

131 FERC ¶ 61,056
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 20, 2010

In Reply Refer To:
Monroe Gas Storage Company, LLC
Docket No. RP09-447-004

Monroe Gas Storage Company, LLC
666 Fifth Avenue
New York, NY 10103

Attention: Tania S. Perez, Counsel for Monroe Gas Storage Company, LLC

Reference: Compliance Filing

Dear Ms. Perez:

1. On March 23, 2010, Monroe Gas Storage Company, LLC (Monroe) filed revised tariff sheets¹ to comply with the Commission's February 18, 2010 Order, which, among other things, accepted revisions to Monroe's form of service agreements (FSAs), subject to conditions.² The tariff sheets generally comply with the February 18, 2010 Order and are accepted effective on April 21, 2010 as requested. Monroe also proposes revisions to its FSAs in addition to its compliance obligations, in order to reflect current contracting practices and to provide consistency throughout its FSAs.³ To accommodate these additional changes, Monroe requests a waiver of section 154.203(b) of the Commission's

¹ See Appendix

² *Monroe Gas Storage Company, LLC*, 130 FERC ¶ 61,113 (2010) (February 18, 2010 Order).

³ Specifically, Monroe proposes to revise Exhibit A to its Hub Agreement to better reflect Monroe's contracting practices with respect to hub services. Monroe is also proposing to add certain provisions to its Information Agreement to provide consistency throughout the FSAs.

regulations.⁴ For good cause shown, waiver of section 154.203(b) is granted. The Commission accepts these additional revised tariff sheets, effective on April 21, 2010 as requested,⁵ subject to conditions.⁶

2. Public notice of the filing was issued on April 1, 2010, with comments due as provided in section 154.210 of the Commission's regulations. 18 C.F.R. § 154.210 (2009). No protests or adverse comments were filed.

3. The February 18, 2010 Order conditioned acceptance of Monroe's FSAs⁷ on Monroe revising several tariff provisions,⁸ and conditioned acceptance of several of Monroe's non-conforming agreements on Monroe revising either the non-conforming agreement provisions or its tariff.⁹ The present compliance filing provides revisions for all of the FSA sections discussed in the February 18, 2010 Order, and tariff revisions to accommodate some of the non-conforming agreement provisions discussed in the February 18, 2010 Order. The information below details where further revisions are necessary.

⁴ Section 154.203(b) states in part: "Filings made to comply with Commission orders must include only those changes required to comply with the order. . . . A compliance filing that includes other changes or that does not comply with the applicable order in every respect may be rejected."

⁵ Monroe's requested effective date is prior to the 30-day notice requirement under section 154.207 of the Commission's regulations. For good cause shown, waiver of section 154.207 is granted.

⁶ See Appendix.

⁷ Monroe's tariff provides for the following six FSAs: Firm Agreement, applicable to Firm Storage Service; Interruptible Agreement, applicable to Interruptible Storage Service; Hub Agreement, applicable to Interruptible Parking, Interruptible Loan, Interruptible Wheeling, Interruptible Imbalance Trading, and Interruptible Balancing Services; Enhanced Hub Agreement, applicable to Enhanced Interruptible Parking and Enhanced Interruptible Loan Services; Capacity Release Umbrella Agreement (Umbrella Agreement) under Firm Storage Service; and Electronic Information Management System Agreement (Information Agreement), which is not applicable to, and does not fall under, a specific Rate Schedule.

⁸ February 18, 2010 Order at P 20-25.

⁹ E.g., *id.* P 32, 39, 58, 63, 66, 77, 81, 83, 99, 101.

4. First, in the February 18, 2010 Order, the Commission rejected Monroe's proposed Waiver of Jury Trial section in each FSA, which stated, in part, that "each party hereto hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this agreement or the transactions contemplated hereby."¹⁰ The Commission stated that it will not allow a jury trial waiver to be a condition of obtaining the basic service that Monroe is obligated by its certificate to provide.¹¹

5. To comply with the Commission's directives, Monroe proposes to revise all its FSAs to provide an Optional Waiver of Jury Trial section that gives customers the option to select the waiver of jury trial provision. Monroe has also revised its Optional Waiver of Jury Trial section to state that each party certifies that no agent "has represented, *to the certifying party's knowledge*, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver."¹² Monroe states that, because the certifying party cannot be expected to know every representation the other party may have made outside of the certifying party's presence, this qualification simply reflects the reality of such a representation. The Commission accepts Monroe's proposed Optional Waiver of Jury Trial section, as this provision no longer requires potential shippers to give up their jury trial rights in order to obtain any services under Monroe's tariff.

