

146 FERC ¶ 61,104  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

Chevron U.S.A. Inc.

Docket No. RP14-161-000

v.

Kinder Morgan Louisiana Pipeline LLC

ORDER ON COMPLAINT

(Issued February 18, 2014)

1. On November 12, 2013, Chevron U.S.A. Inc. (Chevron) filed a complaint (Complaint) pursuant to Rule 206 of the Commission's Rules<sup>1</sup> against Kinder Morgan Louisiana Pipeline LLC (KMLP). Chevron states that it requested primary point changes in order to reverse the flow of most of its contracted-for capacity, but that KMLP refused, in part because the request would require facility modifications. Chevron argues that the "Commission should order KMLP to make the permanent primary receipt and delivery point changes that Chevron has requested, and to make any facility modifications requested by Chevron."<sup>2</sup>

2. As discussed below, the Commission is requiring KMLP to provide additional information before we address the issues raised by Chevron's complaint and KMLP's responses.

**Background**

3. Chevron's complaint arises from the following undisputed facts. In 2004 and 2006, the Commission issued orders pursuant to NGA section 3 authorizing Sabine Pass LNG, L.P. to construct an LNG terminal (Terminal) in Louisiana for the purpose of importing, storing, and revaporizing foreign-sourced LNG.<sup>3</sup> Three customers have firm

---

<sup>1</sup> 18 C.F.R. § 385.206 (2013).

<sup>2</sup> Chevron Complaint at 3.

<sup>3</sup> *Sabine Pass LNG, L.P.*, 109 FERC ¶ 61,324 (2004). *Sabine Pass LNG, L.P.*, 115 FERC ¶ 61,330 (2006).

capacity in the Terminal: Cheniere Resources, which is an affiliate of the Terminal; Chevron; and Total Gas & Power North America (Total). Cheniere Resources uses the Cheniere Creole Trail Pipeline to transport revaporized LNG away from the Terminal to interconnections with interstate pipelines. However, Chevron and Total chose not to contract for capacity on that pipeline. Instead, in 2005, Chevron and Total issued a public request for proposals looking for a company to build a pipeline that could transport their revaporized LNG from the tail gate of the Terminal to various delivery points at interconnections with a number of interstate pipelines. KMLP agreed to build the pipeline, and in 2007 the Commission issued a certificate for the pipeline.<sup>4</sup>

4. KMLP's system consists of two pipeline "legs," both of which originate at the Terminal. Leg 1 extends approximately 132 miles north-east, interconnecting with nine interstate pipelines and two storage providers. Leg 2 is much shorter, running only one mile from the Terminal to a point of interconnection with Natural Gas Pipeline Company of America, LLC (Natural), and continuing, using capacity leased from Natural, for another 20 miles to interconnections with four interstate pipelines. As requested by Chevron and Total, KMLP's system does not include any compression. KMLP states that its deliveries and operations rely on the send-out pressure from the Terminal.

5. Chevron and Total each have 20-year service agreements for 50 percent of KMLP's total capacity. Chevron pays a negotiated rate, which is approximately one-third of KMLP's maximum recourse rate. Chevron and Total have primary receipt points at the outlet of the Terminal and primary delivery points inland, at the interconnections with the various interstate pipelines connected to KMLP. Chevron and Total also each have a "Facility Option Agreement" with KMLP, under which KMLP agrees to install certain facilities if requested by Chevron and Total for expected and/or potential future needs.<sup>5</sup>

6. Although KMLP was built for the purpose of transporting imported LNG from the Terminal to interstate pipelines, today almost no LNG is being imported into the U.S. Only a very minimal amount of gas flows from the Terminal, and any flow that does occur is due to terminal operations. In 2012, the Commission authorized Sabine Pass LNG and Sabine Pass Liquefaction, LLC, to construct facilities for the liquefaction and export of domestically produced natural gas at the existing Terminal.<sup>6</sup>

---

<sup>4</sup> *Kinder Morgan Louisiana Pipeline, LLC*, 119 FERC ¶ 61,309 (2007).

<sup>5</sup> In its complaint, Chevron requests privileged treatment of its Facility Option Agreement pursuant to section 388.112 of the Commission's procedural rules.

