

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

MoBay Storage Hub, Inc.

Docket Nos. CP06-398-000
CP06-399-000
CP06-400-000

ORDER ISSUING CERTIFICATES

(Issued December 20, 2006)

1. On June 22, 2006, MoBay Storage Hub, Inc. (MoBay) filed an application in Docket No. CP06-398-000 under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting a certificate of public convenience and necessity authorizing the construction and operation of a natural gas storage facility and associated pipeline facilities (MoBay Gas Storage Project) in South Mobile Bay County, Alabama. In addition, in Docket Nos. CP06-399-000 and CP06-400-000, MoBay seeks a blanket certificate under Part 157, Subpart F, of the Commission's regulations and a blanket certificate under Part 284, Subpart G, of the Commission's regulations. As discussed below, the Commission finds that MoBay's proposed construction and operations are required by the public convenience and necessity, and issues MoBay its requested certificate authorizations, subject to conditions. The Commission also grants MoBay's request to charge market-based rates for its storage and hub services.

I. Background and Proposal

2. MoBay is a limited liability corporation organized and existing under the laws of Delaware. It is a wholly-owned subsidiary of Falcon Gas Storage Company (Falcon). MoBay is a new company with no existing jurisdictional or non-jurisdictional operations in the natural gas pipeline or storage industry. Upon receipt of its requested certificate authorizations, MoBay will become a natural gas company within the meaning of NGA section 2(6).

A. New Facilities

3. MoBay proposes to construct and operate a new, high-deliverability natural gas storage facility consisting of three underground depleted natural gas storage reservoirs located offshore in Alabama state waters; thirty new injection and withdrawal wells supported by ten offshore caissons and approximately seven miles of offshore distribution (storage field) pipeline; an onshore compressor station with 37,880 horsepower (hp) of compression; two 8,500 hp compressor units located offshore on an existing platform; three metering stations and approximately 3.5 miles of 24-inch diameter pipeline laterals; and a 15-mile long, 36-inch diameter pipeline connecting the storage reservoirs to the onshore compressor station.
4. MoBay states that its project will include nearly 83 billion cubic feet (Bcf) of total storage capacity and 50 Bcf of working gas storage capacity from the three fully-developed reservoirs. The storage facility will be capable of receiving and delivering natural gas at a maximum rate of 1.0 Bcf per day.
5. MoBay proposes to construct approximately 3.5 miles of 24-inch diameter bi-directional pipeline laterals extending from the onshore compressor station to interconnections with four interstate natural gas pipelines.¹ MoBay proposes to construct bi-directional metering and regulation sites at each pipeline interconnect. The compressor station will include eight natural-gas fueled reciprocating compressor units providing a total of 37,880 hp, as well as dehydration, separation, and other appurtenant facilities. In addition, MoBay will construct two gas-driven turbine centrifugal compressors, each rated at 8,500 hp (a total of 17,000 hp) on the North Dauphin Island Platform. MoBay will not need to make any structural modifications to the existing platform to accommodate the compression.
6. Offshore, MoBay will also construct a distribution pipeline system that will consist of approximately 7 miles of 8- to 16-inch diameter pipelines to connect the injection and withdrawal wells to the two platforms; a 36-inch diameter pipeline will connect the platforms to MoBay's onshore facilities. The 36-inch diameter pipeline will run approximately 12 miles north from the offshore platforms to landfall just east of the mouth of Bayou Coden; once ashore, the 36-mile pipeline will extend for approximately 3 miles to connect to the MoBay Compressor Station.

¹ Florida Gas Transmission Company (FGT), Transcontinental Gas Pipe Line Corporation (Transco), Gulf South Pipeline Company (Gulf South), and Gulfstream Natural Gas System, LLC (Gulfstream).

B. Market and Services

7. MoBay states that the Energy Information Administration's "Annual Energy Outlook 2006" projects that total U.S. demand for natural gas will grow an average of 1.2 percent per year in the next twenty years, primarily due to the growth in demand for electric generation and industrial applications.² Based on data obtained from the RDI Newgen database, MoBay states that the total expected capacity growth of electric generation facilities in the potential customers' market regions is estimated to be approximately 100,000 megawatts,³ which MoBay expects to be fueled primarily by natural gas.

8. MoBay held an initial, non-binding 30-day open season in February 2006 to gauge the level of market interest in the proposed project. The bids from electric utilities, local distribution companies, producers, marketers, and LNG importers totaled 24 Bcf of firm storage capacity and 900,000 dekatherms per day (Dth/d) of firm withdrawal service. MoBay has executed multi-year precedent agreements for 10 Bcf of firm storage capacity and 400,000 Dth/d of firm withdrawal service. MoBay states that because it is a newly formed entity, it has no existing customers who might be adversely affected by the costs or risks of recovery of the costs of the project. The economic risks of the project will be borne by the project owners.

C. Market-Based Rates

9. MoBay requests authority to charge market-based rates for its proposed storage and hub services. To support its market-based rate proposal under the Commission's 1996 Alternative Rate Policy Statement,⁴ MoBay has included in its application a market

² See *Annual Energy Outlook 2006 with Projections to 2030*, Department of Energy, Energy Information Administration, February 2006 (AEO 2006).

³ RDI Newgen is a unit of the Financial Times. Potential electric generation facility growth was obtained from the RDI Newgen database for the following regions: Southeastern Electric Reliability Council (SERC), East Central Area Reliability Council (ECAR), The Mid-Atlantic Area Council (MAAC), and Northeast Power Coordinating Council (NPCC).

⁴ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines (Alternative Rate Policy Statement)*, 74 FERC ¶ 61,076, *reh'g denied*, 75 FERC ¶ 61,024, *petitions for review denied sub nom.*, *Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998).

power study based on the criteria set forth in the *Alternative Policy Statement*. MoBay maintains that the market study took a narrow, conservative approach by defining the relevant geographic market to include only Alabama, Mississippi, Louisiana, and east/south Texas (the Gulf Coast Production Area), and by including only the storage facilities that are available to the relevant market, and not other services provided by non-storage facilities or other alternative services that effectively compete with the proposed storage, hub, and wheeling services. MoBay states that the market power analysis demonstrates that good alternatives to the proposed services exist, given the number and size of existing storage facilities and hubs in the relevant market, and that no barriers to entry in the market exist. MoBay states that its market power study shows that it will not possess market power over storage and hub services that will allow it to sustain significant price increases; therefore, MoBay asserts the grant of market-based rates authority is justified.

D. Waivers

10. MoBay requests waivers of certain filing and other requirements that it considers inapplicable to its proposal for storage and hub services with market-based rates. Because it proposes to charge market-based rates, MoBay requests waiver of the following Commission regulations relating to cost-based rate proposals: (1) section 157.6(b)(8) (submission by certificate applicants of cost and revenue data); (2) sections 157.14(a)(13), (14), (16), and (17), and 157.20(c)(3) (submission of cost-based related exhibits); (3) Part 201 (accounting and reporting requirements of the Uniform System of Accounts); (4) sections 260.1 and 260.2 (filing of annual reports in FERC Form Nos. 2 and 2-A); and (5) sections 284.10 and 284.7(e) (use of straight fixed variable rate design methodology). MoBay also requests waiver of the section 157.14(a)(10) requirement to provide a showing of accessible gas supplies, and the section 284.7(d) requirement pertaining to segmentation, both of which MoBay states do not apply to its proposal to provide natural gas storage operations.

