

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Starks Gas Storage L.L.C.

Docket Nos. CP05-8-001  
CP05-9-001  
CP05-10-001

ORDER DENYING REHEARING

(Issued June 27, 2005)

1. On April 29, 2005, the Commission issued a Preliminary Determination on Non-Environmental Issues (Preliminary Determination)<sup>1</sup> finding, pending completion of its environmental review, that granting authority to Starks Gas Storage L.L.C. (Starks), an independent storage provider, to construct and operate a high-deliverability natural gas storage facility at the Starks salt dome in Calcasieu Parish, Louisiana, and related facilities including a header pipeline to connect with interstate pipelines in the area would be in the public interest.<sup>2</sup> The Commission similarly found Starks' request for a blanket certificate pursuant to Part 284, subpart G, authorizing Starks to provide firm and interruptible storage services at market-based rates should be granted. The Commission denied Starks' request for a waiver of the unbundling requirement of Order No. 636<sup>3</sup> so

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<sup>1</sup>*Starks Gas Storage L.L.C.*, 111 FERC ¶ 61,105 (2005).

<sup>2</sup> The completed project will have the capacity to store approximately 28.9 billion cubic feet of cushion and working gas, with a peak withdrawal rate of 800 million cubic feet per day (MMcf/d) and a peak injection rate of 750 MMcf/d.

<sup>3</sup> *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939 (1992), *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950 (1992), *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *reh'g denied*, 62 FERC ¶ 61,007 (1993) *remanded in part sub nom.*, *United Distribution Co. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997), *cert. denied*, *Associated Gas Distributors v. FERC*, No. 95-1186 (1996), *order on reh'g*, Order No. 636-D, 83 FERC ¶ 61,210 (1998).

that it may make bundled sales of gas out of its storage facilities. Starks has filed a request for rehearing of the denial of its request for a limited waiver of Order No. 636.

2. Starks requests rehearing asserting that its unique status as an independent storage provider prevents it from committing the abuses Order No. 636 was designed to prevent, and that allowing it to make sales out of storage will provide it with the economic incentive to build storage infrastructure in anticipation of future market demand for such storage. Although Starks elaborates on the arguments made in its application, it provides no compelling information to convince us to create an exception to Order No. 636. Therefore, we will deny rehearing for the reasons discussed herein.

### **Background**

3. The Preliminary Determination rejected Starks' request for waiver of the Order No. 636 unbundling requirement to allow Starks to own and sell gas stored within its storage facility; in other words, to make bundled sales of natural gas. Starks asserted the waiver was needed for it to optimize, or sell, underutilized capacity at its facility. The Commission held that Starks had neither justified the requested waiver nor explained why it could not sell such optimization gas through the use of a marketing affiliate, which would eliminate the need for a waiver. Thus, the Commission directed Starks to remove all references to optimization gas from its pro forma tariff and to make other revisions as well.<sup>4</sup>

### **Discussion**

4. Starks contends that the Commission failed to provide a reasoned basis for its rejection of Starks' request for waiver of the Order No. 636 unbundling requirement. It asserts that there are fundamental differences between independent storage providers and large, regionally dominant pipelines that provide storage services. Starks asserts that these traditional storage providers have market power and other characteristics that could allow the abuse and market distortions that Order No. 636 was designed to prevent. Starks states that, as an independent storage provider, it cannot engage in unduly discriminatory behavior because, unlike pipeline storage providers, it has no market power, no exclusive franchise area, no cost-of-service rates or assured rate of return, no captive ratepayers, no ability to cross subsidize its at-risk business with ratepayer contributions, and no affiliation to interconnecting pipelines. Thus, Starks urges the

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<sup>4</sup> Starks reserves the right to seek rehearing on the pro forma tariff revisions when the Commission issues an order on the compliance filing required by the Preliminary Determination.

Commission to follow the approach taken on rehearing of Order No. 2004,<sup>5</sup> where the Commission exempted independent storage providers from the Standards of Conduct imposed on other Transmission Providers based on their lack of market power and the fact that they are not interconnected to affiliated jurisdictional pipelines.

5. The unbundling requirement of Order No. 636 was designed to prevent pipelines from using their transportation services to favor their own sales services. Order No. 636 required pipelines to unbundle their gas sales from transportation and to offer transportation on an open-access basis. Order No. 636 amended section 284.1(a) of the Commission's regulations to define transportation as including storage.<sup>6</sup> As such, Order No. 636 required storage capacity to "be allocated on an even, nondiscriminatory basis among all shippers without regard to the seller of gas."<sup>7</sup>

6. Starks' status as an independent storage provider operating in a competitive market place may lessen Starks' ability to exercise market power. However, the full implications of allowing bundled sales by the operator of a storage facility are too potentially wide-ranging and damaging to permit at this time. Further, we disagree that the Order No. 2004-A exemption is applicable here. Order No. 2004 seeks to strengthen the standards imposed on Transmission Providers to ensure that they will not extend their market power over transmission to wholesale energy markets by giving their energy affiliates preferential treatment. In the Order No. 2004-A rehearing order, we exempted independent storage providers authorized to charge market-based rates from the definition of Transmission Providers -- as long as the storage providers are not interconnected with affiliated jurisdictional interstate pipelines.<sup>8</sup>

7. Starks also asserts that the Commission erred in concluding that Starks could sell its own gas using a marketing affiliate. Starks contends that the storage operator -- not a marketing affiliate -- has the best information necessary to fully assess and value its interruptible service. It states that its approach minimizes any potential concern about

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<sup>5</sup> *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2004), *order on rehearing*, Order No. 2004-A, FERC Stats. & Regs., Regulations Preambles ¶ 31,161 (2004).

