

155 FERC ¶ 61,253
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 13, 2016

In Reply Refer To:
Mercuria Energy America, Inc. and
Mercuria Energy Gas Trading LLC
Docket No. RP16-952-000

Mark K. Lewis
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2001 M Street, NW
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Washington, DC 20036

Dear Mr. Lewis and Ms. Tweed:

1. On May 13, 2016, Mercuria Energy America, Inc. (MEA) and Mercuria Energy Gas Trading LLC (MEGT) (collectively, Petitioners) filed a joint petition requesting a limited and temporary waiver of the Commission's capacity release regulations and policies related to the release of capacity on several interstate natural gas pipelines.¹ In addition, to the extent required, Petitioners seek a temporary waiver of the related capacity release tariff provisions of the Indicated Pipelines to effectuate an internal reorganization. Petitioners request that the waiver in this joint petition remain in effect for a period of 180 days after the reorganization becomes effective. Petitioners also request a shortened comment period and expedited issuance of an order granting the petition no later than June 13, 2016. For the reasons discussed below, and for good cause shown, the Commission grants the requested temporary waiver.

¹ The natural gas transportation and storage contracts with the various pipelines (Indicated Pipelines) are listed in Attachment A of the Petitioners' filing and reflect: (1) the identity of the pipeline, whether transporter or storage provider; (2) the contract number; (3) the contract expiration date; and (4) the maximum contract quantity.

2. Petitioners state that MEA and MEGT are undertaking an internal reorganization of business activities by which MEA and MEGT are merging and the surviving entity will be MEA (Reorganization). Petitioners assert that a grant of the requested waiver will allow MEGT to permanently release the capacity associated with the Indicated Pipelines and reassign those interstate natural gas transportation and storage agreements (collectively, Agreements) to MEA in order to facilitate the merger. Further, Petitioners state that MEA, by operation of law, will become the merged successor-in-interest to the natural gas transportation and storage capacity of MEGT, and associated natural gas inventory, as well as the service agreements through which MEGT currently holds such capacity and inventory. Petitioners request that the waiver in this joint petition be effective from the date of issuance through a 180-day period following the effective date of the Reorganization in order to ensure sufficient time to complete the Reorganization and all administrative procedures and processes associated with the Reorganization. Petitioners state that they will notify the Commission of the exact Reorganization effective date within one week of the Reorganization. Petitioners claim that the Commission has previously approved temporary waiver of such duration in similar circumstances.²

3. To implement the Reorganization, Petitioners seek waiver of the Commission's: (1) capacity release regulations set forth in section 284.8 of the Commission's regulations, including the posting and bidding requirements;³ (2) restrictions on capacity releases at negotiated rates in excess of the applicable maximum rate;⁴ (3) shipper-must-have-title policy; (4) prohibition against buy/sell arrangements; and (5) prohibition against tying arrangements to permit the inherited capacity to be permanently released. Petitioners also request that the Commission waive the related capacity release tariff provisions of the Indicated Pipelines.

4. Petitioners explain that after the Reorganization is complete, by operation of law, MEGT will cease to exist as a separate entity. According to the Petitioners, MEGT plans to assign all of its capacity associated with the Agreements to MEA, subject to receipt of the waiver requested by its joint petition. Petitioners state that MEA will succeed to MEGT's rights under the jurisdictional natural gas transportation and storage agreements that are listed in Attachment A of the Petitioners' filing. Petitioners further state that MEA will also succeed to MEGT's rights under several service agreements with non-jurisdictional natural gas transportation and storage service providers. Petitioners also state that subject to the requested waivers, the agreements listed in Attachment A to their

² Petition at 7 (citing *Sequent Energy Mgt., L.P.*, 137 FERC ¶ 61,042 (2011); *Sempra Energy Trading LLC*, 133 FERC ¶ 62,128 (2010)).

³ 18 C.F.R. §§ 284.8(c)-(e) (2015).

⁴ 18 C.F.R. §§ 284.8(b)(2), 284.8(h)(1)(iii) (2015).

filing will, by operation of law, become MEA's agreements and MEA will be obligated, from the date of the Reorganization forward, to assume all of the rights and obligations under the Agreements on the same terms now applicable to MEGT.