11. In addition, MoBay seeks a waiver of the Commission's "shipper must have title" policy for any off-system capacity that MoBay may obtain in the future in order to provide storage or hub services. In support of this request, MoBay proposes tariff language stipulating that any service MoBay provides by utilizing a third-party pipeline system will be performed pursuant to MoBay's open-access tariff, subject to the rate authority approved by the Commission. MoBay also requests approval of its proposed *pro forma* gas tariff.

II. Notice and Interventions

12. Public notice of MoBay's application was published in the *Federal Register* on June 29, 2006.⁵ Timely, unopposed motions to intervene⁶ were filed by FGT; Bay Gas Storage Company, LTD; SG Resources Mississippi, LLC; Niska Gas Storage, LLC; and Florida Power and Light Company. Transco filed an untimely motion for leave to intervene. Transco's motion shows that it has a direct and substantial interest in this proceeding, and that granting the motion will not delay the proceeding or cause undue prejudice to the other parties. For good cause shown, Transco's motion will be granted.

13. Pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure,⁷ Freeport-McMoRan Energy, LLC (Freeport-McMoRan) filed a protest, timely motion to intervene, and request for technical conference.⁸ In response, MoBay filed an answer to Freeport-McMoRan's protest. Although the Commission's Rules of Practice and Procedure do not permit answers to protests, the Commission finds good cause to waive Rule 213(a) to admit these pleadings, as they have provided information that assists in the decision making process.⁹ In addition, Freeport-McMoRan requests that the Commission either clarify or withdraw the environmental assessment (EA) for MoBay's proposed project.

III. Discussion

A. Certificate Policy Statement

14. Since the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction, acquisition, and operation of the facilities are subject to the requirements of the NGA section 7, subsections (c) and (e).

⁵ 71 Fed. Reg. 38,632.

⁶ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(d) (2006).

⁷ 18 C.F.R. §§ 385.211 and 385.214 (2006).

⁸ Freeport-McMoRan filed a supplement to its request for a technical conference on October 20, 2006, and renewed its request for a technical conference in a letter dated November 20, 2006.

⁹ 18 C.F.R. § 385.213(a)(2) (2006)

15. The Commission's September 15, 1999 statement of policy on the Certification of New Interstate Natural Gas Pipeline Facilities (*Certificate Policy Statement*) provides guidance as to how it will evaluate proposals for certificating new construction.¹⁰ 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* explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances 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 capacity, and the avoidance of the unnecessary exercise of eminent domain or other disruptions of the environment.

16. Under this policy, the threshold requirement for 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.

17. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. MoBay is a new entrant in the natural gas storage market and has no existing customers. Therefore, there will neither be subsidization by existing customers nor any adverse impacts on service to existing customers. Moreover, under its market-based rate proposal, MoBay assumes the economic risks associated with the costs of the project's facilities to the extent that any capacity is unsubscribed or revenues are not sufficient to recover costs. Thus, the Commission finds that MoBay has satisfied the threshold requirement of the *Certificate Policy Statement*.

¹⁰*Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128, *Order Further Clarifying Statement of Policy*, 92 FERC ¶ 61,094 (2000) (*Certificate Policy Statement*).

18. The proposed MoBay Gas Storage Project will have no adverse impact on existing customers or services, since MoBay has no current customers or services. Further, the MoBay project will not adversely impact landowners and no landowners have submitted protests to MoBay's project. The Commission is also satisfied that there will be no negative impact on existing storage providers or their captive customers. The proposal will also enhance storage options available to pipelines and their customers, and thus, will increase competitive alternatives. Additionally, no storage company in MoBay's market area has protested MoBay's application. Accordingly, the MoBay Gas Storage Project meets the requirements of the Certificate Policy Statement and is required by the public convenience and necessity. Consequently, we will approve the proposal, as conditioned below.

B. Freeport-McMoRan's Protest, Request for Technical Conference, and Request for Clarification or Withdrawal of the EA

19. MoBay has proposed that its onshore 36-inch-diameter pipeline be built along the north side of the Gulfstream's existing right of way (ROW). MoBay's pipeline would be located roughly 60 feet north of Gulfstream's northernmost 36-inch-diameter pipeline, except for a short section between mile post (MP) 0.89 and MP 1.67 (Station Numbers 47+00 and 88+00), which would be located on the opposite side of Gulfstream's lines. MoBay's proposed pipeline would be 20 feet north of the Commission-approved 36-inch-diameter onshore Coden Pipeline that Freeport-McMoRan intends to construct in late 2008.¹¹ Freeport-McMoRan requests a technical conference to address the conflicts between its Coden Pipeline and MoBay's proposed pipeline, including issues related to pipeline routing, meter station and HDD spacing, and construction timing. Freeport-McMoRan raises similar issues in its request for clarification or withdrawal of the EA.

20. Freeport-McMoRan maintains that MoBay's facilities would encroach upon, conflict with, and require significant changes to Freeport-McMoRan's certificated (but yet to be constructed) Coden Pipeline. In particular, Freeport-McMoRan maintains that MoBay's proposed landfall approach of its offshore pipeline, horizontal directional drill (HDD) landfall site, extra work spaces, meter station sites, and sections of onshore pipeline would interfere with construction of its certificated pipeline and facilities. Regarding the onshore pipeline alignment, Freeport-McMoRan maintains that MoBay's

¹¹ See *Freeport-McMoRan Energy, LLC*, 115 FERC ¶ 61,201 (order issuing certificate), *reh'g denied*, 117 FERC ¶ 61,116 (2006). MoBay's pipeline would have also been co-located within a portion of the proposed ROW for a new pipeline proposed by Compass Pass Pipeline L.L.C. (Compass Pass) in Docket No. CP04-114-000. However, Compass Pass withdrew its application effective November 16, 2006.

proposed pipeline would cross its planned Coden Pipeline twice between MPs 0.89 and 1.67, causing interference, and also that MoBay's proposed pipeline would cause a complex intersection involving the planned Coden Pipeline and other companies' existing pipelines between MPs 3.26 and 4.40.

21. Freeport-McMoRan states that in authorizing its Coden Pipeline, the Commission did not impose any conditions that would require it to modify or alter its ROW to accommodate a subsequent certificate holder. Freeport-McMoRan states that MoBay can work around the site of its Coden Pipeline by shifting the location of MoBay's pipeline. Freeport-McMoRan requests the Commission ensure that construction of the MoBay Gas Storage Project does not interfere with or undermine any aspect of its existing certificate authorizing the Coden Pipeline.

22. Freeport-McMoRan contends the EA's Staff Recommendation No. 22, which states that the first of the pending pipelines to be constructed within a ROW be located closest to the pipeline that now lies within that ROW, would render a final certificate insufficient "authority to construct a pipeline or storage field as approved by the Commission, because a later project could be constructed in the same right-of-way and effectively modify the previously certificated project" and invite "an endless loop of eminent domain actions" as multiple certificated projects seek to be the first to commence construction within the same ROW.¹²

23. The Commission disagrees. Nothing here modifies Freeport-McMoRan's existing certificate authority. The EA's Staff Recommendation No. 22 merely restates the Commission's existing policy, requiring, in areas in which multiple pipeline projects are planned to be co-located adjacent to an existing pipeline right of way, that the first pipeline to be constructed shall be placed closest to the existing pipeline.¹³ This policy is intended to ensure that adverse environmental impacts are minimized when co-locating facilities within a single ROW, *i.e.*, placing new facilities along a previously disturbed route adjacent to existing facilities. This policy has several benefits, including the fact that it allows for the location of construction work space to the side of, rather than on top of, previously installed facilities, which is a safety-related consideration. Further, while Freeport-McMoRan correctly points out that prudent project sponsors take steps to obtain necessary right of way as early as possible, the commencement of construction is driven by project ripeness. As Freeport-McMoRan acknowledges, it cannot commence

¹² Freeport-McMoRan's November 20, 2006 letter at 4.

