136 FERC ¶ 61,069
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Golden Pass LNG Terminal LLC Docket No. RP11-2212-000

ORDER GRANTING WAIVER

(Issued July 29, 2011)

1. On June 24, 2011, Golden Pass LNG Terminal LLC (Golden Pass Terminal) filed a petition for a limited blanket waiver of the Commission's tying prohibition for two years (Petition) to enter into short term releases of capacity it holds on Golden Pass Pipeline LLC (Golden Pass Pipeline). Golden Pass Terminal stated that it seeks the waiver in order to be able to enter into short term capacity releases with importers of spot liquefied natural gas (LNG) cargos using the terminal without requesting individual waivers for each transaction. As discussed more fully below, the Commission grants Golden Pass Terminal a waiver as requested.

Background

2. In July 2005, the Commission authorized Golden Pass Terminal and Golden Pass Pipeline to construct and operate a single integrated LNG project consisting of the Golden Pass LNG terminal and associated facilities (Terminal) and a takeaway pipeline extending from the Terminal near Port Arthur, Texas through Texas to Louisiana.[1] The Commission issued a certificate for the Terminal in the July 2005 Order. The Terminal facilities include a berthing structure and unloading facilities for LNG ships, vaporization equipment, and LNG storage tanks. The Terminal was designed to have a completed nominal output of 2.0 billion cubic feet (Bcf) per day with a peak capacity of 2.7 Bcf per day. The Commission approved the operation of the Terminal under Natural Gas Act

[1] *Golden Pass LNG Terminal LP and Golden Pass Pipeline LP*, 112 FERC ¶ 61,041 (2005) (July 2005 Order), *amended*, 117 FERC ¶ 61,015 (October 2006 Order) and 117 FERC ¶ 61,332 (2006) (December 2006 Order) (collectively Certificate Orders).

(NGA) section 3, and, pursuant to our Hackberry policy,[2] authorized Golden Pass to provide services at market based rates and upon mutually agreeable terms.

3. The Commission in the Certificate Orders also authorized, as amended, the construction and operation of Golden Pass Pipeline, an approximately 33 mile, 42-inch diameter pipeline extending from the tailgate of the Terminal to an interconnection with American Electric Power Texoma (AEP Texoma) , an intrastate pipeline in Orange County, Texas, and an approximately 35 mile, 42-inch diameter pipeline extending from the interconnection with AEP Texoma to an interconnection with Transcontinental Gas Pipe Line Company (Transco) near Starks in Calcasieu Parish, Louisiana. The Golden Pass Pipeline system was designed to transport re-gasified LNG from the Terminal to intrastate and interstate pipelines in Texas and Louisiana.[3] Golden Pass Pipeline has two receipt points, one at the Terminal and one at the Golden Triangle LLC Storage facility, each with receipt point capacity of up to 250,000 dth/day.[4] In addition to interconnections with AEP Texoma and Transco, Golden Pass Pipeline has interconnections with the following downstream pipelines: Natural Gas Pipeline Company of America (NGPL), Florida Gas Transmission Company, LLC (FGT), Texas Eastern Transmission, LP (Texas Eastern), and Tennessee Gas Pipeline Company (Tennessee).[5] Golden Pass Pipeline is the only pipeline available to transport re-vaporized LNG from the Terminal.

4. On November 16, 2010, Golden Pass Pipeline filed an application to amend its certificate to revise its rates to reflect actual construction costs and to revise certain cost of service components to mitigate the increased costs. In that application, Golden Pass Pipeline stated that it had executed firm service agreements for 1,152,000 Dth per day (43 percent) of its capacity with ExxonMobil LNG Supply Inc. (ExxonMobil), for 812,300 Dth per day (31.2 percent) with ConocoPhillips, and the remaining 636,610 dth per day (26 percent) of capacity with Golden Pass Terminal. The referenced contracts for this capacity are for 25 years at the maximum applicable rate. Golden Pass Pipeline stated in its application that Golden Pass Terminal intended to actively market the full amount of its capacity on Golden Pass Pipeline on a permanent basis, and Golden Pass Terminal offered in the meantime, to adhere to certain conditions for holding capacity on

---

[2] *Hackberry LNG Terminal, LLC,* 101 FERC ¶ 61,294 (2002).

[3] The original Golden Pass Pipeline proposal contemplated up to eleven interconnections with downstream pipelines.

[4] Petition at 11.

[5] *See* Golden Pass Tariff, Section 3, v1.0.0 System Map; *see also* December 2006 Order, 117 FERC ¶ 61,332 at P 3; Petition at 17.

