

131 FERC ¶ 61,023  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Total Gas & Power North America, Inc. and Chesapeake Energy Marketing, Inc.      Docket No. RP10-496-000

ORDER ON PETITION FOR WAIVER

(Issued April 15, 2010)

1. On March 15, 2010, Total Gas & Power North America, Inc. (Total Gas) and Chesapeake Energy Marketing, Inc. (Chesapeake Marketing), on behalf of themselves and affiliates Total E&P USA, Inc. (Total E&P) and Chesapeake Exploration, L.L.C. (Chesapeake Exploration) (collectively, Petitioners), filed a joint petition for temporary waivers (Joint Petition). Petitioners seek waiver of several of the Commission's capacity release regulations and related policies and of certain related tariff provisions of affected pipelines, in order to allow Chesapeake Marketing to permanently release a portion of its firm transportation agreements on those pipelines to Total Gas as part of Chesapeake Exploration's sale to Total E&P of a share of its production in the Barnett Shale in northern Texas. The Commission grants the requested waivers, as described below.

**Background**

2. Petitioners state that on January 25, 2010, they closed a transaction whereby the Total affiliates purchased several Chesapeake assets and interests. As a part of that transaction, Total E&P acquired a 25 percent interest in Chesapeake Exploration's properties in the Barnett Shale in northern Texas, with the interest lying in each property and wellhead, both existing and to be developed, rather than a separate set of properties.<sup>1</sup>

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<sup>1</sup> Petitioners state that the transaction between Total E&P and Chesapeake Exploration encompasses approximately 270,000 net acres of leasehold with current production of approximately 700 million cubic feet of natural gas equivalent per day and contains 3.0 trillion cubic feet of proved reserves. Petitioners further state that they expect Total E&P's and Chesapeake Exploration's development in the field to support another 3,100 net drilling locations and contain around 6.3 trillion cubic feet of unrisksed unproved reserves. See Joint Petition at 5-6.

Total E&P and Chesapeake Exploration will develop the properties jointly. As part of the transaction, Chesapeake Marketing is to permanently release to Total Gas a *pro rata* share of several of Chesapeake Marketing's negotiated-rate pipeline contracts, including eight firm capacity contracts on four interstate pipelines.<sup>2</sup> Petitioners assert that the amount of capacity to be released equals 22 percent of Chesapeake Marketing's long-term capacity relevant to this transaction, and the releases will be at the same negotiated rates as Chesapeake Marketing is currently paying.<sup>3</sup> In exchange for these assets, Total E&P is providing Chesapeake Exploration with \$800 million in cash and a commitment (valued at \$1.45 billion) to fund 60 percent of Chesapeake Exploration's share of drilling and completion expenditures in the Barnett Shale. Total E&P and Chesapeake Exploration agree to offer to share with each other further unspecified upstream and midstream interests in the Barnett Shale for a period of 10 years.

3. Petitioners seek waivers to release capacity for eight contracts, which in total provide 1,564,500 dekatherms of firm transportation per day on four pipelines. With the exception of one contract, under which Chesapeake Marketing would set aside 200,000 dekatherms, Chesapeake Marketing would permanently release 22 percent of its capacity under each contract, for a total of 300,100 dekatherms per day. The subject contracts are as follows:

<b>Pipeline</b>	<b>Contract #</b>	<b>Expiration Date</b>	<b>Contracted Capacity (Dth/day)</b>	<b>Released Capacity (Dth/day)</b>
CenterPoint	1006304	6/30/2015	50,000	11,000
Gulf Crossing	15	7/31/2019	150,000	33,000

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<sup>2</sup> Those pipelines are CenterPoint Energy Gas Transmission Company (CenterPoint), Gulf Crossing Pipeline Company, LLC (Gulf Crossing), Gulf South Pipeline Company, LP (Gulf South), and MidContinent Express Pipeline, LLC (MidContinent). Joint Petition at 6-8. Petitioners state that Total Gas is also acquiring transportation assets subject to the Natural Gas Policy Act of 1978 (NGPA) as well as non-jurisdictional transportation assets. Petitioners do not seek any waivers for the NGPA portion of their transaction. *See* Joint Petition at 4 & n.3.

<sup>3</sup> Petitioners explain that the difference between the 25 percent Barnett Shale interest and the 22 percent pipeline capacity interest is because Chesapeake Marketing uses some of its capacity to transport gas from properties that are not part of the present acquisition. *See* Joint Petition at 6 & n.6.

