

125 FERC ¶ 61,117
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.

Williston Basin Interstate Pipeline Company

Docket No. CP08-443-000

ORDER ISSUING CERTIFICATE

(Issued October 29, 2008)

1. On July 21, 2008, Williston Basin Interstate Pipeline Company (Williston) filed an application, in Docket No. CP08-443-000, for the authority to lease, on a temporary basis, approximately 5 billion cubic feet (Bcf) of natural gas to be used as cushion gas¹ for its Elk Basin Storage Reservoir (Elk Basin), a natural gas underground storage facility in Park County, Wyoming and Carbon County, Montana. Williston states that it seeks this authority in order to protect and maintain the currently certificated deliverability of the field while it continues its efforts to secure the integrity of the field.

2. For the reasons discussed below, we will grant Williston's proposal.

I. Background

3. Williston, a corporation organized and existing under the laws of the state of Delaware, is authorized to conduct business in the states of Montana, North Dakota, South Dakota and Wyoming. Williston is a natural gas company, with approximately 3,700 miles of pipeline facilities, engaged in the gathering, transportation, and storage of natural gas. In addition to Elk Basin, Williston operates underground storage reservoirs in the Cedar Creek (Baker) Field located in Montana and the Billy Creek Field located in Wyoming to serve its natural gas system.

¹ Cushion gas is the volume of gas needed as a permanent inventory to maintain enough reservoir pressure to enable the entire volume of working gas to be withdrawn from an underground storage reservoir. Cushion gas is typically composed of both native gas (gas that has never been withdrawn from the ground) and base gas (gas that has already been produced and is injected into the storage reservoir during the development of the storage facility).

4. Elk Basin was originally certificated as a natural gas storage reservoir in 1949.² In 1985, Williston was authorized to acquire the field from Montana-Dakota Utilities Co. and operate the field and to perform transportation and sales services.³ Williston states that between 1949 and 2002, Elk Basin operated in a consistent, predictable manner similar to that of a closed container system. Further, it states that in 2002, Howell Petroleum Corporation (Howell), a third-party producer, drilled five production wells - two inside Elk Basin's boundaries and completed in the formations just below Elk Basin, and three just outside the southern boundary and completed in the same formation as the Elk Basin.⁴ Williston states that since those wells were drilled, it has observed that the field is no longer acting like a closed container, and that the reservoir pressure is not reaching the level expected based on the volume of gas injected into the field. Williston estimates that approximately 10 Bcf of cushion gas has been lost or migrated from the field. Williston states that it is currently pursuing, through litigation and Commission action, ways to stop the loss and recover damages.⁵ In October 2006, Williston received authority to add temporary compression for the 2006-2007 winter season and until no longer needed.⁶ In October 2007, Williston leased, under its blanket certificate authority, an additional 4 Bcf of natural gas to act as cushion gas for the 2007-2008 winter season.

II. Proposal

5. In this application, Williston proposes to lease approximately 5 Bcf of gas to act as cushion gas for the 2008-2009 winter storage season. The total cost of the 5 Bcf will be based on the gas volumes leased, the price per dekatherm of the lease, and the duration of the lease.

² In certifying Elk Basin, the Commission afforded the reservoir's cushion gas the status of a certificated facility. *Consolidated Gas Supply Corp.*, 42 FPC 1008, 1010 (1969) ("cushion gas is a facility as that term is used in the Natural Gas Act [15 U.S.C. § 717f].")

³ *Williston Basin Interstate Pipeline Co.*, 30 FERC ¶ 61,143 (1985).

⁴ Howell, a subsidiary of Anadarko Petroleum Corporation, is engaged in oil and gas exploration and production. Howell owns the mineral rights to acreage outside the surface boundaries of the Elk Basin Storage Reservoir as well as below the vertical boundaries of the storage facility.

⁵ In a pending proceeding in Docket No. CP08-158-000, Williston proposes to expand the boundaries of the Elk Basin.

⁶ *Williston Basin Interstate Pipeline Co.*, 117 FERC ¶ 62,017 (2006).

III. Interventions

6. Notice of Williston's application was published in the *Federal Register* on July 30, 2008 (73 Fed. Reg. 44,243). Howell filed a motion to intervene and protest.⁷

7. Howell states that it does not oppose Williston's request for the specific, limited-term certificate to lease 5 Bcf of natural gas to provide pressure support for Elk Basin. Howell objects to Williston's assertions that "the physical capacity of the reservoir is the same as that previously certificated by the Commission," that the Elk Basin suffered "no appreciable gas losses . . . in the over 50 years of storage operations prior to" the commencement of Howell's operations, and that "analyses" show that the natural gas being produced by Howell's wells is "Williston Basin's storage gas."