¹³ *Starks Gas Storage, LLC*, 112 FERC ¶ 61,109 (2005).

construction of the Coden Pipeline until and unless it receives authorization from the U.S. Department of Transportation Maritime Administration (MARAD) and the Coast Guard to construct its associated Main Pass Energy Hub deepwater port facilities. In other circumstances, pipeline sponsors can choose to delay the construction of facilities in response to market forces. All certificate orders give project sponsors some period of time to construct and place the authorized facilities into service (Freeport-McMoRan was given three years for its Coden Pipeline); however, if, for whatever reasons, construction cannot or does not commence early in that period, project sponsors have no guarantee circumstances on the ground will remain static. That is why all certificates, including Freeport-McMoRan's, provide for minor alignment changes, such as the ones which would be necessitated for the second of these pipelines that begins construction, as approved by the Director of OEP.

24. Freeport-McMoRan contends the Commission's EA is insufficient in that it neglects to consider the cumulative impacts of the construction of both the MoBay and Coden pipelines, and contends it would be inequitable to force Freeport-McMoRan to bear the time and expense involved in undertaking a supplemental environmental review to assess such impacts. The Commission assures Freeport-McMoRan that it does not anticipate any need to supplement the EA in the event both pipelines are constructed. The EA covering MoBay's proposal presumes that each new pipeline will be located 25 feet from an existing pipeline, and considers the resulting environmental impacts of the two potential pipelines co-located within the ROW corridor that would result from a 25-foot offset between each of the two potential projects.¹⁴ In fact, the EA reviews impacts associated with a 60-foot offset, and thus would permit a pipeline to be placed up to 10 feet beyond the prescribed 25-foot offset without involving undocumented environmental impacts.¹⁵ The Commission acknowledges that the possible co-location of the two projects may result in certain minor routing variations, but does not anticipate any new studies associated with such variations will be any more burdensome than the additional studies that are routinely undertaken in connection with the minor routing variations for other projects.

¹⁴ The EA also took into account impacts associated with the then-pending Compass Pass project, which would have been located – unlike MoBay and Coden – to the south of the existing Gulfstream pipeline. As noted, Compass Pass has withdrawn its proposal.

¹⁵ The EA considered the inclusion of a ROW width for construction of 110 feet, and a 75-foot wide operational easement, with the new pipeline 60 feet from Gulfstream's existing line.

25. The Commission's policy regarding co-located pipeline projects adjacent to an existing ROW is that the first pipeline to be constructed is placed closest to the existing ROW.¹⁶ The Commission affirms this approach in this case, finding that there is sufficient space available for both the MoBay and Coden Pipeline projects to be co-located adjacent to one another along the existing Gulfstream pipeline ROW. Thus, for areas where MoBay's project's onshore pipeline would be co-located adjacent to one or more planned or certificated pipelines within an existing ROW, the first pipeline to be constructed is to be placed closest to the existing pipeline ROW. In view of the Commission policy regarding the co-location of multiple pipelines within the same ROW, and the Commission's determination that the MoBay project's EA adequately considers impacts associated with the construction of both potential projects, the Commission finds there are no material issues of fact in dispute. As such, Freeport-McMoRan's request for technical conference is denied.

C. Market-Based Rates

26. The Commission has approved market-based rates for storage services where applicants have demonstrated, under the criteria in the Commission's *Alternative Rate Policy Statement*,¹⁷ they lack significant market power or have adopted conditions that significantly mitigate market power. In prior orders, we have approved requests to charge market-based rates for storage services based on a finding that proposed projects would not be able to exercise market power due to small size, anticipated share of the market, and numerous competitors.¹⁸ The Commission has also distinguished between production area storage facilities, such as MoBay's, and market area storage facilities.¹⁹ In general, alternatives to storage in a production area are less of a concern than in a market area, because production itself can serve as a substitute for storage.

¹⁶ See, e.g., *Starks Gas Storage, LLC (Starks)*, 112 FERC ¶ 61,109 (2005).

¹⁷ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services for Natural Gas Pipelines*, 74 FERC ¶ 61,076; *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *petitions denied and dismissed*, *Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir 1998).

¹⁸ See, e.g., *Liberty Gas Storage LLC (Liberty)*, 113 FERC ¶ 61,247 (2005) and *Freebird Gas Storage, LLC* 111 FERC ¶ 61,054 (2005).

¹⁹ See, e.g., *Moss Bluff Hub Partners, L.P.*, 80 FERC ¶ 61,181 and *Steuben Gas Storage Company*, 72 FERC ¶ 61,102 (1995), *order on compliance filing and denying reh'g*, 74 FERC ¶ 61,060 (1996).

29. MoBay's market power analysis for the storage market provides a description of the services for which market-based rates are proposed, defines the relevant product and geographic markets, measures market share and concentration, and evaluates other factors. For the purposes of its analysis, MoBay identifies the relevant product market as firm and interruptible storage services for natural gas, as well as various hub services consisting of interruptible parking and loaning, firm and interruptible balancing, imbalance trading, and wheeling services. The relevant geographic market for those products and service, except wheeling, is defined as consisting of east/south Texas, Louisiana, Mississippi, and Alabama. MoBay states that it has further narrowed the potential market by removing from the study any facility that does not currently offer storage capacity and deliverability into the marketplace for the use of third parties. Interruptible wheeling, which is a transportation service, is also covered by MoBay's study for the geographic market that includes Texas, Louisiana, Mississippi, and Alabama.

30. The Commission uses the Herfindahl Hirschman Index (HHI) test to determine market concentration for gas pipeline and storage markets. The *Alternative Rate Policy Statement* states that a low HHI – generally less than 1,800 – indicates that sellers cannot exert market power because customers have sufficiently diverse alternatives in the relevant market. While a low HHI suggests a lack of market power, a high HHI – generally greater than 1,800 – requires a closer scrutiny in order to make a determination about a seller's ability to exert market power. MoBay's market power analysis shows an HHI calculation of 1,145 for working gas capacity, and an HHI calculation of 986 for peak day deliverability. These measures of market concentration are well below the Commission's threshold of 1,800, thus indicating that MoBay would be unable to exert market power in the relevant market area after construction of its proposed storage facilities.

31. In addition to the proposed facility and the storage facility of MoBay's affiliate, Falcon, MoBay's market power study identifies 26 alternative storage facilities, affiliated with 13 other separate entities, in the relevant market area. The study finds that the current combined market working gas capacity of all the identified facilities, including MoBay, is 570.15 Bcf, with MoBay and Falcon together controlling 60 Bcf, or 10.5 percent of the market (Exhibit I-I, Attachment A). In addition, the study finds that MoBay's and Falcon's 1,300 MMcf per day of peak deliverability will be 8.0 percent of the total market peak deliverability of 16,288 MMcf per day (Exhibit I-I, Attachment B). Thus, MoBay's aggregate share of the relevant storage market will be relatively small. Given the number of current storage providers, the Commission concludes that the barriers to entry to the storage market in the relevant market are low.

