

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.

Worsham-Steed Gas Storage, L.P.

Docket No. PR07-6-000

ORDER APPROVING PETITION FOR MARKET-BASED RATES
SUBJECT TO CONDITIONS

(Issued May 11, 2007)

1. On December 14, 2006, Worsham-Steed Gas Storage, L.P. (Worsham-Steed) filed a petition seeking market-based rate authority for firm and interruptible storage services and storage-related hub services under section 311 of the Natural Gas Policy Act of 1978 (NGPA). For the reasons discussed below, the Commission will authorize Worsham-Steed to charge market-based rates for its section 311 firm and interruptible storage services, storage-related hub services, and firm and interruptible load following and balancing services on the condition Worsham-Steed notify the Commission if its current market power status changes in the future. Additionally, Worsham-Steed is directed to file an updated market power analysis within five years of the date of this order.

Background

2. Worsham-Steed is a limited partnership whose sole limited partner is Falcon Gas Limited, Inc., which owns 99.9 percent of the partnership interest in Worsham-Steed. Worsham-Steed GP, Inc. is the general partner of Worsham-Steed and owner of a 0.1 percent partnership interest in Worsham-Steed. Falcon Gas Limited, Inc. and Worsham-Steed GP, Inc. are both wholly-owned subsidiaries of Falcon Gas Storage Company, Inc. (Falcon). Falcon currently has two Texas storage facilities in operation, the Worsham-Steed Storage Facility, which is the subject of this proceeding, and the Hill-Lake Storage Facility (Hill-Lake).¹ Falcon is also developing the MoBay Storage Project (MoBay) in Alabama.²

¹Hill-Lake has been authorized to charge market-based rates for its firm and interruptible storage services under section 311 of the NGPA. *Hill-Lake Gas Storage, L.P.*, 99 FERC ¶ 61,037 (2002).

² MoBay has been granted a blanket transportation certificate under Subpart G of Part 284. In addition, MoBay has been authorized to charge market-based rates for its storage and hub services. *MoBay Storage Hub, Inc.*, 117 FERC ¶ 61,298 (2006).

3. Worsham-Steed is an intrastate pipeline within the meaning of section 2(16) of the NGPA, providing intrastate natural gas storage services within the state of Texas, subject to regulation by the Texas Railroad Commission. The Worsham-Steed facility is a converted depleted natural gas and oil reservoir located in Jack County, Texas; it currently has a maximum daily deliverability of 65,000 MMBtu and is capable of cycling 12 Bcf of gas storage inventory annually. The Worsham-Steed facility interconnects to one intrastate pipeline, Energy Transfer Fuel's Old Ocean.

4. Worsham-Steed states that it is redeveloping the storage facility to increase deliverability to provide firm storage services to customers in the Texas intrastate market. Worsham-Steed further states that it is also in the process of redeveloping the facility to provide high-deliverability, multi-cycle (HDMC) gas storage services, primarily to serve the owners and operators of gas-fired electric generation (GFEG). Worsham-Steed submits the redevelopment will involve reworking most of the existing wells, drilling at least 30 new storage wells, adding approximately 16,000 hp of new compression, expanding the facility's working gas capacity, and building a 63-mile 24-inch header pipeline to connect the facility to two major Texas intrastate pipelines.³ Worsham-Steed states that once redevelopment is complete, which is expected to occur on or around September 1, 2007, Worsham-Steed will have increased its maximum daily deliverability to 300,000 Mcf and will be capable of cycling 16 Bcf of gas storage inventory 2.2 times annually.

Description of the Filing

5. Worsham-Steed proposes market-based rates for its firm and interruptible storage services and its storage-related hub services pursuant to its Operating Statement and General Terms and Conditions, which it will file within 30 days of the date that service commences, as permitted under 18 C.F.R. § 284.123(e). Worsham-Steed states that in addition to its base intrastate customers' services, it proposes to offer, under section 311 of the NGPA: (1) single-cycle firm service; (2) multi-cycle firm service; (3) interruptible hub services (*e.g.*, parking, loaning, and imbalance trading); and (4) both firm and interruptible load following and balancing services.⁴ Worsham-Steed contends that the rates for these services will be offered at negotiated rates on a non-discriminatory basis in response to requests for such services. Worsham-Steed maintains that it will not be able to raise prices above competitive levels.

