

131 FERC ¶ 61,258
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Monroe Gas Storage Company, LLC

Docket No. RP09-447-006

ORDER ON COMPLIANCE FILING

(Issued June 18, 2010)

1. On May 19, 2010, Monroe Gas Storage Company, LLC (Monroe) filed four revised non-conforming agreements to comply with the Commission's February 18, 2010 order.¹ As discussed below, the Commission accepts the agreements as in compliance with its February 18, Order, subject to the conditions discussed below.

Background

2. On March 10, 2009, Monroe filed, among other things, proposed tariff revisions to its Form of Service Agreements (FSAs) as well as six non-conforming service agreements that materially deviate from the revised FSAs.²

¹ *Monroe Gas Storage Company, LLC*, 130 FERC ¶ 61,113 (2010) (February 18 Order).

² The six non-conforming agreements are:

- Firm and Enhanced Hub Storage Service Agreements between Monroe and Citigroup Energy Inc. (Citigroup Firm and Enhanced Agreements).
- Firm Storage Service Agreement between Monroe and PPL EnergyPlus, LLC (PPL Firm Agreement).
- Firm Storage Service Agreement between Monroe and Sequent Energy Management (Sequent Firm Agreement).
- Firm and Interruptible Storage Service Agreements between Monroe and Morgan Stanley Capital Group Inc. (Morgan Stanley Firm and Interruptible Agreements).

3. In the February 18 Order, the Commission accepted Monroe's proposed revisions to its FSAs and its non-conforming agreements, subject to the condition that Monroe make various revisions to its FSAs within 30 days and make revisions to its non-conforming agreements within 90 days. In April and June, the Commission accepted Monroe's filings to comply with the conditions concerning its FSAs.³ This order addresses Monroe's filing to comply with the requirements of the February 18 Order concerning the non-conforming Agreements.

4. At the beginning of its discussion regarding the non-conforming agreements, the Commission held:

All six non-conforming agreements, as well as the FSAs on which they are based, contain a *Memphis* clause⁴ authorizing Monroe, with the Commission's approval, to make changes to its tariff that control and affect the service agreement.... To the extent that this order rejects or conditionally accepts any language in the FSAs discussed above that also appears in the non-conforming agreements discussed below, Monroe is directed to make corresponding revisions to its non-conforming agreements as well.⁵

5. Most notably, the Commission directed the following changes to the non-conforming agreements (or to the FSAs that compelled corresponding revisions to its non-conforming agreements):

- a. At P 23, correcting erroneous cross-references in the Warehousemen's Lien sections of all agreements.
- b. At P 25, clarifying Exhibit A of its agreements to ensure that the imbalance trading charge does not extend to trades submitted by shippers or third-parties acting to facilitate imbalance trading.

³ *Monroe Gas Storage Company, LLC*, 131 FERC ¶ 61,056 (2010) (April 20 Order). *Monroe Gas Storage Company, LLC*, 131 FERC ¶ 61,206 (2010) (June 1 Order).

⁴ See *United Gas Pipe Line Co. v. Memphis Light, Gas and Water Division*, 358 U.S. 103 (1958). A *Memphis* clause allows a pipeline to reserve the right to make NGA section 4 filings to propose changes in the rates and terms and conditions of service, which the Commission evaluates under the just and reasonable standard of review.

⁵ February 18 Order at P 31.

- c. At P 32, including a reference to Exhibit A in section 1 of its non-conforming Firm Agreements.
- d. At P 63, requiring amendments to its tariff and the FSA for its Firm Agreement to provide storage ratchets on generally applicable terms.⁶
- e. At P 77, revising its *pro forma* agreement or section 7 of the PPL Firm Agreement to provide the same Limitation of Liability options to all customers.
- f. At P 90, correcting a reference to “Exhibit B” instead of “Exhibit A” in section 1(b) of its Morgan Stanley Interruptible Agreement.
- g. At P 92, replacing the word “in” with “is” in section 2 of its Morgan Stanley Interruptible Agreement.

