

133 FERC ¶ 61,184
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

November 30, 2010

In Reply Refer To:
Enstor Grama Ridge Storage and
Transportation, L.L.C.
Docket No. PR05-16-002

Pillsbury, Winthrop, Shaw, Pittman, L.L.P.
2300 N Street, NW
Washington, DC 20037-1122

Attention: Joseph H. Fagan
Attorney for Enstor Grama Ridge Storage and Transportation, L.L.C.

Reference: Request for Elimination of Five-Year Filing Requirement

Ladies and Gentlemen:

1. On September 24, 2010, Enstor Grama Ridge Storage and Transportation, L.L.C. (Grama Ridge) filed to request that it be relieved of its obligation to file updated market power analyses every five years from the date of the Commission's order issued on December 21, 2005 granting Grama Ridge market-based rates for storage service (five-year filing requirement).¹ In support of its request, Grama Ridge also filed a market power analysis.² The Commission accepts Grama Ridge's updated market power

¹ *Grama Ridge Storage and Transportation, LLC*, 113 FERC ¶ 61,301 (2005) (December 2005 Order) (granting Grama Ridge the authority to charge market-based rates for firm and interruptible storage services performed under section 311 of the Natural Gas Policy Act).

² The market power analysis in the instant filing was originally filed with the Commission on January 12, 2010, as part of an advance notification of construction of additional facilities in Docket No. CP10-42-000.

analysis and grants its request to lift its five-year filing requirement, subject to the conditions discussed below.

2. In the December 2005 Order, the Commission authorized Grama Ridge to provide interstate storage and storage-related services at market-based rates. The Commission conditioned Grama Ridge's market-based rate authorization on the requirements that Grama Ridge file a new market power study within five years of the December 2005 Order and every five years thereafter, as well as notify the Commission if future circumstances affect its market power status. The December 2005 Order also stated that Grama Ridge's market-based rate authority for the indicated services was subject to reexamination in the event that: (a) Grama Ridge adds storage capacity beyond the capacity authorized in the order; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to Grama Ridge; or (d) Grama Ridge, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to Grama Ridge.

3. Grama Ridge explains that after the December 2005 Order, on June 19, 2006, the Commission issued Order No. 678, amending its storage pricing policies and regulations,³ which, among other things, changed the Commission's policy on the five-year filing requirement. Order No. 678 held that, where an applicant's market shares were ten percent or less, the Commission would not impose the five-year filing requirement and where market shares were greater than ten percent, the Commission would determine whether to require periodic reporting requirements on an individual, case-specific basis. Order No. 678 also required storage providers granted market-based rate authority to inform the Commission of any change in circumstances that affect its market power status.⁴

4. Grama Ridge states that its owner, Enstor Operating Company, LLC (Enstor), sought clarification, or alternatively, rehearing of Order No. 678. Enstor wanted the Commission to clarify that any pre-existing rate review condition, involving the market-based rate authorization for a storage provider with a market share less than ten percent, such as Grama Ridge, was no longer applicable.⁵ Grama Ridge explains that the

³ Grama Ridge Request at 6, n.11 (*citing Rate Regulation of Certain Natural Gas Storage Facilities*, FERC Stats. & Regs., ¶ 31,220, at P 91 (2006) (Order No. 678)).

⁴ *See* Order No. 678 at P 91; *see also* 18 C.F.R. § 284.504(b) (2010).

⁵ Specifically, Grama Ridge explains that Enstor wanted clarification that the five year rate review requirement was no longer applicable to Grama Ridge's market-based rate authorization and requested the Commission to lift the five year rate review requirement that was imposed by the December 2005 Order. Enstor explained that Grama Ridge's market share at the time of its application was well below the ten percent threshold established by Order No. 678. *See* Grama Ridge Request at 7.

Commission denied Enstor's request for a blanket waiver of the five-year filing requirement but said that a pipeline could file a case-specific waiver request in the proceeding where the periodic filing requirement was adopted.⁶ In the instant filing Grama Ridge requests that the Commission remove the five-year filing requirement because it lacks market power and it has informed the Commission of each change in its circumstance affecting market power.

