151 FERC ¶ 61,002
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ExxonMobil LNG Supply LLC
ConocoPhillips Company
Golden Pass Products LLC

Docket No. RP15-605-000

ORDER GRANTING WAIVER

(Issued April 1, 2015)

1. On February 27, 2015, ExxonMobil LNG Supply LLC (ExxonMobil), ConocoPhillips Company (ConocoPhillips), and Golden Pass Products LLC (GP Products) (collectively, the Petitioners) filed a petition for waiver of the Commission's prohibition on tying (Joint Petition) in order to facilitate two prearranged capacity releases on pipeline capacity serving the Golden Pass LNG Terminal (Golden Pass Terminal).[1] The Petitioners state that the prearranged capacity releases set forth in the Joint Petition are one component of a multifaceted business arrangement to expedite the creation of LNG export capabilities at the Golden Pass Terminal. For good cause shown, the Commission grants the requested waiver as described more fully below.

<u>Background</u>

2. In July 2005, the Commission issued an order authorizing Golden Pass LNG Terminal LLC (GP LNG) and Golden Pass Pipeline LLC (GP Pipeline) to construct and operate a single integrated LNG project consisting of the Golden Pass Terminal and associated facilities near Port Arthur, Texas, and a takeaway pipeline extending from the terminal through Texas and into Louisiana (Golden Pass Pipeline).[2] The Golden Pass Terminal was designed to have a completed nominal output of 2.0 billion cubic feet (Bcf) per day and a peak capacity of 2.7 Bcf per day. The Commission approved the operation

[1] The Petitioners request that the Commission act on the requested waiver on or before April 1, 2015.

[2] *Golden Pass LNG Terminal LP and Golden Pass Pipeline LP*, 112 FERC ¶ 61,041(2005), *amended*, 117 FERC ¶ 61,015 (2006) and 117 FERC ¶ 61,332 (2006).

of the Golden Pass Terminal under section 3 of the Natural Gas Act (NGA), and, pursuant to the *Hackberry*[3] policy, authorized its terminal services to be provided at market-based rates and upon mutually agreeable terms. The Commission authorized the construction of the Golden Pass Pipeline pursuant to NGA section 7 and granted it a blanket certificate to provide open access transportation services pursuant to Part 284 of the Commission's regulations using cost-based rates.

3. Golden Pass Pipeline is the only pipeline that serves Golden Pass Terminal. ExxonMobil and ConocoPhillips each hold long-term capacity rights at the terminal and on the pipeline. The Petitioners state that these transportation agreements provide for northbound transportation of re-vaporized imported LNG from the terminal to downstream delivery points on the Golden Pass Pipeline. They also state that ExxonMobil and ConocoPhillips are currently not using their firm capacity on the Golden Pass Pipeline but continue to pay capacity charges for both.

4. In Docket No. CP14-517-000, GP Products proposed to modify operations of the Golden Pass Terminal to include LNG export capabilities, so that the facility can both import and export natural gas. According to the Petitioners, various parties have recently entered into an agreement to implement these modifications. The agreeing parties include GP LNG, GP Pipeline, GP Products, ExxonMobil, and ConocoPhillips. The Petitioners state that, as part of this agreement, ExxonMobil and ConocoPhillips will be relieved of their capacity on Golden Pass Pipeline, including the payment of any reservation charges. To accommodate such relief, under the agreement, ExxonMobil and ConocoPhillips would release their full capacity on Golden Pass Pipeline to GP Products, on a temporary basis, for a period of seven years, and on a prearranged basis. The Petitioners state that the release would be implemented pursuant to the terms of the capacity release provisions of Golden Pass Pipeline's FERC Gas Tariff, and that GP Products will pay the maximum reservation rate for the capacity.[4]

5. Also under the agreement, GP Products and GP LNG will execute a Terminal Access Agreement granting GP Products both import and export rights. In exchange, GP Products will pay a fee to GP LNG. ExxonMobil and ConocoPhillips will be relieved of the terminal fees they currently pay for their capacity obligations in the terminal, but

[3] *Hackberry LNG Terminal*, L.L.C., 101 FERC ¶ 61,294 (2002).

