

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.

Minnesota Energy Resources Corporation

Docket No. CP06-378-000

ORDER ISSUING BLANKET CERTIFICATE OF LIMITED JURISDICTION

(Issued November 30, 2006)

1. On May 31, 2006, Minnesota Energy Resources Corporation (MERC), a local distribution company (LDC), filed an application under section 7(c) of the Natural Gas Act (NGA) and section 284.224 of the Commission's regulations for a limited jurisdiction blanket certificate authorizing MERC, consistent with the terms and conditions of subparts C and D of Part 284 of the Commission's regulations, to engage in non-discriminatory sales and transportation of natural gas subject to the jurisdiction of the Commission. For the reasons discussed below, we will issue the requested limited jurisdiction certificate, but require MERC to make an additional rate filing complying with section 284.224(c)(7) of the Commission's regulations.

Background

2. On July 3, 2006, WPS Resources Corporation (WPSR) acquired from Aquila, Inc. (Aquila) certain natural gas distribution facilities in Minnesota used to serve approximately 201,000 customers in 51 counties and 165 communities in Minnesota, subject to the jurisdiction of the Minnesota Public Utilities Commission (MPUC). As part of the transaction by which WPSR acquired these facilities in Minnesota from Aquila, WPSR also acquired 600 feet of pipe in Iowa which connects to a Northern Natural Gas Company meter station and is used to transport gas into Minnesota for local distribution. Aquila retained its other local distribution facilities in Iowa.

3. WPSR formed a subsidiary, MERC, to own and operate all of the facilities acquired from Aquila. Because the facilities include the 600 feet of pipeline in Iowa, it was necessary for MERC to file an application seeking a service area determination pursuant to section 7(f) of the NGA so that MERC can operate as an LDC, rather than an interstate pipeline fully subject to the Commission's NGA jurisdiction. On July 14, 2006,

the Director of the Division of Pipeline Certificates, Office of Energy Projects, issued an order, pursuant to delegated authority under section 375.308 of the regulations,¹ granting MERC's request for designation of a section 7(f) service area including the 600 feet of pipe in Iowa.² Having obtained the section 7(f) service area determination, MERC will need no additional authorizations from the Commission for its local distribution services in its designated service area or to construct local distribution facilities in that service area.

4. However, receiving a designated a section 7(f) service area does not provide authority for a company to sell and transport gas that will be consumed outside that service area. Therefore, MERC filed the instant application for a blanket certificate of limited jurisdiction pursuant to section 284.224 of the regulations to sell and deliver gas to Aquila in Minnesota so that Aquila can serve 11 customers in Silver Lake Township, Iowa, which is located just south of the Minnesota-Iowa border. The only access to natural gas for these 11 customers is via MERC's facilities in Minnesota.³

Instant Filing

5. MERC seeks a limited jurisdiction blanket certificate pursuant to section 284.224 of the regulations to ensure that it is properly authorized to sell and transport gas to

¹ 18 C.F.R. § 375.308 (2006).

² *Minnesota Energy Resources Corporation*, 116 FERC ¶ 62,036 (2006). The Commission designates section 7(f) service areas for natural gas companies that would qualify for the NGA's exemption for local distribution but for the fact that their service areas includes portions of more than one state. A section 7(f) service area determination (1) permits a company to enlarge or expand its facilities to supply market requirements without further Commission approval, and (2) makes the company's transportation of gas to ultimate consumers in its designated section 7(f) service area subject to the exclusive jurisdiction of the state in which the gas is consumed.

³ On June 30, 2006, MERC filed supplemental information to clarify that its 600 feet of pipe in Iowa will not be used to directly serve Aquila's 11 customers. Rather, Aquila will use pipeline that it retained in Minnesota to receive the gas from MERC. This Minnesota pipe still owned by Aquila is downstream of three new meters which will be installed by MERC immediately north of the Minnesota/Iowa border to record the volume of natural gas flow from MERC to Aquila. On November 13, 2006, the Director of the Division of Pipeline Certificates, Office of Energy Projects, issued an order under delegated authority to designate for Aquila a section 7(f) service area that includes these limited facilities in the vicinity of Emmons, Minnesota, and its local distribution facilities in adjacent Worth County, Iowa. 117 FERC ¶ 62,151 (2006).