³ The header pipeline will connect to two 36-inch intrastate pipelines, the Atmos Line X and the North Texas Pipeline (NTP), thus, giving Worsham-Steed access to the interstate market at the Carthage Hub, Katy Hub, and Waha Hub.

⁴ Worsham-Steed states that the availability of firm and interruptible load following and balancing services will depend on the willingness of the interconnecting and other affected pipelines to accommodate hourly nominations and short notice services.

6. Worsham-Steed explains the load following and balancing services will be made available on a firm, short notice basis and a firm, hourly-nomination basis. Worsham-Steed proposes that customers contracting for these services be required to maintain a zero daily inventory balance or face charges for any day on which (1) the customer's injections do not equal its withdrawals; (2) the customer exceeds its hourly rate for injections or withdrawals; or (3) the customer exceeds its maximum cumulative injections or withdrawals in a 24-hour period. Worsham-Steed states the charges can be avoided if a customer subscribes to a storage service allowing the two services to be linked thereby utilizing the customer's Maximum Storage Quantity (MSQ), provided the MSQ is not exceeded.

Market Power Analysis

7. Worsham-Steed included with its petition, the prepared statement of Theodore R. Breton which contains a market power analysis to support its contention that it lacks market power. The market power analysis assesses Worsham Steed's potential market power for natural gas storage services in combination with the potential market power of its Falcon-owned affiliates, Hill-Lake and MoBay. Worsham-Steed states that a separate market power analysis was not conducted for the hub services because it does not include wheeling services within the hub services. Worsham-Steed states that consistent with the Commission's 1996 Alternative Ratemaking Policy Statement (1996 Policy Statement),⁵ regarding procedures for assessing alternatives to cost-of-service ratemaking, the market power analysis identifies the relevant geographic and product markets, then calculates Worsham-Steed's respective market share and measures industry concentration using the Herfindahl-Hirshman Index (HHI). In addition, other factors such as whether near substitutes for storage service exist and ease of entry for potential competitors are entertained to determine whether Worsham-Steed has or could have market power.

8. Worsham-Steed identified two geographic markets in which it operates. One market includes Texas, Louisiana, Mississippi, Alabama, Oklahoma, New Mexico, and Arkansas (together, "Greater Texas-Gulf Coast Production Region"), where it and its affiliates Hill-Lake and MoBay operate. A second market includes only Texas, Oklahoma, New Mexico, and Arkansas (together, "Greater Texas Production Region") where it and its affiliate Hill-Lake operate.⁶

⁵ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *petitions denied and dismissed*, *Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998).

⁶ MoBay is excluded from the Greater Texas Production Region market because it is located in Alabama.

9. Worsham-Steed asserts that due to extensive interconnections between pipelines, the Greater Texas-Gulf Coast Production Region is the appropriate geographic market. However, Dr. Breton states that while the Worsham-Steed Project is part of the Greater Texas-Gulf Coast Production Region, he examined the Project's market power in the smaller Greater Texas Production Region to be conservative and to provide additional information to the Commission.

10. Worsham-Steed defines its product market as natural gas storage facilities available to the market. Existing natural gas storage facilities located in the relevant geographic market, but dedicated to an affiliate, or other specific parties under long-term contractual agreements were not included in the analysis for either of the two geographical markets addressed in the analysis. In addition, Worsham-Steed notes that in Order No. 678,⁷ the Commission concluded that there are services provided by non-storage facilities and alternatives available to potential storage customers, such as local gas supply, LNG supply, and financial instruments, which effectively compete with storage services and could be included in the relevant product definition.⁸ However, Worsham-Steed states that to be conservative and simplify the analysis, competing alternatives from non-storage facilities were not included in the product market.