32. On June 19, 2006, the Commission issued Order No. 678, which modified its market share power analysis to better reflect the competitive alternatives for storage.²⁰ Specifically, Order No. 678 adopted a more expansive definition of the relevant product market for storage. In Order No. 678, the Commission recognized that if an applicant has demonstrated a lack of market power under the traditional definition of product market, it would follow that the applicant would also qualify for market-based rates using the expanded definition of product market adopted in Order No. 678.²¹ As discussed herein, the Commission finds that MoBay's market-based rate proposal meets the criteria established in the Commission's *Alternative Rate Policy Statement*. Thus, any further inquiry under the modified analysis implemented in Order No. 678 is unnecessary.

33. MoBay's proposed parking and loaning, balancing, and imbalance hub services are essentially variations of storage service. MoBay's market power analysis for its storage service also demonstrates that it lacks market power over its parking and loaning, balancing, and imbalance trading services. MoBay presents an analysis showing interconnections between six delivering pipelines and six receiving pipelines, indicating that shippers can avoid the interconnections provided by MoBay through the use of alternate routes (Exhibit I-I, Attachment C). Therefore, the Commission finds that approving market-based rates for MoBay's parking and loaning, balancing, and imbalance hub services is consistent with the Commission's decisions regarding other storage service facilities.²²

34. Traditionally, in evaluating whether shippers of an applicant seeking market-based rate authority for interruptible wheeling service could obtain the same services from alternative providers, the Commission has used a matrix, referred to as a "bingo card" which identifies all possible interconnections for pipelines attached to a hub and indicates whether good alternatives exist. MoBay provides such an analysis of delivery and receipt capacity in Mississippi, Louisiana, Texas, and Alabama, which demonstrates that there are 45 receipt and delivery interconnections between the pipelines that are directly or indirectly interconnected to MoBay that would be capable of providing competing wheeling services. MoBay's study shows that MoBay would have a market share of 15.4

²⁰ *Rate Regulation of Certain Natural Gas Facilities*, Order No. 678, 71 Fed. Reg. 36,612 (June 2006); FERC Stats. & Regs. ¶ 31,220 (2006), *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

²¹ *Id.* at P 38.

²² *See, e.g., Liberty*, 113 FERC ¶ 61,247 (2005) and *Pine Prairie Energy, LLC*, 109 FERC ¶ 61,215 (2004).

percent for receipt capacity at the market hubs in the relevant market, and a market share of 14.1 percent of delivery capacity. The total HHI for receipt capacity is 1,029 and the total HHI for delivery capacity is 968 (Exhibit I-I, Attachment E). These are well below the 1,800 HHI threshold. The results of this analysis indicate that MoBay lacks market power regarding its proposed wheeling service.

35. MoBay's study demonstrates that its proposed storage facilities will be in a highly competitive production area where numerous storage and hub service alternatives exist for potential customers. The Commission also finds that MoBay's prospective market shares are low and that market area HHIs are below the threshold warranting further review. Thus, the Commission concludes that MoBay will lack market power. Further, MoBay's proposal for market-based rates is unopposed. For these reasons, the Commission approves MoBay's request to charge market-based rates for firm and interruptible storage, hub, and wheeling services.

36. MoBay must notify the Commission if future circumstances significantly affect its present market power status. The Commission's approval of market-based rates for the indicated services is subject to re-evaluation in the event that: (a) MoBay expands its storage capacity beyond the amount authorized in this proceeding; (b) MoBay acquires additional transportation facilities or additional storage capacity; (c) an affiliate provides storage or transportation services in the same market area or acquires an interest in another storage field that can link MoBay's facilities to the market area; or (d) MoBay or an affiliate acquires an interest in or is acquired by an interstate pipeline. Since these circumstances would affect its market power status, MoBay shall notify the Commission within 10 days of acquiring knowledge of any such changes. The notification shall include a detailed description of the new facilities and the relationship to MoBay.²³ The Commission also reserves the right to require an updated market power analysis at any time.²⁴

²³ See, e.g., *Port Barre Investments, L.L.C. d/b/a Bobcat Gas Storage*, 116 FERC ¶ 61,052 (2006); *Pine Prairie Energy Center, LLC*, 109 FERC ¶ 61,215 (2004); and *Copiah County Storage Company*, 99 FERC ¶ 61,316 (2002).

²⁴ See, e.g., *BGS Kimball Gas Storage, L.L.C.*, 117 FERC ¶ 61,122 at P 32 (2006) and *Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141 at P 40 (2005). The Commission notes that in Order No. 678 it chose not to impose a requirement that storage providers granted market-based rates file an updated market power analysis every five years.

D. Waivers of Filing Requirements

37. In light of its request for authority to charge market-based rates and the fact that MoBay has no pre-existing facilities, MoBay requests that the Commission waive section 157.6(b)(8) of the Commission's regulations, which requires an applicant to provide the Commission with the information otherwise necessary for the Commission to make an up-front determination on the rate treatment of the MoBay project. MoBay also requests that the Commission waive its filing requirements as to Exhibit K (cost of facilities), Exhibit L (financing), Exhibit N (revenues, expenses and income), and Exhibit O (depreciation and depletion). MoBay argues that these exhibits are required of applicants seeking cost-based rate treatment and are thus not relevant. In addition, MoBay requests waiver of the accounting and reporting requirements under Part 201 and section 260.2 of the Commission's regulations, and of section 284.7(e), which requires that rates be designed on a straight fixed-variable methodology. MoBay requests waiver of the section 157.14(a)(10) to provide total gas supply information to the extent the information does not pertain to MoBay's natural gas storage operations.

38. In *Richfield Gas Storage System*²⁵ the Commission approved market-based rates for storage service and found that where the market is sufficiently competitive to warrant market-based rates, the submission of cost-based data is superfluous. In view of our decision to permit MoBay to charge market-based rates for its storage and hub services, we will waive compliance with the requirements of sections 157.6(b)(8) and 157.14 to submit Exhibits K, L, N, and O.²⁶

39. Since we are approving MoBay's request for market-based rates, we find that there is no ongoing regulatory need to have cost-based financial statements prepared in accordance with the Commission's Uniform System of Accounts. Accordingly, we will grant MoBay's request to waive Part 201 and section 260.2 of the Commission's regulations (pertaining to accounting and reporting requirements, which presume that

²⁵ 59 FERC ¶ 61,316 (1992).

²⁶ We note that in *Avoca Natural Gas Storage*, 68 FERC ¶ 61,045 (1994) and *Steuben Gas Storage Company*, 72 FERC ¶ 61,102 (1996), we similarly granted market-based rate authority for storage projects and granted waivers of Exhibits K, N, and O. We grant omission of Exhibit L here because there is no protest and MoBay will bear the financial risks of the project.

cost-of-service rates are charged), but note that such waiver does not extend to the FERC's annual charges.

40. In addition, the Commission grants the requested waiver of the requirement to file an annual report (Form No. 2-A) in section 260.2 of the regulations, except for the information necessary for the Commission's assessment of annual charges. MoBay is required to file pages 520 and 520A of Form No. 2-A, reporting the gas volume information which is the basis for imposing an Annual Charge Adjustment charge. In addition, the Commission requires MoBay to maintain sufficient records of cost and revenue data consistent with the Uniform System of Accounts should the Commission require MoBay to produce this report in the future.