Aquila for its 11 small customers in Silver Lake Township, Iowa. For purposes of establishing a rate methodology, MERC proposes to rely on section 284.123(b)(1)(ii), which, by operation of section 284.224(c)(7), authorizes section 284.224 blanket certificate holders "[t]o use the rates contained in one of its then effective transportation schedules for intrastate service on file with the appropriate state agency which the intrastate pipeline determines covers service comparable to service under this subpart".⁴ Specifically, MERC proposes to use, as a ceiling for transportation services under the blanket certificate, the rates contained in Aquila's Rate Schedule GS-1, which is a bundled transportation and sales rate that was approved by the MPUC for Aquila's Minnesota operations prior to Aquila's sale of its facilities in Minnesota to MERC's parent, WPSR, which transferred the facilities to MERC.⁵ Because the volumes of natural gas to be transported are small and the service will be used to supply gas to 11 customers, MERC believes it is appropriate for the Commission to approve Aquila's state-approved "bundled" rate for MERC's services under its requested limited jurisdiction blanket certificate.

Notice of Filing

6. A notice of MERC's application in Docket No. CP06-378-000 was issued on July 6, 2006, and published in the *Federal Register* on July 21, 2006 (71 Fed. Reg. 38392), with protests, comments, or motions to intervene due on or before July 26, 2006. Aquila Networks filed to intervene in support of MERC's application. This timely, unopposed motion to intervene is granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁶ No other motions to intervene or comments were filed.

Discussion

7. As discussed above, MERC has been granted a service area determination pursuant to section 7(f) of the NGA for its Minnesota distribution facilities and the 600 feet of pipeline in Worth County, Iowa⁷. However, the recipient of such a determination is exempted from NGA section 7 certificate requirements only with respect to its local

⁴ 18 C.F.R. § 284.123(b)(1)(ii) (2006).

⁵ The Minnesota Public Utilities Commission's "Order Approving Sale Subject to Conditions", (*G-007,011/M-05-1676*), issued June 1, 2006, required MERC to file revised tariffs with the new company name within 30 days of closing of the transaction transferring Aquila's local distribution facilities in Minnesota to MERC.

⁶ 18 C.F.R. § 385.214 (2006).

⁷ *Minnesota Energy Resources Corporation*, 116 FERC ¶ 62,036 (2006).

distribution activities within the designated service area. Thus, MERC cannot rely on the section 7(f) service area determination to sell and deliver gas to Aquila for its local distribution services in Iowa. Therefore, MERC has applied in this docket for a section 284.224 blanket certificate to authorize interstate services that do not constitute local distribution.

8. MERC requests a section 284.224 limited jurisdiction blanket certificate based on its qualification as a local distribution company served by an interstate pipeline. Section 284.224 of the Commission's regulations permits any local distribution company served by an interstate pipeline to apply for a blanket certificate to sell and transport gas in interstate commerce in the same manner that intrastate pipelines are authorized to engage in such activities under section 311 of the NGPA and subparts C and D of Part 284 of the Commission's regulations.⁸ MERC's application meets the requirements of section 284.224 and, accordingly, we find its proposal is in the public convenience and necessity, subject to the rate conditions discussed below.