Greater Texas-Gulf Coast Production Region

11. Worsham-Steed has determined that 37 competing natural gas storage facilities with a total working gas capacity of approximately 838 Bcf exist in the Greater Texas-Gulf Coast Production Region. Worsham-Steed claims that it, Hill-Lake, and MoBay, when completed, will have a combined 77.1 Bcf of working gas capacity, bringing the market total to approximately 915.6 Bcf. Worsham-Steed states that it and its affiliates will have a combined market share of less than 9 percent of the region's total working gas capacity. Worsham-Steed claims that no single entity controls more than 15 percent of the Greater Texas-Gulf Coast Production Region natural gas storage market, with most

⁷ Order No. 678, 115 FERC 61,190 (2006), *order on reh'g and clarification*, Order No. 648-A, 117 FERC ¶ 61,190 (2006).

⁸ *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, 71 Fed. Reg. 36612 (June 27, 2006). FERC Stats. & Regs. ¶ 6 (2006) (Order No. 678). Specifically, it adopted a more expansive definition of the relevant product market for storage. In Order No. 678, the Commission recognized that if an applicant has demonstrated a lack of market power under the traditional definition of product market, it would follow that the applicant would also qualify for market-based rates using the expanded definition of product market adopted in Order No. 678. *Id.* at P 38.

controlling less than 7 percent. Furthermore, the market power analysis calculates an HHI of 845 for working gas capacity in the region, below the 1,800 threshold set by the Commission in its 1996 Policy Statement,⁹ indicating minimal concentration.

12. Worsham-Steed has also included in its market power analysis calculations for available peak day deliverability. Worsham Steed states that it, Hill-Lake, and MoBay, when completed, will together add 1.45 Bcf per day of peak day deliverability to the Greater Texas-Gulf Coast Production Region, bringing the market's total to 22.2 Bcf/day. Therefore, Worsham-Steed states, the three Falcon-owned projects account for less than 7 percent of the available delivery in the region. Worsham-Steed calculated an HHI of 715 for peak day deliverability; again well below the threshold of 1,800 set forth in the 1996 Policy Statement.

Greater Texas Production Region

13. As explained above, Worsham-Steed performed a second market power analysis for the smaller Greater Texas Production Region. Worsham-Steed has determined that 19 competing natural gas storage facilities with a total working gas capacity of approximately 448 Bcf exist in the Greater Texas Production Region. Worsham-Steed claims that it and Hill-Lake will have a combined 27.1 Bcf of working gas capacity,¹⁰ bringing the market total to approximately 475 Bcf, or less than 6 percent of the total working gas capacity in the Greater Texas Production Region. Worsham-Steed claims that no single entity controls more than 29 percent of the Greater Texas Production Region natural gas storage market, with most controlling less than 6 percent. Worsham-Steed calculates an HHI of 1,526 for working gas capacity in the region, again below the 1,800 threshold set by the Commission in its 1996 Policy Statement.

14. Similarly, Worsham-Steed states, it together with Hill-Lake will add .453 Bcf per day of peak day deliverability to a market totaling 9.79 Bcf, or less than 5 percent of the Greater Texas Production Region. Worsham-Steed calculated an HHI of 1,153 for peak day deliverability, again below the threshold of 1,800 set forth in the 1996 Policy Statement.

15. In addition, Worsham-Steed asserts that no barriers to entry exist in either region. It states that this is exemplified by 13 new gas storage facilities under development in the Greater Texas-Gulf Coast Production Region and two new facilities in the Greater Texas Production Region. Also, Worsham-Steed asserts, six existing gas storage facilities are in the process of adding additional working gas capacity in the Greater Texas-Gulf Coast

⁹ 1996 Policy Statement at 61,235. See also, Order No. 678 at P 55 noting that the 1,800 HHI threshold level will be maintained.

