In Reply Refer To:
Mitsui & Co. Energy Marketing and Services (USA) Inc.
Alta Energy Marketing LLC
Docket No. RP17-338-000

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Dear Ms. Gibbs and Mr. Morgan:

1. On January 17, 2017, Mitsui & Co. Energy Marketing Services (USA) Inc. (Mitsui) (f/k/a MMGS. Inc.) and Alta Energy Marketing LLC (Alta) (Petitioners) filed a joint petition requesting temporary waiver of the Commission’s capacity release regulations and policies and the applicable capacity release tariff provisions of Transco. Petitioners state that they seek the waiver to permit the transfer of capacity under two firm service agreements to effectuate the sale of a portion of an interest in the Marcellus shale region. Petitioners also request reconfirmation of the Commission’s approval of non-conforming provisions in one of the transportation service agreements. For the reasons discussed below and for good cause shown, the Commission grants the requested limited waivers and confirms approval of the subject non-conforming provisions.

2. Petitioners state they are seeking waiver in order to facilitate the transfer of capacity under two firm service agreements as part of a larger asset transaction involving the sale by Mitsui E&P USA, LLC (MEPUSA), an affiliate of Mitsui, of a portion of MEPUSA’s interest in the Marcellus shale region in the State of Pennsylvania to Alta Marcellus Development, LLC (Alta Marcellus), the parent company of Alta (the
Transaction). Petitioners state that MEPUSA and Alta Marcellus entered into a purchase and sale agreement on December 21, 2016, in which Alta Marcellus agreed to acquire all of MEPUSA’s “Anadarko-Operated” oil and natural gas assets covered in an Area of Mutual Interest (AMI) Participation Agreement (MEPSA Assets), as well as the capacity utilized under the firm transportation service agreements to move production from the MEPSA Assets to market. 1 According to the Petitioners, the Transaction is anticipated to close on March 1, 2017. Petitioners state that they need to complete the permanent releases and assignment of capacity prior to closing. Therefore, Petitioners ask the Commission to grant the requested waiver on or before February 17, 2017.

3. According to Petitioners, Mitsui will release the capacity associated with the two firm service agreements to Alta in accordance with section 42 of the General Terms and Conditions (GT&C) of Transco’s tariff. Specifically, Petitioners state that Mitsui will release to Alta all of the capacity under Contract No. 9165691 (25,254 Dth/d) but only a portion of the capacity under Contract No. 9144667 (6,500 Dth/d). Petitioners state that Mitsui needs to retain a portion of the capacity under Contract No. 9144667 in order to serve MEPUSA’s “Chesapeake-Operated” portion of the oil and gas assets covered under the AMI in the Participation Agreement, which are not part of the assets to be sold under the Transaction. Additionally, Petitioners note that Contract No. 9144667 contains non-conforming provisions, previously approved in an unpublished letter order.2 Petitioners request that the Commission reconfirm its prior approval of the non-conforming provisions, which will be included in one of the replacement transportation agreements between Alta and Transco.

4. Petitioners assert that the acquisition of these agreements and assignment of capacity is an integral part of the Transaction. Petitioners state that the Transaction

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1 Petitioners state that MEPUSA’s oil and gas assets located in the AMI are operated by either Anadarko E&P Company LP and Kerr-McGee Oil & Gas Onshore LP (Anadarko-Operated) or Chesapeake Operating, L.L.C (Chesapeake-Operated).