41. The Commission grants these waivers because of the approval of MoBay's market-based rates. However, the waivers are subject to re-examination in the event that MoBay's market power or market-based rates need to be re-examined as discussed above. In addition, at some future time, the Commission may need to review records and data showing MoBay's costs. Accordingly, the waivers are conditioned upon MoBay maintaining accounts and financial information of its facilities consistent with generally accepted accounting principles.

E. Tariff Provisions

42. MoBay's *pro forma* tariff provides for firm storage service (Rate Schedule FSS), interruptible storage service (Rate Schedule ISS), interruptible parking (Rate Schedule IPS), interruptible loaning (Rate Schedule ILS), interruptible wheeling service (Rate Schedule IWS), interruptible imbalance trading (Rate Schedule IBTS), interruptible balancing (Rate Schedule IBS), and a sales service (Rate Schedule SS). In addition, MoBay will offer a firm hourly balancing service (Rate Schedule (FHBS) which will allow customers to inject or withdraw quantities of gas at accelerated rates during the course of a 24-hour period, so long as the shipper maintains a zero balance of injections and withdrawals over the course of the 24-hour period.

43. MoBay states that its tariff complies with the requirements of Order No. 637,²⁷ and states that it will provide its services on an open access basis under non-discriminatory terms and conditions. MoBay states that it will make arrangements to transmit and receive information on an electronic basis for all storage transactions, and will provide all information required by the North American Energy Standards Board (NAESB) standards through an Internet-based Electronic Delivery Mechanism.

44. The Commission finds MoBay's tariff sheets comply with the Commission's regulations and policies, with the exception of those requirements from which waiver is granted as discussed below. The Commission will require MoBay to file actual tariff sheets consistent with the directives in this order at least 30 days, but no more than 60 days, prior to the commencement of service.

1. Electronic Data Interchange

45. MoBay requests a partial waiver of section 284.12(a)(1)(iv) of the Commission's regulations requiring compliance with the electronic data interchange (EDI) standards established by NAESB. MoBay states that it will operate an interactive website which will provide for an electronic delivery mechanism, but it anticipates having only a limited number of customers initially, and it does not anticipate any of those customers requiring EDI. MoBay requests a waiver of the EDI standard until 90 days following a request from one of its customers that MoBay implement EDI.

46. Consistent with precedent, the Commission will grant MoBay's request for an exemption of the EDI standards, but will require MoBay to implement EDI standards within 90 days following such a request.²⁸

²⁷ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, 65 Fed. Reg. 10,156 (Feb. 25, 2000), FERC Stats. & Regs. [Regs. Preambles 1996-2000] ¶ 31,091 (2000), *order on reh'g*, Order No. 637-A, 65 Fed. Reg. 35,706 (June 5, 2000), FERC Stats. & Regs. [Regs. Preambles 1996-2000] ¶ 31,099 (2000), *reh'g denied*, Order No. 637-B, 65 Fed. Reg. 47,284 (Aug. 2, 2000), 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part*, *Interstate Natural Gas Assoc. of Am. V. FERC*, 285 F.3d 18 (D.C. Cir.), *order on remand*, 101 FERC ¶ 61,127 (2002).

²⁸ *See, e.g., Unocal Windy Hill Gas Storage, LLC*, 115 FERC ¶ 61,218 (2006) and *Rendezvous Gas Services*, 112 FERC ¶ 61,141 (2005).

2. Segmentation

47. Section 284.7(d) of the Commission's regulations provides that an interstate pipeline must permit a shipper to make use of firm capacity for which the shipper has contracted by segmenting that capacity into separate parts for the shipper's own use, or for the purpose of releasing that capacity to replacement shippers, to the extent that segmentation is operationally feasible. MoBay requests waiver of the Commission's regulations requiring segmentation, contending that its system consists of a single storage facility, and thus there is nothing to segment. Consistent with precedent, the Commission grants MoBay's request for waiver of the segmentation requirement.²⁹

3. Gas Retention Penalties

48. Under section 8 of Rate Schedules FSS, ISS, IPS, and IBS, MoBay can retain gas which a shipper has failed to remove from MoBay's system within a contractually specified period after the expiration of the shipper's service agreement with MoBay. MoBay's tariff provides that MoBay will credit its customers with the value of that gas. In *Blue Lake Gas Storage Company*,³⁰ the Commission held that the retention of gas left in storage at the end of the applicable withdrawal period is an operationally justified deterrent to shipper behavior that could threaten the system or degrade service to firm shippers. Thus, we will accept the proposed tariff provisions, including the proposal to credit net proceeds to non-offending shippers.

4. Imbalance Netting and Trading

49. Section 284.12 (b)(2) requires that pipelines establish provisions for the netting and trading of imbalances and other imbalance management services. Orders No. 587-G and 587-L³¹ adopt the NAESB standards related to these regulations. MoBay requests exemption from compliance with Order Nos. 587-G and 587-L regarding netting and trading of imbalances because it is not proposing to charge imbalance penalties. In Order

²⁹ See, e.g., *Liberty*, 113 FERC ¶ 61,247 (2005) and *Clear Creek Gas Storage Company*, 96 FERC ¶ 61,071 (2001).

³⁰ 96 FERC ¶ 61,164 (2001).

³¹ *Standards For Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-G, 63 Fed. Reg. 20,072 (Apr. 23, 1998), FERC Stats. & Regs. [Regs. Preambles 1996-2000] ¶ 31,062 (1998), Order No. 587-L, 65 Fed. Reg. 41,873 (July 7, 2000), FERC Stats. & Regs. [Regs. Preambles 1996-2000] ¶ 31,100 (2000).

No. 637-A³² the Commission stated that if a pipeline has no authority to assess penalties for imbalances, then there is no need to require that pipeline to offer such imbalance services. Therefore, the regulations requiring imbalance services, including netting and trading of imbalances, are not applicable to MoBay at this time and there is no necessity for an exemption. However, if MoBay seeks to impose imbalance penalties in the future, then it must comply with the Commission's policies and regulations regarding imbalance management services. The Commission notes that MoBay does propose to offer an imbalance trading service as part of its hub services.

5. Off-System Capacity and Waiver of Shipper-Must-Have-Title Rule

50. MoBay requests a generic waiver of the "shipper must have title" policy for any off-system capacity it may need to acquire in order to provide storage services and to enable it to use that capacity to transport natural gas owned by other parties without MoBay having to take title to the gas. Relying on *Texas Eastern Transmission Corporation (TETCO)*,³³ MoBay asks the Commission to accept its off-system capacity statement proposed in section 26 of the General Terms and Conditions (GT&C) of its *pro forma* tariff. MoBay states that it will only provide transportation and storage services for others using off-system capacity acquired from third parties under its open-access tariff and subject to the rates approved by the Commission.

51. In *TETCO*,³⁴ the Commission found that pipelines no longer need to obtain prior approval to acquire capacity on another pipeline, provided the acquiring pipeline filed tariff language specifying that it would only transport for others on off-system capacity pursuant to its existing tariff and rates. MoBay's proposed tariff language is consistent with the requirements set forth in *TETCO* and the authorizations granted other storage companies authorized to charge market-based rates.³⁵ The Commission accepts MoBay's tariff language and grants a waiver of the shipper-must-have-title policy, with the following clarification. MoBay may only use capacity obtained on other pipelines in order to render the services set forth in its tariff. That is, MoBay may not use capacity on other pipelines to transport gas which will not physically or contractually enter its storage facility unless and until it has received Commission authorization to provide such

³² *Id.*

³³ 95 FERC ¶ 61,056 (2001).

