

172 FERC ¶ 61,252
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

September 17, 2020

In Reply Refer To:
Golden Pass LNG Terminal LLC
Docket No. RP20-957-000

Golden Pass LNG Terminal LLC
811 Louisiana
Suite 1500
Houston, TX 77002

Attention: Blaine Yamagata,
Vice President and General Counsel

Dear Mr. Yamagata:

1. On June 17, 2020, Golden Pass LNG Terminal LLC (Golden Pass LNG) filed a petition requesting, to the extent necessary, a limited waiver of the Commission's buy/sell prohibition and any other relevant capacity release regulations and policies to enable Golden Pass LNG to purchase gas from potentially affiliated upstream suppliers, which would be resold in foreign commerce to a different affiliate under a long-term contract for export as liquefied natural gas (LNG) in foreign commerce (Petition). As discussed below, we find that good cause has been shown to grant a limited waiver of the buy/sell prohibition in the circumstances set forth by Golden Pass LNG.
2. Golden Pass LNG states that it owns and operates an existing LNG import terminal in the vicinity of Sabine Pass in Jefferson County, Texas.¹ Golden Pass LNG further states that on December 21, 2016, the Commission granted Golden Pass LNG further authorization to site, construct and operate the Golden Pass LNG Export Project facilities adjacent to and integrated with the existing onshore LNG import terminal constructed by Golden Pass LNG.²

¹ *Golden Pass LNG Terminal LP*, 112 FERC ¶ 61,041 (2005).

² *Golden Pass Products LLC*, 157 FERC ¶ 61,222 (2016) (authorizing Golden Pass Products LLC (Golden Pass Products) to add facilities at the Golden Pass LNG terminal site in order to export gas); *Golden Pass LNG Terminal*, 165 FERC ¶ 61,261 (2018) (Golden Pass LNG merged with Golden Pass Products leaving

3. Golden Pass LNG requests waiver for any transaction in which it (1) enters into an agreement to purchase natural gas from one or more potentially affiliated suppliers and (2) makes sales of that gas under a long-term contract for export as LNG at the Golden Pass LNG export terminal to Ocean LNG Limited (Ocean LNG), an affiliate of Golden Pass LNG, for export of LNG in foreign commerce. Golden Pass LNG represents that Ocean LNG will purchase the LNG from Golden Pass LNG solely for export and that Ocean LNG will not engage in domestic sales and purchases of natural gas.

4. Golden Pass LNG states that it will hold firm capacity on an affiliated interstate pipeline, Golden Pass Pipeline LLC, as well as other, non-affiliated interstate pipelines, in order to receive natural gas at the terminal. Golden Pass LNG states it will act as merchant shipper and will acquire natural gas supplies at receipt points on those pipelines, take title to that gas, and ship the gas on its firm pipeline capacity to the Golden Pass LNG terminal for liquefaction and resale to Ocean LNG pursuant to a long-term agreement entered into previously. Golden Pass LNG states that it may sell some or all of this gas in interstate commerce for resale or direct sale, as part of its management of a large portfolio of supplies from diverse suppliers including both potentially affiliated and non-affiliated entities, based in part on conditions in the LNG export market and need for gas supplies for liquefaction and export at any given time.

5. Golden Pass LNG states that Ocean LNG will take title to the LNG at the flange of the vessel for export in foreign commerce and in no instance will Golden Pass LNG purchase U.S domestic natural gas from Ocean LNG for liquefaction and export from the Golden Pass LNG terminal. Golden Pass LNG emphasizes that although the majority of its natural gas purchases will likely be with non-affiliated upstream suppliers, it seeks the ability to purchase natural gas from affiliated upstream suppliers for sale in LNG form to Ocean LNG. Golden Pass LNG states that this flexibility to purchase natural gas from diverse suppliers, including affiliated entities, will foster the development of existing domestic gas supply opportunities to meet demand, including LNG.

6. Golden Pass LNG states that its purchase of natural gas from potentially affiliated companies, and subsequent sale of that gas as LNG to Ocean LNG, does not constitute a prohibited buy/sell transaction. However, out of an abundance of caution, and due to the need to clarify whether it may engage in negotiations for the future purchase of natural gas from upstream affiliates, Golden Pass LNG requests a waiver, to the extent necessary, of the buy/sell prohibition and any other capacity release regulations, policies and orders deemed relevant, to engage in such transactions. Golden Pass LNG states that its request

Golden Pass LNG as the owner and operator of the export and import facilities at the LNG terminal site).

for waiver will enhance its acquisition and transportation of natural gas, thereby guaranteeing a consistent and timely source of feedstock for its LNG processes.

