

132 FERC ¶ 61,011  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Mississippi Hub, LLC

Docket No. CP10-65-000

ORDER ISSUING CERTIFICATE

(Issued July 2, 2010)

1. On February 12, 2010, Mississippi Hub, LLC (MS Hub) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) to construct, own, and operate two new salt dome storage facilities at the site of the previously approved MS Hub Storage Terminal in Simpson County, Mississippi. The proposed expansion (Expansion Project) will include the construction of two salt dome storage caverns and associated injection and withdrawal equipment that will result in a total increase of 22.1 billion cubic feet (Bcf) of storage capacity. MS Hub also requests the continuation of its existing authority to charge market-based rates for its storage and hub services, and the waiver of certain filing requirements. The Commission will grant the requested authorizations, subject to conditions, for the reasons set forth herein.

**I. Background and Proposal**

2. MS Hub is a limited liability company organized and existing under the laws of Mississippi and authorized to do business in Mississippi. MS Hub is a wholly-owned subsidiary of Mississippi Hub Acquisition, LLC, which is a wholly-owned subsidiary of Sempra Midstream, Inc., which in turn is a wholly-owned subsidiary of Sempra Global. Sempra Energy, which is a publicly owned company, owns 100 percent of Sempra Global.

3. On February 15, 2007, in Docket No. CP07-4-000, the Commission granted MS Hub a certificate of public convenience and necessity authorizing the construction, ownership and operation of a salt dome natural gas storage facility and associated

pipeline facilities in Simpson and Jefferson Counties, Mississippi.<sup>1</sup> The facilities authorized included: a 17.34 Bcf high-deliverability natural gas storage facility consisting of two 8.67 Bcf subsurface caverns and gas compression and withdrawal facilities; a leaching plant for the solution mining of the caverns; water withdrawal and brine disposal facilities; pipeline facilities to connect the storage facilities with two interstate pipelines and one intrastate pipeline; and bi-directional metering and regulation facilities at each pipeline interconnection.

4. In a subsequent order issued on September 17, 2009,<sup>2</sup> in Docket No. CP09-110-000, the Commission authorized MS Hub to enlarge natural gas storage facilities previously authorized by the February 15, 2007 Order. Specifically, MS Hub was permitted to build new gas compression facilities and modify certain facilities; and to construct two interstate natural gas interconnections, which resulted in an increase in MS Hub's authorized storage capacity from 17.34 Bcf to 22.1 Bcf. In addition, the maximum delivery capacity increased from 1.2 Bcf/d to 1.4 Bcf/d, and the maximum injection capacity increased from 0.6 Bcf/d to 0.8 Bcf/d.

5. MS Hub is currently constructing the facilities that were authorized by the February 15, 2007 and September 17, 2009 Orders. Because those facilities are not yet completed and have not been placed into operation, MS Hub has not yet commenced the natural gas storage or hub services that it is authorized to provide.

6. In this application, MS Hub proposes to construct the following new facilities to further increase MS Hub's storage, delivery and injection capacities:

- Two new 11.05 Bcf salt dome storage caverns, each with a working gas capacity of 7.5 Bcf and a cushion gas capacity of 3.55 Bcf;
- 37,305 horsepower of additional compression for gas injection into storage caverns;
- Two gas dehydration units, each with a capacity of 350 MMcfd;
- Four natural gas withdrawal heaters, each with a capacity of 12 MMBtu/hour;
- One 1250 kW emergency generator; and

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<sup>1</sup> Mississippi Hub, LLC, 118 FERC ¶ 61,099 (2007) (February 15, 2007 Order).

<sup>2</sup> Mississippi Hub, LLC, 128 FERC ¶ 61,254 (2009) (September 17, 2009 Order).

- Ancillary piping and equipment.

7. In sum, the Expansion Project will result in a total increase of 22.1 Bcf of storage capacity; a total increase in working gas capacity of 15 Bcf and a total increase in cushion or base gas of 7.1 Bcf. The Expansion Project will also increase delivery capacity from 1.4 Bcf/d to 2.8 Bcf/d and injection capacity from 0.8 Bcf to 1.5 Bcf. Due to the length of time required for cavern leaching the project will be constructed over a five-year period with injection and withdrawal equipment to be constructed to coincide with the completion of each of the storage caverns in 2015.