[4] Under the terms of the capacity release, each releasing shipper may recall in whole or in part its released capacity with prior notice if needed to transport gas from the Golden Pass Terminal. Also under the terms of the capacity release, GP Products may terminate the release at its sole discretion after one year.

retain the right to recall their terminal capacity to import LNG to satisfy contractual requirements.

Waiver Request

6. ExxonMobil and ConocoPhillips plan to release their capacity on Golden Pass Pipeline to GP Products in conjunction with conditions set forth in the Terminal Access Agreement. In particular, the Petitioners seek to tie the release of the Golden Pass Pipeline capacity to corresponding capacity in Golden Pass Terminal capacity. The Petitioners state that, as they understand the Commission's policy under Order No. 712, executing this sort of tying arrangement on a "*Hackberry*" LNG terminal such as Golden Pass Terminal would require a waiver of the Commission's tying prohibition.[5] Accordingly, the Petitioners seek waiver of the Commission's prohibition on tying arrangements pursuant to 18 C.F.R. § 284.4 to allow for the capacity releases.

7. The Petitioners argue that granting waiver and allowing the capacity releases would maximize access to the Golden Pass Terminal and Golden Pass Pipeline, and would result in the most efficient use of the pipeline capacity. Aside from the waiver, they contend that the proposed capacity releases will be entirely consistent with Commission policies and rules. They argue that the Commission's primary concern underlying the tying prohibition is that scarce pipeline capacity would not be allocated to the highest-valued user.[6] Petitioners state that in contrast, Golden Pass Pipeline and Terminal capacity is not scarce as the capacity in question has been posted on GP Pipeline's website for the past four years.

8. According to the Petitioners, one of the primary purposes for the implementation of the prohibition of tying capacity releases to extraneous conditions was to ensure that releasing shippers did not place unreasonable restrictions on the use of the capacity, or require replacement shippers to purchase natural gas only from the releasing shipper. The Petitioners assert that no such concerns are present in this case, because no

[5] Joint Petition at 10.

[6] Joint Petition at 13 (citing Order No. 712 at P 119, where the Commission held that the bidding requirements of section 284.8 and the prohibition against tying the release to extraneous conditions were all part of the Commission's fundamental goal of ensuring that such unneeded capacity would be reallocated to the person who values it the most. The Commission found that such "capacity reallocation will promote efficient load management by the pipeline and its customers and, therefore, efficient use of pipeline capacity on a firm basis throughout the year.")

unreasonable restrictions are placed on the released capacity other than the recall rights discussed above.

9. The Petitioners contend that granting the waiver will have no adverse effect on open access competition. They state that any remaining unsubscribed capacity on Golden Pass Pipeline will still be posted as available, and any unused released capacity will be available for interruptible service or for re-release. The Petitioners assert that the alternative sources of firm and interruptible capacity on the pipeline and the Commission's posting and disclosure requirements, combined with the potential for complaint by any shipper based on undue discrimination or preference under section 5 of the Natural Gas Act, will prevent any potential for withholding of GP Products' pipeline capacity.

10. The Petitioners assert that the proposal provides adequate safeguards to ensure transparency, and a not unduly discriminatory allocation of capacity, because all releases of the subject capacity will be implemented consistent with the Commission's capacity release provisions set forth in sections 284.8 and 284.13(b) of the Commission's regulations. They contend that all parties to the agreement voluntarily agreed to terms of the releases and the associated commercial arrangements, and that this is not the case of a replacement shipper compelled to accept anticompetitive restrictions on pipeline use or a requirement to purchase natural gas or anything else from the releasing shipper. The Petitioners assert that GP Products and the releasing shippers will each receive commercial benefits from the capacity releases and the Terminal Access Agreement, and will allow parties to respond more timely to the changing natural gas market.

11. Finally, the Petitioners contend that granting the subject waiver would be consistent with precedent. They assert that in prior orders, the Commission has waived the tying prohibition in cases where there is no adverse effect on open access competition; no party has been harmed; no entity had an interest in obtaining the relevant pipeline capacity; unreasonable restrictions are not placed in the use of the capacity; adequate safeguards are in place to ensure transparency and not unduly discriminatory allocation of the capacity; petitioners voluntarily agreed to the terms of the transaction; and the transaction will produce significant benefits.[7] The Petitioners assert that they have demonstrated that these same factors exist for the subject waiver request, and as such, the request should be granted.