5. Grama Ridge states that good cause exists to lift the five-year filing requirement because it lacks market power in all of its relevant geographic markets. Grama Ridge explains that, in the December 2005 Order, the Commission evaluated Grama Ridge's market power in three different geographic market regions, including the Southwest (New Mexico, Arizona, and California), Texas, and the Midwest (portions of Texas plus Oklahoma, Kansas, Iowa, Illinois, Nebraska, and Minnesota). In the instant market power analysis, Grama Ridge combines its facilities with the assets of its parent company, Iberdrola Renewables, Inc. (Iberdrola) and lists the market shares for storage capacity, market shares for storage deliverability, and market concentration figures (in the form of Herfindahl-Hirschman Index calculations) for each of its three geographic markets as well as for its combined geographic market. Grama Ridge asserts that generally it has low market shares in unconcentrated geographic markets. Grama Ridge states that although the December 2005 Order was issued prior to the Commission's issuance of Order No. 678, its market concentrations and market shares are generally within the Commission's guidance in Order No. 678.

6. Further, Grama Ridge asserts good cause exists for lifting the five-year filing requirement because it has consistently informed the Commission of changes in its circumstances that may have affected its ability to exert market power. Since the December 2005 Order was issued, Grama Ridge states that on four occasions it filed to inform the Commission of specific circumstances that potentially affected its market power status.

7. Public notice of Grama Ridge's filing was issued on October 6, 2010. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2010)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2010)), all timely filed motions to intervene and any 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 protests or adverse comments were filed.

⁶ Grama Ridge Request at 7-8 (*citing Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678-A, 117 FERC ¶ 61,190, at P 17 (2006)).

8. Grama Ridge's market shares and market concentration levels are consistent with those accepted in the December 2005 Order and do not alter Grama Ridge's inability to exert market power in its relevant geographic areas. In its application Grama Ridge provided market share and market concentration figures for both storage capacity and deliverability in its three geographic markets and its combined geographic market. Including Iberdrola's assets in the Texas market, Grama Ridge's market shares for storage capacity and deliverability are 15.4% and 10.0%, respectively. While these market shares are over ten percent and require extra scrutiny, the market is only moderately concentrated with HHI figures for storage capacity and deliverability of 1,380 and 1,027, respectively.⁷ Also, Grama Ridge asserts in its application that its market shares for storage capacity and deliverability in its combined market (containing the Texas, Southwest, and Midwest markets) are 5.9% and 4.7%, respectively, which are below the Commission's threshold for requiring additional reporting requirements.

9. Grama Ridge's market shares in the Texas geographic market are above the ten percent threshold at which Order No. 678 requires the Commission to analyze whether to require periodic reporting requirements on an individual, case-specific basis. The Commission finds that it is unnecessary to require Grama Ridge to file an updated market power analysis every five years. Grama Ridge's updated market power analysis shows that it currently lacks market power in the Texas market. Further, Grama Ridge has filed four times to update the Commission of changed circumstances potentially affecting its market power status. Grama Ridge's pattern of consistently filing to notify the Commission of its changes in circumstances potentially affecting its market power status has adequately allowed the Commission to monitor its market power.

10. The Commission accepts Grama Ridge's updated market power analysis and lifts the requirement that it file an updated market power analysis within five years after the date of the December 2005 Order and every five years thereafter.⁸ As directed in the December 2005 Order and required by section 284.504(b) of the Commission's regulations,⁹ Grama Ridge must continue to notify the Commission if future changes in circumstances may affect its market power status. Failure to timely file a change in

⁷ See *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, order granting clarification, 74 FERC ¶ 61,194 (1996) (stating that a low HHI – generally less than 1,800 – indicates that sellers cannot exert market power because customers have sufficiently diverse sources of supply in the relevant market).

⁸ See *Rendezvous Gas Pipeline Company, L.L.C.*, 133 FERC ¶ 61,109 (2010) (where the Commission recently lifted a five-year filing requirement).

⁹ 18 C.F.R. § 284.504(b) (2010).

circumstance report or failure to comply with any of the Commission's reporting requirements would constitute a violation of the Commission's regulations.

11. The Commission reserves the right to require Grama Ridge to file a market power analysis at any time.¹⁰

By direction of the Commission. Commissioner Moeller is not participating.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁰ See *Liberty Gas Storage LLC*, 113 FERC ¶ 61,247, at P 51 (2005).