8. MS Hub states that it will provide firm storage and interruptible hub services in accordance with its existing pro forma tariff approved by the Commission in the February 15, 2007 Order. Accordingly, consistent with section 3.1 of MS Hub's *pro forma* tariff,<sup>3</sup> MS Hub shall hold an open season for the capacity from the two new caverns and provide the results thereof to the Commission before initiating service.

9. MS Hub asks the Commission to reaffirm the finding made in the February 15, 2007, and September 17, 2009 Orders that MS Hub lacks market power with respect to its storage and hub services and that it may charge market-based rates for those services when such services commence. MS Hub has submitted an updated market power analysis at Exhibit I to its application that evaluates the storage and delivery capacity of both its previously-authorized facilities and the new facilities being proposed, as well as the storage and delivery capacity of the other natural gas storage projects in which MS Hub's ultimate shareholder, Sempra Energy, has an ownership interest. MS Hub did not update its market power analysis with respect to interruptible wheeling services in this filing because it did not propose any revisions to the pipelines, interconnections or metering facilities previously approved by the Commission orders issued February 15, 2007 and September 17, 2009. MS Hub asserts that the market analysis demonstrates that MS Hub continues to lack market power over both the relevant natural gas storage and hub services markets.

10. MS Hub states that its Expansion Project will meet the growing need for high deliverability natural gas storage in the Gulf Coast region. The Expansion Project will serve a variety of customers and markets, including local distribution companies, natural gas marketers, electric generation customers, and liquefied natural gas terminals and their customers. MS Hub contends that these proposed high-deliverability natural gas storage expansion facilities will support further development of domestic gas production in the Gulf Coast region. MS Hub asserts that such high-deliverability storage can serve a critical role during periods of peak demand, production interruption or market

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<sup>3</sup> MS Hub's FERC Gas Tariff, Original Pro Forma Sheet No. 67, Original *Pro Forma* Vol. No. 1.

dislocation. Salt cavern storage can also be an economically viable alternative for producers to sell gas production during periods of low demand and depressed prices providing an economic alternative to paying pipeline scheduling and imbalance penalties resulting from load swings.

11. Because the Expansion Project will not require additional easements or land rights, MS Hub submits that the project will have minimal impact on the environment and adjacent landowners. All proposed construction activities will take place on an 80-acre site on which MS Hub is constructing the previously approved storage facilities. MS Hub states that it has already cleared and graded the site and that no additional clearing, temporary workspace, or construction/storage yards will be required. MS Hub will use the authorized water supply and brine infrastructure. For these reasons MS Hub states that there are no anticipated direct impacts on adjacent landowners.

## **II. Notice**

12. Notice of MS Hub's application was published in the *Federal Register* on March 5, 2010 (75 Fed. Reg. 10,230). No motions to intervene, protests or comments were filed in response to the notice of application.

## **III. Discussion**

13. Since MS Hub will use the proposed facilities to provide natural gas service in interstate commerce subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

### **A. Certificate Policy Statement**

14. The Commission's Certificate Policy Statement provides guidance as to how the Commission will evaluate proposals for certificating new construction.<sup>4</sup> The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, we balance the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed

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<sup>4</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

15. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

16. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from existing customers. The Commission authorized MS Hub to charge market-based rates in both the February 15, 2007 and September 17, 2009 Orders, and noted that MS Hub would assume the economic risks associated with the costs of the project's facilities to the extent that any capacity was unsubscribed. Likewise, under the market-based rate proposal we are authorizing here, MS Hub assumes the economic risks associated with the costs of the expansion facilities to the extent that any capacity is unsubscribed or revenues are not sufficient to recover costs. Thus, the Commission finds that MS Hub has satisfied the threshold requirement of the Certificate Policy Statement.

17. Because the MS Hub Expansion Project will serve increased market demand, there will be no negative impact on existing storage providers or their captive customers. As discussed below, the proposed project will be located in a competitive market and will serve new demand in region that is experiencing rapid growth in natural gas availability and use. The proposal will also enhance storage options available to existing pipelines and their customers, and thus, will increase competitive alternatives. Further, no storage company in the MS Hub market area protested the application.

