

157 FERC ¶ 61,171
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 1, 2016

In Reply Refer To:
Freeport-McMoRan
Exploration & Production LLC
and Anadarko US Offshore LLC
Docket No. RP17-51-000

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Dear Mr. Morgan and Mr. Haskell:

1. On October 24, 2016, Freeport-McMoRan Exploration & Production LLC (FMEP) and Anadarko US Offshore LLC (AUSO) (jointly, the Petitioners) filed a joint petition requesting a limited and temporary waiver of the Commission's capacity release regulations and policies and related tariff provisions of four pipelines.¹ Petitioners request the waiver to facilitate the assignment and permanent release of capacity under long-term firm natural gas transportation service agreements in connection with AUSO's acquisition of numerous offshore oil and gas production and related assets owned by FMEP and its affiliates Freeport-McMoRan Oil & Gas LLC (FMOG) and Plains

¹ The four pipelines are Destin Pipeline Company, L.L.C. (Destin), Discovery Gas Transmission LLC (discovery), Nautilus Pipeline Company, L.L.C. (Nautilus) and High Island Offshore System LLDC (HIOS) (together, the Pipelines).

Offshore Operations Inc. (POOI) (together, Freeport-McMoRan). For the reasons discussed below, and for good cause shown, the Commission grants the requested temporary waivers.

2. Petitioners state that AUSO and Freeport-McMoRan have agreed to a complex transaction whereby Freeport-McMoRan will sell, and AUSO will purchase, substantially all of FMEP's offshore oil and gas production and related assets located in the Gulf of Mexico (the Transaction). Petitioners further state that, as part of the Transaction, Freeport-McMoRan is also assigning and transferring several marketing and transportation assets to AUSO, including six firm interstate transportation service agreements under which FMEP holds capacity to transport natural gas on the noted pipelines. Petitioners state that FMEP will assign and permanently release to AUSO at existing rates the long-term natural gas transportation service agreements. The Petitioners also state that, upon consummation of the sale, AUSO will use the capacity under the agreements for the primary purpose of transporting natural gas from the acquired production to onshore market centers, just as FMEP currently uses the capacity. In order to effectuate this corporate transfer of assets without being subject to the posting and bidding rules for capacity releases, the Petitioners seek a waiver of the Commission's posting and bidding requirements. Petitioners anticipate the closing of the Transaction will occur on December 12, 2016. Therefore, Petitioners request that the Commission grant the requested waivers on or before December 2, 2016, and allow the waivers to remain in effect until 120 days past the Transaction closing date.

3. Specifically, the Petitioners request temporary and limited waiver of the Commission's capacity release rules and regulations,² including: (1) the posting and bidding requirements; (2) the applicable maximum rate provisions; (3) the prohibition against tying to the extent applicable; (4) waiver of the shipper-must-have title rule; (5) the prohibition against buy-sell arrangements, as well as any other authorizations or waivers deemed necessary to implement the assignment and permanent release of the capacity described above. In addition, the Petitioners state that under an abundance of caution they are requesting waiver of the provisions of the Pipelines' tariffs implementing the Commission's capacity release rules and regulations, with such waivers being for the limited purpose of effectuating the release of the subject capacity,³ as well as any other authorizations or waivers deemed necessary to implement the assignment and permanent release of the capacity.

² 18 C.F.R. § 284.8 (2016).

³ These tariff provisions include the following General Terms and Conditions of each pipeline (1) section 18.2 of Destin; (2) section 11.1 of Discovery; (3) section 22.2 of Nautilus; and (4) section 17 of HIOS.

4. The Petitioners state that the Commission has granted temporary waivers of its capacity release regulations and policies to permit parties to consummate similar transactions.⁴ The Petitioners also state that the consummation of the Transaction is in the public interest in that it will facilitate the continued production of the transferred properties because AUSO will have the firm transportation rights necessary to move such production to markets.

5. Public notice of the filing was issued on October 25, 2016. Interventions and protests were due on November 1, 2016, as provided in section 154.210 of the Commission's regulations.⁵ Pursuant to Rule 214,⁶ all timely 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. No protests or adverse comments were filed.

6. The Commission has reviewed the Petitioners' request for temporary waiver and finds that the request is adequately supported and consistent with previous waiver requests that the Commission has granted to permit the release of capacity under similar circumstances.⁷ Specifically, the Commission finds that the Petitioners have

⁴ Joint Petition at 4 (citing *WPX Energy Marketing, LLC*, 156 FERC ¶ 61,037 (2016); *Anadarko Energy Services Co.*, 153 FERC ¶ 61,124 (2015); *WPX Energy Marketing, LLC*, 151 FERC ¶ 61,164 (2015); *Rice Energy Marketing LLC*, 150 FERC ¶ 61,014 (2015); *Apache Corp.*, 149 FERC ¶ 61,289 (2014); *Eni Petroleum US LLC*, 147 FERC ¶ 61,007 (2014); *Noble Energy, Inc.*, 146 FERC ¶ 61,227 (2014); *Gavilon, LLC*, 146 FERC ¶ 61,219 (2014); *GeoMet, Inc.*, 147 FERC ¶ 61,083 (2014); *Virginia Power Energy Marketing Corp., Inc.*, 142 FERC ¶ 61,223 (2013); *BP Canada Energy Marketing Corp.*, 133 FERC ¶ 61,173 (2010); *EnergyMark, LLC*, 130 FERC ¶ 61,059 (2010); *Marathon Oil Company*, 133 FERC ¶ 61,168 (2010)).

⁵ 18 C.F.R. § 154.210 (2016).

⁶ 18 C.F.R. § 385.214 (2016).

⁷ See, e.g., *Barclays Bank PLC*, 152 FERC ¶ 61,069 (2015); *J.P. Morgan Ventures Energy Corp.*, 148 FERC ¶ 61,010 (2014); *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; *Total Gas & Power North America, Inc.*, 131 FERC ¶ 61,023 (2010); *Sequent Energy Mgmt., L.P.*, 129 FERC ¶ 61,188 (2009); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008).

appropriately provided the information required for approval of such waivers, by: (1) identifying the regulations and policies for which waiver is sought; (2) identifying the pipeline service agreements and capacity to be transferred; (3) describing 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; and by (4) filing the Petition as much in advance of the requested date as possible.⁸ The Commission has permitted the release of capacity under similar circumstances, particularly when it results in sales of entire business units.⁹ Moreover, no party has objected to the requested waivers.

7. Accordingly, for good cause shown, the Commission grants the Petitioners' request for temporary, limited waiver of the our capacity release regulations and policies as specified above, but only as necessary to facilitate the described transaction. The temporary, limited waivers requested by Petitioners are granted, effective on the date that this order is issued, and waiver of the prohibition of buy/sell arrangements, the posting and bidding provisions, and the shipper-must-have-title rule shall continue for 120 days thereafter, as requested, to allow resolution of any transitional issues involving the assigned capacity.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁸ *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).

⁹ *E.g.*, *WPX Energy Holdings, LLC*, 154 FERC ¶ 61,221 (2016); *Big Sandy Pipeline, LLC*, 141 FERC ¶ 61,151 (2012); *Big Sandy Pipeline, LLC*, 136 FERC ¶ 61,130; *Total Gas & Power North America, Inc.*, 131 FERC ¶ 61,023; *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082 (2009); *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009).

