

170 FERC ¶ 61,249
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

March 24, 2020

In Reply Refer To:
W&T Offshore, Inc.
Marubeni Oil & Gas (USA), LLC
Docket No. RP20-518-000

Matthew M. Schreck
2226 Pine Street
Philadelphia, PA 19103

John Weathington III
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Dear Mr. Schreck and Mr. Weathington:

1. On February 12, 2020, W&T Offshore, Inc. (W&T) and Marubeni Oil & Gas (USA), LLC (Marubeni) (collectively, Petitioners) filed a joint petition requesting limited and temporary waiver of Commission capacity release regulations and policies. Petitioners also seek waiver of related capacity release tariff provisions of Garden Banks Gas Pipeline, LLC (Garden Banks). For the reasons discussed below, and for good cause shown, we grant the requested temporary waiver to be effective the date of the issuance of this order. The waiver is to remain in effect for 120 days from the earlier of the issuance date of this order, or the date the transaction is completed, and only to the extent necessary to facilitate the described transaction.
2. Petitioners state that they are seeking waiver to allow the permanent and partial release of capacity under a firm negotiated transportation agreement that Marubeni holds on Garden Banks.¹ Petitioners state that W&T is acquiring Marubeni's ownership interest in the Magnolia Prospect located on Garden Banks Blocks 783 and 784 in the Gulf of Mexico. Petitioners further state that the Magnolia Prospect is currently

¹ The capacity to be released is 963 Mcf per day for the economic life of the Magnolia Prospect (Contract No. 330042-R3).

producing gas that is being transported under Garden Bank's Rate Schedule FT-2. Petitioners state that the capacity associated with the service agreement is integral to the Magnolia Prospect's natural gas production being acquired by W&T and will be necessary to transport gas produced there into the market. Petitioners state that the requested waiver is being sought to effectuate a larger commercial transaction between W&T and Marubeni. They state that the nature of the agreement and the integrated sale of both physical assets and the transfer of the firm transportation agreement are so intertwined that it would be impractical and impossible to separate them.

3. Petitioners state they anticipate that the purchase and sale agreement between the parties would be executed on February 18, 2020. Petitioners further state that the transaction is projected to close on or about March 25, 2020 or shortly thereafter. However, Petitioners state that the proposed assignment of the firm transportation agreement will not occur until the Commission has granted the requested waiver. Thus, the Petitioners request expedited action by March 25, 2020, because the transaction is projected to close on that day or shortly thereafter. Petitioners also request that the waiver remain in effect for 120 days in order to permit sufficient time to complete the transaction.

4. Petitioners therefore request, to the extent necessary, waiver of certain Commission regulations and policies. First, they request waiver of the Commission's applicable maximum rate requirements in sections 284.8(b)(2) and 284.8(h)(1)(iii) of the Commission's regulations, notification for bidding regulations in section 284.8(d), and bidding regulations in section 284.8(e). Further, Petitioners request waiver of the Commission's prohibition against tying arrangements and buy-sell arrangements, and the Commission's shipper-must-have-title policies. Finally, Petitioners ask for waiver of the related capacity release tariff provisions of Garden Banks.² Petitioners state that waiver of the bidding and posting rules and regulations is necessary to ensure that there are no violations concerning the bidding and posting of the capacity, including the maximum rate ceiling limitations because the service agreement is a negotiated rate agreement and not subject to the applicable maximum recourse rates. Petitioners state that waiver of the maximum rate requirements, as well as the ones for bidding will allow the release to be treated as a prearranged maximum release transaction even though the service agreement is a negotiated rate agreement.

5. Public notice of the filing was issued on February 13, 2020. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.³

² Section 19 of the General Terms and Conditions of Garden Banks' FERC Gas Tariff.

³ 18 C.F.R. § 154.210 (2019).

Pursuant to Rule 214, 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.⁴ Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No adverse comments or protests were filed.

6. We have reviewed Petitioners' request for temporary waiver and find that the request is adequately supported and appears consistent with previous waiver requests the Commission has granted to permit the release of capacity under similar circumstances.⁵ Specifically, we find that Petitioners provided the information required for approval of such waivers, which includes: (a) identification of the regulations and policies for which waiver is sought; (b) identification of the pipeline service agreement and capacity to be transferred; (c) a 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.⁶

7. Accordingly, for good cause shown, we grant Petitioners' request for temporary, limited waiver of the requested Commission regulations and policies, including the posting and bidding requirements and maximum rate provisions, as well as the Commission's policies on the prohibition against tying, buy/sell arrangements and the shipper-must-have-title rule. We also grant waiver of the applicable capacity release tariff provisions of Garden Banks' FERC gas tariff. This grant of waiver is to remain in effect for 120 days from the earlier of the issuance date of this order, or the date the transaction is completed, and only to the extent necessary to facilitate the described

⁴ 18 C.F.R. § 385.214 (2019).

⁵ See, e.g., *Anadarko Energy Services Co.*, 169 FERC ¶ 61,006 (2019); *Black Hills Gas Distribution, LLC*, 168 FERC ¶ 61,218 (2019); *HG Energy II Appalachia, LLC*, 167 FERC ¶ 61,100 (2019); *GenOn Wholesale Generation, LP*, 167 FERC ¶ 61,113 (2019); *Encana Marketing (USA) Inc.*, 166 FERC ¶ 61,185 (2019).

⁶ *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).

transaction. Granting the request for waiver will allow Petitioners sufficient time to complete the transaction.

By direction of the Commission.

Kimberly D. Bose,
Secretary.