18. The Expansion Project should have minimal adverse impacts on landowners and surrounding communities since MS Hub is constructing two new salt dome storage caverns in the existing 80-acre site that has already been cleared and graded.

19. The Commission concludes that any impacts on landowners and communities will be minimal. There will be no adverse impacts on existing storage providers or their captive customers. The proposed project will be located in a competitive market and is intended to serve new demand. Further, the MS Hub Expansion Project will increase the availability of high-deliverability natural gas storage capacity in the Gulf Coast area,

thereby enhancing the interstate pipeline transportation system. Based on the benefits that the Expansion Project will provide and the lack of any identified significant adverse effect on existing customers, other pipelines, or landowners and communities, the Commission finds that the public convenience and necessity requires approval of the MS Hub Expansion Project, subject to the conditions discussed below.

## **B. Market-Based Rates**

20. Generally, the Commission evaluates requests to charge market-based rates for storage under the analytical framework of its Alternative Rate Policy Statement.<sup>5</sup> Under that policy, the Commission will approve market-based rates for storage providers where the applicant has demonstrated it lacks market power<sup>6</sup> or has adopted conditions that significantly mitigate market power.<sup>7</sup> The Commission has previously approved requests to charge market-based rates for storage services based on a finding that the proposed projects would not be able to exercise market power due to small size, anticipated share of the market and numerous competitors.<sup>8</sup> The February 15, 2007 and September 17, 2009 Orders approved market-based rates because the Commission determined that MS Hub would not possess market power over storage services in the relevant geographic market.

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<sup>5</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996) (Alternative Rate Policy Statement), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *petitions for review denied sub nom.*, *Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998), *criteria modified*, *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220 (2006), Order No. 678-A, *order on clarification and reh'g*, 117 FERC ¶ 61,190 (2006).

<sup>6</sup> The Commission defines “market power” as “the ability of a pipeline to profitably maintain prices above competitive levels for a significant period of time.” See Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,230 (citation omitted).

<sup>7</sup> See *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220, 115 FERC ¶ 61,343 (2006), *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

<sup>8</sup> See, e.g., *Arlington Storage Company, LLC*, 125 FERC ¶ 61,306 (2008); *Tarpon Whitetail Gas Storage, LLC*, 123 FERC ¶ 61,274 (2008), *order granting reh'g and allowing tariff*, 125 FERC ¶ 61,050 (2008); *Tres Palacios Gas Storage, LLC*, 120 FERC ¶ 61,253 (2007).

21. The Commission's analysis of whether an applicant has the ability to exercise market power consists of three major steps: (1) definition of the relevant markets;<sup>9</sup> (2) measurement of a firm's market share and concentration; and (3) evaluation of other relevant factors. If an applicant is unable to, or elects not to, demonstrate that it lacks market power, it may still receive market-based rates if such rates are deemed to be in the public interest to encourage construction of natural gas storage facilities and customers are adequately protected.<sup>10</sup>

22. The Commission finds that MS Hub's market-power analysis satisfies these three factors.<sup>11</sup> First, MS Hub identifies the relevant product market as firm natural gas storage service. MS Hub identifies the relevant geographic market region as East Texas, Louisiana, Mississippi and Alabama (Gulf Coast Region). MS Hub identifies fifty-two storage facilities unaffiliated with the MS Hub project that offer similar services in the Gulf Coast Region.<sup>12</sup>

23. Second, a company can exercise market power in two ways: (i) it has a large market share so it can raise prices acting alone; or (ii) it can act with others to raise prices.<sup>13</sup> Here, the relatively small market shares, as shown in Exhibit No. 4 of MS Hub's market-power analysis,<sup>14</sup> indicate that MS Hub will not be able to exert

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<sup>9</sup> This includes the relevant product market, which consists of the applicant's service and other services that are good alternatives to the applicant's services, and the relevant geographic market. *See* Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,231. In Order No. 678, the Commission expanded the definition of the relevant product market and permitted storage applicants to include non-storage products and services, including pipeline capacity, local production and LNG supply in calculating their market concentration and market share. *See* Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 26.

