

148 FERC ¶ 61,254
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 30, 2014

In Reply Refer To:
Mex Gas Supply, S.L.
Comisión Federal de Electricidad
Docket No. RP14-1252-000

John & Hengerer
1730 Rhode Island Avenue, NW
Suite 600
Washington, DC 20036-3116

Attention: Douglas F. John

Reference: Temporary Waiver Request

Dear Mr. John:

1. On September 8, 2014, Mex Gas Supply, S.L. f/k/a MGI Supply Ltd (Mex Gas) and the Comisión Federal de Electricidad (CFE) (jointly Petitioners) filed a petition seeking temporary waivers of the Commission's capacity release regulations and related El Paso Natural Gas Company, L.L.C. (El Paso) tariff provisions (Petition). Petitioners state that the waivers will permit Mex Gas to relinquish its business of acquiring gas supplies in the U.S. for CFE and transfer to CFE a package of assets, including several El Paso transportation service agreements.¹ Petitioners ask the Commission to grant the Petition by September 30, 2014, or as soon thereafter as possible. Petitioners also ask the Commission to permit the waivers to remain in effect for 120 days following the date of a Commission order granting the waivers. Petitioners add that El Paso has authorized them to state that El Paso does not object to the Petition. As discussed below, the Commission grants the requested waivers to be effective for 120 days from the date of this order or until the date on which the capacity release transaction described in this order is completed, whichever is earlier.

¹ The affected service agreements are listed in Ex. A to the Petition. Petitioners state that the applicable El Paso tariff provisions include its FERC Gas Tariff, Third Revised Volume No. 1A, General Terms and Conditions, sections 9.7 and 9.10(c), as well as any other tariff provisions the Commission deems applicable.

2. Petitioners maintain that their Petition meets the Commission's requirements in that it: (a) identifies with as much specificity as possible the regulations and policies for which they seek waiver; (b) identifies the pipeline capacity at issue; (c) provides 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 is in the public interest; and (d) was filed as much in advance of the requested action date as possible.² Petitioners point out that the agreements to be transferred to CFE are either short-term agreements (with one year or less, but more than 31 days of remaining primary term) or agreements to provide service at a discounted reservation rate.

3. Specifically, Petitioners request temporary waivers of the following capacity release regulations and Commission policies: (a) the shipper-must-have-title requirement; (b) the buy-sell prohibition; (c) the capacity tying prohibition; and (d) the posting and bidding requirements. Petitioners also request any necessary waivers of tariff provisions implementing these regulations and policies that may have been adopted by El Paso. Petitioners contend that waiver of these tariff provisions will obviate the requirements for: (a) a delivery of notice via the El Paso EBB of the election by Mex Gas to release the firm transportation capacity; (b) an open season bidding process for the capacity; and (c) the award of released capacity pursuant to the evaluation criteria in the El Paso Tariff.

4. Petitioners explain that the transfer of the El Paso service agreements from Mex Gas to CFE is scheduled to occur as early as October 1, 2014, provided the requested waivers are granted prior to that date. However, Petitioners further state that if an order is not issued by that date, the transfer likely will take place on the first day of the month after the waivers are granted. In either case, the Petitioners anticipate that the transfer will occur fairly quickly, likely within 30 days of the issuance of a Commission order. Petitioners add that a 120-day effective time period of the waivers will enable the Petitioners to complete the administrative process necessary to accomplish the transfer and address any issues that may arise.

5. Petitioners contend that the proposed transaction is similar to other recent transactions for which waivers have been granted.³ According to Petitioners, in such

² Petitioners cite *Request for Clarification of Policy Regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Business*, 127 FERC ¶ 61,106, at P 10 (2009).

³ Petitioners cite, e.g., *J.P. Morgan Ventures Energy Corporation and Mercuria Energy America, Inc.*, 148 FERC ¶ 61,010, at P 8 n.7 (2014) (citing numerous other cases in which similar waivers were granted).

proceedings, the parties transferred jurisdictional transportation and/or storage agreements as part of larger, integrated transactions that were part of corporate restructurings, including corporate mergers and sales of entire business units.⁴ Petitioners explain that transfer of the El Paso service agreements from Mex Gas to CFE is part of a larger, integrated transaction that is prompted by a change in Mexican law and involves the transfer of various other contracts for service on intrastate pipelines that are not subject to the Commission's capacity release rules. Further, state Petitioners, the transaction is intended to facilitate the sale of a separate and distinct business from Mex Gas to CFE, which will expand its own business activities to take over the supply operations from Mex Gas.⁵