2 Transcontinental Gas Pipe Line Co., LLC, Docket No. RP13-1363-000 (October 24, 2013). The non-conforming clauses provided for the extension of the subject agreements for all or a portion of the MDQ, and limitations on damage liability. The provisions were accepted consistent with the Commission’s determinations that capacity “step-down” rights in expansion shippers’ service agreements contracts are permissible non-conforming provisions as they were offered to all participants in the project and reflected the unique circumstances involved with the construction of new energy infrastructure. See Transcontinental Gas Pipe Line Co., LLC, 136 FERC ¶ 61,220 (2011); Transcontinental Gas Pipe Line Co., LLC, Docket No. RP11-2470-002 (November 28, 2011); Ruby Pipeline, L.L.C., 128 FERC ¶ 61,224 (2009); Guardian Pipeline, L.L.C., 121 FERC ¶ 61,259 (2007).
cannot be fully effectuated in a timely and orderly manner without the transfer of the 
associated transportation capacity. Therefore, Petitioners request a temporary waiver to 
be effective for 90 days starting on the closing date of the Transaction. Accordingly, to 
facilitate the Transaction, Petitioners seek temporary waiver of the following 
Commission regulations and policies in order to effectuate the transfer of pipeline 
capacity: (1) the prohibition against tying arrangements; (2) the capacity release 
regulations set forth in section 284.8\(^3\) of the Commission’s regulations and the related 
capacity release tariff provisions in the GT&C of Transco;\(^4\) (3) to the extent 
necessary, the restrictions on capacity releases above or below the applicable maximum 
rate;\(^5\) (4) the prohibition against buy/sell arrangements; and (5) the “shipper must have 
title” rule. Petitioners also request that the Commission reconfirm its prior approval of 
the non-conforming provisions in Contract No 9144667. Petitioners state the 
Commission has granted waiver requests in similar circumstances where parties have 
sought capacity release waivers in connection with the sale of related production assets.\(^6\) 
Finally, Petitioners claim they have contacted Transco, the only affected pipeline, and 
that Transco has not expressed opposition to the petition, provided it is financially 
indifferent to the releases.

5. Public notice of the filing was issued on January 18, 2017. Interventions and 
protests were due as provided in section 154.210 of the Commission’s regulations.\(^7\) 
Pursuant to Rule 214,\(^8\) 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 interventions 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.

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\(^3\) 18 C.F.R. §§ 284.8(b)(2), 284.8(d), 284.8(e) and 284.8(h)(1)(iii) (2016).

\(^4\) See section 42, Capacity Release, of the GT&C of the tariff provisions of 
Transco.


\(^6\) Joint Petition at 3 (citing Freeport-McMoRan Exploration & Production, LLC 
and Anadarko US Offshore, LLC, 157 FERC ¶ 61,171 (2016); SWN Energy Services Co., 
LLC and Antero Resources Corp., 156 FERC ¶ 61,040 (2016); and EQT Energy, LLC 
and Statoil Natural Gas, LLC, 156 FERC ¶ 61,013 (2016).

\(^7\) 18 C.F.R. § 154.210 (2016).

\(^8\) 18 C.F.R. § 385.214 (2016).
The Commission has reviewed Petitioners’ request for temporary waiver and finds that the request is adequately supported and appears consistent with previous waivers the Commission has granted to permit the release of capacity under similar circumstances. Specifically, the Commission finds that the Petitioners have 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 (4) filing the petition as much in advance of the requested date as possible.

Accordingly, for good cause shown, the Commission grants Petitioners’ request for temporary, limited waiver of the Commission’s capacity release regulations, including the prohibition on buy-sell and tying arrangements, posting and bidding provisions, and shipper-must-have-title requirements but only as necessary to facilitate the described Transaction. Granting these waivers, subject to Transco finding that it is financially indifferent to the releases, will allow the Petitioner 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 of Transco. The Commission also reconfirms its approval of the non-conforming provisions in Contract No. 9144667. The Commission notes, however, that Transco must file an executed copy of the non-conforming agreement with Alto disclosing and

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reflecting all non-conforming language as part of Transco’s tariff and a tariff record identifying the agreement as a non-conforming agreement\textsuperscript{11} consistent with section 154.112 of the Commission’s regulations.\textsuperscript{12}

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

\textsuperscript{11} This requirement is consistent with the Commission’s requirement in \textit{WPX Energy Marketing, LLC}, 151 FERC ¶ 61,164 (2015).

\textsuperscript{12} 18 C.F.R. § 154.112(b) (2016).