<sup>10</sup> *See* Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 102 (quoting 15 U.S.C. § 717c(f) (2006)).

<sup>11</sup> MS Hub included its affiliated storage fields in the production area in its market power study. These storage fields include Bay Gas Storage Company Ltd. and Liberty Gas Storage Company, LLC, which also provide Commission approved market-based rate storage service.

<sup>12</sup> *See* Exhibit Nos. 4, 5, and 6 of Exhibit I of MS Hub's Application, prepared testimony of Dr. Paul Bogenrieder.

<sup>13</sup> *See* Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,234.

<sup>14</sup> *See* Exhibit I of MS Hub's Application.

market power in the relevant market area. Exhibit No. 4 shows that at full capacity, MS Hub would control approximately 6.37 percent of the total working gas capacity in the relevant market and Exhibit No. 6 shows that MS Hub would control approximately 13.46 percent of total deliverability in the Gulf Coast Region.

24. The Commission uses the Herfindahl-Hirschman Index (HHI) to determine market concentration for gas pipeline and storage markets.<sup>15</sup> The Alternative Rate Policy Statement states that a low HHI (generally less than 1,800) indicates that sellers are less likely to be able to exert market power because customers have sufficiently diverse alternatives in the relevant market.<sup>16</sup> While a low HHI suggests a lack of market power, a high HHI (generally greater than 1,800) requires closer scrutiny in order to make a determination about a seller's ability to exert market power. MS Hub's market power analysis shows MS Hub's HHI calculation is 673 (Exhibit 4) for working gas capacity and 704 (Exhibit 6) for peak day deliverability. These measures of market concentration are significantly below the 1,800 HHI level, indicating that MS Hub does not have market power in the relevant market area.

25. Lastly, MS Hub cannot exercise market power because the relevant market is easy to enter as demonstrated by the fifty-two competing storage providers. The Commission has found previously that barriers to entry in the Gulf Coast Region are not significant.<sup>17</sup>

26. Based on these factors, the Commission finds that MS Hub's analysis demonstrates that its proposed project will be in a highly competitive area where numerous storage service alternatives exist for potential customers. The Commission also finds that MS Hub's analysis properly identifies good alternatives<sup>18</sup> and that MS Hub's entry will increase the storage alternatives in the Gulf Coast Region.

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<sup>15</sup> See Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,235.

<sup>16</sup> See Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 55 (noting that the Commission is not changing the 1,800 HHI threshold level).

<sup>17</sup> See, e.g. *Tarpon Whitetail Gas Storage, LLC*, 123 FERC ¶ 61,274, at P 28 (2008); *order granting reh'g and allowing tariff*, 125 FERC ¶ 61,050 (2008); *Enstor Houston Hub Storage and Transportation, LP*, 123 FERC ¶ 61,019, at P 32 (2008); *Port Barre Investments, L.L.C. d/b/a Bobcat Gas Storage*, 116 FERC ¶ 61,052, at P 25 (2006) (*Bobcat*).

<sup>18</sup> A good alternative is an alternative that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute it for an applicant's proposed service. See Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,231.

Furthermore, the Commission finds that, within the relevant market, MS Hub's prospective market shares are low and that the market concentration is below the threshold which would require closer scrutiny. Finally, the Commission finds that barriers to entry are likely to be low in the relevant market. Thus, the Commission concludes that MS Hub will lack significant market power.

27. In view of these considerations, the Commission finds that MS Hub may continue to charge market-based rates for its storage services, including the additional services that are the subject of this proceeding. However, consistent with the Commission's finding in the February 15, 2007 and September 17, 2009 Orders, we will condition this finding on a requirement that MS Hub notify the Commission if future circumstances significantly affect its present market power status for firm and interruptible storage service and interruptible hub and wheeling services. Thus, the Commission's approval of market-based rates for the indicated services is subject to re-examination in the event that: (a) MS Hub adds storage capacity beyond the capacity authorized in this order; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to MS Hub; or (d) MS Hub, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to MS Hub. Since these circumstances could affect its market power status, MS Hub shall notify the Commission within ten days of acquiring knowledge of any such changes. The notification shall include a detailed description of the new facilities and their relationship to MS Hub.<sup>19</sup> The Commission also reserves the right to require an updated market power analysis at anytime.<sup>20</sup>