<sup>6</sup> 18 C.F.R. §284.1(a) (2005), defines transportation as follows: Transportation includes storage, exchange, backhaul, displacement, or other methods of transportation.

<sup>7</sup> Order No. 626 at p. 30,427.

<sup>8</sup> The request for exemption was made by Encana Corporation (Encana), Starks' parent company.

affiliate preference, since Starks' proposed pro forma tariff assures that Starks' gas is subordinate to the storage services provided to third parties<sup>9</sup> while the service rendered by a marketing affiliate would not be subordinate to third-party service. Starks states that the cost of creating a marketing affiliate would be burdensome without corresponding benefit. The Commission acknowledges that Starks may incur additional expense to make wholesale natural gas sales through an affiliate. However, from the Commission's point of view, these costs are no different than those incurred by other storage service providers which also make wholesale gas sales, and place Starks on a level playing field with its competitors.

8. Although Starks has held two open seasons thus far, it admits that the market has shown little enthusiasm for its project.<sup>10</sup> Starks explains that it is building this project in anticipation of future storage demand.<sup>11</sup> With these facts, we are not persuaded that the timing of the Starks project will rest primarily on its ability or inability to sell its own storage gas using storage that is otherwise unsubscribed in the interim. It is more likely that any delay would be due to the discouraging market response and uncertainties associated with the development of LNG projects in the vicinity. Starks' implication that its superior knowledge of the value of its unsubscribed interruptible service will make it more capable than an affiliate of finding a market for its sales gas is likewise unpersuasive. In fact, this argument highlights one of the very concerns that led the Commission to impose an unbundling requirement in Order No. 636. If a storage provider (or a pipeline) has superior knowledge of the market because of its unique position providing storage services (transportation) to others, then it has both the means and the incentive to favor itself over third-parties. The Commission is unwilling to waive its existing open access requirements under these circumstances.

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<sup>9</sup> See section 7.1 of Starks' Pro Forma FERC Gas Tariff, Vol. No. 1, Original Sheet No. 333.

<sup>10</sup> At the time the Starks application was filed, it had held one open season that resulted in only six non-binding requests for service for a combined 6.15 Bcf of capacity. However, its web site currently states that Starks held a "very successful open season" for the Starks Gas Storage Project, indicating that the second open season may have generated greater commitment from the market. See [www.encanastorage.com](http://www.encanastorage.com).

<sup>11</sup> Future market demand is expected to arise since there are five large-scale LNG projects, at various stages of planning, in proximity to Starks with planned direct or indirect access for storage injection and withdrawal, as well a general increased demand for the high-deliverability service that salt caverns are capable of providing. See Starks' October 26, 2004 application at pp. 27-28.

9. Starks states that its business model has proven successful at two state-regulated facilities in the United States<sup>12</sup> and at one Canadian storage complex. It adds that it has not found it necessary or desirable to use a marketing affiliate to sell unsubscribed storage at those facilities and has not had any customer complaints challenging its business model. Therefore, Starks urges the Commission to revise its storage policy here rather than within a generic storage proceeding in order to encourage the development of needed infrastructure without delay. Such action, urges Starks, would be consistent with the Commission's approach in recent LNG proceedings in *Hackberry LNG Terminal, L.L.C. (Hackberry)*.<sup>13</sup>

10. Although the success of Encana's business model for state-regulated and Canadian storage facilities might be useful in an examination of whether the model is workable on the federal level, we do not believe it is sufficient evidence by itself to indicate that storage companies using that business model should be exempt from our open access regulations. Nor do we believe that approving that business model by waiving our open access regulations for independent storage providers necessarily will significantly encourage the development of independent storage facilities.

11. Although we announced our new policy regarding the regulation of LNG importation facilities in *Hackberry*, a case-specific proceeding, we reached our decision under section 3 of the Natural Gas Act which governs facilities for the importation of gas and in which the Commission is charged to authorize the facilities if it is "not inconsistent with the public interest" to do so. This is a broader standard than that required under section 7 of the Natural Gas Act which applies here and which requires a finding that a proposal is "required by the present or future public convenience and necessity."

12. Furthermore, in *Hackberry* the Commission reasoned that not requiring jurisdictional LNG import terminals to provide open access terminalling services would actually promote competition.<sup>14</sup> First, it would put LNG sales downstream of the terminalling facilities on the same footing as deregulated first sales of natural gas in the Gulf Coast region. Second, it would provide competitive parity with offshore LNG

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<sup>12</sup> Starks is an indirect subsidiary of Encana, a Canadian corporation whose subsidiary, Encana Gas Storage, Inc. (EGSI), operates Wild Goose Storage, Inc., in California and Salt Plains Storage, Inc. (Salt Plains) in Oklahoma.

<sup>13</sup> 101 FERC ¶ 61,294 (2002), *order on reh'g, Cameron LNG, LLC*, 104 FERC ¶ 61,269 (2003).

<sup>14</sup> *Hackberry*, 101 FERC ¶ 61,294 at PP 23, 26.

terminals. Pursuant to section 106(d) of the Maritime Transportation Security Act, offshore terminals, which are regulated by the Department of Transportation, are not subject to open access requirements. The Commission found that onshore LNG facilities should not be at a competitive disadvantage as compared to offshore facilities and therefore should not be subject to open access requirements. Since all interstate storage providers are subject to our open access requirements, there is no competitive disadvantage to remedy.

13. For all of these reasons, we will deny Starks' request for rehearing.

The Commission orders:

Starks' request for rehearing of the Commission's April 29, 2005 Preliminary Determination on Non-Environmental Issues is denied.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.