9. For service under the requested section 284.224 blanket certificate, MERC proposes, as discussed above, to establish a rate under the rate election provisions of section 284.123(b)(1)(ii) of the Commission's regulations, using the bundled sales rates contained in Rate Schedule GS-1 approved by the MPUC for Aquila's bundled sales in Minnesota prior to Aquila's sale of its Minnesota facilities to MERC's parent, WPSR. MERC's proposed rate election is not appropriate here because the GS-1 rate is a bundled rate containing sales and transportation costs, not an unbundled cost-of-service transportation rate under a schedule on file with the appropriate state agency for comparable service. While section 284.123(b)(1)(i)(A) of the Commission's regulations provides for a pipeline to derive a transportation rate from a bundled firm sales rate, it does not allow for the use of the bundled sales rate itself. Further, MERC has not filed any cost data that would allow us to determine appropriate cost-based transportation rates.

11. As discussed above, section 284.123(b)(1)(B)(ii) of the regulations provides, by operation of section 284.224(c)(7), for an LDC to use rates contained in the effective transportation rate schedules on file with the appropriate state regulatory agency which the LDC determines covers service comparable to service being provided under the

⁸ We note that, although an LDC holding a section 284.224 blanket certificate is authorized to make sales of gas for resale under the terms and conditions of subpart D of Part 284, this specific sales authority was made unnecessary, for practical purposes, by the adoption of subpart L of Part 284, which provides automatic blanket authority for non-interstate pipelines to make sales of gas for resale at negotiated rates.

section 284.224. While MERC has an unbundled, cost-based retail transportation rate on file with the MPUC, MERC has elected not to use this service.

12. The Commission recognizes that MERC's only present use for the requested section 284.224 blanket certificate is to deliver sufficient gas supplies to Aquila for its 11 local distribution customers in Silver Lake Township, Iowa. The Commission will not require MERC to provide information sufficiently detailed to establish a cost-based rate specifically for this particular service to Aquila. Instead, the Commission will allow MERC to provide this service under a cost-of-service based transportation rate schedule already on file with the MPUC for service which is most comparable to this service for Aquila. Thus, we are waiving the requirements of section 284.123(b)(ii) to the extent necessary to permit MERC to provide service for Aquila at the transportation rates established under one of MERC's existing rate schedules on file with the MPUC. However, this waiver will be limited so that it provides only for service by MERC to Aquila through the three new meters to be installed by MERC as described in MERC's June 30, 2006 filing of supplemental information in this proceeding.⁹

13. The Commission did not prepare an environmental assessment or impact statement with respect to this application because under section 380.4(a)(22) of the Commission's regulations, issuance of a blanket certificate to MERC is categorically excluded from the requirement for environmental review.

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

The Commission Orders:

(A) A blanket certificate of limited jurisdiction is granted under section 284.224 of the Commission's regulations authorizing MERC to provide natural gas services subject to the Commission's jurisdiction under the NGA to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activities under subparts C and D of Part 284 of the Commission's regulations.

(B) The certificate issued by Ordering Paragraph (A) above and the rights granted thereunder are conditioned upon MERC's compliance with all applicable Commission regulations under the NGA and in particular the general terms and conditions set forth in Paragraphs (a) and (e) of section 157.20 of such regulations. Further, the authorization

⁹ Upon the Commission's approval of rates under an elected MPUC-approved rate schedule, MERC will also be authorized to charge such rates for any interstate services that are comparable to its local distribution services under the elected MPUC schedule.

granted herein is also subject to all the terms and conditions in sections 284.224 and section 284.123 of the Commission's regulations, except to the extent of the waiver set forth in Ordering Paragraph (D) below.

(C) The services are authorized subject to MERC filing, within 30 days of the date of this order, initial transportation rates for Commission approval. Such rates shall be unbundled, cost-of-service based transportation rates approved by the MPUC for MERC's services most comparable to its service for Aquila as discussed herein.

(D) MERC is granted a waiver of the requirements of section 284.123(b)(ii) to the extent necessary to permit MERC to provide service for Aquila at the rates approved by the Commission in accordance with Ordering Paragraph (C) above. This waiver is limited to service by MERC to Aquila through the three new meters to be installed by MERC as described in MERC's June 30, 2006 filing of supplemental information in this proceeding.

By the Commission

(S E A L)

Magalie R. Salas,
Secretary.