### **C. Waivers of Filing, Reporting and Accounting Requirements**

28. In light of its request for authority to charge market-based rates and the fact that it has no existing interstate pipeline operations, MS Hub requests that the Commission waive section 157.6(b)(8) of the Commission's regulations, which would require MS Hub to submit cost and revenue information otherwise necessary for the Commission to make an up-front determination of the rate treatment for the project. MS Hub also requests that the Commission waive the filing requirements of sections 157.14(a)(13),

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<sup>19</sup> See, e.g., *Bobcat*, 116 FERC ¶ 61,052 (2006); *Copiah County Storage Co.*, 99 FERC ¶ 61,316 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002).

<sup>20</sup> See *Liberty Gas Storage LLC*, 113 FERC ¶ 61,247, at P 51 (2005) (*Liberty*); see also *Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141, at P 40 (2005). We note that in Order Nos. 678 and 678-A, the Commission chose not to impose a generic requirement that storage providers, granted market-based rate authority on the basis of a market power analysis, file an updated market power analysis every five years, or at other periodic intervals. See Order No. 678-A, 117 FERC ¶ 61,190 at P 12-15.

(14), (16) and (17), which require submission of Exhibits K (Cost of Facilities), Exhibit L (Financing), Exhibit N (Revenues, Expenses, and Income), and Exhibit O (Depreciation and Depletion), since these exhibits are required for cost-based rate authority. MS Hub requests such additional waivers of the Commission's regulations as necessary to carry out the authorizations requested in its application and as are customarily issued.

29. For the same reasons, MS Hub requests waiver of the accounting and annual reporting requirements under Part 201 (accounting and reporting requirements of Uniform System of Accounts) and sections 260.1 and 260.2 (which require natural gas companies to file annual reports in FERC Form Nos. 2 and 2-A) of the Commission's regulations. MS Hub also requests waiver of the rate and cost information filing requirements of sections 157.14(a)(10) and 157.20(c)(3) to submit total gas supply data, as being inapplicable to natural gas storage services.

30. The cost-related information required by the above-described regulations is not relevant in light of the Commission's approval of market-based rates for MS Hub proposed services. Thus, consistent with the Commission's previous orders,<sup>21</sup> the Commission grants MS Hub's request for waiver of the regulations requiring cost-based related information for these services. The Commission also grants a waiver of sections 157.14(a)(10) and 157.20(c)(3), which require an applicant to submit gas supply data, which is inapplicable to storage operations.

31. In addition, the Commission grants the requested waiver of the requirement to file an annual report (Form Nos. 2 and 2-A), contained in section 260.2 of the Commission's regulations, except for the information necessary for the Commission's assessment of annual charges.<sup>22</sup> MS Hub is required to file page 520 of Form No. 2-A, reporting the gas volume information which is the basis for imposing an Annual Charge Adjustment (ACA) charge.<sup>23</sup>

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<sup>21</sup> See, e.g., *Bobcat*, 116 FERC ¶ 61,052, at P 33; *SG Resources Mississippi, L.L.C.*, 101 FERC ¶ 61,029, at P 26 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269, at 62,142 (2002); *Egan Hub Partners, L.P.*, 95 FERC ¶ 61,395, at 62,473 (2001).

<sup>22</sup> MS Hub, however, is required to maintain sufficient records of cost and revenue data, consistent with the Uniform System of Accounts, should the Commission require MS Hub to produce this report in the future.

<sup>23</sup> See *Wyckoff Gas Storage Co., LLC*, 105 FERC ¶ 61,027, at P 65 (2003).