<sup>6</sup> *Sabine Pass Liquefaction, L.L.C.*, 139 FERC ¶ 61,039, *reh'g denied*, 140 FERC ¶ 61,076 (2012).

7. On May 6, 2013, Chevron submitted to KMLP a written request for a permanent change in the primary points in its service agreement so as to reverse the direction of most of its primary path on Leg 1. Chevron made its request pursuant to section 2.1(d)(2) of KMLP's General Terms and Conditions (GT&C).<sup>7</sup> That section states:

Any Shipper with an FTS Agreement may request a permanent change in primary point at any time. KMLP will respond to such a request within two (2) Business Days. KMLP shall grant such a request if firm transportation and point capacity is available to do so; provided that the revised primary points are consistent with the Shipper's capacity (split between Leg 1 and Leg 2 to the extent required by this Tariff) and provided further that the parties can mutually agree on the rate unless the applicable FTS Agreement or related discount or Negotiated Rate or Negotiated Rate Formula agreement does not permit a rate change when there is such a permanent primary point change. Any such permanent point change shall be reflected in an amendment to the FTS Agreement.

8. Chevron requested to move a portion of its Leg 1 primary receipt point capacity away from the Terminal to KMLP's interconnections with various interstate pipelines and move a corresponding portion of its primary delivery point rights to the Terminal. These changes would require KMLP to provide Chevron primary firm service of 900,000 Dth per day on Leg 1 in the opposite direction from Chevron's existing primary path. In particular, Chevron requested an MDQ of 650,000 Dth at Pine Prairie and an MDQ of 250,000 Dth at Egan Hub, both of which are bi-directional interconnection points relatively far inland on Leg 1. Chevron proposed to retain 165,000 Dth of capacity in the existing direction on Leg 1, and did not request primary point changes with respect to its capacity on Leg 2.<sup>8</sup>

9. On May 16, 2013, Chevron also requested, pursuant to the Facility Option Agreement, that KMLP install new, and modify existing, interconnections on its system.<sup>9</sup> Specifically, Chevron requested that KMLP convert an existing delivery point at the

---

<sup>7</sup> [Sheet No. 121, , 0.0.0.](#)

<sup>8</sup> Chevron Complaint at Ex. I. In order to account for its requested 900,000 Dth/day of reverse-direction capacity, Chevron proposed to reduce its primary delivery point MDQs at the CGT, Transco, Texas Gas, and FGT interconnection points by a total of 900,000 Dth/day.

<sup>9</sup> Chevron Complaint at Ex. N.

inland terminus of Leg 1 (where KMLP interconnects with Columbia Gulf Transmission) into a bi-directional point that can provide at least 1,065,000 Dth/day of receipt point capacity, and also requested that KMLP modify the existing receipt point at the Sabine Pass LNG Terminal so that it can accommodate deliveries up to 1,065,000 Dth per day.<sup>10</sup> Chevron requested cost estimates for the new and modified interconnections, which it states would result in the ability to reverse flow on KMLP's entire Leg 1. Chevron stated that once these changes were made, it would request KMLP to make the Columbia Gulf point Chevron's new primary receipt point and the Terminal its new primary delivery point for all service on Leg 1.<sup>11</sup>

10. KMLP rejected Chevron's various requests. KMLP relied primarily on its assertion that Chevron's right to change primary points under GT&C section 2.1(d)(2) is subject to the parties' mutual agreement on rates.<sup>12</sup> KMLP stated that Chevron's request asked for very significant changes to its services that were uniquely designed to move regasified LNG away from the terminal, and KMLP would not agree to provide the modified service pursuant to Chevron's existing negotiated rate.<sup>13</sup> KMLP also rejected Chevron's request for new interconnection facilities under the Facility Option Agreement, stating that the requested new facilities were not covered by that agreement.<sup>14</sup> KMLP did not provide any estimate of the cost of the requested new facilities.