Golden Pass Pipeline, including to post the capacity as available for release on Golden Pass Pipeline's web site, and to request a waiver of the Commission's tying prohibition prior to making any sales of Terminal capacity in conjunction with a release of its pipeline capacity. On January 20, 2011, the Commission approved Golden Pass Pipeline's application to amend its certificate to modify its initial rates.[6]

5. On June 24, 2011, Golden Pass Terminal filed the Petition requesting a two year waiver of the Commission's prohibition against the tying of capacity release transactions to any extraneous conditions[7] in order to allow it to tie capacity in the Terminal to short term releases of its capacity on Golden Pass Pipeline. According to Golden Pass Terminal, such waiver would facilitate its efforts to attract spot LNG imports to the Terminal.

6. Golden Pass Terminal states that it requests the waiver to remove impediments to the temporary release of its Golden Pass Pipeline capacity and transportation of re-vaporized natural gas on Golden Pass Pipeline while it seeks to permanently release its capacity on Golden Pass Pipeline. In support of its request, Golden Pass Terminal argues that granting the waiver to allow short term releases of its capacity on Golden Pass Pipeline will enhance competition and otherwise complies with the Commission's capacity release regulations. Golden Pass Terminal contends that granting the waiver will not affect open access because it will release its capacity "to users of the . . . Terminal and to others on a not unduly discriminatory or preferential basis."[8] Golden Pass Terminal notes that it has posted, and will continue to post, its Golden Pass Pipeline

[6] *Golden Pass Pipeline LLC*, 134 FERC ¶ 61,037 (2011) (January 2011 Order).

[7] The Commission established its prohibition against tying in Order No. 636-A, where it stated, "all terms and conditions for capacity release must be posted and non-discriminatory and must relate solely to the details of acquiring transportation on the interstate pipelines. Release of capacity cannot be tied to any other conditions. Moreover, the Commission will not tolerate deals undertaken to avoid the notice requirements of the regulations." *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, *order on reh'g*, order No. 636-A, FERC Stats. & Regs. ¶ 30,950, at 30,559, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC 61,186 (1997).

[8] Petition at 9.

capacity as available. Golden Pass Terminal also notes that shippers can obtain capacity on Golden Pass Pipeline from the other firm capacity holders or on an interruptible basis, and thus shippers looking to access the Terminal would still have alternatives to Golden Pass Terminal's released capacity to move their gas to downstream markets. Golden Pass Terminal also argues that the waiver would facilitate attracting LNG cargos to the Terminal by allowing Golden Pass Terminal to assure importers that they will have access to pipeline capacity to transport the re-gasified LNG away from the Terminal. Golden Pass Terminal claims that these combined factors essentially preclude any potential for Golden Pass Pipeline to withhold capacity or to discriminate in favor of Golden Pass Terminal's capacity on Golden Pass Pipeline.

7. Golden Pass Terminal also contends that granting the waiver would be consistent with Commission policy, regulations and precedent as it is only for a limited time and is intended to optimize the use of its Golden Pass Pipeline capacity. Golden Pass Terminal argues that the main reasons for the prohibition on tying, to ensure that releasing shippers do not put unreasonable restrictions on the use of the capacity, or to require replacement shippers to purchase gas from the releasing shipper, are not present in the instant situation. Golden Pass Terminal notes that because it is not engaged in the sale or purchase of gas other than for operational purposes, Golden Pass Terminal would not be in a position to tie a capacity release to a gas purchase obligation. Moreover, Golden Pass Terminal states that the releases will not place any undue restrictions on the use of the capacity. Recognizing that it cannot provide the specifics of any particular deal because it is requesting a blanket waiver for spot transactions, Golden Pass Terminal volunteers to post and adhere to certain conditions for all its releases of Golden Pass Pipeline capacity, including that it will not enter into any release for more than one year, and that subject to Golden Pass Pipeline's tariff, it will not restrict segmentation or re-release of the capacity and will not include any recall rights other than for failure to comply with Golden Pass Pipeline's tariff.[9]

8. Golden Pass Terminal also argues that akin to situations where the Commission granted waivers of the tying prohibition to allow the tying of LNG terminal capacity to downstream pipeline capacity, it is the importer here seeking assurance of capacity rights in both the LNG terminal and the pipeline.[10] Thus, Golden Pass Terminal claims that is

[9] Petition at 13.

[10] Golden Pass cites to *Statoil Natural Gas LLC and La Societe National pour la Recherche, La Production la Transport, la Transformation et la Commercialization des Hydrocarbures s.p.a.*, 128 FERC ¶ 61,240 (2009) (*Statoil I*), and *Statoil Natural Gas LLC and Gazprom Marketing and Trading USA, Inc*., 130 FERC ¶ 61,110 (2010) (*Statoil II*).

not attempting to require the shipper to take its Golden Pass Pipeline capacity in order to gain access to the Terminal or downstream markets but that it will be at a competitive disadvantage in marketing its Golden Pass Pipeline capacity if it cannot provide assurance to importers, in advance, that they will have pipeline capacity to reach downstream markets. Further, Golden Pass Terminal contends that its waiver request does not extend to any pipelines downstream of that directly connected to the Terminal as we granted in *Statoil II*. Golden Pass Terminal notes that Golden Pass Pipeline is only approximately 69 miles long and terminates at an interconnection with Transco in Calcasieu Parish Louisiana. Thus, according to Golden Pass Terminal, while Golden Pass Pipeline has interconnections with several inter- and intra-state pipelines, Golden Pass Pipeline does not extend into any major market areas.

