

143 FERC ¶ 61,272
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Petal Gas Storage, L.L.C.
Hattiesburg Industrial Gas Sales, L.L.C.

Docket No. CP12-464-001

ORDER GRANTING REHEARING

(Issued June 26, 2013)

1. On March 21, 2013, BP America Production Company and BP Energy Company (collectively, BP) filed a request for rehearing of a February 21, 2013 order¹ issuing a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act (NGA).² The order authorized Petal Gas Storage, L.L.C. (Petal) to acquire through merger and operate the natural gas storage facilities and pipelines owned by Hattiesburg Industrial Gas Sales, L.L.C. (Hattiesburg), subject to conditions. The order also authorized Petal to charge market-based rates for storage services provided on the integrated facilities; authorized Hattiesburg to abandon its certificate of limited jurisdiction issued under section 284.224 of the Commission's regulations;³ and approved an offer of settlement between applicants Petal and Hattiesburg and a customer of Hattiesburg, Consolidated Edison of New York, Inc., as modified.

2. BP seeks rehearing of the Commission's determination not to impose a reporting condition on Petal for the acquisition of off-system capacity. As discussed below, we will grant BP's request for rehearing.

Background

3. On May 21, 2012, Petal and Hattiesburg filed a joint application under section 7 of the NGA for a certificate of public convenience and necessity authorizing Petal to acquire through merger and operate the natural gas storage facilities and pipelines owned by Hattiesburg, for authorization to charge market-based rates for storage services provided

¹ *Petal Gas Storage, L.L.C.*, 142 FERC ¶ 61,119 (2013) (February 2013 Order).

² 15 U.S.C. § 717f (2006).

³ 18 C.F.R. § 284.224 (2012).

on the integrated facilities, and for authorization to abandon Hattiesburg's certificate of limited jurisdiction issued under section 284.224 of the Commission's regulations. BP, in addition to other parties, filed a motion to intervene and protest, in which it raised a number of issues. Among those issues, BP requested that Petal be required to file an annual report on the use of off-system capacity similar to the reporting requirements imposed by the Commission on other market-based rate storage companies. BP stated its concern that, without more specific tariff protections, Petal could acquire off-system transportation capacity that it would combine with storage service to create a bundled transportation/storage service at market-based rates. Petal filed a reply stating that BP's request was beyond the scope of the proceeding, because the application was made under section 7 of the NGA and no tariff revisions were proposed.

4. In its February 2013 Order, the Commission denied BP's request. The Commission stated that BP had failed to show that Petal is currently acquiring off-system capacity to bundle with its storage service and Petal proposed no changes to its current tariff. Therefore, the Commission stated it would not impose additional reporting requirements on Petal as a result of its acquisition of Hattiesburg's storage facilities.⁴

5. On March 21, 2013, BP filed its rehearing request, asserting that the February 2013 Order departed without explanation from the Commission's policy and precedent, which imposes the annual reporting requirement on other market-based rate storage facilities with similar tariff provisions allowing the acquisition of off-system capacity.

Discussion

6. The issue on rehearing is whether the Commission erred in not imposing on Petal reporting requirements for the acquisition of off-system capacity. As stated above, the February 2013 Order did not impose additional reporting requirements on Petal, on the basis that BP had failed to show that Petal is currently acquiring off-system capacity to bundle with its storage service and Petal proposed no changes to its current tariff.

7. In its request for rehearing, BP argues that the annual informational filings for off-system capacity acquisitions are "a standard reporting requirement imposed by the Commission during NGA Section 7 proceedings on storage facilities such as Petal that want to charge market-based rates and that have tariff provisions allowing for the acquisition of off-system capacity with a waiver of the Commission's 'shipper must have title policy.'"⁵ Those annual reporting requirements include:

⁴ See February 2013 Order, 142 FERC ¶ 61,119 at P 42.

⁵ See BP Request for Rehearing at 5-6 (citing numerous orders issued since 2005, including most recently *D'Lo Gas Storage, LLC*, 140 FERC ¶ 61,182, at P 64 (2012)).

- (a) the name of the off-system provider;
- (b) the type, level, term, and rate of service contracted for by the storage company;
- (c) a description of the geographic location, boundaries, receipt and delivery points, and segments comprising the capacity;
- (d) the operational purpose(s) for which the capacity is utilized;
- (e) a description of how the capacity is associated with specific transactions involving customers of the storage company; and
- (f) an identification of total volumes, by rate schedule and customer, that the storage company has nominated on each off-system provider during the reporting period.

