154 FERC ¶ 61,018
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 15, 2016

In Reply Refer To:
MMGS, Inc.
Mitsui & Co. Cameron LNG Sales, Inc.
Docket No. RP16-313-000

Jeffrey J. Williamson
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Dear Mr. Williamson:

1. On December 18, 2015, MMGS, Inc. (MMGS) and Mitsui & Co. Cameron LNG Sales, Inc. (Mitsui LNG) (collectively, Applicants) filed a joint petition for a limited, one-time waiver of section 284.8 of the Commission regulations,[1] concerning a shipper's release of natural gas pipeline capacity (Petition). Applicants also seek waiver of section 8.11 of the General Terms and Conditions (GT&C) of the FERC Gas Tariff of Cameron Interstate Pipeline, LLC (Cameron Pipeline), which implements those regulations. As discussed below and for good cause shown, the Commission grants the requested waivers. Applicants request that the Commission issue an order granting the requested waivers by January 18, 2016.

2. The Applicants state that MMGS and Mitsui LNG are affiliates that plan to work in tandem to purchase natural gas in the American market, mainly for export and sale in the international market through facilities which Cameron LNG, LLC (Cameron LNG) is currently constructing for the purpose of liquefying and exporting domestically produced natural gas.[2] Applicants state that Mitsui LNG will be responsible for storing and converting the natural gas to LNG for export. For this purpose, it is a tolling customer for the Cameron LNG project, with rights to one-third of the total LNG terminal capacity.

[1] 18 C.F.R. § 284.8 (2015).

[2] *Cameron LNG, LLC*, 147 FERC ¶ 61,230 (2014).

Mitsui LNG also holds, or will hold, capacity at various pipeline storage facilities so that it can store natural gas during periods when the LNG terminal cannot accommodate the natural gas because of outages or other factors. The Applicants state that MMGS will be responsible for purchasing domestic natural gas and transporting it either to the Cameron LNG terminal or to a storage facility for resale to Mitsui LNG. Applicants state that MMGS has executed a long-term, negotiated-rate, firm transportation service agreement with Cameron Pipeline but that service pursuant to that agreement has not yet commenced because the corresponding facilities are currently under construction and are scheduled to go in service in 2017.

3. Applicants state that they are filing the waiver request at this time in an effort to streamline the division of duties between MMGS and Mitsui LNG and to ensure that their future actions comply with Commission regulations. Applicants state that, as their arrangements are currently structured, Mitsui LNG will hold title to natural gas that is stored pursuant to its storage service agreements, while MMGS will hold title to the natural gas while it is being transported pursuant its executed service agreement with Cameron Pipeline. Applicants further state that they are concerned that, under these arrangements, their sales and resales to one another as natural gas is transported to Mitsui LNG's storage capacity and then from that storage capacity to the Cameron LNG terminal may be considered an impermissible buy/sell arrangement. Applicants state that they believe they can avoid such potential violations of the buy/sell rule by executing a standard Asset Management Arrangement (AMA) before service commences on the Cameron Pipeline. Applicants state that under the proposed AMA, Mitsui LNG would be the primary capacity holder for all jurisdictional pipeline capacity, including the capacity on Cameron Pipeline for which MMGS currently has an executed service agreement. As permitted by the Commission's capacity release regulations,[3] Mitsui LNG would release that capacity to MMGS pursuant to an AMA under which MMGS would serve as asset manager for that capacity on Mitsui LNG's behalf. Pursuant to Order No. 712,[4] the Applicants could buy and sell gas with each other without violating the buy-sell prohibition.

4. Applicants state that to facilitate this arrangement, MMGS must permanently release its capacity on Cameron Interstate to Mitsui LNG (Permanent Release Transaction). Thereafter, Mitsui LNG will enter into an AMA with MMGS and make a temporary capacity release to MMGS for it to act as asset manager of the capacity.

[3] 18 C.F. R. § 284.8(h)(3) (2015).

[4] *Promotion of a More Efficient Capacity Release Market*, Order No. 712, FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g*, Order No. 712-A, FERC Stats. & Regs. ¶ 31,284 (2008), *order on reh'g*, Order No. 712-B, 127 FERC ¶ 61,051 (2009).