9. Golden Pass Terminal also asserts that an asset management agreement (AMA) would not work for its situation. Golden Pass Terminal notes that it will not hold any commodity supplies and thus has no need for an asset manager. Moreover, it claims that under its proposal there would be no purchase or supply obligation tied to the release of pipeline capacity. To the contrary, the replacement shipper would market the re-vaporized LNG and make arrangements for downstream transportation of that gas independent of Golden Pass Terminal.

Public Notice, Comments, and Interventions

10. Public notice of the Petition was issued on June 27, 2011, providing for interventions, comments, and protests to be filed by July 6, 2011. No entity filed any motion, comment or protest.

Discussion

11. As discussed, Golden Pass Terminal seeks a blanket two-year waiver of the Commission's prohibition on tying in order to permit it to enter into short-term to releases of its firm capacity on Golden Pass Pipeline with importers of spot LNG cargoes using its Terminal. According to the Petition, Golden Pass seeks the blanket waiver to be able to conduct short term releases on an ongoing basis without having to seek a waiver in every instance. For the reasons below, we grant Golden Pass' request for a waiver of our tying prohibition as requested in the Petition.

12. Existing Commission 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.[11] The same is not the case for capacity holders in non-open

[11] A holder of capacity in an open access LNG terminal, where both the LNG terminal and the directly connected interstate pipeline facilities are subject to the Commission's Part 284 open access regulations, has the right to release both its terminal

(continued…)

access LNG terminals that are not subject to the Commission's open access policies, however, because any releases or assignments of terminal capacity would not be made pursuant to the capacity release rules. Thus, there would be no Commission process to ensure that the transaction would be transparent and non-discriminatory. Accordingly in Order No. 712-A, we declined to grant a blanket exemption from tying and bidding in the context of a non-open access LNG terminal and stated that the Commission 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 such a request.

13. The Commission finds in this situation that Golden Pass Terminal has justified its request for a temporary waiver while it seeks to release permanently its capacity on the Golden Pass Pipeline. As Golden Pass states, importers of spot LNG cargoes will want assurance that they will have pipeline capacity to ship their re-vaporized LNG from the terminal to downstream markets, and Golden Pass Pipeline is the only way to transport gas out of the Golden Pass Terminal. Therefore, permitting Golden Pass Terminal to enter into prearranged deals for the temporary release of its Golden Pass Pipeline capacity in conjunction with a sale of Terminal capacity will allow Golden Pass to maximize the efficient use of both the Terminal and pipeline capacity until it is able to permanently release its capacity on Golden Pass Pipeline.[12]

14. Moreover, Golden Pass Terminal's proposal provides adequate safeguards to ensure transparency and a not unduly discriminatory allocation of capacity. Golden Pass Terminal has committed to continually post its pipeline capacity for release not only to users of the Terminal but also to others on a not unduly discriminatory or preferential basis.[13] Therefore, to the extent the capacity is not released to an LNG importer, it will be available for release to replacement shippers desiring to use the capacity to transport domestically sourced gas. In addition, similar to the situation in *Statoil II*,[14] Golden Pass Terminal states that it will place no restriction on the replacement shipper's use of the

---

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. *See Promotion of a More Efficient Capacity Release Market*, Order No. 712, FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g*, Order No. 712-A, FERC Stats. & Regs. ¶ 31,284 at 45 (2008), *order on reh'g*, Order No. 712-B, 127 FERC ¶ 61,051 (2009).

[12] *See Statoil II*, 130 FERC ¶ 61,110 at P 24.

[13] Petition at 9.

[14] *Statoil II*, 130 FERC ¶ 61,110 at P 25.

pipeline capacity, and the replacement shipper will not be required to purchase any LNG from Golden Pass Terminal, which is not itself engaged in the importation of LNG.

15. Golden Pass Terminal also states that the terms of any releases it enters into pursuant to the waiver will be posted consistent with the requirements of the Commission's capacity release regulations in section 284.8 and with section 284.13(b), which includes the competitive bidding requirements of section 284.8(c) through (e) and (h). Further, there is nothing in the record to indicate that granting the waiver of the tying prohibition in this situation will adversely impact open access competition on the interstate grid, and no party filed to object to the Golden Pass' waiver request.

The Commission orders:

The Commission grants Golden Pass Terminal's request for a waiver of the Commission's prohibition on tying capacity releases to extraneous conditions to conduct short term capacity releases as described in the Petition.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.