7. Golden Pass LNG asserts that in *Cheniere*³ the Commission denied a petition for declaratory order filed by Cheniere Energy, Inc. (Cheniere) in which Cheniere requested that the Commission find that certain transactions would not violate the Commission's buy/sell prohibition or any related capacity release rule, regulation or policy. Golden Pass LNG states that nevertheless the Commission granted a waiver of the buy/sell prohibition to Cheniere to engage in such sales, in order to support a robust LNG export market. Golden Pass LNG submits that the same considerations that justified the waiver granted in *Cheniere* apply equally or with greater force to its transactions.

8. Golden Pass LNG asserts that its potential transactions are distinguishable from those in *Cheniere* in two respects. First, Golden Pass LNG states that in *Cheniere* the Commission expressed concern that Cheniere's transaction appeared on its face to constitute a prohibited buy/sell arrangement because Cheniere would buy natural gas, transport it over firm interstate transportation capacity held by Cheniere to its terminal, and then liquefy the natural gas and resell it as LNG to "an entity that may be the original owner of the gas."⁴ Golden Pass LNG asserts that the transactions for which it seeks waiver do not include a resale of natural gas or LNG to the original owner of the gas. Rather, Golden Pass LNG argues that all of its sales would be made to Ocean LNG, which possibly may be an affiliate of the upstream entity from which the gas would be purchased.

9. Second, Golden Pass LNG states that, in contrast to *Cheniere*,⁵ the purchase of natural gas from upstream suppliers and sale of LNG to Ocean LNG would not be contemporaneous. Golden Pass LNG states that its contract with Ocean LNG was entered into long before its negotiations for purchases of upstream supply. Thus, Golden Pass LNG asserts that it did not specifically plan the purchase of supplies from its affiliates in connection with its agreement with Ocean LNG.

³ *Cheniere Energy, Inc.*, 169 FERC ¶ 61,148 (2019) (*Cheniere*).

⁴ *Id.* P 10.

⁵ *Id.* P 20 (Commission found that "Cheniere would enter into two contemporaneous contacts under one of which it would purchase natural gas from a Supplier at an upstream point and under the second of which it would sell LNG to the Supplier or its affiliate at a downstream LNG terminal").

10. Public notice of the filing was issued on June 18, 2020. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁶ Pursuant to Rule 214,⁷ all timely filed motions to intervene and any unopposed motion to intervene filed out-of-time 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.

11. On June 29, 2020, the Center for Liquefied Natural Gas (CLNG) submitted comments in support of Golden Pass LNG's request. CLNG contends that under Commission precedent, a transaction is not a prohibited buy/sell unless there was a commercial arrangement regarding the gas purchase and sale.⁸ CLNG argues that where there is no linkage between or pre-arrangement with respect to the two transactions, there is no commercial arrangement and thus no prohibited buy/sell. Therefore, CLNG asserts that Golden Pass LNG's transactions are not prohibited buy/sell transactions.

12. Golden Pass LNG asserts that although its commercial model differs from the proposed structure in *Cheniere*, the waiver it requests would allow it to address the same purposes identified in the *Cheniere* order. For example, Golden Pass LNG states that it must manage its interstate pipeline capacity, its liquefaction facilities, and sales of the LNG produced at the terminal. Golden Pass LNG states that the portfolio of supply and transport capacity must respond to changes in market demand as well as potential interruptions due to unavailability of capacity on an upstream pipeline or downtime at the terminal. Golden Pass LNG states the requested waiver petition is needed to provide it the capability to manage these varying demands and conditions and is similar to the concept of the regulatory waiver of the buy/sell prohibition with respect to Asset Management Agreements. Golden Pass LNG also asserts that the requested waiver would be limited to the transactions that enable its pipeline capacity to be used for the same purpose for which it bought the capacity, namely to transport natural gas to its LNG terminal for liquefaction and export to an international customer. Finally, Golden Pass LNG explains that its acquisition of natural gas for resale as LNG to Ocean LNG cannot readily be accomplished through the Commission's capacity release mechanisms.

