

130 FERC ¶ 61,110  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

Statoil Natural Gas LLC  
And  
Gazprom Marketing and Trading USA, Inc.

Docket No. RP10-197-000

ORDER ON PETITION FOR WAIVER

(Issued February 18, 2010)

1. On December 1, 2009, Statoil Natural Gas LLC (Statoil) and Gazprom Marketing and Trading USA, Inc (Gazprom) (collectively Petitioners) filed jointly for a waiver of the Commission's prohibition on tying capacity releases to extraneous conditions (Joint Petition), in order to allow Petitioners to enter into and directly link a series of related liquefied natural gas (LNG) and pipeline capacity agreements. Petitioners also request that the Commission waive the requirement that the capacity release be posted for bidding, to the extent necessary. For the reasons discussed below the Commission grants the requested waiver of the prohibition on tying and finds that no waiver of the bidding requirements is necessary.

**The Joint Petition**

2. Petitioners' request relates to service on the facilities of both Dominion Cove Point LNG, LP (Cove Point) and Dominion Transmission, Inc. (Dominion). Cove Point operates an LNG terminal and storage tanks in Lusby, Maryland. It also operates a pipeline that extends approximately 88 miles from the LNG facility to interconnections with several interstate pipelines in Loudon County, Virginia (Cove Point pipeline). At its LNG facilities, Cove Point provides an LNG tanker discharging (LTD) service that consists of the receipt of LNG from ocean-going tankers, the temporary storage of LNG, and the vaporization of LNG and delivery of natural gas to the Cove Point pipeline. Cove Point also provides firm peaking storage service (Rate Schedules FPS-1, FPS-2, and FPS-3) at its LNG facilities for withdrawals during the winter months. Cove Point provides firm and interruptible transportation service on its pipeline under Rate Schedules FTS and ITS and an off-peak transportation service under Rate Schedule OTS.

3. Dominion is an open-access pipeline operating under the Commission's regulations and an approved tariff and is engaged primarily in the business of storing and transporting natural gas for customers principally in New York, Ohio, Pennsylvania, West Virginia, Virginia, Maryland and the District of Columbia. Dominion's interstate pipeline interconnects with the Cove Point pipeline at Loudon, Virginia. Cove Point delivers regasified LNG to Dominion downstream of the Cove Point pipeline at the Loudon, Virginia interconnect.

4. In 2006 the Commission approved the Cove Point Expansion Project, which included the installation of two additional LNG storage tanks at the terminal facility and the construction by Cove Point and Dominion of new downstream pipeline and appurtenant storage facilities. The expansion LNG facilities, which were approved under section 3 of the Natural Gas Act (NGA), were placed into service in January 2009 and increased the terminal's storage capacity to 14.6 billion cubic feet and its peak send-out capacity to 1.8 million dekatherms (Dth) per day. Cove Point provides open access service at its original LNG storage facilities and on its pipeline but the new LNG storage facilities were constructed under the Commission's *Hackberry* policy,<sup>1</sup> and therefore are not subject to the Commission's open access or capacity release rules.<sup>2</sup>

5. According to the Joint Petition, Statoil holds 250,000 Dth per day of the pre-expansion NGA section 7 terminal capacity at the Cove Point LNG receiving facility and an equivalent 250,000 Dth per day of firm capacity on the Cove Point pipeline pursuant to Rate Schedule FTS.<sup>3</sup> Additionally, Statoil holds 83,000 Dth per day of incremental send-out service at the Cove Point terminal and 83,000 Dth per day of off-peak transportation service under Rate Schedule OTS on the Cove Point pipeline. Petitioners state that both of these services were approved pursuant to section 4 of the NGA.<sup>4</sup> Statoil

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<sup>1</sup> *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337 (2006); *order on reh'g*, 118 FERC ¶ 61,007 (2007); *order on remand*, 125 FERC ¶ 61,018 (2008); *order on reh'g on remand*, 126 FERC ¶ 61,036 (2009).

<sup>2</sup> See Order No. 712-A, FERC Stats & Regs. ¶ 31,284 (2008) (citing *Hackberry LNG Terminal, L.L.C.*, 101 FERC ¶ 61,294 (2002)(*Hackberry*)).