11. Meanwhile on March 12, 2013, Magnolia LNG LLC (Magnolia LNG) requested the use of the Commission's pre-filing review process for its planned new LNG export facility in the Port of Lake Charles, Louisiana, and the Commission approved this request on March 20, 2013.<sup>15</sup> Magnolia LNG indicated that natural gas would be transported to the project via KMLP, which "passes directly through the project site."<sup>16</sup>

---

<sup>10</sup> Chevron Complaint at 13.

<sup>11</sup> Chevron Complaint at Ex. N.

<sup>12</sup> Chevron Complaint at Ex. J, Ex. L.

<sup>13</sup> Chevron Complaint at Ex. J.

<sup>14</sup> Chevron Complaint at Ex. O.

<sup>15</sup> That pre-filing process has been assigned Docket No. PF13-9.

<sup>16</sup> Resource Report No. 1 at 3.

## **Complaint**

12. In its complaint, Chevron contends that KMLP's rejection of Chevron's requests for changes to its primary points and for modified facilities violates KMLP's tariff, the Facility Option Agreement, and Commission policy. Chevron states that changing the direction of its primary contract path, so that it leads to the Terminal, will permit it to use the firm capacity it already holds on KMLP in a commercially reasonable manner.

13. Chevron contends that KMLP's rejection of its May 6, 2013 request to change its primary points violates GT&C section 2.1(d)(2). It argues that section requires KMLP to grant its request, "if firm transportation and point capacity is available to do so." Chevron contends that KMLP has effectively conceded that it has available firm transportation and point capacity to grant the request, because KMLP did not provide any operational reasons as to why the request could not be granted when it denied the request last May. Chevron also points out that in the proceeding authorizing construction of the Sabine Pass Liquefaction project and export facility, KMLP stated that it is positioned to deliver gas to that project. Chevron also notes that in the pre-filing process for the Magnolia LNG Project KMLP has said that it currently has a great deal of operationally available capacity and this is likely to continue over the medium term.

14. Chevron also contends that KMLP erred in denying the request on the ground that parties had not mutually agreed on a revised rate for service after the primary point change. Chevron points out that GT&C section 2.1(d)(2) provides that the requirement for the parties to "mutually agree on the rate" does not apply if "the applicable FTS Agreement ... does not permit a rate change when there is such a permanent primary point change." Chevron states that section 1.4(h) of the negotiated rate agreement provides that the negotiated rate shall not "be subject to change for any reason." Therefore, Chevron argues, its negotiated rate agreement lets it change its primary points without a rate change.

15. Chevron also contests KMLP's assertion that the point change cannot be granted because the pipeline was "uniquely designed" to move gas from the Terminal to points north and therefore Chevron's request asks for very significant changes that go beyond the type of changes contemplated in GT&C section 2.1(d)(2). Chevron contends that this assertion is belied by the fact that KMLP has been simultaneously in discussions with Magnolia LNG to provide service through the same pipeline from receipt points north, as Chevron has requested, to Magnolia LNG's proposed export facility. In addition to contesting KMLP's denial of its request for primary point changes, Chevron also contends that KMLP's denial of its May 16, 2013 request that KMLP install new, and modify existing, interconnections violates both the Facility Option Agreement and the Commission's interconnection policies. Finally, Chevron contends that its request for

new and modified interconnections is consistent with the Commission's interconnection policy.<sup>17</sup>

### **Public Notice and Responsive Pleadings**

16. Public Notice of Chevron's complaint was issued on November 13, 2013, with interventions and protests due on December 12, 2013. Pursuant to Rule 214,<sup>18</sup> all timely filed motions to intervene and any unopposed motions 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 this proceeding or place additional burdens on existing parties.

17. As required by Rule 385.213(a)(1) of the Commission's Rules of Practice and Procedure,<sup>19</sup> on December 12, 2013, KMLP filed an answer to Chevron's complaint requesting that the Commission dismiss the complaint as without merit or, in the alternative, deny the complaint on the record of the pleadings.