Gulf South	35040	3/31/2013	35,000	7,700
Gulf South	34683	1/31/2013	100,000	22,000
Gulf South	34684	1/31/2015	100,000	22,000
MidContinent	553378	7/31/2019	600,000	88,000
MidContinent	554254	~2/1/2021	254,500	55,900
MidContinent	554372	~6/1/2020	275,000	60,500

4. Petitioners seek temporary 90-day waivers of four sets of Commission regulations and policies regarding capacity release. First, Petitioners seek waiver of the requirement that long-term releases not exceed the maximum recourse rate.<sup>4</sup> Petitioners state that currently all of the subject negotiated rates are below the respective pipeline's maximum tariff rate but that the requested waiver may become necessary if, at some point in the future, the applicable pipeline's maximum recourse rate were to be set lower than the negotiated rate. Petitioners argue that it is Commission policy to allow permanent releases at the negotiated rate in order to ensure that the pipeline remain financially indifferent to the transfer.<sup>5</sup> Second, Petitioners seek waiver of the Commission's procedures for notification for bidding and for bidding.<sup>6</sup> Petitioners contend that such waiver is necessary in order to ensure that Total Gas receives the relevant capacity as intended.<sup>7</sup> Third, Petitioners seek waiver of shipper-must-have-title policy and the prohibition against buy-sell transactions. Petitioners state that "given the scope of the Joint Development Agreement, the number of permanent capacity releases . . . , and the integration of these releases and assignments, there may be instances where unavoidable non-compliance . . . occurs."<sup>8</sup> Fourth, Petitioners seek waiver of the prohibition against tying capacity releases to extraneous conditions. Petitioners request this waiver because their agreement ties the sale of capacity to the sale and joint development of production assets.

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<sup>4</sup> See 18 C.F.R. § 284.8(b)(2) (2009).

<sup>5</sup> Joint Petition at 10-11.

<sup>6</sup> See 18 C.F.R. §§ 284.8(d), (e).

<sup>7</sup> See Joint Petition at 9.

<sup>8</sup> Joint Petition at 11.

5. Petitioners also seek 90-day waivers for the corresponding sections in the General Terms and Conditions of the tariffs of the subject pipelines. The sections in question concern the pipeline's policies for capacity releases, which generally serve to require prior notification of releases, orderly and non-discriminatory bidding procedures, and enforcement of the Commission's maximum rate policies. The sections for which waiver is requested are as follows:

<b>Pipeline</b>	<b>Prior Notification</b>	<b>Bidding Procedures</b>	<b>Maximum Rate</b>
CenterPoint	§§19.1, 19.2, 19.3	§§19.3, 19.4	§19.5
Gulf Crossing	§§16.3, 16.4	§§16.3, 16.4	§16.1
Gulf South	§§29.1(B), (C)	§§29.1 preamble, (C), (D)	§§29.1 preamble, (H)
MidContinent	§§14.1, 14.4, 14.5, 14.7	§§14.1, 14.8	§§14.5, 14.10

6. Petitioners argue that the Commission has granted waiver under similar circumstances in order to facilitate the permanent release of transportation capacity at negotiated rates.<sup>9</sup> Petitioners argue that the current capacity release regulations and tariff mechanisms are not suited for complex, integrated transactions that aggregate production assets with transportation capacity. Petitioners represent that, similar to the circumstances in *Sempra* and *Macquarie*, the capacity released by Chesapeake Marketing will continue to be used for the purpose for which it was originally acquired – to transport gas produced from the relevant properties. Thus, Petitioners state, by granting the requested waivers the Commission will facilitate the transportation of current production in a more orderly and effective manner.<sup>10</sup> Petitioners also state that the public benefits of this transaction will be to increase competition, and to provide additional natural gas supplies to the market.<sup>11</sup> Petitioners seek an expedited action date of April 15, 2010.

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<sup>9</sup> Joint Petition at 1 & nn.1-2 (citing *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009) (*Macquarie*); *Sempra Energy Trading Corp.*, 121 FERC ¶ 61,005 (2007) (*Sempra*); *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082 (2009) (*North Baja*)).

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

<sup>11</sup> Joint Petition at 5.

### **Public Notice and Interventions**

7. Public notice of Petitioners' filing was issued on March 16, 2010. Interventions and protests were due March 29, 2010, as provided in section 154.210 of the Commission's regulations.<sup>12</sup> Pursuant to Rule 214,<sup>13</sup> all timely filed motions to intervene and any motions to intervene out-of-time 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 were filed.

8. CenterPoint and MidContinent intervened in the proceeding. CenterPoint filed comments stating that it does not oppose the Joint Petition, provided that Total Gas meets its creditworthiness requirements. MidContinent stated that it supports the Joint Petition.