**D. Engineering Analysis**

32. The Commission staff completed an engineering analysis of the two proposed new storage caverns as well as the additional compression. Based on this analysis, the Commission concludes that the geological and engineering parameters for the underground natural gas storage facilities proposed by MS Hub are well defined. The Commission finds that the facilities are appropriately designed to inject gas at a maximum rate of 1.5 Bcf/d and withdraw gas at a maximum rate of 2.8 Bcf/d and that each cavern will provide a total capacity of 11.05 Bcf (7.5 Bcf working gas and 3.55 Bcf base gas) at 14.73 psia and 60°F.

33. The Commission notes that Appendix A to the February 15, 2007 Order imposed Engineering Condition 5 on MS Hub which required the following: "Each cavern's well will be periodically logged to check the cavern roof and status of each casing string. Additionally, every five years MS HUB shall conduct sonar surveys of the caverns to monitor their dimensions and shape and to estimate pillar thickness between openings throughout the storage operations, and file results with the Commission." The Commission acknowledges that technology is constantly evolving and that standard testing methods may be improved as a result. Therefore, we are amending Engineering Condition 5 to include the following language as the last sentence: In the alternative, no less than 30 days before placing the caverns into service, MS Hub may file with the Commission, for prior approval of the methodology, a detailed cavern integrity monitoring plan that is consistent with the intent of the sonar survey.

**E. Environment**

34. On March 10, 2010, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Expansion Project and Request for Comments on Environmental Issues (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected landowners.

35. We received comments in response to the NOI from the Mississippi Department of Wildlife, Fisheries and Parks (MDWFP) and the Chickasaw Nation. The primary issues raised concern potential impacts on water quality; and cultural resource material or remains.

36. To satisfy the requirements of the National Environmental Policy Act, our staff prepared an environmental assessment (EA) for MS Hub's proposal that was placed into the public record on June 11, 2010. The analysis in the EA addresses geology, soils, surface and groundwater resources, wetlands, vegetation, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality,

noise, safety, and alternatives. All substantive comments received in response to the NOI were addressed in the EA.

37. The MDWFP commented that it believes that the proposed Expansion Project likely poses no threat to listed species or their habitats if best management practices, particularly measures to prevent or minimize impacts on water quality, are employed. The EA concludes that no significant impacts to surface water or groundwater resources would occur from project construction and operation.

38. The Chickasaw Nation submitted scoping comments requesting to be notified immediately should project activities generate any environmentally detrimental effects, or discover any culturally significant material or remains. The EA states that MS Hub would continue to implement its Unanticipated Discoveries Plan as approved under Docket No. CP07-4-000 which includes appropriate notification to affected tribes.

39. As stated in the EA, operation of the modified Storage Terminal, as currently designed, is predicted to exceed the National Ambient Air Quality Standard (NAAQS) for particulate matter less than 2.5 microns in diameter (PM<sub>2.5</sub>) averaged over a 24-hour period. As a result, MS Hub would not be able to obtain its Clean Air Act construction permit from the Mississippi Department of Environmental Quality. Therefore, as recommended in the EA, this order includes a condition requiring that MS Hub submit a plan for approval by the Director of the Office of Energy Projects (OEP) prior to construction that demonstrates, through project design modifications or a refined modeling analysis, that the projected concentrations of PM<sub>2.5</sub> averaged over a 24-hour period from the modified Storage Terminal would be in compliance with the NAAQS for all criteria pollutants.

40. Based on the discussion in the EA, the Commission concludes that if MS Hub constructs and operates the Expansion Project in accordance with its application and supplement(s), and in compliance with the environmental conditions in the Appendix to this order, approval of this proposal will not constitute a major federal action significantly affecting the quality of the human environment.

41. Any state or federal permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>24</sup>

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<sup>24</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and

(continued...)

42. The Commission, on its own motion, received and made a part of the record all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein. Upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to MS Hub to construct and operate the proposed natural gas storage facilities, as described more fully in the application and in the body of this order.

(B) The certificate authorization granted in Ordering Paragraph (A) is conditioned on MS Hub's compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e) and (f) of section 157.20 of the regulations.

(C) Pursuant to section 157.20(b) of the Commission's regulations, MS Hub must construct and make available for service the authorized expansion project facilities within five years of the date of this order.

(D) MS Hub's request for authorization to continue to charge market-based storage rates for firm and interruptible storage service and interruptible hub service is approved, as discussed in this order.