5. Petitioners affirm that the temporary waiver will only be used for the limited purpose of implementing the Reorganization, thereby allowing the timely merger of MEGT into MEA. Petitioners claim the Commission has recognized that such temporary waivers serve a vital function in facilitating complex transactions.⁵ Petitioners state that the Reorganization is consistent with those for which the Commission has granted waivers in the past. Petitioners contend that the Commission has granted waiver of its regulations and policies governing the use and release of interstate capacity to allow parties to consummate transactions such as mergers, corporate consolidations, sales of entire business units, and that the Commission has granted comparable waivers in similar circumstances.⁶

6. Petitioners state that the implementation of the assumption by MEA of the inherited capacity as a result of the Reorganization is a necessary component of MEGT's merger into MEA. Petitioners argue that the Reorganization cannot be effectively accomplished if the inherited capacity is divided into stand-alone transactions subject to the posting and bidding requirements set forth in the Commission's regulations. Petitioners explain that MEGT presently uses the inherited capacity in support of its natural gas marketing and trading business. Petitioners affirm that after the Reorganization, MEA will use the inherited capacity for the same purposes as MEGT. Petitioners state that granting the waiver will ensure that the public interest is served by allowing natural gas to continue to be marketed while also preserving existing commercial relationships and marketing structures.

⁵ *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).

⁶ Petition at 3 (citing, e.g., *Eni Petroleum US LLC and Eni USA Gas Marketing LLC*, 147 FERC ¶ 61,007 (2014); *Virginia Power Energy Marketing, Inc.*, 145 FERC ¶ 61,066 (2013); *ProLiance Energy, LLC*, 144 FERC ¶ 61,037 (2013); *DCP Midstream, LP and DCP South Central Texas LLC*, 141 FERC ¶ 61,256 (2012); *Iberdrola Renewables, Inc.*, 138 FERC ¶ 61,201 (2012); *Constellation NewEnergy - Gas Div., LLC*, 130 FERC ¶ 61,059 (2010); *Sequent Energy Mgmt., L.P.*, 129 FERC ¶ 61,188 (2009); *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008); *Barclays Bank PLC*, 125 FERC ¶ 61,383 (2008).

7. Public notice of the filing was issued on May 18, 2016. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁷ Pursuant to Rule 214,⁸ all motions to intervene are granted 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 adverse comments or protests were filed.

8. The Commission has reviewed the Petitioners' request for temporary waiver and finds that the request is adequately supported and consistent with previous waivers the Commission has granted to permit the release of capacity under similar circumstances.⁹ Specifically, we find that Petitioners have provided the information required for approval of such waiver, which includes: (a) identification of the regulations and policies for which waiver is sought; (b) identification of the pipeline service agreements and capacity to be transferred; and (c) a 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 waiver is in the public interest.¹⁰

9. Accordingly, for good cause shown, the Commission grants Petitioners' request for temporary, limited waiver of its capacity release regulations, including the posting and bidding provisions, restrictions on capacity releases at negotiated rates in excess of the applicable maximum rate, shipper-must-have-title requirements, prohibition against buy/sell arrangements and prohibition against tying arrangements, but only as necessary to facilitate the described transaction. Granting these waivers will allow the Petitioners to implement the transaction in an orderly and efficient manner. In addition, the Commission grants, to the extent necessary, a temporary and limited waiver of the related capacity release tariff provisions that the Indicated Pipelines listed in Attachment A of

⁷ 18 C.F.R. § 154.210 (2015).

⁸ 18 C.F.R. § 385.214 (2015).

⁹ See, e.g., *Big Sandy Pipeline, LLC*, 141 FERC ¶ 61,151 (2012); *Antero Res. Corp.*, 139 FERC ¶ 61,258 (2012); *Salmon Res., 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); *Wis. Elec. Power Co.*, 131 FERC ¶ 61,104 (2010); *EnergyMark, LLC*, 130 FERC ¶ 61,059 (2010); *Total Gas*, 131 FERC ¶ 61,023 (2010); *Sequent Energy Mgmt., L.P.*, 129 FERC ¶ 61,188 (2009); *N. 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).

Petitioners' filing so as to facilitate the capacity release transaction. The Commission will allow the waiver to remain in effect for a 180-day period following the effective date of the Reorganization. Petitioners are reminded to notify the Commission of the exact Reorganization effective date within one week of the Reorganization.

By direction of the Commission.

Kimberly D. Bose,
Secretary.