6. With regard to the storage ratchet issue, the Commission found that Exhibit B to several of the non-conforming Firm Agreements included ratchet tables indicating the schedule by which the customers may inject and withdraw storage gas. The Commission stated it allows storage providers to offer customers the option of receiving either ratcheted or un-ratcheted storage service, but requires specific and generally applicable ratchet percentages to be stated in the tariff when implemented. However, neither Monroe’s tariff nor its FSAs included any generally applicable terms for ratcheting. Therefore the Commission accepted the non-conforming ratchet provisions on the condition that Monroe revise its tariff and the FSA of its Firm Agreement to provide storage ratchets on a generally applicable basis.

7. In its March 23, 2010 filing to comply with the February 18 Order’s directives concerning its FSAs, Monroe proposed to modify Exhibit A to its Firm Agreement FSAs to include specific ratchet percentages that would be generally applicable to all shippers. In the April 20 Order, the Commission accepted Monroe’s proposed ratchet provisions for insertion into Exhibit A of Monroe’s *pro forma* Firm Agreement.

May 19 Compliance Filing

8. Monroe’s May 19, 2010 filing proposes to comply with the February 18 Order’s directives regarding Monroe’s non-conforming agreements. Although the Commission’s

⁶ February 18 Order at P 63 (citing *Windy Hill Gas Storage, LLC*, 119 FERC ¶ 61,291, at P 43-44 (2007); *Golden Triangle Storage Inc.*, 121 FERC ¶ 61,313, at P 54 (2007); and *Orbit Gas Storage, Inc.*, 126 FERC ¶ 61,095, at P 60 and 61 (2009)). Ratchets are tariff or contract provisions that specify the rights to inject or withdraw storage gas depending on the inventory in the storage account.

February 18 Order accepted, subject to conditions, all six of Monroe's non-conforming agreements, Monroe states that two of these agreements (the Citigroup Firm and Enhanced Agreements) have since been terminated.

9. To comply with the February 18 Order, Monroe submits amended versions of the PPL Firm Agreement, Morgan Stanley Firm and Interruptible Agreements, and Sequent Firm Agreement. The PPL Firm Agreement is executed, dated May 13, 2010. Morgan Stanley and Sequent, however, have not signed their respective agreements. Monroe explains that on April 30, 2010, it tendered to Morgan Stanley copies of the proposed Morgan Stanley Firm and Interruptible Agreements for execution. Monroe states that Morgan Stanley notified Monroe that it requires additional time to review and consider the proposed agreements.

10. Monroe argues that regardless of whether Sequent and Morgan Stanley execute their agreements, the proposed operative terms will still apply due to Monroe's *Memphis* clause. Monroe argues that the revisions to its Firm Agreement FSA including the new ratchet percentages in Exhibit A to that FSA, which were approved by the Commission in the April 20 Order and further revised by Monroe on May 5, 2010, are binding and override any conflicting terms (e.g., ratchet provisions) contained in the original non-conforming agreements, which are on file with the Commission.

11. Monroe explains that, because it would create asymmetrical risks if Monroe were to leave its offer to enter into agreements open indefinitely, Monroe intends to terminate its offer to enter into the Amended and Restated Agreements in the near future, having afforded all customers ample time to execute the proposed agreements. Monroe further explains that because there are certain optional provisions in the *pro forma* tariff agreements that can only apply if the customer makes an affirmative election through a signed agreement (i.e., waiver of jury trial and limitation of liability), unless and until Morgan Stanley and Sequent execute their respective proposed amended and restated agreements, Morgan Stanley and Sequent have effectively declined these optional provisions.

12. In order to comply with the February 18 Order, Monroe states that it has revised non-conforming agreements as follows:

- a. To comply with P 23, correcting erroneous cross-references in the Warehousemen's Lien sections of all agreements.
- b. To comply with P 25, deleting the imbalance trading charge.
- c. To comply with P 32, including a reference to Exhibit A in section 1 of its non-conforming Firm Agreements.