<sup>3</sup> The Petitioners state that Cove Point has reviewed the Joint Petition and has authorized the Petitioners to state that the pipeline does not oppose any of the requested waivers.

<sup>4</sup> *Dominion Cove Point LNG, LP*, 118 FERC ¶ 61,023 (2007); *Dominion Cove Point LNG, LP*, Docket Nos. RP06-417-004 and RP07-36-002, Letter Order (dated Sep. 17, 2007).

also states that it is the sole Cove Point expansion shipper,<sup>5</sup> and that as part of the Cove Point expansion, Statoil holds 800,000 Dth per day of NGA section 3 terminal capacity and an equivalent amount of firm transportation capacity on the Cove Point pipeline. Statoil further states that it contracted with Dominion to expand its storage and pipeline facilities to accommodate an additional 700,000 Dth per day of supply and to expand its storage facilities to accommodate 100,000 Dth per day of storage.

6. Petitioners state that Gazprom is the natural gas marketing and trading subsidiary of OAO Gazprom, and was incorporated to secure regasification capacity and to develop a natural gas and trading company to support the importation of LNG sourced from Russia. Petitioners state that Gazprom commenced commercial operations in October 2009 and is currently marketing and trading natural gas at a number of locations in the United States with multiple counterparties.

7. Petitioners further state that Gazprom's parent company, OAO Gazprom, is the world's largest natural gas company, and the largest exporter of natural gas in the world through its sales to markets in Europe and Asia. Petitioners further state that OAO Gazprom is looking to expand its LNG business to serve new markets in China, Japan, Korea and the United States and that a key component of this growth will be driven by the export of LNG from Russia in tankers, which will then be delivered and regasified through various LNG terminals in the United States.

8. Petitioners state that the transaction for which they seek waiver involves five agreements, two LNG commodity agreements and three prearranged capacity release agreements. Petitioners state that they seek the referenced waivers in order to allow Statoil to (1) permit Gazprom to use its capacity at the LNG terminal and (2) release its capacity on the two downstream pipelines to Gazprom. Petitioners state that pursuant to the commodity agreements, Gazprom will sell LNG to Statoil at the interconnection between the LNG vessel that docks at the Cove Point pier and the inlet of the Cove Point terminal. Petitioners further state that Statoil will take title to the LNG at the inlet of the Cove Point terminal and, using its non-open access NGA section 3 Cove Point expansion terminal capacity, will store and regasify the LNG. Statoil will then sell the regasified LNG to Gazprom at the outlet of the Cove Point terminal. Petitioners state that the parties have freely negotiated the transaction price for these buy/sell arrangements.

9. According to the Joint Petition, two of the prearranged capacity releases involve capacity on the Cove Point pipeline and one involves capacity on Dominion, which is downstream of the Cove Point pipeline. The Joint Petition divides the agreements into two groups: (1) the Mid-Term agreements, which have terms of seven years beginning April 1, 2010, and which include one of the commodity agreements and a capacity

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<sup>5</sup> *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337 (2006) at P 18, P 23 and P 31.

release on the Cove Point pipeline, and (2) the Long-Term agreements, which have terms of 18-20 years, depending on the commencement of commercial operations of Gazprom's Shtokman LNG Project (estimated to be in the 2014-2015 timeframe), and which include the other commodity agreement, a capacity release agreement on the Cove Point pipeline and a capacity release agreement on Dominion. According to the Joint Petition, all the prearranged capacity releases are long-term agreements at the maximum rate. The Joint Petition also states that all the terminal and pipeline capacity associated with the waiver request involves capacity that Statoil contracted for as part of the Cove Point expansion project. Statoil will release to Gazprom 50,000 Dth per day of Cove Point pipeline expansion capacity under the Mid-Term agreements and 200,000 Dth per day of Cove Point pipeline capacity, and 145,500 Dth per day of Dominion pipeline expansion capacity, respectively, under the Long-Term agreements. Petitioners further state that there are no restrictions on Gazprom's ability to use the released capacity, except as may be provided for in the relevant pipelines' tariffs or the Commission's regulations.