18. In its answer, KMLP states that it properly denied both Chevron's May 6, 2013 request to change its primary points and its May 16, 2013 request for the installation of new and modified interconnections, and KMLP requests that the Commission summarily dismiss the complaint. KMLP contends that Chevron's May 6, 2013 request to change its primary points failed to satisfy the requirements of GT&C section 2.1(d)(2) for such a change. KMLP points out that that section only requires it to grant a permanent change to a primary point if firm transportation and point capacity are available to do so. KMLP claims it lacks the capacity to provide the guaranteed primary firm long-term service that Chevron is requesting. KMLP emphasizes that, in Chevron's original request for proposals and subsequent discussions with KMLP concerning the construction of the pipeline, Chevron expressly requested that the pipeline be built without any compression. Thus, KMLP's system is a free-flow system and its deliveries and operations rely primarily, if not exclusively, upon the send out pressure of the Sabine LNG Terminal to transport Chevron and Total's regasified LNG from the Terminal to downstream delivery points. Consistent with this fact, KMLP points out, Chevron's service agreement requires it to deliver its natural gas into Leg 1 at a pressure of 1440 psig.

19. KMLP argues that if it were to grant Chevron's permanent primary point changes, it would be unable to effect receipts and deliveries up to Chevron's revised contract demand at these points while at the same time fulfilling its obligations under Total's

---

<sup>17</sup> (Citing *Panhandle Eastern Pipe Line Co.*, 91 FERC ¶ 61,037, at 61,141 (2000)).

<sup>18</sup> 18 C.F.R. § 385.214 (2013).

<sup>19</sup> 18 C.F.R. § 385.213(a)(1) (2013).

service agreement and Chevron's remaining forward-flow contract demand without adding compression facilities. KMLP also asserts that if it granted Chevron's request to change its primary points, it would be at risk for breach of Chevron's service agreement and, among other things, could be liable for reservation charge credits when it failed to provide the revised primary firm service Chevron seeks.

20. KMLP also asserts it properly denied Chevron's request for permanent primary point changes because the parties have not agreed on the rate to be paid by Chevron after such changes. KMLP relies on the provision in GT&C section 2.1(d)(2) that it need not grant the primary point change unless "the parties can mutually agree on the rate unless the applicable . . . negotiated rate . . . does not permit a rate change when there is such a permanent primary point change." KMLP disagrees with Chevron's contention that its negotiated rate agreement does not permit a rate change in these circumstances. KMLP asserts that the Chevron service agreement contains numerous provisions that demonstrate that an essential element of the agreement between the parties and rate negotiated by the parties is a primary flow path from the Terminal to delivery points to the north.<sup>20</sup> KMLP contends that the existing negotiated rate does not automatically apply to the requested primary point changes, where in order to grant such requests, new facilities must be constructed and operated.

21. On December 24, 2013, Chevron filed an answer to KMLP's Answer, noting that KMLP's Answer also contained a Motion for Summary Disposition. On January 8, 2014, KMLP filed a limited Answer to Chevron's December 24, 2013 answer.<sup>21</sup> These pleadings largely reiterate contentions the parties made in their prior pleadings. However, Chevron in its answer asserted that KMLP's contentions that it currently lacks the ability to provide primary firm service in the direction of the Terminal is belied by the fact that it recently posted two firm transactions with primary receipt points at the existing Pine Prairie bi-directional point and primary delivery points at the Terminal. KMLP responded that the two transactions in no way show that it could grant Chevron's request for a permanent long-term reversal of its primary path. KMLP states that the two transactions in question were each for a very limited time over a total five-day period. In both instances, Cheniere Marketing, LLC requested the firm service for these limited periods to permit its affiliate, Cheniere Creole Trail Pipeline to run a pig in its pipeline. Thus, KMLP states that the two transactions were for integrity testing, not commercial purposes. In both instances, KMLP's ability to perform the services was dependent on the fact that Chevron and Total were not flowing gas at the time, and Cheniere Marketing

---

<sup>20</sup> KMLP Answer at 16-18.

<sup>21</sup> Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to protests or answers unless otherwise permitted by the decisional authority. 18 C.F.R. § 213(a)(2) (2013). In this case the Commission will accept both of these answers because they provide information that should assist us in our decision-making process.

was willing to configure both its receipt and delivery point pressures so as to permit the reverse flow.