- d. To comply with P 63, providing specific and generally applicable ratchet percentages consistent with revised Exhibit A to its Firm Agreement FSA.
- e. To comply with P 77, revising its non-conforming Firm Agreements to provide the same Limitation of Liability options to all customers.
- f. To comply with P 90, correcting a reference to “Exhibit B” instead of “Exhibit A” in section 1(b) of its Morgan Stanley Interruptible Agreement.
- g. To comply with P 92, replacing the word “in” with “is” in section 2 of its Morgan Stanley Interruptible Agreement.

In addition, Monroe seeks waiver of section 154.203(b) of the Commission’s regulations in order to make “certain non-substantive miscellaneous revisions as described in Appendix C.”⁷ In Appendix C, Monroe notes, *inter alia*, corrections to titles, section numbers, spelling, and contact information.

Notice of Filing

13. Notice of Monroe’s May 19, 2010 filing was issued on May 25, 2010, providing for comments to be submitted by June 1, 2010. On June 1, 2010, Sequent moved to intervene and filed a protest. Sequent states that it has a contract at issue in this proceeding, which the Commission has required Monroe to modify. Accordingly, for good cause shown, we will grant late intervention to Sequent pursuant to Rule 214(d).⁸ Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. However, pursuant to Rule 214(d), late interveners must accept the record as it was developed prior to the late intervention.

Protest

14. Sequent argues that in revising the Sequent Firm Agreement, Monroe exceeds its compliance mandate, in violation of section 154.203(b) of the Commission’s regulations, which states:

Filings made to comply with Commission orders must include only those changes required to comply with the order. Such compliance filings may not be combined with other rate or tariff change filings. A compliance filing that includes

⁷ Monroe May 19, 2010 Transmittal at 3.

⁸ 18 C.F.R. § 385.214(d) (2009).

other changes or that does not comply with the applicable order in every respect may be rejected.⁹

15. Sequent notes that Monroe seeks waiver of section 154.203(b), but argues that in so doing, “Monroe concedes that its May 19th Filing is an improper compliance filing.”¹⁰ Sequent recommends that the Commission reject the May 19 filing “in its entirety, simply because the Commission never ordered Monroe to revise its previously-negotiated non-conforming FSSAs [Firm Agreements].”¹¹ In particular, Sequent urges the Commission to reject Monroe’s proposed modifications to the storage ratchet terms in Exhibit B of the Sequent Firm Agreement. Sequent argues:

[T]he Commission specifically approved the nonconforming FSSAs, including Sequent’s FSSA, subject only to the condition that Monroe file generally applicable storage ratchet provisions to its Tariff and generic FSA. Nowhere has the Commission directed Monroe to take the wholly-unrelated step of amending its existing nonconforming FSSAs to eliminate their contract-specific storage ratchets.¹²

Sequent further notes that in numerous proceedings, the Commission has invoked section 154.203(b) to reject compliance filings that extended beyond the specific language of the applicable order.

16. Sequent also points to the fact that it has not signed the proposed Amended and Restated FSSA that Monroe is tendering. Sequent argues that Monroe’s submission is “a unilateral and commercially-improper effort to rescind an essential term of Sequent’s original November 21, 2008 contract.”¹³ Sequent argues that its original ratchet terms are as essential to its deal with Monroe as the rate, term of duration, and storage quantity provisions.

17. Finally, Sequent protests Monroe’s assertion that the *Memphis* clause in the original Sequent Firm Agreement permits Monroe to unilaterally amend Sequent’s storage ratchet terms. Sequent argues that this would be akin to Monroe unilaterally

⁹ 18 C.F.R. 154.203(b) (2009).

¹⁰ Sequent Protest at 6.

¹¹ *Id.* at 5.

¹² *Id.* at 6.

¹³ *Id.* at 7.

increasing or decreasing term of duration or storage quantity provisions, and thus Monroe's interpretation of the *Memphis* clause would render the contract meaningless.

Discussion

18. The Commission generally accepts Monroe's May 19 filing as in compliance with the February 18 Order. We find that Monroe's filing complies with the directives in paragraphs 23, 25, 32, 63, 77, 90, and 92 of the February 18 Order as detailed above. In addition, we find good cause to waive section 154.203(b) in order to accept the additional minor administrative revisions proposed by Monroe. In reviewing the redlined version of the revised contracts, we find these revisions amount to typographical changes and updates to Monroe's corporate name and contact information.