³⁴ 93 FERC ¶ 61,273 (2000), *reh'g denied*, 94 FERC ¶ 61,139 (2001).

³⁵ *See, e.g., SG Resources Mississippi, L.L.C.*, 101 FERC ¶ 61,029 (2002).

transportation services. Furthermore, MoBay's authorized use of the *TETCO* waiver to provide storage service shall be limited to the geographic area covered by MoBay's market study.

52. To ensure that MoBay uses acquired off-system capacity in a manner consistent with its market-based rate authority and tariff provisions, and in order to satisfy our responsibility to monitor and prevent the exercise of market power, MoBay is directed to make, once it becomes operational, an annual informational filing on its provision of service using off-system capacity as detailed below.

53. Within 30 days after its first full year of operation, and every year thereafter, MoBay is directed to file, for each acquisition of off-system capacity:

- a. the name of the off-system provider;
- b. the type, level, term, and rate of service contracted for by MoBay;
- c. a description of the geographic location – boundaries, receipt and delivery points, and segments comprising the capacity;
- d. the operational purpose(s) for which the capacity is utilized;
- e. a description of how the capacity is associated with specific transactions involving customers of MoBay; and
- f. an identification of the total volumes, by MoBay's rate schedule and customer, that MoBay has nominated on each off-system provider during the reporting period.

6. Negotiated Right of First Refusal

54. MoBay requests that the Commission authorize it to negotiate a right of first refusal (ROFR) with its customers on a not unduly discriminatory basis. Because the regulatory ROFR applies only to customers paying the maximum tariff rate, and because MoBay proposes to charge market-based rates for which there will be no maximum rate, MoBay maintains that the regulatory ROFR does not apply. Furthermore, MoBay maintains that as a new market entrant it has no market power and no captive customers; consequently, none of the Commission's policy reasons for a regulatory ROFR apply. The Commission has previously approved tariff language that provides for the negotiation of ROFR on a not unduly discriminatory basis where a regulatory ROFR would not otherwise apply.³⁶ Since the Commission is authorizing MoBay to charge market-based rates in this order, the regulatory ROFR is not applicable. The Commission

³⁶ See, e.g., *Egan Hub Storage, LLC*, 116 FERC ¶ 61,174 (2006).

accepts MoBay's request to provide for negotiation of a contractual ROFR with customers on a not unduly discriminatory basis.

7. Standards of Conduct

55. In Order No. 2004-A³⁷ the Commission granted a generic exemption from the requirement to file specific provisions for compliance with the Standards of Conduct to independent storage providers which are authorized to charge market-based rates and which are not interconnected with an affiliated transmission provider. MoBay states that pursuant to that exemption it has not included such provisions in its tariff. The Commission accepts MoBay's explanation for this omission.

8. Establishment of a Lien

56. MoBay's form of service agreements for all rate schedules, except Rate Schedule SS, contain a provision whereby the shipper acknowledges that MoBay may establish a lien or interest on all gas received from the shipper in order to satisfy charges for storage or transportation. The lien is to be in conformance with the New York Uniform Commercial Code. In *Starks Gas Storage, LLC*,³⁸ the Commission rejected a proposal that would have permitted Starks to offset amounts owed by the shippers against the positive balance in the shipper's gas inventory account held by Starks. The Commission ruled that such actions amounted to a confiscation of gas and rejected the proposal, but permitted Starks to file tariff language to assert a lien or interest that is consistent with state law or the Uniform Commercial Code. MoBay's provisions state that the establishment of a lien or interest in gas received from a shipper will be consistent with the New York Uniform Commercial Code, and thus satisfy the requirement established in *Starks*. The Commission finds that MoBay's proposal meets the requirements established in *Starks*.

³⁷ *Standards of Conduct for Transmission Providers (Standards of Conduct)*, 69 Fed Reg. 23,562 (Apr. 29, 2004), Order No. 2004-A, FERC Stats. & Regs. [Regulations Preambles] ¶ 31,161 (2004), *vacated and remanded sub nom. National Fuel Gas Supply Corp. v. FERC*, No. 04-1183, *et al.* (D.C. Cir. Nov. 17, 2006). While the court vacated and remanded Order No. 2004 as it applies to natural gas pipelines, the mandate has not yet issued so MoBay's request is still relevant to the Commission's consideration of its application at this time.

³⁸ 111 FERC ¶ 61,105 (2005).

F. Engineering Analysis

57. The Commission reviews the design capacity of proposed natural gas facilities to ensure that the design is appropriate and efficient. Commission staff completed an engineering analysis of the facilities proposed for natural gas storage. Based on Commission staff's review, the Commission concludes that the geological and engineering parameters for the underground natural gas storage facilities proposed by MoBay are well defined. Based on this analysis, and provided MoBay complies with the engineering requirements of Appendix A of this order, the Commission finds that the facilities are appropriately designed to withdraw up to 1 Bcf of gas per day from storage and to inject up to 1 Bcf of gas per day into storage and to provide a gas storage inventory of 50 Bcf at 14.73 psia and 60°F.

G. Environmental Analysis

58. On August 1, 2005, Commission staff issued a *Notice of Intent (NOI) to Prepare an EA for the Proposed MoBay Storage Project and Request for Comments on Environmental Issues*. Written comments were received from two agencies and three pipeline companies on issues related to the proposed pipeline route and offshore injection/withdrawal well area. No other comments raising environmental issues in response to the NOI were filed by federal, state, or local agencies.

59. The EA addresses onshore and offshore geology, soils, wildlife, fisheries, federally listed endangered and threatened species, cultural resources, noise, pipeline safety, alternatives, onshore water resources, wetlands, vegetation, land use, and air quality. Based on the analysis in this EA, and on supplements filed on July 28, August 1, August 4, September 1, September 6, September 15, October 23, and October 25, 2006, the Commission concludes that if MoBay constructs the facilities in accordance with its application, as supplemented, and the staff's mitigation measures listed below, approval of this project would not constitute a major federal action significantly affecting the quality of the human environment.

60. Any state or local 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.³⁹ MoBay shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies MoBay. MoBay shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

61. As required by section 7 of the Endangered Species Act, the Commission staff evaluated the potential impacts on federally listed threatened and endangered species, and determined that six federally listed species under the jurisdiction of National Marine Fisheries Service (NMFS) may occur in the vicinity of the project. The species include five sea turtles (loggerhead sea turtle, Kemp's ridley sea turtle, green sea turtle, leatherback sea turtle, and hawksbill sea turtle) and the Gulf sturgeon. Based on staff's analysis, it was determined that with implementation of the mitigation measures recommended in the EA for this project, the MoBay project may affect, but is not likely to adversely affect these species. Staff has requested a written concurrence from NMFS in regard to the determination of effect for these species and will complete section 7 consultation with the NMFS before construction is authorized to commence (*see* Environmental Condition Number 19 of Appendix B).

62. The NMFS also identified Essential Fish Habitat (EFH) for 24 species and life stages including shrimp, red drum, reef fish, Gulf stone crab, coastal migratory pelagic species, and highly migratory species in the vicinity of the MoBay project. The Commission staff prepared an EFH Assessment as necessary for compliance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), which is included in the EA as Appendix C. The EFH Assessment evaluates the proposed action's potential effects on these 24 federally managed species and their EFH. Staff determined that the proposed MoBay project would not affect the overall sustainability of EFH resources, would not have a substantial adverse effect on managed fisheries in the project area, and would comply with the intent and degree of protection afforded to these species and their designated EFH under the MSFCMA. Staff's conclusion is based, in part, on conservation measures that would be implemented to minimize impacts on EFH. Staff has requested NMFS comments and/or conservation recommendations. Construction of the proposed project will not be authorized to commence until the consultation with NMFS has been completed.