13. Golden Pass LNG asserts that the transactions subject to this waiver request are not prohibited buy/sell transactions and thus are distinguished from those in *Cheniere*. We disagree. Based on the facts presented, it appears that the transactions that Golden Pass LNG describes may be prohibited buy/sell transactions. Indeed, the fact that the

⁶ 18 C.F.R. § 154.210 (2020).

⁷ *Id.* § 385.214 (2019).

⁸ CLNG Comment at 3 (citing *In re: BP Energy Co.*, 121 FERC ¶ 61,088, at PP 14-17 (2007); *Rice Energy Mktg., LLC*, 153 FERC ¶ 61,048, at P 3 n.6 (2015)).

transactions for which it seeks waiver do not include a resale of natural gas or LNG to the original owner, but rather an affiliate, and also are not contemporaneous, do not eliminate the potential that such transactions will be prohibited buy/sell arrangements.

Specifically, Golden Pass LNG may purchase natural gas from a potentially affiliated supplier at a point located in the United States, ship that gas on firm pipeline capacity, and sell LNG to an affiliate that may also be affiliated with its supplier. These facts satisfy the prerequisites for a prohibited buy/sell transaction.⁹ As in *Cheniere*, the key factor is that Golden Pass LNG will hold and use firm pipeline capacity connecting the points at which it would purchase the natural gas and deliver it to its LNG terminal. Because Golden Pass LNG holds firm pipeline capacity connecting the upstream purchase point and the downstream LNG terminal, it is possible that transactions subject to this waiver could be carried out by Golden Pass LNG releasing its firm pipeline capacity to its supplier.

14. By prohibiting buy/sell transactions, the Commission intended to prevent a capacity holder with firm pipeline capacity from circumventing the Commission's open access transportation policy and regulations which require released capacity to be posted and bid on a nondiscriminatory basis.¹⁰ We cannot find based on these facts that Golden Pass LNG would not violate this prohibition in its proposed LNG transactions. This is because the requested waiver would likely enable any large marketer of natural gas with a significant amount of firm pipeline capacity to engage in buy/sell transactions that would allow its customers to receive the benefits of that capacity without having to compete with other entities in the capacity release market to obtain the marketer's firm capacity for itself.

15. However, as in *Cheniere*, we continue to find value in fostering a robust marketplace for LNG and agree with Golden Pass LNG that the instant waiver may help provide it with the capability to manage varying demands and conditions in its portfolio of supply and transport capacity. The Commission has previously granted waivers of its related policies prohibiting tying capacity releases to extraneous conditions for the purpose of allowing interstate pipeline and LNG terminal capacity to be transferred to importers or exporters of LNG for terms of up to 20 years.¹¹ The Commission has found such waivers to be in the public interest because the import and export of LNG brings greater flexibility to the natural gas markets in the United States.

⁹ *Cheniere*, 169 FERC ¶ 61,148 at P 20.

¹⁰ See *El Paso Nat. Gas Co.*, 59 FERC ¶ 61,031, at 61,080 (1992).

¹¹ See, e.g., *Statoil Nat. Gas LLC*, 128 FERC ¶ 61,240 (2009); *Statoil Nat. Gas LLC*, 130 FERC ¶ 61,110 (2010); *ExxonMobil LNG Supply LLC*, 151 FERC ¶ 61,002 (2015).

16. Accordingly, we find good cause to grant the waiver requested by Golden Pass LNG for any transaction in which Golden Pass LNG enters into: (1) an agreement to purchase natural gas from a potentially affiliated supplier; and (2) an agreement to sell LNG to Ocean LNG. This limits the waiver to transactions which enable Golden Pass LNG's interstate pipeline capacity to be used for the same purpose for which Golden Pass LNG originally purchased that capacity: to transport natural gas to its LNG terminal for export. In light of this waiver, it is unnecessary to grant waiver of any capacity release regulations.

17. In order to monitor the impact of the waiver granted by this order, we order Golden Pass LNG to submit the following reports to the Commission. On or before March 1 of the three calendar years following the in-service date of the Golden Pass LNG Export Project, Golden Pass LNG must report to the Commission the total annual volume of natural gas that it purchased during the preceding calendar year from sellers who are affiliates of Ocean LNG.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.