeline and after the issuance of the certificate requires Commission approval.⁵ In short, the Commission has determined that such an assignment is subject to the capacity release rules. Given that the Atlantic Bridge Project requires new facilities that are under construction and not yet in service, it is not possible to effectuate the assignment and capacity releases pursuant to Algonquin's and Maritimes' tariffs or capacity release websites. To effectuate a release of capacity on LINK[®], which is used by both pipelines, an agreement must be activated. However, the TSAs at issue here cannot be activated at this time because (i) the Atlantic Bridge Project facilities have not been completed, (ii) the project costs, and therefore the maximum recourse rates, are unknown, and (iii) the in-service date is unknown, so the contract term is not determinable. A capacity release posting would require all of this information.

Accordingly, to enable NENG to assign the capacity under the TSAs to Boston Gas, Petitioners request a waiver of Section 284.8 of the Commission's regulations. More specifically, Petitioners request waiver of the posting and bidding

⁵ *Supra*, note 2.

requirements of Section 284.8(d) and 284.8(e), the pipelines' applicable maximum recourse rates, and any other regulations that the Commission deems necessary to permit the proposed releases to occur. Petitioners further request a waiver of the prohibition against tying arrangements in order to ensure that the releases of capacity on two pipelines is not considered a violation of the Commission's prohibiting the tying of capacity releases to an extraneous condition. There is no assignment of gas supply associated with the capacity releases; however, in order to ensure that there are no capacity release-related issues with the Transaction, and out of an abundance of caution, Petitioners further request a temporary waiver of the shipper-must-have-title policy and the prohibition of buy/sell arrangements.

Additionally, Petitioners request a waiver of Algonquin's and Maritimes' FERC Gas Tariff capacity release requirements, including the posting and bidding requirements, maximum recourse rate, and any assignment provisions as may be necessary. A waiver of both the Commission's regulations and the pipeline's tariff provisions is necessary to complete the Transaction.

This Petition satisfies the Commission's procedural requirements for requests for waiver of the capacity release regulations.⁶ The Commission has stated that requests for waivers should: (1) identify with as much specificity as possible the regulations and policies for which they seek waiver; (2) identify the pipeline capacity at issue; (3) provide a sufficient description of the overall transaction and its claimed benefits to permit the Commission and other interested parties to analyze whether granting the requested waivers are in the public interest; and (4) be filed as far in advance of the requested action date as possible.

The temporary waivers requested herein will only be used for the limited purpose of consummating the transfer of the capacity under the TSAs under the transaction. The Algonquin and Maritimes firm capacity is necessary for Boston Gas to maintain service to its firm gas distribution customers in coming years. The Atlantic Bridge Project will provide increased access to Marcellus and Utica shale gas, and it will benefit consumers by giving Boston Gas additional options to select cost-effective supply sources. In addition, as explained above, it is not possible to release the capacity under the TSAs pursuant to the pipelines' tariffs or either

⁶ *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).

Algonquin's or Maritimes' LINK[®] websites, as the Atlantic Bridge Project is not yet 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 on LINK[®].

V.

REQUEST FOR EXPEDITED ACTION AND SHORTENED COMMENT PERIOD

Petitioners request expedited action on this Petition. The waiver requested herein is an important and necessary step to fully implementing the Transaction at the earliest possible time. Accordingly, Petitioners respectfully request expedited treatment of this Petition, including expedited issuance of a notice of the Petition, a shortened comment period of seven (7) days, and issuance by the Commission of an order on this Petition no later than October 20, 2019.

VI.

CONCLUSION

WHEREFORE, for the foregoing reasons, Petitioners respectfully request that the Commission: (a) grant temporary waiver of its capacity release regulations and the related Algonquin and Maritimes tariff provisions as set forth herein; (b) establish a shortened comment period of seven (7) days; and (c) issue an order by October 20, 2019 granting the requested waivers to remain in effect until the earlier of one-hundred and twenty (120) days following the date of the

Commission's order or the date the capacity release transaction described herein is complete.

Respectfully submitted,



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