### **Discussion**

22. The Commission requires additional information concerning the operational capabilities of KMLP's system before addressing the issues raised by the pleadings in this proceeding. Chevron contends that KMLP improperly denied its May 6, 2013 request pursuant to GT&C section 2.1(d)(2) to make various primary point changes in order to reverse the flow of most of its contract path. That section requires KMLP to grant a request to change primary points if certain conditions are satisfied. One of those conditions is that "firm transportation and point capacity" must be "available to" permit the requested primary point changes. Therefore, if KMLP's system, as currently configured, has insufficient firm transportation and point capacity available to permit the primary point changes in Chevron's May 6, 2013 request pursuant to GT&C 2.1(d)(2), KMLP's rejection of Chevron's request did not violate GT&C section 2.1(d)(2). In that event, Chevron would only be entitled to change its primary points to the extent that the Facility Option Agreement required KMLP to grant Chevron's May 16, 2013 request for KMLP to install new, and modify existing, interconnections on its system. The current record is insufficient for the Commission to resolve the factual question of whether KMLP has available capacity to grant the primary point changes Chevron requested on May 6, 2013, immediately, without any physical changes to facilities or operations.

23. In order to determine whether a tariff or other violation has occurred, the Commission requires KMLP to provide the additional factual information described below. Responses to this data request are due no later than 30 days from the date of this order.<sup>22</sup> Chevron or any other parties who wish to file an answer to KMLP's responses must do so within 45 days from the date of this order; subsequent answers shall not be permitted. All responses must be filed via the Commission's eFiling system in native electronic format, and must be accompanied by one or more affidavits attesting to the truthfulness, completeness, and accuracy of the responses. KMLP and Chevron are directed to preserve and maintain any and all documents or information related to the subject matter of the complaints in these dockets.

- Q1) Provide the hydraulic design models KMLP used to design its original system, both Leg 1 and Leg 2, operating as a free flowing away from the Terminal toward existing pipeline interconnects or "south-to-north" pipeline system. If there are any differences between the hydraulic design models and the original design requirements from Chevron and Total, describe the differences.

---

<sup>22</sup> See, e.g., *Allegheny Electric Cooperative, Inc., et al. v. PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,165, at P 14 (2007) (compelling the respondent to answer a data request, in order to resolve a complaint).

- Q2) Discuss the operating conditions on KMLP's system that were necessary in order to allow north-to-south flow (toward the Terminal) of up to 350,000 Dth/d for Cheniere Marketing, LLC. Provide hydraulic flow model studies, accompanied by flow diagrams, to demonstrate how the reversal of gas flow was possible without the addition of compression facilities.
- Q3) Chevron requested on May 6, 2013, to make various permanent changes in its primary receipt and delivery points pursuant to GT&C 2.1(d)(2). Is it within KMLP's existing operational abilities (consistent with its existing contractual obligations to Total) to comply with this request? If not, provide a detailed explanation of why not and a list of facility modifications that would be necessary for KMLP to reverse its flow in order to accommodate Chevron's May 6, 2013 request while simultaneously meeting KMLP's receipt and delivery obligations to Total. Support the response with new flow diagrams, hydraulic flow models, and preliminary cost estimates.
- Q4) What service disruptions or contractual violations, if any, would occur as a result of granting Chevron's May 6, 2013 request for receipt and delivery point modifications without making any physical modifications to its system?
- Q5) Would the new and modified interconnection facilities which Chevron requested on May 16, 2013, pursuant to the Facility Option Agreement be sufficient to permit KMLP to grant Chevron's request to modify its primary points so as to reverse its entire primary path on Leg 1, without the installation of any other system upgrades? If not, list the additional facility modifications that would be necessary for KMLP to accommodate Chevron's May 16, 2013 request while simultaneously meeting KMLP's receipt and delivery obligations to Total. Support the response with new flow diagrams, hydraulic flow models, and preliminary cost estimates.
24. The Commission defers action on Chevron's complaint until such time as it has received responses to these data requests and has the requisite factual predicate upon which to grant or deny the requested relief.

The Commission orders:

(A) KMLP shall respond to the data request presented above within 30 days from the date of this order.

(B) Chevron and any other parties may file answers to KMLP's responses with 45 days of the date of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.