10. Petitioners also state that the terms of the Long-Term agreements terminate after the expiration of the initial term of Statoil's Cove Point expansion project transportation service agreements. To address any potential issues related to this disparity, the Petitioners state that they have agreed that Statoil will exercise its contractual right of first refusal (ROFR), if necessary, to ensure that Statoil's pipeline service agreements do not terminate prior to the expiration of the capacity releases to Gazprom.

11. Petitioners assert that the instant waiver request is similar to a waiver the Commission recently granted in *Statoil Natural Gas LLC, et al.*,<sup>6</sup> and that the Joint Petition is similar in substance to that ruled on in *Statoil*. They note that, as in *Statoil*, the transaction here involves Statoil's non-open access Cove Point expansion terminal capacity and open access pipeline expansion capacity and that the releases are long-term releases at the maximum rate. Petitioners contend that the only factual difference between the instant request and the situation in *Statoil* is that the transaction in the current request also includes a long-term, maximum rate prearranged capacity release on Dominion downstream of the Cove Point pipeline. Petitioners claim that this proposal only seeks to complete the LNG "send-out" chain and preserve the linkage that was created as part of the Cove Point expansion project. Petitioners assert that the Cove Point terminal and Cove Point and Dominion pipeline expansion capacity were "inextricably linked" as part of one integrated expansion project and thus the Dominion capacity in question is only part of the larger Cove Point expansion project. Petitioners note that Statoil underwrote the substantial cost of that expansion project and is the sole expansion

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<sup>6</sup> 128 FERC ¶ 61,240 (2009)(*Statoil*).

shipper. Petitioners also point out that the total amount of Dominion expansion capacity to be released is small relative to Dominion's total system capacity of 6,000,000 Dth per day.

12. The Petitioners argue that the Commission should grant the waiver for the same reasons it granted the waivers in *Statoil*. Specifically the Petitioners note that the Joint Petition meets the Commission's requirements under Order No. 712, that Statoil and Gazprom voluntarily agreed to enter into and link the commodity and capacity release agreements at issue, that Gazprom requires long-term access to downstream pipeline capacity as a condition precedent to entering into the commodity agreements, that there are no unreasonable restrictions on how Gazprom can use the released capacity and that Gazprom is not required to purchase gas from Statoil other than under the terms of the LNG commodity agreements.<sup>7</sup> Petitioners also assert that no party will be harmed by the transaction, that Cove Point and Dominion have no objection to the transaction, and that the objectives of the transaction cannot be accomplished through the use of a supply asset management arrangement (AMA).

13. Petitioners also assert that granting the waiver will provide benefits to the United States in terms of new gas supplies and by enhancing the ability of LNG importers to access U.S. markets, which in turn will increase competition and expand potential supply sources. Petitioners note that granting the waiver will allow the Cove Point expansion project to move more quickly toward full utilization and prevent excess supplies from moving to foreign markets. Petitioners also point out that Gazprom is paying the maximum tariff rate for the released capacity and thus the capacity will go to the party that values it the most.<sup>8</sup>

14. Petitioners contend that the proposed transaction will have no adverse impact on open access competition and assert that competition on equal terms will be enhanced. With regard to the capacity release on the Cove Point pipeline, Petitioners claim that the Commission approved linking a nearly identical commodity and sale agreement to a pre-arranged capacity release in *Statoil*, and that based on the same reasons given in that order, the Commission should approve the link between the commodity agreement and capacity on the Cove Point pipeline.<sup>9</sup>

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<sup>7</sup> Joint Petition at 14.

<sup>8</sup> Petitioners further support their claim by noting that the Cove Point expansion capacity, which is the only capacity that will be used under the capacity release agreements, is more expensive than non-expansion capacity on the Cove Point and Dominion pipelines.

<sup>9</sup> Joint Petition at 21.