19. However, two parts of the filing require further elaboration: the Ratchet provisions in Exhibit A of the Sequent Firm Agreement and the *Memphis* clause of the Morgan Stanley Interruptible Agreement.

Sequent Protest

20. Sequent urges the Commission to reject not only the request for waiver of section 154.203(b), but also the May 19 filing "in its entirety, simply because the Commission never ordered Monroe to revise its previously-negotiated non-conforming FSSAs [Firm Agreements]." ¹⁴ Sequent asserts that Monroe has conceded that its filing goes beyond compliance with the February 18 Order because Monroe requests a waiver of the Commission's regulations. Sequent is in error. First, Monroe sought waiver of section 154.203(b) to attend to certain typographical and administrative changes. As shown above, the Commission has granted the requested waiver in order to permit these minor changes. Such waiver and the changes it permits do not affect the Commission's directives in the February 18 Order concerning the nonconforming contracts at issue in the present case or Monroe's response.

21. Secondly, in regard to Sequent's assertion that the Commission never ordered Monroe to revise its previously-negotiated non-conforming firm agreement, including the ratchet provisions, Sequent is also in error. The February 18 Order accepted Monroe's non-conforming ratchet provisions on the condition that Monroe revise its tariff and the FSA of its Firm Agreement to provide storage ratchets on generally applicable terms. As the February 18 Order clarified:

The Commission allows storage service providers to offer customers the option of receiving either ratcheted or un-

¹⁴ *Id.* at 5.

ratcheted storage service, but requires specific and generally applicable ratchet percentages to be stated in the tariff when implemented. Monroe's FSAs and tariff currently do not provide any generally applicable terms for ratcheting. Without such generally applicable terms, this non-conforming provision would result in a customer receiving a different quality of service than that provided to other customers under the pipeline's tariff.¹⁵

The Commission directed Monroe to "revise its tariff and the FSA of its Firm Agreement to provide storage ratchets on generally applicable terms."¹⁶ Since the February 18 Order already stated that Monroe was "to make corresponding revisions to its non-conforming agreements as well,"¹⁷ then the Sequent Firm Agreement also would require modification to the extent that it failed to follow the generally applicable terms in Monroe's compliance tariff sheets. Any other result would be contrary to the Commission's policy prohibiting the negotiation of storage ratchets. As the Commission explained in the *Golden Triangle* order cited in the February 18 Order, "Allowing shippers to negotiate ratchets of a storage service fundamentally changes the nature of the service, such that two parties contracting for the same service may no longer be receiving service that is equal or even similar in quality."¹⁸

22. In its March 23, 2010 compliance filing, Monroe sought to comply with these conditions by proposing a ratcheting system with specific ratchet percentages that would be generally applicable to all shippers. In the April 20 Order, the Commission accepted Monroe's proposed ratchet provisions for insertion into Exhibit A of Monroe's *pro forma* Firm Agreement. The April 20 Order did not, however, accept any of the six non-conforming agreements. Those agreements remained subject to the conditions of the February 18 Order.

23. Because the ratchet provisions contained in the original Sequent Firm Agreement differ from the generally applicable ratchet provisions in Monroe's current *pro forma* Firm Agreement, Monroe was obligated to revise Sequent's originally negotiated non-conforming ratchet provisions. Accordingly, we reject Sequent's assertion that

¹⁵ February 18 Order at P 63 (citing *Windy Hill Gas Storage, LLC*, 119 FERC ¶ 61,291, at P 43-44 (2007)).

¹⁶ *Id.*

¹⁷ *Id.* P 31.

¹⁸ *Golden Triangle Storage Inc.*, 121 FERC ¶ 61,313 at P 54.

Monroe's proposed revisions to the ratchets in the Sequent Firm Agreement extend beyond Monroe's compliance obligations set forth in the February 18 Order.

