

170 FERC ¶ 61,250
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

March 24, 2020

In Reply Refer To:
Mitsui & Co. Energy Marketing
Services (USA), Inc.
Mitsui & Co. Cameron LNG Sales LLC
Docket No. RP20-555-000

Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005

Attention: Emily P. Mallen, Counsel
Mitsui & Co. Energy Marketing Services (USA), Inc. and
Mitsui & Co. Cameron LNG Sales LLC

Re: Petition for Temporary Waiver of Capacity Release Regulations and Related Tariff Provisions

Dear Ms. Mallen:

1. On February 25, 2020, Mitsui & Co. Energy Marketing Services (USA), Inc. (MEMS) and Mitsui & Co. Cameron LNG Sales LLC (Mitsui Cameron LNG) (collectively, Petitioners) filed a joint petition requesting limited waiver of the Commission's capacity release regulations and policies, and the related tariff provisions¹ of Pine Prairie Energy Center, LLC (Pine Prairie), in order to permit Mitsui Cameron LNG to recall capacity released to MEMS pursuant to a prearranged capacity release made on

¹ Petitioners specifically request waiver of the prohibition on tying, the buy-sell prohibition, the shipper-must-have-title rule, section 284.8 of the Commission's regulations, and any other rule, regulation or policy necessary to allow Petitioners to correct the mischaracterization of the subject capacity release. Petitioners also request waiver of Section 4 of the General Terms and Conditions of Pine Prairie's tariff. *See* Petition at 4 nn.7-8.

April 1, 2019 to effectuate an Order No. 712² asset management agreement (AMA). Petitioners request that these waivers be granted effective the date of the Commission's order and continue for a period of 30 days thereafter to allow time to document the characterization of the release as recallable, and to take the necessary steps to effectuate recall of the subject capacity from MEMS to Mitsui Cameron LNG. As discussed below, we grant the requested waivers for good cause shown.

2. Mitsui Cameron LNG is an indirect co-owner of the Cameron LNG export facility which is owned by Cameron LNG, LLC (Cameron LNG). Petitioners state that in order to help supply Cameron LNG with natural gas, Mitsui Cameron LNG executed natural gas transportation and storage service agreements with various pipelines and storage operators, including Pine Prairie. Mitsui Cameron LNG also sought assistance from its natural gas marketing affiliate, MEMS, to procure natural gas fuel supplies for the Cameron LNG facility and manage the associated transportation and storage capacity by executing an AMA. Petitioners state that, on April 1, 2019, as part of the subject AMA, Mitsui Cameron LNG released to its affiliate, MEMS, 2,000,000 Dekatherms (Dth) of storage capacity that Mitsui Cameron LNG held at Pine Prairie under Rate Schedule FSS. Petitioners state that the AMA included terms that reflected that the intent of the parties was that the release be (1) temporary and not permanent; and (2) subject to Mitsui Cameron LNG's right to recall the capacity. Petitioners state that it was always the intent that Mitsui Cameron LNG be the ultimate owner of the capacity to support operations of the Cameron LNG facility. However, in a Capacity Release Offer for the released capacity posted on March 26, 2019, Petitioners inadvertently referred to the prearranged release as non-recallable and, therefore, the release was mistakenly effectuated as not subject to recall by Mitsui Cameron LNG. Petitioners explain further that Mitsui Cameron LNG continued to pay reservation fees for the released capacity to Pine Prairie, and this indicates that Petitioners did not intend the transaction to be a permanent release to MEMS.

3. Petitioners state that the error was discovered when they planned to effectuate a new replacement arrangement whereby Mitsui Cameron LNG would recall the subject Pine Prairie capacity from MEMS and then re-release it back to MEMS effective April 1, 2020 under one or more updated AMAs and/or non-AMA releases. Petitioners state that, upon realizing this error, MEMS and Mitsui Cameron LNG acted expeditiously to ascertain the best path forward to correct this mutual mistake, and then filed the subject petition.

² *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 123 FERC ¶ 61,286, at P 119 & n.119, *order on reh'g*, Order No. 712-A, 125 FERC ¶ 61,216 (2008), *order on reh'g*, Order No. 712-B, 127 FERC ¶ 61,051 (2009).

4. Petitioners request limited waiver to allow Mitsui Cameron LNG to recall the capacity and re-release it effective April 1, 2020. Specifically, Petitioners request that the Commission permit them to treat as recallable capacity their April 1, 2019 capacity of 2,000,000 Dth, which increases to 4,000,000 Dth effective April 1, 2020, and which was inadvertently labelled as non-recallable, in order to reflect their AMA's original intent. Petitioners state that the requested relief will help ensure that the capacity continues to be subject to the same market-based rates that are currently in effect, such that Pine Prairie will be kept financially indifferent and Mitsui Cameron LNG will enjoy the benefit of its market rates. Furthermore, Petitioners state they are not exchanging any consideration for the release, and thus neither party is making a profit based on the requested relief.

5. Public notice of the filing was issued on February 26, 2020. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.³ Pursuant to Rule 214,⁴ all timely filed motions to intervene and any unopposed motion 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 protests or adverse comments were filed.

6. We have reviewed Petitioners' request for waiver and find good cause to grant the waiver. We find that Petitioners have appropriately provided the information required for approval of the waiver requested by (1) identifying the regulations and policies for which waiver is sought; (2) identifying the pipeline service agreements and capacity to be transferred; (3) describing 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 (4) filing the petition as much in advance of the requested date as possible.⁵

7. Granting the unopposed requested waivers will allow the parties to correct the administrative error made by Petitioners at the time of the release and the requested relief ensures that the April 1, 2019 capacity release correctly reflects the intent of the AMA. The Commission has previously granted waivers to allow parties to correct administrative

³ 18 C.F.R. § 154.210 (2019).

⁴ 18 C.F.R. § 385.214 (2019).

⁵ *Request for Clarification of Policy Regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Businesses*, 127 FERC ¶ 61,106, at P 10 (2009).

errors made in the context of capacity release.⁶ Accordingly, for good cause shown, we grant Petitioners limited waiver of Pine Prairie's capacity release tariff provisions and, to the extent necessary, the Commission's rules, regulations, and policies, as requested, with the requested waivers to remain effective for 30 days following the issuance of this order, in order to allow Petitioners to correct the improper characterizations made at the time of the release of the subject capacity.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁶ See *Southern Star Central Gas Pipeline, Inc.*, 167 FERC ¶ 61,085 (2019) (waiver granted to correct a typographical error of the pre-arranged rate); *Southern Star Central Gas Pipeline, Inc.*, 154 FERC ¶ 61,062 (2016) (granting waiver to correct the pricing of the subject capacity); *Iroquois Gas Transmission Sys., L.P.*, 161 FERC ¶ 61,146 (2017) (granting waiver to correct the pricing of the subject capacity); *Southern Star Central Gas Pipeline, Inc.*, 162 FERC ¶ 61,151 (2018) (granting waiver to correct the pricing of the subject capacity).