

155 FERC ¶ 61,293
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Elba Express Company, L.L.C.

Docket No. CP14-115-000

ORDER GRANTING PARTIAL WAIVER OF CONDITION

(Issued June 22, 2016)

1. On June 1, 2016, the Commission issued an order authorizing Elba Express Company, L.L.C. (Elba Express) to construct, operate, and maintain the Elba Express Modification Project, which adds north-to-south transportation capacity to Elba Express's pipeline system.¹ Elba Express intends to construct and operate the project in three phases. The June 1 Order included a condition in Ordering Paragraph (G) requiring Elba Express to execute contracts for volumes and terms represented by the precedent agreements supporting the application before Elba Express could begin constructing each phase of the project. On June 14, 2016, Elba Express filed a request for a partial waiver of the condition. For the reasons set forth below, we grant the request for partial waiver.

Background

2. Elba Express, in Phase I of the project, proposed to construct and operate additional compression at the existing Hartwell Compressor Station in Hart County, Georgia, and two new compressor stations in Jefferson and Effingham Counties, Georgia. The Elba Express Modification Project was designed, in part, to provide capacity to facilitate additional transportation to markets in the southeastern U.S.

¹ *Elba Liquefaction Company, L.L.C.*, 155 FERC ¶ 61,219 (2016) (June 1 Order). Elba Express filed its acceptance of the June 1 Order on June 3, 2016. On June 3, 2016, Elba Express also filed its Implementation Plan and requested authorization to begin construction of the project. By letter order dated June 7, 2016, the Commission issued its notice to proceed with construction. In compliance with Ordering Paragraph (G), Elba Express has not commenced any construction activities.

3. As a result of an open season, Elba Express entered into precedent agreements with five shippers for 406,167 cubic feet per day (Mcf/d) of the capacity created by the project and proposed to provide service to those shippers under Elba Express's existing rate schedules. In addition, prior to the open season, Elba Express signed a precedent agreement with an existing shipper, Shell NA LNG LLC (Shell LNG) for firm transportation capacity totaling 287,000 Mcf/d on the project.

4. The June 1 Order authorized the Elba Express Modification Project, finding that Elba Express's proposal was consistent with the Certificate Policy Statement.² Specifically, the June 1 Order found that: (1) Elba Express will not rely on subsidies from existing customers, since none of the costs of the expansion are in Elba Express's currently-effective rates and project revenues would exceed project costs; (2) the project will increase flexibility for existing customers, including Shell LNG, by providing additional compression to support bi-directional flow and by facilitating transportation of natural gas to multiple markets in the southeastern U.S.; and (3) there should be no adverse impact on existing pipelines or their captive customers, and little, if any, impact on landowners and surrounding communities. No pipelines or their captive customers or landowners protested the application.³ Consistent with our standard practice, the June 1 Order conditioned the certificate authorization so that construction of each phase of the project could not commence until after Elba Express executed contracts which reflect the levels and terms of service represented in its precedent agreements.⁴

Elba Express's Request for Waiver

5. On June 14, 2016, Elba Express filed a letter with the Commission requesting a partial waiver of Ordering Paragraph (G) of the June 1 Order. Elba Express states that it has executed contracts with five of the six shippers represented by the precedent agreements. Elba Express explains that Shell LNG has not executed its contract and,

² *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000).

³ As explained in the June 1 Order, 155 FERC ¶ 61,219 at P 41, all of the proposed compression will be installed at existing compressor station locations or sites adjacent to the existing Elba Express Pipeline.

⁴ See June 1 Order, 155 FERC ¶ 61,219 at ordering para. (G).

under the terms of its precedent agreement, is not obligated to do so until the June 1 Order is final.⁵

6. Elba Express states that the other shippers on the project are anxious to receive their natural gas service and that Elba Express has its contractors waiting to proceed with the construction necessary to provide that service. Therefore, Elba Express requests a partial waiver of Ordering Paragraph (G) as it pertains to the Shell LNG contract and requests authorization to commence construction of the facilities related to the service to be provided under the five contracts that have been executed. Elba Express states that the capacity associated with these five contracts is 409,167 Mcf/d and would involve construction of two gas turbine units totaling 31,800 horsepower (hp) at the existing Hartwell Compressor Station in Hart County, Georgia, and construction of the new Rincon Compressor Station in Effingham County, Georgia, which would house one gas turbine unit totaling 15,900 hp. Elba Express commits that it will not commence any construction activities at the Jefferson Compressor Station nor perform any additional construction activities at the Hartwell Compressor Station until it has received Shell LNG's executed contract and notified the Commission of such execution.

Commission Response

7. Where the applicant has supported its application with evidence of capacity subscribed under precedent agreements, our general policy is to condition the certificate on the applicant's executing contracts for the level of service and for the terms of service represented in the precedent agreements before commencing construction.⁶ The reason for this requirement is that we believe that executed service agreements or contracts, by their very nature, reflect a higher level of commitment than precedent agreements. In addition, since we ultimately balance a project's demonstrated benefits against its environmental impacts, the requirement that final service agreements be executed prior to the commencement of construction helps to ensure that the evidence of need relied upon in assessing the balance was not illusory.⁷

8. Here, Elba Express has executed contracts for a considerable portion of the capacity represented in the precedent agreements and Elba Express has committed to

⁵ Parties have the opportunity to seek rehearing of the June 1 Order until July 1, 2016. 18 C.F.R. § 385.713 (2015). If no requests for rehearing have been filed by that date, the order is considered final.

⁶ See, e.g., *Dominion Transmission, Inc.*, 136 FERC ¶ 61,031, at P 7 (2011) (Dominion).

⁷ *Id.* See also *Arlington Storage Co.*, 128 FERC ¶ 61,261 (2009).

commence construction of only those facilities associated with the five contracts that have been executed. Although it is our general policy to require the applicant to execute contracts for the total level of service reflected in the precedent agreements before beginning construction, we have granted partial waivers of this requirement in similar circumstances.⁸ We find the level of contract support and shipper demand presented by Elba Express here is sufficient to demonstrate a need for the project, particularly given that Elba Express will only commence construction of facilities related to the executed contracts. As existing rates have been approved for the project and none of the costs of the expansion are included in Elba Express's currently-effective rates, there is no danger of subsidization by existing customers of the Phase I facilities related to the executed contracts. Moreover, partial waiver of the contract condition will have no impact on our finding that landowners will experience minimal, if any, environmental impact. As noted above, no landowners protested the application. Therefore, we will grant Elba Express's request for a partial waiver of the requirement in Ordering Paragraph (G) of the June 1 Order that it execute firm contracts for all of the project's Phase I capacity before beginning construction, as it pertains to the Shell LNG contract.

The Commission orders:

(A) Elba Express's request for partial waiver of Ordering Paragraph (G) of the June 1 Order is granted and Elba Express may proceed with the construction of facilities associated with the five executed contracts, as described in the body of this order;

(B) Elba Express shall notify the Commission when it receives Shell LNG's executed contract.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁸ See, e.g., *Dominion*, 136 FERC ¶ 61,031, at P 8; *SG Resources Mississippi, L.L.C.*, 108 FERC ¶ 61,051, at P 15 (2004); *Portland Natural Gas Transmission System*, 83 FERC ¶ 61,080, at 61,388 (1998).