24. Sequent also argues that Monroe's *Memphis* clause in the original Sequent Firm Agreement does not permit Monroe to unilaterally amend Sequent's storage ratchet terms. Section 1 of the original Sequent Firm Agreement contains a *Memphis* clause stating the following:

Customer agrees that Operator shall have the unilateral right to file with the appropriate regulatory authority and make changes effective in (a) the terms and conditions of this Service Agreement, pursuant to which service hereunder is rendered or (b) any provision of the General Terms and Conditions applicable to this Service Agreement. Operator agrees that the Customer may protest or contest the aforementioned filings, and the Customer does not waive any rights it may have with respect to such filings.¹⁹

From this excerpt, it is apparent that Monroe may unilaterally file changes to the terms and conditions of the service agreement with the Commission. In the instant filing, Monroe is attempting to comply with the February 18 Order where the Commission directed Monroe to revise its FSAs to provide generally applicable ratchet provisions and also directed Monroe to make corresponding revisions to its non-conforming agreements. Accordingly, Sequent's dispute is not with a unilateral filing by Monroe; rather, it is with a condition imposed by the Commission in the February 18 Order. Sequent did not seek rehearing of this order, and does not provide any compelling reason for the Commission to revisit its conclusions at this time. Moreover, the only issue that may be raised in a compliance proceeding is whether the filing complies with the directives of the Commission's order.²⁰ As set forth above, the Commission finds that Monroe has complied with the dictates of the February 18 Order.

25. Sequent also points to the fact that it has not signed the proposed Amended and Restated Firm Agreement that Monroe is tendering. However, Sequent does not need to sign the amended agreement for it to take effect. By signing the original agreement,

¹⁹ In the April 20 Order, the Commission approved revisions to Monroe's *pro forma* Firm Agreement that also gives Monroe the unilateral right to file and make changes in any provisions of Rate Schedule FSS.

²⁰ *Great Lakes Gas Transmission, L.P.*, 108 FERC ¶ 61,308, at P 11 (2004); *East Tennessee Natural Gas Co.*, 108 FERC ¶ 61,135, at P 4 (2004).

Sequent agreed to such changes as the Commission found necessary in order to render its non-conforming agreement just and reasonable.

26. As determined in the February 18 Order and as described above, the negotiated ratchets that exist in the original Sequent Firm Agreement offer Sequent a different quality of service from other existing customers and, accordingly, are non-conforming and unduly discriminatory provisions. Regardless of whether Monroe's draft Amended and Restated Agreements are executed, Monroe's currently effective *pro forma* service agreements override any non-conforming provisions that substantively and materially deviate from the tariff, as provided in the February 18 Order.

Morgan Stanley Interruptible Agreement

27. We find that the Morgan Stanley Interruptible Agreement is currently inconsistent with Monroe's FSA applicable to Interruptible Storage Service. Specifically, the Morgan Stanley Interruptible Agreement contains a *Memphis* clause in section 1(d) of the agreement, but the tariff no longer provides for this provision. Upon further inspection, the Commission has determined that Monroe deleted the *Memphis* clause from its *pro forma* Interruptible Agreement in its filing under Docket No. RP09-447-004. Because Monroe did not redline this deletion or provide justification for such a deletion in its transmittal letter, the deletion is procedurally improper. Monroe appears to have inadvertently made this deletion. Accordingly, we direct Monroe to submit revisions, within 30 days, to First Revised Sheet No. 309 of its tariff to reinsert its *Memphis* clause into section 1 of its *pro forma* Interruptible Agreement.

28. In addition, the *Memphis* clause that currently exists in section 1(d) of the Morgan Stanley Interruptible Agreement is inconsistent with the February 18 Order, which directed Monroe to reinsert the phrase "any provision of Rate Schedule [ISS]." ²¹ Accordingly, we direct Monroe to revise, within 30 days, section 1(d) of the Morgan Stanley Interruptible Agreement to comply with the Commission's February 18 Order.

The Commission orders:

(A) Monroe's compliance filing and non-conforming agreements are accepted as in compliance with the February 18 Order, subject to the conditions discussed in the body of this order.

²¹ February 18 Order at P 34.

(B) Monroe is directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.