

169 FERC ¶ 61,104
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

November 8, 2019

In Reply Refer To:
TOTAL E&P USA, Inc.
Murphy Exploration &
Production Company – USA
Docket No. RP20-60-000

TOTAL E&P USA, Inc.
c/o Orrick, Herrington & Sutcliffe LLP
1152 15th Street, NW
Washington, DC 20005

Murphy Exploration & Production Company – USA
c/o Baker Botts LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004

Attention: Erik J.A. Swenson
Counsel for TOTAL E&P USA, Inc.
Emil J. Barth
Counsel for Murphy Exploration & Production Company – USA

Dear Mr. Swenson and Mr. Barth:

1. On October 11, 2019, TOTAL E&P USA, Inc. (TEPUSA) and Murphy Exploration & Production Company - USA (MEPUSA) (collectively, Petitioners) filed a joint petition requesting temporary and limited waiver of the Commission's capacity release regulations and policies and the applicable capacity release tariff provisions of Discovery Gas Transmission LLC (Discovery). For the reasons discussed below and for good cause shown, we grant Petitioners' requested temporary and limited waiver.

2. Petitioners state that on September 13, 2019, they entered into a purchase and sale agreement pursuant to which TEPUSA will sell all of its Chinook field (offshore of Louisiana) and related assets to MEPUSA.¹ Petitioners state that, pursuant to the terms of the agreement, TEPUSA must transfer to MEPUSA all of the natural gas transportation related rights held by TEPUSA on the Discovery pipeline system used to transport natural gas owned by TEPUSA and produced from the Chinook field to downstream markets. Petitioners state that following the closing of the transaction, TEPUSA will not have any interests or assets related to the Chinook field.

3. Petitioners state that the subject capacity involves a single contract designated by Discovery as “Firm Transportation Service Agreement FT-2 Rate Schedule DTF251” (DTF251).² Pursuant to a discounted rate agreement between TEPUSA and Discovery dated August 1, 2008, TEPUSA pays a discounted rate for service under DTF251, which is currently less than the otherwise applicable maximum recourse rate and will never exceed the then-effective maximum recourse rate for as long as the agreement remains in effect.

4. Petitioners state that Discovery’s FT-2 Rate Schedule provides for volumetric service, conditioned upon the commitment of all of TEPUSA’s lifetime production from specified natural gas resources to transportation on the Discovery system. Petitioners state that they are aware that the Commission has previously held that, because transportation such as this is not subject to a reservation fee, it is not eligible for capacity release. However, Petitioners state that they understand this limitation to be applicable to stand-alone capacity releases, where transportation capacity rights alone are transferred. Petitioners state that, in this situation, MEPUSA is acquiring TEPUSA’s interests in the committed natural gas reserves that qualified TEPUSA for FT-2 service on the Discovery system; and MEPUSA will be subject to the same commitment of production for transportation on the Discovery system as previously made by TEPUSA. Petitioners state that, in such circumstances, the Commission’s established practice of allowing a release outside of the Commission’s standard release rules in order to facilitate the larger transaction and preserve the original rationale for entering into the

¹ TEPUSA currently has a 33.33 percent interest in the Chinook field and related assets. The remaining 66.67 percent of the rights to the Chinook field are held by MP Gulf of Mexico, LLC, which is owned 80 percent by MEPUSA and 20 percent by Petrobras America Inc.

² According to Petitioners, the maximum daily volume under the DTF251 is 40,000 Dth/day. Petitioners explain that the contract has a term that commenced on August 1, 2008 and does not expire until certain leases giving TEPUSA the rights to produce natural gas from the Chinook field expire.

transportation agreement should apply. Petitioners state that, once the Commission grants the requested waiver, they will work with Discovery to enter into revised contracts and make any necessary filings with the Commission needed to effectuate the permanent release and assignment of the DTF251 service agreement and the related discount rate agreement.

5. Petitioners note that the Commission has allowed the permanent release of a portion of the releasing party's firm transportation contracts to match the interests in production properties being transferred.³ Petitioners also note that the Commission has allowed permanent releases, without posting for bidding, even if the applicable discounted rates are not equal to the applicable maximum recourse rates.⁴ Petitioners further note that the Commission has recognized that a failure to grant the requested waivers would inhibit the transfer of capacity from a shipper that no longer requires the capacity to a shipper that requires it as a part of an overall, complex commercial transaction. Therefore, Petitioners state that their request for waiver of the capacity release rules and regulations is consistent with recent precedent.