5. Applicants further state that while they are entering into the Permanent Release Transaction in order to ensure compliance with Commission regulations once service on Cameron Interstate begins, they are requesting a limited, temporary waiver of section 284.8 of the Commission's regulations due to concerns that MMGS's permanent release to Mitsui LNG may potentially violate those regulations. Among other things, MMGS's service agreement contains a negotiated rate that is currently below the applicable maximum rate and could at some future date exceed that rate. Therefore, the Applicants request waiver of the prohibition on exceeding the maximum rate, the requirements for competitive bidding, the prohibition on tying, section 8.11 of the GT&C of the Cameron Interstate tariff implementing the above policies, and to the extent necessary, any other policy or provision that the Commission deems necessary to effectuate the Permanent Release Transaction. Applicants state that it is not clear whether the capacity release regulations apply to the Transaction because service has not yet commenced on Cameron Pipeline, and thus they are filing this waiver request to remove any ambiguity and ensure that their actions remain in accordance with Commission policies.

6. Public notice of the filing was issued on December 21, 2015. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[5] Pursuant to Rule 214,[6] 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 the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

7. We have reviewed the Applicants' request for waiver, and find that good cause exists to grant a limited, one-time waiver of the Commission's capacity release regulations and section 8.11 of the GT&C of Cameron Interstate's Tariff. Petitioners have provided the information required for approval of such waivers: (1) identification of the regulations and policies for which waiver is sought; (2) identification of the pipeline service agreements and capacity to be transferred; and (3) description of the overall transaction and its claimed benefits, with sufficient detail to permit the Commission and other interested parties to determine whether granting the requested waivers is in the public interest.[7]

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[5] 18 C.F.R. § 154.210 (2015).

[6] 18 C.F.R. § 385.214 (2015).

[7] *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).

8. As noted, Applicants state that it is not clear whether the capacity release regulations in 18 C.F.R. 284.8 apply to the Transaction because the Cameron Interstate line is not yet in-service. We clarify that "firm capacity" as referred to in 18 C.F.R. 284.8 refers to any executed natural gas transportation service agreement for firm service under a Natural Gas Act tariff, including a firm service agreement with a future effective date such as MMGS's service agreement with Cameron Pipeline. Thus the Commission's capacity release regulations apply the same as they do to any other executed service agreement for jurisdictional service.[8]

9. Applicant's request is generally consistent with previous waivers that the Commission has granted 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 spinoffs of entire business units. Elements of the proposed release that are critical to our review are that the "release at issue will permit the subject capacity to continue to be used for the same purpose for which [MMGS] originally purchased it,"[10] that the waiver is "both limited in scope and temporary in time frame,"[11] and that the Transaction will be conducted in a manner that does not harm any third parties. In particular, as we have noted, a pipeline "may refuse to allow a permanent capacity release if it has a reasonable basis to conclude that it will not be financially indifferent to the release."[12] However, where, as here, "the releasing shipper is paying a negotiated rate [potentially] in excess of the maximum rate, waiver of the maximum rate is necessary to render the pipeline financially indifferent to the release."[13]

10. Accordingly, we grant one-time waivers as requested, of the prohibition on exceeding the maximum rate, the competitive bidding requirements, the prohibition on tying, and section 8.11 of the GT&C of the Cameron Interstate tariff to the extent that it

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[8] By contrast, the capacity release regulations do not apply to precedent agreements which have not yet resulted in the execution of an actual service agreement.

[9] *E.g., Big Sandy Pipeline, LLC*, 141 FERC ¶ 61,151 (2012); *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).

[10] *Big Sandy Pipeline, LLC*, 141 FERC ¶ 61,151 at P 6.

[11] *Distrigas of Massachusetts LLC*, 135 FERC ¶ 61,028, at P 19 (2011).

[12] *Algonquin Gas Tranmission, LLC*, 112 FERC ¶ 61,262 (2005).

[13] *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082 at P 14.

implements the above policies. The limited waivers are effective for 90 days from the date of this order. Further, we grant the requested waivers only as necessary to complete the Permanent Release Transaction specified in the Petition, and not for any other permanent or temporary releases. Applicants remain obligated to comply with any other applicable provisions of the pipelines' tariffs.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.