

157 FERC ¶ 61,066
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

Tres Palacios Gas Storage LLC

Docket No. CP14-27-001

ORDER DENYING CLARIFICATION

(Issued October 28, 2016)

1. On February 18, 2016, the Commission issued an order¹ granting clarification of the Commission's March 19, 2015 order² denying Tres Palacio Gas Storage LLC's (Tres Palacios) request for authorization pursuant to section 7(b) of the Natural Gas Act (NGA)³ to abandon up to 22.9 billion cubic feet (Bcf) of certificated working gas storage capacity in its salt dome natural gas storage facility located in Matagorda, Colorado, and Wharton Counties in Texas. No party sought rehearing of the February 2016 Order. However, on February 26, 2016, Underground Services Markham, LLC (Markham), a party to the underlying proceeding, filed a request for clarification of that order. Markham asks the Commission to clarify that any request to alter the certificated parameters of a storage facility must be supported by a scientific or engineering analysis demonstrating the requested change will not adversely impact the integrity of the facility and that the change is dictated by the analysis. As discussed below, we deny Markham's request for clarification.

¹ *Tres Palacios Gas Storage LLC*, 154 FERC ¶ 61,105 (2016) (February 2016 Order). The order also dismissed Tres Palacios' alternative request for rehearing as moot.

² *Tres Palacios Gas Storage LLC*, 150 FERC ¶ 61,197 (2015) (March 2015 Order).

³ 15 U.S.C. § 717(b) (2012).

I. Background

2. In 2007, Tres Palacios was granted certificate authorization to construct and operate a storage facility that currently includes a 60-mile-long header system and three salt caverns with a combined certificated working gas capacity of 38.4 Bcf, supported by 18.86 Bcf of base gas, for a total certificated capacity of 57.26 Bcf.⁴ On December 6, 2013, Tres Palacios filed an application proposing to abandon up to 22.9 Bcf of the previously-certificated working gas storage capacity. Tres Palacios stated that its working gas capacity is significantly higher than market demand. In seeking to abandon working gas capacity, Tres Palacios explained that it subleases the three storage caverns from Markham and makes annual lease payments calculated in part on working gas capacity. Thus, reducing working gas capacity would enable Tres Palacios to reduce its annual lease payments to Markham, which Tres Palacios asserted would decrease its costs and enhance its ability to compete in the Gulf Coast gas storage market. Tres Palacios' proposal did not specify how this reduction in working gas capacity would be implemented across the three caverns in the storage facility. Instead, Tres Palacios stated that after the Commission approved the abandonment, it would decide how to implement the reduction based on the physical configuration of the caverns, engineering analyses, and market need. Tres Palacios also stated that there would be no changes in the physical operation of its storage facility.

3. The March 2015 Order denied Tres Palacios' requested abandonment, finding it contrary to current Commission policy and to the conditions of Tres Palacios' existing certificate authorization. Specifically, the Commission stated that its policy is to ensure adequate preservation and protection of the integrity of storage facilities (be they salt caverns, reservoirs, or other formations) and that Tres Palacios' proposal failed to provide enough information for the Commission to determine whether the integrity of the salt caverns would be preserved and protected if the requested abandonment was authorized and implemented. The Commission also stated that Tres Palacios' current certificate authorizes specific parameters for each cavern, including working and cushion gas volumes and operating pressures, and highlighted that contrary to current policy, Tres Palacios' proposal failed to explain how the reduction in working gas capacity would be applied to each cavern or how it would affect other facility parameters. The March 2015

⁴ *Tres Palacios Gas Storage, LLC*, 120 FERC ¶ 61,253 (2007). This initial certificate order was subsequently amended in *Tres Palacios Gas Storage, LLC*, 133 FERC ¶ 62,244 (2010) to modify the certificated total, working, and base gas capacities of each cavern to conform to post-conversion sonar surveys.

Order noted that the Commission's ruling was without prejudice to Tres Palacios filing a properly supported application for authorization to abandon storage.⁵

4. The February 2016 Order granted Tres Palacios' request for clarification of the March 2015 order by stating that Tres Palacios is not required to present evidence of structural changes to its storage facility in order to request authorization to change the certificated working gas capacity. The February 2016 Order added that in any future application, Tres Palacios must specify the changes to the existing certificated parameters for each storage cavern that will be necessary to effectuate the proposed changes in certificated working gas capacity and must submit evidence that will allow the Commission to determine that such changes will not adversely affect the integrity of the storage caverns.