8. Williston filed an answer to Howell's protest.⁸ Williston states it has no objection to Howell's intervention, but believes Howell's protest is an attempt to interject issues and arguments that are not germane to this application. Williston states that Howell is using the protest to repeat objections and arguments previously advanced in Docket Nos. CP08-158-000 and CP08-184-000.

9. Howell's protest contains no fact or argument of consequence to the determination to be made in this docket; rather, it relates to the matter before us in the separate Williston certificate proceeding in Docket No. CP08-158-000. We will not address these issues here. Consequently, Howell's protest is denied.

IV. Discussion

10. Since the proposal herein involves facilities certificated for natural gas service in interstate commerce subject to the jurisdiction of the Commission, the proposal is subject to the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

A. Certificate Policy Statement

11. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction by establishing criteria for determining

⁷ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2008).

⁸ Answers to protests are not allowed under our rules, but this rule may be waived for good cause shown. We find good cause to do so here because admitting the answers will not cause undue delay or unfairly prejudice any party and they provide information that has assisted the Commission in our decision making. 18 C.F.R. § 385.213(a)(2) (2008), and 18 C.F.R. § 385.101(e) (2008).

whether there is a need for a proposed project and whether the proposed project will serve the public interest.⁹ A proposal to lease natural gas with no related construction of facilities, such as in this proceeding, does not educe the Certificate Policy Statement's concerns with overbuilding, disruptions of the environment and the exercise of eminent domain.

12. However, the threshold requirement under the Certificate Policy Statement, that a pipeline must be prepared to financially support the project without relying on subsidization from its existing customers, is applicable to this situation. The Certificate Policy Statement provides that increasing the rates of existing customers to pay for projects designed solely to improve reliability or flexibility of service for the existing customers is not a subsidy, and that the costs of the projects may be rolled in.¹⁰ Further, since the proposed lease is necessary to ensure the integrity of Elk Basin and maintain field deliverability, all to the benefit of Williston's existing customers, it is appropriate to permit Williston to roll in the reasonable level of project costs in its next section 4 rate proceeding.

13. The proposed lease involves no new service, no new customers, no degradation of service to its existing customers, and no adverse physical impact on the storage assets. It benefits Williston's existing customers by ensuring the continued operation and reliability of service offered by Williston at currently certificated levels. Since no new service is being offered and the proposal affects only Williston's system, there will be no adverse impacts on other pipelines or their customers. Nor will the proposed project have a significant adverse impact on landowners or surrounding communities, as there are no facilities required. In view of the lack of adverse effects on existing customers, other pipelines, landowners, or communities, we find that the public convenience and necessity will require the approval of the lease proposal.

B. Environmental Analysis

14. Since the lease proposal requires no construction of facilities, the proposal qualifies as a categorical exclusion under section 380.4(a)(27) of the Commission's regulations and therefore no environmental assessment is required.¹¹

⁹*Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000).

¹⁰ See Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,746, n.12 (1999).

¹¹ 18 C.F.R. § 380.4 (a)(27) (2008).

C. Engineering

15. For Williston to provide its contracted levels of service, the minimum allowable inlet pressure of the Elk Basin compressor station must not decline below 547 pounds per square inch gauge (psig). This pressure is provided by the reservoir pressure of Elk Basin, which is supported by the cushion gas. Williston has shown that the field is not reaching the pressure expected based on the volume of gas injected. This decrease in pressure indicates a loss of cushion gas. The proposed leased gas will enable Williston to maintain the requisite reservoir pressure to sustain the 547 psig minimum compressor inlet pressure over the entire 2008-2009 winter season.

16. The Commission on its own motion received and made a 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 certificate of public convenience and necessity authorizing Williston to execute a Lease Agreement(s) in order to lease, on a temporary basis, approximately 5 Bcf of natural gas to be used as cushion gas at the Elk Basin Storage Reservoir, as described above and in the application, is granted.

(B) The certificate authorization is conditioned on Williston's acceptance of such authority in accordance with section 157.20(a) of the regulations.

(C) Williston's proposed lease(s) must be executed and the natural gas made available as cushion gas within one year from the date this order is issued, pursuant to paragraph (b) of section 157.20 of the Commission's regulations. The authority granted herein is effective only for the 2008-2009 winter storage season.

(D) The protest by Howell is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.