(E) Pursuant to section 284.504(b) of the Commission's regulations, MS Hub must notify the Commission within 10 days of acquiring knowledge of significant changes that could affect its market power. The notification shall include a detailed description of the new facilities and their relationship to MS Hub. The Commission also reserves the right to require an updated market power analysis at any time.

(F) MS Hub shall file, not less than 30 days nor more than 60 days, prior to its proposed effective date, actual tariff sheets in compliance with the requirements of the February 15, 2007 Order in Docket No. CP07-4-000.

(G) MS Hub is granted waiver of the Commission regulations that are not applicable to storage providers with market-based authority, as discussed in this order.

(H) Except as provided in this order MS Hub shall comply with the engineering conditions set forth in Appendix A to the February 15, 2007 Order in Docket No. CP07-4-000. Further, Appendix A to the February 15, 2007 is amended to add the following language at the end of Engineering Condition 5: In the alternative, no less than 30 days

before placing the caverns into service, MS Hub may file with the Commission, for prior approval of the methodology, a detailed cavern integrity monitoring plan that is consistent with the intent of the sonar survey.

(I) The maximum inventory of natural gas stored at the MS Hub facility shall not exceed the certificated levels of 11.05 Bcf (7.5 Bcf working gas and 3.55 Bcf base gas) at 14.73 psia and 60° F for each cavern.

(J) MS Hub shall comply with the environmental conditions set forth in Appendix A to this order.

(K) MS Hub shall notify the Commission's environmental staff by telephone, e-mail, or facsimile of any environmental non-compliance identified by other federal, state, or local agencies on the same day that such agency notifies MS Hub. MS Hub shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## Appendix

### Environmental Conditions for the MS Hub Expansion Project Docket No. CP10-65-000

1. MS Hub shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. MS Hub must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of the Order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, MS Hub shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. **Within 60 days of the acceptance of the Certificate and before construction** begins, MS Hub shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. MS Hub must file revisions to the plan as schedules change. The plan shall identify:

- a. how MS Hub will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
  - b. how MS Hub will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - e. the location and dates of the environmental compliance training and instructions MS Hub will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
  - f. the company personnel (if known) and specific portion of MS Hub's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) MS Hub will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the environmental compliance training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
5. Beginning with the filing of its Implementation Plan, MS Hub shall file updated status reports with the Secretary on a monthly basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on MS Hub's efforts to obtain the necessary federal authorizations;
  - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);

- d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;
  - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by MS Hub from other federal, state, or local permitting agencies concerning instances of noncompliance, and MS Hub's response.
6. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, MS Hub shall file with the Secretary documentation that it has received all authorizations required under federal law (or evidence of waiver thereof).
7. MS Hub must receive written authorization from the Director of OEP **before placing each phase of the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
8. **Within 30 days of placing the authorized facilities in service**, MS Hub shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the Certificate conditions MS Hub has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
9. **Prior to construction**, MS Hub shall submit for review and approval by the Director of OEP, a plan to reduce the projected concentrations of particulate matter less than 2.5 microns in diameter (PM<sub>2.5</sub>) averaged over a 24-hour period from the modified Storage Terminal. The plan shall lay out in detail any necessary design modifications and/or demonstrate, by submittal of a revised refined modeling analysis, that the facility design changes or revised modeling data would reduce the projected PM<sub>2.5</sub> concentrations from operation of the Storage Terminal and conform to all Mississippi Department of Environmental Quality permitting requirements. The revised analysis shall apply existing ambient concentrations using the most representative monitoring data combined

with the projected Storage Terminal emissions, to demonstrate compliance with the National Ambient Air Quality Standards for all criteria pollutants.

10. MS Hub shall file a noise survey with the Secretary **no later than 60 days** after placing the Expansion Project facilities in service. If the noise attributable to the operation of all of the equipment at the modified Storage Terminal at full load exceeds a day-night sound level ( $L_{dn}$ ) of 55 decibels on the A-weighted scale (dBA) at any nearby noise-sensitive areas, MS Hub shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the in-service date. MS Hub shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.