15. Petitioners also assert that the Commission should authorize their request to tie a commodity agreement to the long-term, pre-arranged capacity release on Dominion.<sup>10</sup> Petitioners assert that the Dominion expansion capacity is substantively similar to the Cove Point pipeline expansion capacity because it was constructed based on Statoil's capacity commitment as an integral part of the NGA section 3 Cove Point terminal expansion. Petitioners claim that granting the waiver will not adversely affect open access competition on the interstate grid. Petitioners state that Statoil's investment in the Cove Point expansion project was based in large part on its ability to move LNG to customers in the Mid-Atlantic market and to gain access to other interstate pipelines that can move gas to New York City. Petitioners claim that because the expansions on both the Cove Point pipeline and Dominion were an integral part of the LNG terminal expansion, there is no basis to distinguish between a tied capacity release on Dominion and a tied capacity release on the Cove Point pipeline. Petitioners claim that existing shippers on the Cove Point and Dominion pipeline systems will not be disadvantaged relative to LNG importers because Gazprom wants to use both the terminal and pipeline capacity in order to import LNG, and is in effect stepping into Statoil's shoes relative to the commercial commitment to enable new LNG import capacity. Petitioners note that the Cove Point expansion project pipeline capacity on the Cove Point pipeline and on Dominion was constructed to move regasified LNG from the terminal to consuming markets and that it is not a coincidence that they are equally sized because they were all meant to be used together. Petitioners also assert that if the Commission declines to grant the waiver, then Statoil's investment in the non-open access Cove Point terminal capacity will be devalued.<sup>11</sup>

16. Petitioners argue that not granting the waiver could place the Cove Point expansion project capacity at a competitive disadvantage relative to similar projects involving expansion of multiple pipelines in a single expansion project. Petitioners note that in Order No. 712 the Commission confirmed its existing policy with regard to open access LNG terminals, which permits a holder of capacity in an open access LNG terminal to require a replacement shipper to take a release of both its terminal capacity and its pipeline capacity.<sup>12</sup> Petitioners contend that LNG importers like Gazprom should not be competitively impeded or discouraged from bringing supplies to the U.S. due to a competitive advantage enjoyed by other LNG importers who are authorized under existing regulations to link NGA section 7 terminal and pipeline capacity or to enter into a supply AMA. They argue that granting the requested waiver will place Gazprom on a competitively equal and non-discriminatory footing with NGA section 7 terminal

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<sup>10</sup> See Joint Petition at 22.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 23 (*citing* Order No. 712 at P 145).

capacity and to not grant the request would be contrary to Commission's *Hackberry* policy, which Petitioners argue was designed to incentivize LNG importers to develop significant infrastructure in the U.S. for the importation of needed gas supplies.<sup>13</sup>

17. Petitioners request that the Commission approve the requested waiver for both the Mid-Term and Long-Term agreements by February 19, 2010, in order for Gazprom to make certain critical financial decisions with regard to the Shtokman LNG project.<sup>14</sup>

### **Public Notice, Comments and Interventions**

18. Public notice of the Joint Petition was issued on December 2, 2009, providing for interventions, comments, and protests to be filed by December 14, 2009. On December 14, 2009, Washington Gas Light Company (WGL) filed a motion to intervene and a request for conditions. On December 29, 2009, the Petitioners filed an answer to WGL's comments and request.

19. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2009)), all timely filed motions to intervene and any 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.

20. In its comments and request for conditions, WGL states that it takes no position on whether the Commission should grant the waiver of its regulations to permit the contemplated buy/sell arrangements.<sup>15</sup> WGL nevertheless asserts that in the Commission's order on remand in the Cove Point expansion proceeding,<sup>16</sup> the Commission conditioned approval of the project on the requirement that physical deliveries of regasified LNG at the interconnect between the Cove Point pipeline and Columbia Gas Transmission's system at Loudon, Virginia be capped at 530,000 Dth per day, or essentially pre-expansion volumes, in order to protect WGL's system against unsafe leakage.<sup>17</sup> WGL contends that the purpose of that limitation was to preclude any volumes being transported on the Cove Point expansion capacity from utilizing the pre-existing facilities at the Columbia-Loudon point. WGL comments that if the

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<sup>13</sup> *Id.* (citing *Hackberry LNG, Inc.*, 101 FERC ¶ 61,294, at P 20-27 (2002)).

<sup>14</sup> Joint Petition at 11.

<sup>15</sup> WGL comments at 4.

<sup>16</sup> *Dominion Cove Point LNG, LP, et al.*, 125 FERC ¶ 61,018 (2008) (Remand Order).