6. Second, Monroe also proposes various revisions to its Hub Agreement, including Exhibit A to that agreement, to better reflect its contracting practices with respect to hub services. Upon review, the Commission finds that these revisions are just and reasonable, with one exception. Section 4, Term, of the Hub Agreement, provides that the agreement will become effective on a date to be filled in and "shall remain in effect on a month to month basis unless terminated by either party upon at least thirty days prior written notice to the other party." However, proposed Exhibit A not only provides a blank for the date of service commencement, but it also provides a blank for a specific date of service termination, with no reference to service continuing on a month to month basis. This aspect of the revised Exhibit A appears to be inconsistent with section 4 of the Hub Agreement. Accordingly, we accept Monroe's proposed changes to the Hub Agreement

¹⁰ February 18, 2010 Order at P 24.

¹¹ *Id.*, citing *New England Power Pool*, 87 FERC ¶ 61,353, at 62,357 (1999) (explaining that the Commission has prohibited waiver of jury trial provisions that are so broad as to cover "any dispute or claim arising under the tariff" but not waivers that are limited in scope, such as a condition of obtaining a corporate guarantee, because "customers ... by exercising [] other options can obtain a jury trial" without losing their right to service from that provider).

¹² Monroe March 23, 2010 Compliance Filing at 5 (proposed insertion in italics).

and its Exhibit A, subject to Monroe filing, within 15 days of the date of this order, to revise section 4 of the Hub Agreement and/or Exhibit A to that agreement to remove any inconsistency between the service termination provisions of the two documents.

7. Lastly, Monroe proposes to add provisions to its Information Agreement consistent with provisions which are already in its other FSAs. Specifically, Monroe revises its Information Agreement to include a section 7, Miscellaneous, which corresponds to the Miscellaneous section in Monroe's other FSAs. The Miscellaneous section addresses all remaining legal issues that were not previously discussed in the Information Agreement: paragraph (a) declares the completeness of the agreement, cancellation of prior agreements, and limits future modifications to the agreement to those agreed upon by both parties in writing; paragraph (b) requires parties, in the event of court nullification of any provision, to continue with the other provisions of the agreement and to seek "to agree upon an equitable adjustment of the provisions of this Agreement with a view to effecting its purpose;" paragraph (c) declares that the identity of the drafting party should not in itself create any presumptions in favor of or against any party; paragraph (d) declares that the agreement creates no rights or obligations for any third parties; and paragraph (e) provides that Monroe's FSAs may be executed in counterparts, that all counterparts form part of the FSAs and that a signature delivered via facsimile or electronically is deemed to be an original signature. The Commission accepts Monroe's proposed Miscellaneous section as providing consistency across all Monroe's FSAs.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

Appendix

Monroe Gas Storage Company, LLC
FERC Gas Tariff, Original Volume No. 1
Tariff Sheets to be Effective April 21, 2010

Title Page	First Revised Sheet No. 320
First Revised Sheet No. 125	First Revised Sheet No. 321
First Revised Sheet No. 170	Original Sheet No. 321.1
First Revised Sheet No. 300	First Revised Sheet No. 325
First Revised Sheet No. 301	First Revised Sheet No. 326
First Revised Sheet No. 302	First Revised Sheet No. 327
First Revised Sheet No. 303	First Revised Sheet No. 328
First Revised Sheet No. 304	First Revised Sheet No. 329
Original Sheet No. 304.1	First Revised Sheet No. 330
First Revised Sheet No. 305	Original Sheet No. 330.1
First Revised Sheet No. 306	First Revised Sheet No. 332
First Revised Sheet No. 307	First Revised Sheet No. 333
Original Sheet No. 307.1	First Revised Sheet No. 335
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First Revised Sheet No. 310	First Revised Sheet No. 338
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First Revised Sheet No. 312	First Revised Sheet No. 340
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First Revised Sheet No. 317	First Revised Sheet No. 346
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Monroe Gas Storage Company, LLC
FERC Gas Tariff, Original Volume No. 1
Tariff Sheet to be Effective April 21, 2010, Subject to Conditions

First Revised Sheet No. 331