6. To facilitate the permanent release of capacity, Petitioners request a temporary waiver of the Commission's capacity release regulations set forth in section 284.8 of the Commission's regulations,⁵ including waiver of (a) the prohibition against tying arrangements, (b) the applicable maximum rate,⁶ (c) notification of bidding, (d) bidding requirements, (e) the shipper must-have-title policy, and (f) the prohibition against buy/sell arrangements. In addition, Petitioners request any other authorization or waiver deemed necessary to implement the assignment and permanent release of the described

³ *Total Gas & Power North America, Inc.*, 131 FERC ¶ 61,023 (2010).

⁴ *Chesapeake Energy Marketing, L.L.C.*, 162 FERC ¶ 61,277 (2018); *XTO Energy Inc.*, 160 FERC ¶ 61,120 (2017); *AEP Generation Resources Inc.*, 157 FERC ¶ 61,170, at P 3 (2016); *Total Gas & Power North America, Inc.*, 131 FERC ¶ 61,023, at PP 10-12 (2010); *Transcontinental Gas Pipe Line Corp.*, 126 FERC ¶ 61,086, at PP 7-8 (2009).

⁵ 18 C.F.R. § 284.8 (2019).

⁶ Petitioners state that they do not anticipate that the transaction could violate the applicable maximum rate limitation because the discount agreement precludes the applicable rate from exceeding the current maximum rate. Petition at 7, note 14.

capacity.⁷ Petitioners also request that the Commission waive the related capacity release tariff provisions of Discovery to facilitate expedited completion of the transaction.⁸

7. Finally, Petitioners request that the Commission issue an order no later than November 12, 2019. Petitioners ask that the requested waiver remain in effect until 120 days from the earlier of the date of the Commission's order or the date the capacity release transaction is complete.

8. Public notice of the filing was issued on October 16, 2019. Interventions and protests were due on or before October 18, 2019. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁹ all timely filed motions to intervene and any unopposed 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. No adverse protests or comments were filed. The request for waiver is therefore uncontested.

9. For good cause shown, the Commission grants Petitioners' request for temporary, limited waiver of the Commission's capacity release regulations. We have reviewed Petitioners' request for waiver and find that the request is adequately supported and appears generally consistent with previous waivers the Commission has granted to permit the release of capacity under similar circumstances, particularly when the transfers are a result of various types of corporate restructurings, including corporate mergers and sales of entire business units.¹⁰ We note that the requested waiver is necessary in order to facilitate a larger, complex transaction involving the sale of all of TEPUSA's Chinook

⁷ *Id.* at 7.

⁸ Petitioners note that Discovery's capacity release tariff provisions, provided in section 11 of the General Terms and Conditions of Discovery's tariff, only expressly apply to firm transportation service provided under Rate Schedule FT-1, while TEPUSA has a firm transportation agreement under Rate Schedule FT-2. For the purpose of this filing, we will treat this capacity release as a waiver of all of the capacity release provisions of Discovery's tariff.

⁹ 18 C.F.R. § 385.214 (2019).

¹⁰ *XTO Energy Inc.*, 160 FERC ¶ 61,120, *WPX Energy Holdings, LLC*, 154 FERC ¶ 61,221 (2016); *Big Sandy Pipeline, LLC*, 141 FERC ¶ 61,151 (2012); *Big Sandy Pipeline, LLC*, 136 FERC ¶ 61,130 (2011); *Total Gas & Power North America, Inc.*, 131 FERC ¶ 61,023; *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082; *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009).

field production interests and assets to MEPUSA, and will be used solely for that purpose.

10. In these cases, the Commission has granted temporary, limited waiver of its capacity release regulations and the relevant tariffs of the affected pipelines involving the transfer of natural gas transportation agreements. We find that Petitioners have provided the information required for granting such waiver, including (a) the identification of the regulations and policies for which waiver is sought, (b) identification of the pipeline service agreements and capacity to be transferred, (c) the description of 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 (d) filing the petition as much in advance of the requested date as possible.¹¹

11. Accordingly, and for good cause shown, we grant temporary and limited waiver of the Commission's capacity release regulations and policies as identified above. The grant of waiver is to remain in effect until 120 days from the earlier of the date of this order or the date the capacity release transactions and assignments are complete, and only to the extent necessary to facilitate the described transaction. In addition, we grant temporary and limited waiver of the related capacity release provisions of Discovery's tariff to facilitate the completion of the subject transaction, which will allow the Petitioners to implement the transaction in an orderly and efficient manner.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹¹ *Request for Clarification of Policy Regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Business*, 127 FERC ¶ 61,106, at P 10 (2009) and *DCP Midstream LP*, 141 FERC ¶ 61,256, at P 6 (2012).