### **Discussion**

9. Petitioners are requesting waiver of the Commission's capacity release regulations and policies to permit Chesapeake Marketing to release to Total Gas 300,100 Dth/day of Chesapeake Marketing's capacity on CenterPoint, Gulf Crossing, Gulf South, and MidContinent on a permanent basis. The Petitioners are also requesting waiver of key sections of the affected pipelines' tariff provisions on capacity release. These releases would be at the same negotiated rates as in Chesapeake Marketing's current contracts with the pipelines. Those rates are currently less than each of the affected pipelines' maximum recourse rates for firm transportation service. Two of the affected pipelines, CenterPoint and MidContinent, state that they do not object to the waiver request, while the other two, Gulf Crossing and Gulf South, have not intervened in this proceeding. No entity filed any adverse comments.

10. The Commission grants the Petitioners' request for a temporary 90-day waiver of the specified capacity release regulations, policies, and tariff provisions. In two recent cases, *North Baja* and *Transcontinental Gas Pipeline Corporation*,<sup>14</sup> the Commission granted waivers to allow capacity to be released on a permanent basis at the negotiated rate in the releasing shipper's contract. As noted in those orders, the Commission's policy is to only require a pipeline to allow a permanent capacity release where the pipeline will be financially indifferent to the release. As we stated in *North Baja*:

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<sup>12</sup> 18 C.F.R. § 154.210.

<sup>13</sup> 18 C.F.R. § 385.214.

<sup>14</sup> *Transcontinental Gas Pipe Line*, 126 FERC ¶ 61,086 (2009) (*Transco*).

where the releasing shipper is paying a negotiated rate in excess of the maximum rate, waiver of the maximum rate is necessary to render the pipeline financially indifferent to the release.... [D]enial of a waiver request in those circumstances would unnecessarily inhibit the use of permanent releases to transfer capacity that the releasing shipper no longer needs to a shipper that does need it. While the release here is at a negotiated, levelized rate that is currently less than the maximum rate, the rate could be above the maximum rate later.... If the Commission were to require that the long-term permanent release be posted for bidding subject to the maximum recourse rate as required by the capacity release regulations, bidders could not offer to pay the existing negotiated rate for the entire term of the release because such a rate could violate the maximum rate during future periods. Therefore, as in *Transco*, denial of a waiver of the bidding requirement for a permanent release would unnecessarily inhibit the use of a permanent release to transfer capacity the releasing shipper no longer needs or wants.<sup>15</sup>

11. In the present case, as in *North Baja*, the negotiated rates at which the Petitioners seek to release the subject capacity are below the current maximum rates of the respective pipelines but could be above the maximum rates at a later date. Thus the pipelines here can reasonably conclude that they are financially indifferent to the releases, and none of them has objected to the proposed releases. Moreover, if we were to require that the proposed long-term permanent releases be posted for bidding subject to the maximum recourse rate as required by the capacity release regulations, bidders could not offer to pay the existing negotiated rate for the entire term of the release because such a rate could violate the maximum rate ceiling in the future. Denial of the requested waivers of the bidding requirement for a permanent release would unnecessarily inhibit the use of a permanent release to transfer capacity. In addition, the Joint Petition states that Total Gas will use the subject capacity in the same manner as the releasing shipper, that is, to transport natural gas from the Barnett Shale production area to various market centers.<sup>16</sup>

12. Accordingly, for the reasons discussed, we grant temporary 90-day waivers of section 284.8(b)(2) of our regulations requiring that long-term releases not exceed the

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<sup>15</sup> *North Baja* at P 14.

<sup>16</sup> See *Transco* at P 6 (noting prior cases in which, in “granting the waivers, the Commission relied in part on the fact [that] the replacement shipper was going to continue to use the capacity for the same purpose as the releasing shipper had used it.”).

maximum recourse rate,<sup>17</sup> as well as sections 284.8(d) and (e) regarding notice and bidding of capacity releases. We also grant waivers of the shipper-must-have-title requirement, and the prohibitions on buy-sell arrangements and tying of capacity releases to extraneous conditions, so that Petitioners can complete their transaction in an orderly and efficient manner.

13. The Commission also grants a limited waiver of the respective tariff provisions only to the extent necessary to effectuate the permanent releases of capacity amounts specified in the Joint Petition for the eight agreements as described therein. The tariff provisions for which the Petitioners seek waivers apply generally to capacity release requirements and procedures on the respective pipelines for both temporary and permanent releases. We grant waiver of the provisions only as necessary to complete the permanent releases specified in the Joint Petition and not for any other permanent or temporary releases. Petitioners remain obligated to comply with any other applicable provisions of the pipelines' tariffs.

The Commission orders:

The Petitioners' request for waivers is granted as discussed above.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>17</sup> See 18 C.F.R. § 284.8(b)(2).