³⁹ *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 *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC 61,094 (1992). □

H. Blanket Certificates

63. In Docket No. CP06-400-000, MoBay requests issuance of a blanket certificate under Subpart G of Part 284 in order to provide open access firm and interruptible storage and hub services. Under a Part 284 blanket certificate, MoBay will not require individual authorizations to provide storage services to particular customers. MoBay filed a *pro forma* Part 284 tariff to provide open access storage and hub services with pre-granted abandonment of such services. Since a Part 284 blanket certificate is required for MoBay to offer these services, we will grant MoBay's request for a Part 284 blanket certificate, subject to the conditions imposed herein.

64. In Docket No. CP06-399-000, MoBay requests issuance of a blanket certificate under Subpart F of Part 157 to automatically, or after prior notice, perform certain eligible activities related to the construction, acquisition, replacement and operation of pipeline facilities. The Commission grants MoBay's request for a Part 157, Subpart F, blanket certificate, subject to the conditions imposed herein.

IV. Conclusion

65. For the reasons discussed above, the Commission finds that the MoBay Gas Storage Project is required by the public convenience and necessity and that a certificate authorizing the construction and operation of the facilities described in this order and in the application, as supplemented, should be issued, subject to the conditions discussed herein and listed in Appendices A and B.

66. The Commission, on its own motion, received and made part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) In Docket No. CP06-398-000, a certificate of public convenience and necessity is issued to MoBay authorizing it to own and operate the storage and associated pipeline facilities, as described more fully in this order and in the application.

(B) In Docket No. CP06-400-000, a blanket transportation certificate is issued to MoBay under Subpart G of Part 284.

(C) In Docket No. CP06-399-000, a blanket construction certificate is issued to MoBay under Subpart F of Part 157.

(D) The certificate issued in Ordering Paragraph (A) is conditioned upon MoBay'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.

(E) Pursuant to section 157.20(b) of the Commission's regulations, the facilities authorized in ordering paragraph (A) must be constructed and placed in service by October 1, 2007.

(F) MoBay's request to charge market-based storage rates for firm and interruptible storage service and interruptible hub and wheeling services is approved, as discussed in this order. MoBay's market power and market-based storage rates authority shall be subject to re-examination in the event that:

1. MoBay expands its storage capacity beyond the amount authorized in this proceeding;
2. MoBay acquires additional transportation facilities or additional storage capacity;
3. An affiliate provides storage or transportation services in the same market area or acquires an interest in another storage field that can link MoBay's facilities to the market area; or
4. MoBay or an affiliate acquires an interest in or is acquired by an interstate pipeline.

(G) MoBay is granted a waiver of section 157.14 of the Commission's regulations requiring submission of Exhibits K (cost of facilities), L (financing), N (revenue-expenses-income), and O (depreciation and depletion); and the accounting and reporting requirements under Part 201 and 260.2 of the Commission's regulations, which presume cost-based rates are being charged and collected, except for the information necessary for the Commission's assessment of annual charges. This waiver is subject to MoBay maintaining accounts and financial information of its storage facility consistent with generally accepted accounting principles.

(H) MoBay shall file, not less than 30 days nor more than 60 days, prior to its proposed effective date, actual tariff sheets consistent with its *pro forma* tariff in accordance with the NGA and Part 154 of the Commission's regulations.

(I) Within 30 days after its first full year of operation, and every year thereafter, MoBay is directed to file an annual informational filing on its provision of service using off-system capacity, as detailed in this order.

(J) The certificate issued in Ordering Paragraph (A) is conditioned upon MoBay's compliance with the engineering and environmental conditions set forth in Appendices A and B of this order.

(K) MoBay shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies MoBay. MoBay shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX A

Engineering Conditions for the MoBay Gas Storage Project

1. Maximum inventory of natural gas stored in the MoBay Gas Storage Project shall not exceed the certificated levels of 83.04 Bcf comprised of 69.3 Bcf attributable to the North Dauphin Island Field, 10.12 Bcf to the Northwest Dauphin Island Field, and 3.62 Bcf capacity at the Northeast Petite Bois Field, at 14.73 psia and 60 degrees Fahrenheit. The maximum shut-in bottom hole storage pressure shall not exceed 900 psig for the North Dauphin Island Field, 860 psig for the Northwest Dauphin Island Field, and 850 psig for the Northeast Petite Bois Field without prior authorization of the Commission.
2. The North Dauphin Island, Northwest Dauphin Island, and Northeast Petite Bois Fields shall be operated in such manner as to prevent/minimize gas loss or migration.
3. MoBay shall submit semiannual reports (to coincide with the termination of the injection and withdrawal cycles) containing the following information (volumes shall be stated at 14.73 psia and 60 degrees Fahrenheit and pressures shall be stated in psia):
 - (1) the daily volumes of natural gas injected into and withdrawn from the storage reservoir;
 - (2) the volume of natural gas in the reservoirs at the end of the reporting period;
 - (3) the maximum daily injection and withdrawal rates experienced during the reporting period, average working pressure on such maximum days, taken at a central measuring point where the total volume injected or withdrawn is measured;
 - (4) results of any tracer program by which the leakage of injected gas may be determined, and if leakage of gas exists, the report should show the estimated total volume of gas leakage, the volume of recycled gas, and the estimated remaining inventory of gas in the reservoir at the end of the reporting period;
 - (5) any surveys of pressures in gas wells, and the results of back-pressure tests and inventory verification studies conducted during the reporting period;
 - (6) the latest revised structure contour maps showing location of the wells and the location of the gas-water contact if one exists; however, these maps need not be filed if there is no material change from the maps previously filed;
 - (7) for the reporting period, a summary that includes the below ground surface depth and casing settings of wells drilled, worked over, or recompleted, and additionally, a summary of reservoir characteristics from any logs or cores taken in each well;
 - (8) a discussion of current operating problems and conclusions; and
 - (9) such other data or reports which may aid the Commission in the evaluation of the storage project.

MoBay shall continue to file these reports semiannually until the storage inventory volume and pressure have reached or closely approximate the maximum permitted in this order. Thereafter, the reports shall continue on a semiannual basis for a period of one year.

APPENDIX B

Environmental Conditions for the MoBay Gas Storage Project

1. MoBay shall follow the construction procedures and mitigation measures described in its application, as supplemented, and as identified in the environmental assessment (EA), unless modified by the order. MoBay 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 delegation 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.
3. **Prior to any construction**, MoBay shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector'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. The authorized facility location shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available**, and before the start of construction, MoBay shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the order. All requests for modifications of environmental conditions of the order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

5. MoBay's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the order must be consistent with these authorized facilities and locations. MoBay's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

6. MoBay shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
-
7. **At least 60 days before construction begins**, MoBay shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how MoBay will implement the mitigation measures required by the order. MoBay must file revisions to the plan as schedules change. The plan shall identify:

- a. how MoBay 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;
 - b. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - d. the training and instructions MoBay will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - e. the company personnel (if known) and specific portion of MoBay's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) MoBay will follow if noncompliance occurs; and
 - g. 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 mitigation training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
8. MoBay shall employ at least one environmental inspector (EI). The EI shall be:
- a. responsible for monitoring and ensuring compliance with all environmental mitigation measures required by the order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the order, and any other authorizing document;
 - d. responsible for documenting compliance with the environmental conditions of the order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - e. responsible for maintaining status reports.