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[7] Joint Petition at 16 (citing *Statoil Natural Gas LLC and La Societe National pour la Recherche, La Production la Transport, la Transformation et la Commericalization des Hydrocarbures s.p.a.*, 128 FERC ¶ 61,240 (2009) (*Statoil I*), *Statoil Natural Gas LLC and Gazprom Marketing and Trading USA, Inc*., 130 FERC ¶ 61,110 (2010) (*Statoil II*), and *Golden Pass LNG Terminal LLC*, 136 FERC ¶ 61,069 (2011)).

Public Notice, Comments and Interventions

12. Public notice of the Petitioners' filing was issued on March 4, 2015, providing for interventions, comments, and protests to be filed by March 11, 2015. 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. No protests or adverse comments were filed.

Discussion

13. In Order No. 712-A, the Commission explained that with regard to LNG terminals providing open access service, where both the LNG terminal and the directly connected interstate pipeline facilities are subject to the Commission's Part 284 open access regulations, a holder of capacity in the LNG terminal has the right to release both its terminal capacity and its capacity on the downstream pipeline pursuant to the Commission's capacity release program. Further, existing Commission policy permits releasing shippers to tie releases of upstream and downstream capacity, and require the replacement shipper to take a release of the aggregated contracts on both pipelines.[9] Thus, existing policy permits the holder of capacity in an open access LNG terminal to require a replacement shipper to take a release of both its terminal capacity and its pipeline capacity.

14. As we also pointed out, however, because non-open access LNG terminals approved under the Commission's *Hackberry* policy are not subject to the Commission's open access policies, there is no Commission process to ensure that the transaction would be transparent and non-discriminatory. Recognizing that there are a myriad of ways to structure transfers of terminal capacity, including through a buy/sell agreement, the Commission declined to grant a blanket exemption from tying and bidding in the context of a non-open access LNG terminal,[10] stating that it remained open to considering individual waiver requests for such transactions on a case-by-case basis if presented in a fully justified proposal. According to the Petition, the Golden Pass Terminal is a "*Hackberry*" terminal, and thus Petitioners have filed the instant waiver request.

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[8] 18 C.F.R. § 385.214 (2014).

[9] *Statoil I*, 128 FERC ¶ 61,240 at P 14 (citing Order No. 712-A, FERC Stats & Regs. ¶ 31,284 at P 45).

[10] *Id*. P 15 (citing Order No. 712-A, FERC Stats & Regs. ¶ 31,284 at P 46).

15. The Commission finds that, in this case, the Petitioners have presented sufficient information about their transaction to justify granting their request for a waiver of the tying prohibition. It appears from the information provided by the Petitioners that granting the requested waiver will not harm open access competition. No party has protested the request or claimed that it would be harmed by the transaction. Moreover, the evidence suggests that no other entity has a significant interest in obtaining the relevant pipeline capacity as it has been posted as available for four years. The Petitioners voluntarily agree to the terms of the transaction, including the link between the Terminal Access Agreement and the capacity release agreement.

16. Further, one of the primary purposes for the implementation of the prohibition on tying releases to extraneous conditions was to ensure that releasing shippers did not place unreasonable restriction on the use of the capacity or require replacement shippers to purchase gas only from the releasing shipper.[11] Those concerns are not at issue here. There is nothing in the Joint Petition to indicate that there are any restrictions on how GP Products uses the Golden Pass Pipeline capacity obtained from ExxonMobil and ConocoPhillips.

17. It also appears that the proposed business arrangement, of which the subject capacity release is a part, will provide significant benefits to Petitioners. It will allow GP Products to bring greater flexibility to the natural gas markets in the United States by providing for the exporting, and not just the importing, of LNG, which will open up new markets. It will relieve ExxonMobil and ConocoPhillips of having to pay reservation charges for capacity that they are not using and thus optimize use of the Golden Pass Pipeline and provide more service options for GP Pipeline.

18. Accordingly, for good cause shown, the Commission grants waiver of its prohibition against tying, limited to permitting the capacity releases discussed in the Joint Petition.

[11] *Id*. P 17.

The Commission orders:

Petitioners’ request for waiver is granted as discussed in the body of the order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.