

157 FERC ¶ 61,197
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 12, 2016

In Reply Refer To:
Osprey Energy Center, LLC
Duke Energy Florida, LLC
Docket No. RP17-165-000

Neil L. Levy
c/o King & Spalding LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006

Steven J. Ross
c/o Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

Dear Mr. Levy and Mr. Ross:

1. On November 8, 2016, Osprey Energy Center, LLC (Osprey) and Duke Energy Florida, LLC (Duke Florida) (jointly, Petitioners) filed a joint petition requesting limited waivers of the Commission's capacity release regulations and certain other Commission policies related to the release of capacity held by Osprey's affiliate, Calpine Energy Services, L.P. (CES), on Gulfstream Natural Gas System, L.L.C. (Gulfstream).¹ The Petitioners request that the Commission issue an order on their petition no later than December 12, 2016. As discussed below, the Commission grants the requested limited waivers.

2. According to Petitioners, Osprey and Duke Florida entered into an Asset Purchase and Sale Agreement (Transaction) on December 17, 2014, pursuant to which Osprey agreed to sell a natural gas-fired, combined-cycle, 590 MW electric generation facility located in Auburndale, Florida, known as the Osprey Energy Center, and certain associated assets, to Duke Florida.

¹ Petitioners also are seeking, to the extent necessary, with respect to Gulfstream, temporary waiver of the tariff provisions governing (for instance) shipper must have title and prohibitions of buy/sell transactions and tying the release of pipeline capacity to extraneous conditions.

3. Petitioners further state that the Transaction requires Osprey to cause CES to permanently release its rights to firm natural gas transportation capacity under CES's firm transportation service agreement with Gulfstream to Duke Florida. According to Petitioners, CES's agreement provides for 68,000 Dekatherms per day of transportation service pursuant to Gulfstream's Rate Schedule FTS for a term beginning November 1, 2003 and ending on November 1, 2023. Petitioners state that the subject agreement is a non-conforming agreement, negotiated rate agreement, for transportation to the Osprey generating facility.

4. To facilitate this release, Petitioners seek a waiver of the prohibition against tying the release of pipeline capacity to extraneous conditions, the Commission's capacity release rules in section 284.8 of the Commission's regulations (to the extent necessary), the shipper must have title rule, and the prohibition against buy-sell transactions. The Petitioners state they are seeking a waiver of the prohibition against tying because the Transaction contemplates that the subject capacity will be permanently released to Duke Florida as a required element of the Transaction, and such transfer could be viewed as contrary to the Commission's prohibition. The Petitioners also assert that waiver of the shipper must have title rule and prohibition of buy-sell transactions would provide flexibility in the event that the permanent release is not made effective coincident with the Transaction's closing date.²

5. The Petitioners state that the temporary waivers will be utilized only for the limited purpose of permanently releasing the subject capacity to Duke Florida in an efficient and timely manner. Petitioners further state that the permanent release of the subject capacity to Duke Florida is necessary to provide continued access to natural gas fuel for the Osprey facility. Petitioners state they will comply with the Commission's rules, policies, and orders, as well as Gulfstream's tariff, at all times, except to the extent permitted by the waivers, and then only as necessary to effectuate the Transaction. The Petitioners indicate that the permanent release of capacity contemplated herein will occur as a prearranged release at Gulfstream's applicable maximum recourse rate pursuant to the permanent release provisions of Gulfstream's tariff.

6. The Petitioners request that the temporary waivers be granted effective as of the date of the Commission's order and continuing for a period of ninety (90) days following the close of the Transaction. To the extent applicable, Petitioners also request that the Commission grant any and all other authorizations or waivers the Commission may deem

² The Petitioners state that, as an example, if the Transaction were to close at midnight on the date of closing, the next gas day would not begin until the following 9:00 a.m. CT.

necessary and issue an order granting the waivers requested in this joint petition by December 12, 2016. The Petitioners further state that the limited waivers requested in the joint petition are consistent with past Commission action on similar petitions, and will facilitate the proposed transaction.

7. Public notice of the filing was issued on November 15, 2016. Interventions and protests were due on or before November 21, 2016, as provided by the notice. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2016), 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.

8. The Commission has reviewed the Petitioners' request for waivers and finds that the request is adequately supported and consistent with previous waivers that the Commission has granted to permit the transaction under similar circumstances.³ Granting these waivers will allow the Petitioners to implement the transaction in an orderly and efficient manner and will ensure a continued supply of natural gas fuel for the Osprey generation facility. Accordingly, the Commission grants a temporary, limited waiver of its capacity release regulations, and the related policies and tariff provisions of Gulfstream's policies as identified above, only to the extent necessary to facilitate the described transaction. The limited waivers will become effective on the date that this order issues, and remain in effect until ninety (90) days from the date of the Transaction.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³ See *GDF SUEZ Energy N. Am., Inc.*, 156 FERC ¶ 61,038 (2016); *Exelon Generation Co., LLC*, 148 FERC ¶ 61,242 (2014); *Entergy Miss., Inc.*, 138 FERC ¶ 61,066 (2012); *Entergy Ark., Inc.*, 138 FERC ¶ 61,065 (2012).