¹⁰ Worsham-Steed did not include MoBay in its market power analysis of the Greater Texas Production Region because MoBay is located in Louisiana.

Production and two existing facilities are adding working gas capacity in the Greater Texas Production Region. Natural gas storage customers in the regions also have the option of utilizing LNG facilities or Peak Shaving.

Interventions and Comments

16. Public notice of the filing was issued on December 28, 2006. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹¹ No timely interventions, protests, or comments were filed.

Discussion

17. In the 1996 Policy Statement, the Commission established criteria for evaluating proposals for market-based rates for natural gas companies. The criteria include an examination of the relevant product and geographic markets, firm size, market concentration, and ease of entry into the market. The Commission has used the HHI as its initial screening tool for determining market power. The HHI is a formula that focuses on the relevant market concentration as an indicator of the potential of an applicant to act together with other sellers to raise prices.¹² The Commission has used an HHI of 1,800 as an indicator of the level of scrutiny to be given to an applicant for market-based rates. The Commission has explained that an HHI at this level indicates that there are four or five good alternatives to the applicant in the relevant market. An HHI above 1,800, however, indicates a higher level of concentration and will cause the Commission to increase its scrutiny of other factors including the applicant's market share, ease of entry into the market, the relative size of the applicant's capacity, and the sustainability of a potential attempt by the applicant to exercise market power. The Commission has approved market-based rates for storage facilities under the 1996 Policy Statement where the facility demonstrates that it lacks significant market power or has adopted conditions that sufficiently mitigate market power.¹³

18. In Order No. 678, the Commission adopted two modifications to its criteria for approving market-based rates for storage facilities in order to ensure that sufficient storage will be available to meet anticipated increases in market demand. First, the Commission modified its market-power analysis to permit the consideration of close

¹¹ 18 C.F.R. § 385.210 (2006).

¹² The HHI is a standard measure of market concentration that is calculated by summing the squares of individual market shares of all participants.

¹³ See, e.g., *EPTG Texas Pipeline, LP*, 103 FERC ¶ 61,181 (2002); *Hill-Lake Gas Storage, LP*, 99 FERC ¶ 61,037 (2002); *Transok, LLC* 93 FERC ¶ 61,031 (2000); *ONEOK Gas Storage, LLC*, 90 FERC ¶ 61,283 (2000); *Honeoye Storage Corp.*, 91 FERC ¶ 62,165 (2000); *Moss Bluff Hub Partners, L.P.*, 80 FERC ¶ 61,181 (1997).

substitutes for storage in defining the relevant product-market. The Commission stated that this will ensure that market-based rates will not be denied because of an overly narrow definition of the relevant market. Second, the Commission adopted regulations implementing section 312 of the Energy Policy Act of 2005¹⁴ which permits the Commission to authorize storage providers to charge market-based rates for service utilizing new capacity even when the storage providers cannot or do not demonstrate that they lack market power, in circumstances where market-based rates are in the public interest and necessary to encourage the construction of storage capacity in an area needing storage service and where customers are adequately protected.

19. Worsham-Steed filed its application using the methodology set forth in the 1996 Policy Statement, and included a market analysis based on those criteria. Consistent with Worsham-Steed's petition in this proceeding, the Commission will evaluate its request under the criteria of the 1996 Policy Statement.

20. For the Commission to grant Worsham-Steed market-based rates under the 1996 Policy Statement, it must first determine that Worsham-Steed lacks market power in the relevant product and geographic markets.¹⁵ Based on our review of Worsham-Steed's petition, the Commission finds that Worsham-Steed lacks market power in both the Greater Texas-Gulf Coast Production Region and the Greater Texas Production Region. Worsham-Steed calculated separate HHI's for working gas capacity and peak deliverability for both the Greater Texas-Gulf Coast Production Region and Greater Texas Production Region. All HHI's were below the 1,800 threshold, indicating the market is less concentrated. Further, Worsham-Steed has demonstrated that its market share is small for working gas capacity and peak deliverability in both production regions. In addition, Worsham-Steed has demonstrated that storage alternatives exist and that there are no significant barriers to entry into these markets. Worsham-Steed has also shown that the markets are open to new entrants, and that at least 13 new facilities are under development in the Greater Texas Gulf Coast Production region and two new facilities are under development in the Greater Texas Production Region.¹⁶