8. As BP acknowledges, Petal's off-system capacity tariff provision was accepted in 2003.⁶ In January 2003, Petal filed to modify its tariff to provide a general statement that the "shipper must have title" policy is waived with respect to off-system capacity.⁷ The letter order accepting Petal's tariff modification explained that, pursuant to the Commission's policy articulated in *Texas Eastern Transmission Corp.*,⁸ pipelines no longer need to obtain approval prior to acquiring off-system capacity, provided that the acquiring pipeline agreed to be at-risk for any unrecovered costs associated with acquiring the capacity. In addition, the Commission found that it was not necessary to apply the "shipper must have title" policy to pipelines holding capacity on other pipelines as long as the acquired capacity is treated as though it were a part of the acquiring pipeline's own system. In a later *Texas Eastern* order, the Commission stated that once a pipeline submitted a single filing to include a general statement in its tariff that it would "only transport for others on off-system capacity pursuant to its existing tariff and rates," the Commission would grant waiver of the "shipper must have title" policy for any such subsequent transportation provided by the pipeline.⁹ The Commission found that the proposed tariff sheets submitted by Petal, which included the required statement that it

⁶ See February 26, 2003 letter order in Docket No. RP03-242-000.

⁷ Petal had already been granted authorization to charge market-based rates for storage service, beginning in 1993. See *Petal Gas Storage, L.L.C.*, 64 FERC ¶ 61,190 (1993).

⁸ 93 FERC ¶ 61,273 (2000), *reh'g denied*, 94 FERC ¶ 61,139 (2001) (*Texas Eastern*).

⁹ *Texas Eastern Transmission Corp.*, 95 FERC ¶ 61,056, at 61,140 (2001).

will only transport for others on off-system capacity pursuant to its existing tariffs and rates, were consistent with the Commission's policy and on that basis granted Petal's request for waiver of the "shipper must have title" policy for off-system transportation.

9. The Commission has continued to apply the *Texas Eastern* policy for off-system capacity acquisition to grant waivers of the "shipper must have title" policy for off-system capacity, provided the acquiring pipeline files tariff language specifying that it will only transport for others on off-system capacity pursuant to its existing tariff and rates. Beginning in 2005, the Commission has imposed additional requirements on storage companies authorized to charge market-based rates that request a *Texas Eastern* waiver. The Commission has clarified that the storage company may only use capacity obtained on other pipelines in order to render the services set forth in its tariff; it may not use capacity on other pipelines to transport gas which will not physically or contractually enter its storage facilities unless and until it has received Commission authorization to provide such transportation services.¹⁰ In addition, the Commission has clarified that the storage company's use of the *Texas Eastern* waiver is limited to the geographic area covered by the company's market study.¹¹ Finally, the Commission has required the storage company to make an annual informational filing on its provision of service using off-system capacity, as detailed above, "in order to ensure that [the company] uses acquired off-system capacity in a manner consistent with its market-based authority and tariff provisions, and in order to satisfy our responsibility to monitor and prevent the exercise of market power."¹² As BP notes, these requirements have been imposed since 2005 in nearly every instance where a storage company requested both market-based rate authority and a *Texas Eastern* waiver.¹³

10. Petal requested and the Commission granted a *Texas Eastern* waiver of the "shipper must have title" policy for off-system capacity in 2003, before the Commission began imposing the annual informational filing requirement on market-based storage companies. However, other than the timing of Petal's waiver request, the Commission cannot factually distinguish Petal from other market-based rate storage companies that have been granted a waiver of the "shipper must have title" policy for off-system capacity acquisition since 2005. Therefore, after further consideration, the Commission will grant BP's request for rehearing and will require Petal to make annual informational filings for

¹⁰ See, e.g., *Caledonia Energy Partners, L.L.C.*, 111 FERC ¶ 61,095, at P 29 (2005).

¹¹ *Id.*

¹² *Id.* P 30. See also *Starks Gas Storage L.L.C.*, 111 FERC ¶ 61,105, at P 57 (2005); *Freebird Gas Storage, LLC*, 111 FERC ¶ 61,054, at P 41 (2005).

¹³ See BP's Request for Rehearing at 12 and cases cited in fn.20.

each acquisition of off-system capacity, as detailed above. This requirement will ensure that, like other similarly-situated storage companies, Petal uses acquired off-system capacity in a manner consistent with its market-based rate authority and tariff provisions, and in order to satisfy our responsibility to monitor and prevent the exercise of market power.

The Commission orders:

(A) BP's request for rehearing of the February 2013 Order is granted.

(B) Within 30 days after its first full year of operation following the effective date of the merger of Hattiesburg into Petal, and every year thereafter, Petal is directed to file an annual informational filing on its provision of service using off-system capacity, as detailed in this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.