<sup>17</sup> WGL comments at 5-6.

Commission approves the Petitioners' waiver request, then Statoil will no longer be the sole importer and shipper of LNG expansion volumes because Gazprom will, in effect, be an expansion shipper. WGL expresses concern that Gazprom would then be able to flow additional volumes from the expansion capacity directly into Columbia, contrary to the Remand Order's intent to ensure that no additional LNG can be delivered into WGL as a result of the expansion project. WGL thus requests that while the cap remains in effect, the Commission "specifically condition the path for the released Cove Point pipeline capacity such that no expansion quantities can be redelivered to Columbia at Loudon,"<sup>18</sup> and that any waiver order specifically provide that the Columbia-Loudon interconnect is not an authorized delivery point for Gazprom or any replacement shipper for that capacity.

21. In their answer, Petitioners argue that WGL misapprehends the scope of the Remand Order and thus WGL's request for conditions should be denied. Petitioners assert that the Remand Order places a limit on the quantity of regasified LNG that can flow to the Columbia interconnect but does not place a condition on the source of such gas.<sup>19</sup> Petitioners emphasize that cap was put in place to protect WGL from receiving any greater volume of regasified LNG as a result of the expansion. Petitioners contend that the limitation is clear and that the 530,000 Dth per day cap applies to the total daily volume of regasified LNG flowing through the Columbia interconnect, regardless of whether such volumes are transported using expansion or non-expansion capacity.

### **Discussion**

22. In Order No. 712-A, the Commission explained that with regard to LNG terminals providing open access service, where both the LNG terminal and the directly connected interstate pipeline facilities are subject to the Commission's Part 284 open access regulations, a holder of capacity in the LNG terminal has the right to release both its terminal capacity and its capacity on the downstream pipeline pursuant to the Commission's capacity release program. Further, existing Commission policy permits releasing shippers to tie releases of upstream and downstream capacity, and require the replacement shipper to take a release of the aggregated contracts on both pipelines.<sup>20</sup> Thus, existing policy permits the holder of capacity in an open access LNG terminal to require a replacement shipper to take a release of both its terminal capacity and its pipeline capacity.

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<sup>18</sup> *Id.* at 6.

<sup>19</sup> Statoil answer at 3.

<sup>20</sup> Order No. 712-A, FERC Stats & Regs. ¶ 31,284 at P 45.

23. However, the Commission also pointed out that because non-open access LNG terminals are not subject to the Commission's open access policies, any releases or assignments of terminal capacity would not be made pursuant to the capacity release rules. Thus, there is no Commission process to ensure that the transaction would be transparent and non-discriminatory. Recognizing that there were a myriad of ways to structure transfers of terminal capacity, including through buy/sell agreements similar to the ones at issue here, and that we lacked sufficient information to determine the benefits of such a transaction or the potential effect on competition, we declined to grant a blanket exemption from tying and bidding in the context of a non-open access LNG terminal.<sup>21</sup> The Commission stated that it remained open to considering individual waiver requests for such transactions on a case-by-case basis if presented in a fully justified proposal. Petitioners have filed just such a request.

24. As noted in the Joint Petition, the Commission addressed the first specific waiver request to tie an LNG commodity agreement to a downstream capacity release agreement in *Statoil*, where Statoil and La Société Nationale pour la Recherche, la Production, le Transport, la Transformation, et la Commercialisation des Hydrocarbures s.p.a. (Sonatrach) sought a tying and bidding waiver in order to link a fifteen year LNG commodity agreement for the purchase and sale of LNG at the non-open access Dominion Cove Point LNG terminal (the same facility at issue here) to a fifteen year pre-arranged capacity release on the Cove Point pipeline. We approved that request, finding that it did not appear from the record that granting the waiver would have an adverse effect on competition and that the parties voluntarily agreed to the terms of the transaction. The Commission also determined that there were no concerns of undue restrictions on the use of the released capacity in that Sonatrach was able to transport gas other than its own LNG from the terminal, could purchase domestic gas and transport it on the Cove Point pipeline and between the pipeline's interconnects with other pipelines, and was able to re-release the capacity. The Commission further found that the proposed transaction would provide significant benefits in terms of introducing new supplies to the United States. We noted that in order to bring, store and market LNG supplies in the United States, LNG suppliers required capacity in both the LNG terminal and the directly connected downstream pipeline, and that the Cove Point pipeline is the only way to transport gas out of the Cove Point terminal. Based on these findings the Commission concluded that granting the waiver request would enhance the ability of LNG importers to access U.S. markets, and in turn, increase competition and expand potential supply sources. The Commission also noted that because the proposed prearranged capacity release was for more than a year at the maximum recourse rate, no bidding waiver was necessary.