6. Additionally, Petitioners assert that the proposed transaction is distinguishable from those for which the Commission has denied requests for waivers. For example, Petitioners cite *Gas Transmission Northwest Corp.*,⁶ in which the Commission denied a request for similar waivers because the transaction in question was designed to support an entity's exit from a natural gas business in Canada. Petitioners point out that the Commission explained that the entity's "exit from a natural gas business is not an appropriate concern of this Commission."⁷

7. However, continue Petitioners, that is not the case here because the business to be transferred by Mex Gas involves the supply of natural gas to generation facilities that are located outside the U.S. (i.e., in Mexico), although the business itself takes place in the U.S. and involves the purchase of natural gas in the U.S. for transportation to the U.S./Mexico border using transportation capacity purchased on U.S. pipelines (i.e., El Paso and certain intrastate pipelines).

⁴ *Id.*

⁵ Petitioners explain that Mex Gas was formed by Pemex for the specific purpose of conducting business outside of Mexico. Further, Petitioners state that Mex Gas's CFE supply business is separate and distinct from its Pemex supply business. According to Petitioners, Mex Gas's retention of its Pemex supply business is consistent with the retention of assets in other cases in which the Commission has granted capacity release waivers. *See, e.g., Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160, at P 2 (2009); *Virginia Power Energy Marketing, Inc.*, 145 FERC ¶ 61,066, at P 10 (2013).

⁶ 119 FERC ¶ 61,031 (2007).

⁷ *Id.* P 11.

8. Public notice of the filing was issued on September 9, 2014. Interventions and protests were due on or before September 22, 2014. Pursuant to Rule 214,⁸ all timely filed motions to intervene and any unopposed motion 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 the proceeding or place additional burdens on existing parties. The Petition is unopposed.

9. The Commission has reviewed the Petitioners' request for waivers and finds that the request is adequately supported and consistent with previous waivers granted by the Commission to permit the release of capacity under similar circumstances,⁹ particularly when the transfers are a result of various types of corporate restructurings, including corporate mergers and sales of entire business units. Petitioners have provided the information required for approval of the requested waivers, as identified above, with sufficient detail to permit the Commission and other parties to determine whether granting the requested waivers is in the public interest.¹⁰

10. Accordingly, for good cause shown, the Commission grants the Petitioners' request for a temporary waiver of the specified capacity release regulations, policies, and tariff provisions to allow the permanent release of the transportation and storage agreements from Mex Gas to CFE. Specifically, the Commission grants limited, temporary waiver of the following:

- a. section 284.8 of its regulations, which governs the release of firm capacity, including the posting and bidding requirements for capacity release transactions,
- b. the shipper-must-have-title policy,

⁸ 18 C.F.R. § 385.214 (2014).

⁹ *E.g.*, *J.P. Morgan Ventures Energy Corporation and Mercuria Energy America, Inc.*, 148 FERC ¶ 61,010 (2014); *Big Sandy Pipeline, LLC*, 141 FERC ¶ 61,151 (2012); *Antero Resources Corp.*, 139 FERC ¶ 61,258 (2012); *Salmon Resources, LTD*, 138 FERC ¶ 61,059 (2012); *Big Sandy Pipeline, LLC*, 136 FERC ¶ 61,130 (2011); *BHP Billiton Petroleum (Fayetteville LLC)*, 135 FERC ¶ 61,088 (2011); *Wisconsin Electric Power Co.*, 131 FERC ¶ 61,104 (2010); *EnergyMark, LLC*, 130 FERC ¶ 61,059 (2010); *Total Gas & Power North America, Inc.*, 131 FERC ¶ 61,023 (2010); *Sequent Energy Mgmt., L.P., et al.*, 129 FERC ¶ 61,188 (2009); *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082 (2009); *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008).

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 (2009).

- c. the prohibition against buy/sell arrangements, and
- d. the prohibition on tying arrangements to the transfer of capacity.

11. In addition, the Commission grants limited, temporary waiver of El Paso's tariff provisions that implement the above policies, to allow the permanent transfer of the agreements listed in Ex. A to the Petition. The Commission also grants Petitioners' request to permit the waivers to remain in effect for a period of 120 days from the date of this order issue or the date on which the capacity release transaction described in this order is completed.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.