21. The Commission concludes that due to this lack of market power, Worsham-Steed's market-based rates will be fair and equitable because Worsham-Steed will be unable to charge rates in excess of amounts that interstate pipelines and storage providers could charge for similar services. In addition, we note that there are no protests to Worsham-Steed's petition. Accordingly, the Commission will accept Worsham-Steed's

¹⁴ Energy Policy Act of 2005, section 312, Pub. L. No. 109-58, 119 Stat. 594, 688 (2005).

¹⁵ *Koch Gateway Pipeline Company*, 66 FERC ¶ 61,007 (1996).

¹⁶ See page 17 of the Market Power Analysis submitted in Worsham-Steed's application.

request to charge market-based rates for its section 311 firm and interruptible storage services, interruptible storage-related hub services, and firm and interruptible load following and balancing services.

22. Because we have determined that the standards of the 1996 Policy Statement have been met, the more expansive criteria of Order No. 678 are necessarily satisfied, and further analysis of the proposal under Order No. 678 is unnecessary. In Order No. 678, the Commission recognized that if an applicant has demonstrated a lack of market power under the traditional definition of product market, it would follow that the applicant would also qualify for market-based rates using the expanded definition of product market adopted in Order No. 678.¹⁷

23. Nevertheless, Worsham-Steed must notify the Commission if future circumstances significantly affect its present market power status. Thus, our approval of market-based rates for the indicated services is subject to re-examination in the event that: (a) Worsham-Steed adds storage capacity beyond the capacity indicated in this order; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to Worsham-Steed; or (d) Worsham-Steed, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to Worsham-Steed. Since these circumstances could affect its market power status, Worsham-Steed shall notify the Commission within 10 days of acquiring knowledge of any such changes. The notification shall include a detailed description of the new facilities and their relationship to Worsham-Steed.¹⁸

24. Worsham-Steed is also directed to file an updated market power analysis within five years of the date of this order, and every five years thereafter. As a general matter, we have not required a periodic rate review in cases where market-based rate authority has been granted under section 311 of the NGPA.¹⁹ However, we have recently required Natural Gas Act (NGA) pipelines to file updated market analyses every five years as a means for the Commission to monitor if market-based rates are still appropriate.²⁰ Therefore, we will require the same thing here for NGPA cases for the same reason: to

¹⁷ Order No. 678 at P. 38.

¹⁸ See, e.g., *Copiah County Storage Company*, 99 FERC ¶ 61,316 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002).

¹⁹ See, e.g., *Katy Storage Transportation*, 106 FERC ¶ 61,145 (2004); *EPGT Texas Pipeline, LP*, 103 FERC ¶ 61,181 (2003); *Hill-Lake Gas Storage, LP*, 99 FERC ¶ 61,037 (2002); *Transok, LLC*, 93 FERC ¶ 61,031 (2000); *Moss Bluff Hub Partners, LP*, 80 FERC ¶ 61,181 (1997).

²⁰ See *Rendezvous Gas Services, LLC*, 112 FERC 61,141 at P 40 (2005).

ensure that the Commission has the means to monitor the continuing appropriateness of market-based rates. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Worsham-Steed's request to charge market-based rates on a non-discriminatory basis for its section 311 storage services is approved, subject to the conditions discussion above. Worsham-Steed must notify the Commission if future circumstances, including acquisitions, affect its present market power status.

(B) Worsham-Steed must file an updated market power analysis within five years of the date of this order, and every five years thereafter.

(C) Worsham-Steed must file its Operating Statement and General Terms and Conditions within 30 days of the date that service performed under section 311 of the NGPA commences as required under 18 C.F.R. § 284.123(e).

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.