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<sup>21</sup> *Id.* P 46.

25. The Mid-Term agreements and the Long-Term agreements relating to the capacity release on the Cove Point pipeline are substantially similar to those addressed in *Statoil*. Accordingly, we find that the Petitioners have presented sufficient information about those transactions to justify granting their request for a waiver of the tying prohibition for the reasons we approved the request in *Statoil*. As in *Statoil*, it appears from the information provided by the Petitioners that granting the requested waiver will not have an adverse effect on open access competition. No party has protested the request or claimed that it would be harmed by the transaction.<sup>22</sup> Moreover, no entity filed to state that it has an interest in obtaining the relevant pipeline capacity. Petitioners voluntarily agree to the terms of the transaction, including the link between the commodity agreements and the capacity release agreements. In fact, the replacement shipper Gazprom required reliable access to downstream capacity as a condition for entering into the commodity agreements with Statoil and bringing LNG to Cove Point. Further, the Joint Petition states that there are no restrictions on how Gazprom may use the Cove Point pipeline capacity other than those that may be imposed by applicable tariff provisions or Commission regulations. The Joint Petition also states that Gazprom is not required to purchase gas from Statoil, other than under the terms of the commodity agreements.

26. We also grant Joint Petitioners' request with respect to the Long-Term agreements relating to the capacity release on Dominion. While such approval extends the scope of the waiver beyond that approved in *Statoil*, by allowing the parties to tie the LNG commodity agreement to a capacity release agreement on a pipeline that is downstream of the pipeline directly connected to the LNG terminal, we find that such extension is warranted based on the facts of this case. As Petitioners note, the capacity at issue is essentially part of an integrated expansion project that links the Cove Point LNG terminal and the Cove Point and Dominion pipelines as a means of transporting re-gasified LNG from the terminal to the interstate grid. As we recognized in *Statoil*, LNG suppliers require capacity in both the LNG terminal and the directly connected downstream pipeline. Here, the expansion capacity on Dominion was constructed as part of an integrated project meant to transport regasified LNG from the Cove Point terminal to the Mid-Atlantic markets, and was based on Statoil's capacity commitment as an integral part of the NGA section 3 Cove Point terminal expansion.

27. There is nothing in the record to indicate that granting the waiver in this situation will adversely impact open access competition on the interstate grid and no party filed to object to the waiver. Moreover, it does not appear that existing shippers on the Cove

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<sup>22</sup> As noted above, WGL does not take a position on whether the Commission should grant the requested waiver but only requests that if we do grant a waiver that we place conditions on it.

Point and Dominion pipeline systems will be disadvantaged relative to LNG importers. The replacement shipper Gazprom wants to use both the terminal and pipeline capacity in order to import LNG, and is in effect stepping into Statoil's shoes relative to the commercial commitment to enable new LNG import capacity. Further, as discussed above, it appears from the Joint Petition that there are no restrictions on Gazprom's ability to use the released capacity. The significant benefits of the proposed transaction outweigh any potential anti-competitive concerns relating to use by others of the capacity to be released on Dominion, particularly because the rate for the released capacity will be the maximum tariff rate for the expansion capacity, which is greater than the rate for pre-existing capacity on both the Cove Point pipeline and Dominion systems. All the reasons supporting our decision to grant the waiver for the Mid-Term agreements and the Long Term agreements relating to the capacity release on the Cove Point pipeline also apply to the release on Dominion.