9. MoBay shall file updated status reports prepared by the EI with the Secretary on a biweekly basis **until all construction-related activities, including restoration and initial permanent seeding, 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. the current 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;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector 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);
 - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of the order, and the measures taken to satisfy such concerns; and
 - f. copies of any correspondence received by MoBay from other federal, state, or local permitting agencies concerning instances of noncompliance, and MoBay's response.

10. MoBay must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way is proceeding satisfactorily.

11. **Within 30 days of placing the certificated facilities in service,** MoBay 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 MoBay has complied with or will comply with, and identifying any areas along the right-of-way where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

12. MoBay shall file, **prior to construction**, revised alignment sheets showing a maximum 50-foot-wide permanent right-of-way for the length of proposed onshore pipelines where only a single pipeline would be built with the Secretary for review and obtain written approval by the Director of OEP.
13. MoBay shall file, **prior to construction**, provide site-specific construction plans for all extra work areas with less than a 50-foot setback from wetland boundaries, and a site-specific explanation of the conditions that would not permit a 50-foot setback with the Secretary for review and obtain written approval by the Director of OEP.
14. MoBay shall file, **prior to construction**, provide dimensions and a site-specific explanation of the conditions that would not permit use of a 100-foot-wide crossing width of Jonas Bayou at milepost Transco Lateral 1.28 with the Secretary for review and obtain written approval by the Director of OEP.
15. MoBay shall file, **prior to construction**, a supplemented Horizontal Directional Drill (HDD) Contingency Plan with the Secretary to include these additional measures:
 - a. site-specific construction figures depicting the location of onshore mud pits, pipe assembly areas, and all areas that would be disturbed or cleared for construction;
 - b. a description of standard onshore clean-up practices such as the use of straw bales, silt fencing, or turbidity curtains to contain the mud, and the use of mechanical or manual means to remove the drilling mud;
 - c. an estimate of how much drilling fluid would be released on the seabed during each phase (e.g., pilot hole punch out, reaming, swab pass, and pull back) of the main pipeline landfall HDD operation; and
 - d. a discussion of the measures MoBay would implement to contain and/or recover the predicted releases of drilling fluid on the seabed and an estimate of how effective these measures would be (i.e., what percentage of the released fluid would be contained and recovered).
16. MoBay shall file, **prior to construction**, plans for use of right-of-way width through wetlands greater than 75 feet along with a written explanation of the current site conditions that require use of right-of-way width through wetlands greater than 75 feet with the Secretary for review and obtain written approval by the Director of OEP.

17. MoBay shall file, **prior to hydrostatic testing**, a final schedule for hydrostatic test water uptake with the Secretary for review and obtain written approval by the Director of OEP. In addition, MoBay shall avoid the placement of the water withdrawal structure within one foot of the seafloor surface.
18. MoBay shall consult with the National Oceanic and Atmospheric Administration (NOAA) Fisheries to determine the need for a plan to minimize potential impacts on sea turtles and marine mammals from driving piles during construction of the platforms. As necessary, the plan shall include measures to reduce sound transmission into the water (e.g., air bubble curtains, limitations on the type of hammer used, reductions in force applied to the pile) or a monitoring protocol to ensure listed species are not present in the zone of potential affect. The plan, if required by NOAA Fisheries, shall be filed with the Secretary for review and for written approval by the Director of OEP **prior to any offshore construction activities**.
19. MoBay shall not begin construction activities until:
 - a. FERC staff receives NOAA Fisheries comments on the proposed project;
 - b. FERC staff completes formal consultation with NOAA Fisheries, if required; and
 - c. MoBay has received written notification from the Director of OEP that construction or use of mitigation may begin.
20. MoBay shall file, **prior to construction**, with the Secretary for review and obtain written approval by the Director of the OEP a plan developed in consultation with Bayou La Batre for construction near Rolston Park to preserve the infrastructure of the park and to safeguard users of the park.
21. MoBay shall develop and implement an environmental complaint resolution procedure. The procedure would provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems or concerns during construction of the project and ensuring restoration of the right-of-way. **Prior to construction**, MoBay shall mail the complaint procedure to each landowner whose property would be crossed by the project. In its letter to affected landowners, MoBay shall:
 - a. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response; instruct the landowners that, if they are not satisfied with the response, they should call MoBay's Hotline; the letter shall indicate how soon to expect a response; and

- b. instruct the landowners that, if they are still not satisfied with the response from MoBay's Hotline, they should contact the Commission's Enforcement Hotline at (1-888-889-8030).

In addition, MoBay shall include in its biweekly status report a table that contains the following information for each problem or concern:

- c. the date of the call;
 - d. the identification number from the certificated alignment sheets of the affected property;
 - e. the description of the problem/concern; and
 - f. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
22. MoBay shall not begin construction of its MoBay Gas Storage Project until it files with the Secretary a copy of the determination of consistency with the Coastal Zone Management Program issued by the State of Alabama.
 23. For areas where MoBay's project's onshore pipelines would be co-located with one or more proposed or certificated pipeline(s) adjacent to an existing right-of-way, the first pipeline to be constructed shall be placed closest to the existing right-of-way. The MoBay onshore pipelines should be constructed with a 25-foot offset from the nearest pipeline. For the MoBay Gas Storage Project, these areas include mile posts 0.00 to 0.89 and 1.57 to 4.86 for Freeport-McMoRan's Coden Onshore Pipeline and mileposts 0.0 to 1.57 for Compass Pass Pipeline LLC's Compass Pass Pipeline.

MoBay shall file, **prior to construction**, alignment sheets and environmental information to support the new alignment with the Secretary for review and obtain written approval by the Director of OEP.

24. MoBay shall file, **prior to construction of the new offshore facilities**, completed cultural resource reports for those facilities with the Secretary. MoBay shall defer construction until the Alabama State Historic Preservation Office (SHPO) reviews and provides comments on all cultural resource survey reports, MoBay files with the Secretary the final survey reports along with the Alabama SHPO's comments, and the Director of the OEP notifies MoBay in writing that it may proceed.

All material filed with the Commission containing location, character, and ownership information about cultural resources, must have the cover and any relevant pages therein clearly labeled in bold lettering: **"CONTAINS PRIVILEGED INFORMATION--DO NOT RELEASE."**

25. MoBay shall file, **prior to construction of offshore pipeline facilities**, an avoidance protocol for the potential shipwreck that may occur in the offshore project area with the Secretary and the Alabama SHPO. MoBay shall defer construction until the Alabama SHPO reviews and comments on the avoidance protocol, MoBay files with the Secretary the final avoidance protocol along with the Alabama SHPO's comments, and the Director of the OEP notifies MoBay in writing that it may proceed.

26. MoBay shall conduct a noise survey and file the survey results with the Secretary **no later than 60 days** after placing the MoBay Compressor Station in service. If the noise attributable to the operation of the compressor station at full load exceeds an L_{dn} of 55 dBA at any nearby noise sensitive area, MoBay shall install additional noise controls to meet the level within 1 year of the in-service date. MoBay shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.