

145 FERC ¶ 61,075
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 25, 2013

In Reply Refer To:
El Paso Marketing Company, L.L.C. and
Gazprom Marketing & Trading USA, Inc.
Docket No. RP13-1331-000

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Reference: Temporary Waiver Request

Gentlemen:

1. On September 17, 2013, El Paso Marketing Company, L.L.C. (EPM) and Gazprom Marketing & Trading USA, Inc. (Gazprom) (jointly, Petitioners) filed a petition (Petition) seeking temporary 30-day waiver of the following Commission capacity release regulations and policies:

- Notice of bidding, 18 C.F.R. § 284.8(d);
- Bidding requirements, 18 C.F.R. § 284.8(3);
- Any other capacity release regulations under 18 C.F.R. § 284.8 for which waiver is necessary to complete the transaction;

- The shipper-must-have-title policy; and
- The prohibition on buy-sell transactions.

2. Petitioners also request a temporary waiver of El Paso Natural Gas' (EPNG) tariff provisions related to the Commission's capacity release rules, including but not limited to provisions on prior notification and bidding procedures. Finally, the Petitioners request any other authorizations or waivers that the Commission deems necessary to facilitate the permanent transfer and release of six natural gas firm transportation service agreements (U.S. Transportation Agreements) on EPNG's natural gas pipeline system as part of a larger cross-border transaction.

3. Petitioners seek Commission action on the Petition by October 31, 2013. As discussed below, and for good cause shown, the Commission grants the requested temporary waivers.

4. Petitioners explain that the cross-border transaction includes the following components: (a) EPM's affiliate El Paso Energy Marketing de Mexico, S. de R.L. de C.V. (El Paso Mexico) will transfer two fuel supply agreements with electric generation plants in Mexico (Fuel Supply Agreements) to Gazprom's affiliate, Gazprom Marketing & Trading Mexico, S. de R.L. de C.V. (Gazprom Mexico); (b) EPM will transfer the U.S. Transportation Agreements to Gazprom; and (c) El Paso Mexico will transfer three firm transportation agreements for capacity in Mexico (Mexican Transportation Agreements) to Gazprom Mexico. Petitioners further explain that EPM and El Paso Mexico currently rely on the U.S. Transportation Agreements and the Mexican Transportation Agreements to transport natural gas across the U.S./Mexico border to meet El Paso Mexico's delivery obligations to two electric generators in Mexico pursuant to the Fuel Supply Agreements.

5. Petitioners maintain that the temporary waivers will serve the public interest because they will allow for the orderly transition of interrelated contracts from EPM and El Paso Mexico to Gazprom and Gazprom Mexico. Petitioners state that the Commission has recognized that when a transaction "goes beyond a simple transfer of interstate pipeline capacity from one company to another," waiver of capacity release regulations and policies may be appropriate.¹ Petitioners also point out that the Commission has determined that the capacity release requirements are not suited to certain types of "complex, integrated deals which do not permit the disaggregation of assets."² However,

¹ Petitioners cite *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160, at P 14 (2009).

² *Id.* Petitioners also cite *Request for Clarification of Policy Regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Businesses*, 127 FERC ¶ 61,106, at P 8 (2009).

Petitioners assert that the transaction at issue here involves more than merely the transfer of interstate pipeline capacity and therefore is consistent with the previous similar situations in which the Commission has granted temporary waivers of its capacity release requirements.³

6. Public notice of the waiver request was issued on September 19, 2013. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁴ Pursuant to Rule 214,⁵ all timely-filed motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance 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. Petitioners state that EPNG has authorized the Petitioners to state that it does not oppose the requested temporary waivers.

7. The Commission has reviewed Petitioners' request for temporary waivers and finds that the request is adequately supported and consistent with previous waivers that the Commission has granted under similar circumstances.⁶ Accordingly, for good cause shown, the Commission grants the requested temporary waivers for the limited purpose of facilitating a temporary capacity release as part of the complex cross-border transaction described above. The waivers shall remain in effect for 30 days following the date of closing of the transaction described in the Petition. The Commission directs the

³ Petitioners cite, *e.g.*, *Arkansas Electric Coop. Corp.*, 140 FERC ¶ 61,026 (2012) (granting waiver of capacity release regulations and policies for transactions involving transfer of generation plant and transportation service agreement used to provide the plant with natural gas); *BP Canada Energy Marketing Corp.*, 133 FERC ¶ 61,173 (2010) (granting waiver of capacity release regulations and policies for transaction involving transfer of production assets and transportation service agreement used to deliver natural gas from the production assets to market); *Big Sandy Pipeline, LLC*, 141 FERC ¶ 61,151 (2012); *Calpine Energy Services, L.P.*, 131 FERC ¶ 61,261 (2010); *PPL Generation, LLC*, 133 FERC ¶ 61,122 (2010).

⁴ 18 C.F.R. § 154.210 (2013).

⁵ 18 C.F.R. § 385.214 (2013).

⁶ *E.g.*, *Big Sandy Pipeline, LLC*, 141 FERC ¶ 61,151 (2012); *Calpine Energy Services, L.P.*, 131 FERC ¶ 61,261 (2010); *PPL Generation, LLC*, 133 FERC ¶ 61,122 (2010); *Total Gas & Power North America, Inc.*, 131 FERC ¶ 61,023 (2010).

Petitioners to file an informational notice in this docket apprising the Commission of the transaction's closing, within 30 days after the transaction is completed.

By direction of the Commission.

Kimberly D. Bose,
Secretary.