28. Further, it appears that granting the waiver requests for both the Mid-Term and Long-Term agreements will provide significant benefits in terms of bringing new supplies to the United States. As explained in the Joint Petition, pipeline capacity from an LNG terminal may have limited or no value absent access to related LNG import terminal facilities or supplies because often (as is the case here) the pipeline directly connected to the LNG terminal has no market of its own. Thus, LNG importers require capacity in the import terminal and the send-out pipeline to avoid having LNG stranded at the terminal. By granting the Petitioners' requested waiver to tie the terminal capacity to capacity releases of expansion capacity that was constructed as a means of transporting regasified LNG to the interstate grid, we will enhance the ability of LNG importers to access U.S. markets, which should in turn increase competition and expand potential supply sources.

29. According to the Joint Petition, Statoil's initial term for the expansion capacity on the Cove Point pipeline is 20 years, while the term of the Long-Term capacity releases may extend beyond 20 years depending on the commencement date of those agreements.<sup>23</sup> Petitioners state that Statoil's Cove Point pipeline service agreements contain rollover and ROFR provisions that grant Statoil the ability to extend the initial term of the service agreements if necessary or desired. Petitioners further state that the parties have agreed that Statoil will exercise its contractual ROFR if necessary to ensure that Statoil's pipeline service agreements do not terminate before the expiration of the Long-Term capacity releases. We find that it is permissible for the Petitioners to include in the Long-Term capacity releases a condition requiring Statoil to exercise its ROFR, if necessary, to ensure that the underlying service agreements would not terminate prior to

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<sup>23</sup> Joint Petition at 28.

the expiration of the capacity release agreements as proposed in the Joint Petition.<sup>24</sup> Statoil's exercise of such right shall be subject to all applicable regulations and tariff provisions in effect at the time the ROFR is exercised.

30. Moreover, we find that it is reasonable to grant waiver of the tying prohibition at this time for the Long-Term agreements, even though those agreements will not go into effect until 2014 or 2015. The waiver granted in this order is an integral component of the development of Gazprom's Shtokman LNG project which, through the transactions proposed in the Joint Petition, will benefit the United States in terms of increasing competition and diversifying supply through the importation of LNG. By granting the waiver at this time for the Long-Term agreements, we will facilitate the investment decisions and continued development of that LNG project.

31. Petitioners also request that "to the extent necessary" we waive the requirement that the capacity release be posted for bidding. As made clear in the Joint Petition, the pre-arranged capacity releases at issue are at the applicable pipelines' maximum recourse rate and are all for a term of more than one year.<sup>25</sup> Long term-capacity releases at the maximum rate are not subject to the Commission's capacity release bidding requirements<sup>26</sup> and thus no waiver of those bidding requirements is necessary here.

32. We decline to impose the conditions sought by WGL. The Remand Order's limitation on regasified LNG volumes that may enter Columbia's system at the Loudon interconnect is a quantitative restriction that remains in effect. Pursuant to that limitation, no more than 530,000 Dth per day can be delivered to the Columbia interconnect. Thus, contrary to WGL's concerns, Gazprom will not be permitted to nominate regasified LNG volumes to the Columbia-Loudon interconnect if doing so would result in exceeding the limit. We disagree that the Remand Order's limitation precludes any volumes of regasified LNG flowing to Columbia at Loudon from the expansion capacity. Thus the grant of waiver in this order will not affect the restriction in the Remand Order, which

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<sup>24</sup> 18 C.F.R. § 284.(b)(1) (2009). See *Transwestern Pipeline Co.*, 63 FERC ¶ 61,138, at 61,911 (1993).

<sup>25</sup> The fact that the release at issue is at the maximum rate distinguishes this case from the Commission's order in *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082 (2009), where we denied a waiver of the Commission's capacity release bidding requirements for a temporary release at less than the pipeline's maximum recourse rate.

<sup>26</sup> See 18 C.F.R. § 284.(8)(h)(1)(iii)(2009).

limit will continue to ensure that no increased volumes of LNG will be delivered into WGL's system as a result of the Cove Point expansion.

33. Accordingly, for the reasons stated above, the Commission grants waiver of its prohibition against tying to permit the direct link of the referenced agreements as requested by the Joint Petitioners.

The Commission orders:

- (A) Petitioners' request for waiver is granted as discussed in the body of the order.
- (B) WGL's request for conditions is denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.