5. In response to Markham's request for clarification of the February 2016 Order, Tres Palacios filed an answer urging the Commission to deny it and to reject a statement of Dr. Leo Van Sambeek appended to Markham's request.⁶

6. Subsequent to these submissions, Markham filed a March 23, 2016 motion in this docket which also referenced Docket Nos. CP10-499 and CP07-90, requesting the Commission direct Tres Palacios to comply with the conditions of its existing certificate authorizations. Tres Palacios answered on April 7, 2016, and on the same date, in Docket No. CP16-145, submitted an application to amend its certificate to change authorized capacities of its storage facility. Markham responded to the application to amend, requesting among other things, that the Commission consolidate this proceeding with the above referenced dockets. The record in this proceeding, as well as those in Docket Nos. CP07-90 and CP10-499, is closed; we denied Tres Palacios' request to abandon a

⁵ The March 2015 Order also noted that Tres Palacios and Markham are parties in a pending proceeding before the District Court for Harris County, Texas, regarding Tres Palacios' sublease, which the court has held in abeyance pending the outcome of this proceeding before the Commission. *See Tres Palacios Gas Storage LLC, Request of Underground Services Markham, LLC to Withdraw Motion to Hold Proceeding in Abeyance*, 20140326-5070 (2014); *Underground Services Markham, LLC, f/k/a Underground Services Markham, L.P. v. Tres Palacios Gas Storage LLC*, No. 2014-00823, (Tex. Dist. – Harris County 2014). We observed that the state court was the appropriate forum in which to address Markham's and Tres Palacios' dispute regarding the sublease, an observation we affirm.

⁶ Markham submitted a reply to Tres Palacios' answer. Because the Commission's Rules of Practice and Procedure do not permit answers to answers, we reject Markham's responsive pleading. 18 C.F.R. § 385.213(a)(2) (2016).

portion of its working gas capacity and dismissed its alternate request for rehearing of the denial order as moot in our Order on Clarification, and no party filed for rehearing. Thus, the Commission's action in this proceeding is final. Further, we find no cause to consolidate or benefit to be gained by consolidation as Markham's concerns regarding the criteria applicable to altering the certificated parameters of a storage facility can best be resolved in Tres Palacios' currently-pending abandonment proceeding.

II. Request for Clarification

7. Markham states that clarification of the February 2016 Order is necessary because the order did not specify under what circumstances a storage operator may change the certificated parameters, e.g., temperature, pressure, base gas volume, or working or base gas capacity, of a storage facility.⁷ Specifically, Markham seeks clarification that any request to change a physical parameter "must be supported by scientific and engineering analysis which demonstrates not only that the change will not adversely affect the integrity of the storage cavern, but also that the change is dictated by, and the necessary result of, the scientific and engineering analysis" conducted;⁸ i.e., that there must be a demonstrated scientific and/or engineering need to change any design parameter.⁹

8. In response, Tres Palacios states that the February 2016 Order correctly and unambiguously explained that a natural gas storage provider need not show evidence of structural changes to its storage facility in order to change the certificated working gas capacity.

III. Discussion

9. We deny clarification. In the February 2016 Order, we stated that Tres Palacios is not required to present evidence of structural changes to its storage facility in order to request authorization to change the certificated working gas capacity, or any other design parameter, so long as it shows that doing so would not adversely impact the structural

⁷ Request for Clarification at 3.

⁸ *Id.*

⁹ In addition, as described in note 6, in response to Tres Palacios' answer to its request for clarification, Markham included a claim that Tres Palacios had failed to comply with certain conditions of its certificate and urged us to direct the company to do so. Because the status of Tres Palacios' compliance with its certificate conditions is immaterial to Markham's request that we clarify the criteria relevant to changing the certificated parameters of storage facility, we find no reason to review this matter here.

integrity of its storage facility.¹⁰ We affirm this statement here, and see no need to offer further clarification as requested by Markham.

The Commission orders:

(A) Underground Services Markham, LLC's February 26, 2016 request for clarification is denied for the reasons discussed in the body of this order.

(B) Underground Services Markham, LLC's request for consolidation is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁰ As stated in the February 2016 Order, 154 FERC ¶ 61,105 at P 7: "Tres Palacios is not required to present evidence of structural changes to its storage facility in order to request authorization to change the certificated working gas capacity;" thus, a company may seek to make changes to certain certificated parameters of its facility, "temperature and pressure ranges, for example, without making any structural modifications to the storage caverns themselves." We observed that a "company conceivably could also modify the working gas capacity of a storage facility by modifying the level of base gas." *Id.* at n. 8. We note any applicant seeking to alter a certificated parameter of a storage facility has the burden of proof to support such a request.