

172 FERC ¶ 61,245
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and James P. Danly.

Enstor Katy Gas Storage and Transportation, L.P. Docket Nos. PR20-56-000
PR20-56-001

ORDER ON STATEMENT OF OPERATING CONDITIONS AND PETITION FOR
MARKET-BASED RATES

(Issued September 17, 2020)

1. On May 4, 2020, and supplemented on June 26, 2020 and July 8, 2020, Enstor Katy Gas Storage and Transportation, L.P. (Katy Gas Storage) filed a petition (Petition) pursuant to section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA),¹ and sections 284.123² and 284.502³ of the Commission's regulations requesting that the Commission: (1) grant Katy Gas Storage the authority to provide firm wheeling transportation service at market-based rates; (2) continue the market-based authorization for Katy Gas Storage's firm and interruptible storage services and for interruptible wheeling services; and (3) accept new language in its existing Statement of Operating Conditions (SOC), filed in Docket No. PR20-56-001,⁴ related to the proposed market-based rate services and other minor changes. As discussed below, we grant the requested market-based rate authority, and accept the SOC filed on June 26, 2020 in Docket No. PR20-56-001⁵ as fair and equitable, effective May 4, 2020, as proposed.

¹ 15 U.S.C. § 3371(a)(2) (2012).

² 18 C.F.R. § 284.123 (2020).

³ 18 C.F.R. § 284.502 (2020).

⁴ Katy Gas Storage refiled its SOC because the original filing in Docket No. PR20-56-000, while identical in substance, was inadvertently submitted under an incorrect filing code. The SOC filed in Docket No. PR20-56-000 is rejected as moot.

⁵ Enstor Katy Storage and Transportation, L.P., FERC NGPA Gas Tariff, Katy Operating Statement, Katy Storage SOC, Statement of Operating Conditions, 7.0.0.

Background

2. Pursuant to a previous Commission order, Katy Gas Storage has authority to offer market-based rates for firm and interruptible storage services and for interruptible hub services.⁶ Katy Gas Storage states that it operates an intrastate natural gas storage and pipeline header system regulated under section 311 of the NGPA, in Fort Bend and Waller Counties, Texas. Katy Gas Storage states that its facilities consist of a depleted gas production reservoir, redeveloped as a natural gas storage reservoir, and a dual pipeline header system interconnecting with 15 natural gas pipelines.⁷

3. Katy Gas Storage states that it has four relevant affiliates: Bay Gas Storage Company, LLC in Washington County, Alabama; Freebird Gas Storage, LLC in Lamar County, Alabama; Caledonia Energy Partners, L.L.C. in Lowndes and Monroe Counties, Mississippi; and Mississippi Hub, LLC in Simpson County, Mississippi.⁸ Katy Gas Storage notes that, while it has included these affiliates in its market power study, these affiliates are all more than 390 miles away from its facilities, and thus argues that the local competition near Katy, Texas is exclusively non-affiliates.⁹

4. Katy Gas Storage submitted an amended Market Power Study on July 8, 2020 (July Market Power Study) to support its application for market-based rates. We will use the July Market Power Study for our analysis of the company's market power status.

Public Notice and Interventions

5. Public notice of the filing was issued on May 7, 2020. Interventions and protests were due May 26, 2020. Pursuant to Rule 214,¹⁰ all timely filed motions to intervene and any unopposed motion to intervene filed out of time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

⁶ *Katy Storage & Transportation, L.P.*, 106 FERC ¶ 61,145 (2004). (Katy Storage & Transportation, L.P. was the previous name of Enstor Katy Gas Storage and Transportation, L.P.)

⁷ Katy Gas Storage Petition at 2.

⁸ *Id.* at 5 n.10.

⁹ *Id.* at 7.

¹⁰ 18 C.F.R. § 385.214 (2020).

Discussion

6. The Commission evaluates requests to charge market-based rates for storage and related services under the analytical framework of its *Alternative Rate Policy Statement*.¹¹ The Commission's main concern in granting a pipeline the use of market-based rates for a service is the presence that the pipeline has in the relevant marketplace. Simply put, if the pipeline has market power over a service in the relevant marketplace, then the Commission will not permit it to charge market-based rates for that service.¹² The Commission will approve market-based rates for storage providers where the applicant has demonstrated it lacks market power¹³ or has adopted conditions that significantly mitigate market power.¹⁴ The Commission has approved requests to charge market-based rates for storage services based on a finding that the applicants of the proposed projects would not be able to exercise market power due to small size, anticipated share of the market, and numerous competitors.¹⁵

7. Pursuant to the *Alternative Rate Policy Statement*, the Commission has developed a framework for evaluation of requests for market-based rates. This framework has two principal purposes: (1) to determine whether the applicant can withhold or restrict

¹¹ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194, *order on reh'g and clarification*, 75 FERC ¶ 61,024, *reh'g denied*, 75 FERC ¶ 61,066, *reh'g dismissed*, 75 FERC ¶ 61,291 (1996), *petition denied sub nom. Burlington Res. Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (*Alternative Rate Policy Statement*); *criteria modified, Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220 (cross-referenced at 115 FERC ¶ 61,343), *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

¹² *Golden Triangle Storage, Inc.*, 152 FERC ¶ 61,158, at P 9 (2015) (*Golden Triangle*).

¹³ Market power is defined as the ability to profitably maintain prices above competitive levels for a significant period of time. *Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 at 61,230.

¹⁴ Order No. 678, FERC Stats. & Regs. ¶ 31,220, Order No. 678-A, 117 FERC ¶ 61,190.

¹⁵ *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002); *Egan Hub Partners, L.P.*, 95 FERC ¶ 61,395 (2001); *Moss Bluff Hub Partners, L.P.*, 80 FERC ¶ 61,181 (1997); *Egan Hub Partners, L.P.*, 77 FERC ¶ 61,016 (1996).

services and, as a result, increase price by a significant amount for a significant period of time; and (2) to determine whether the applicant can discriminate unduly in price or terms and conditions of service. To find that an applicant cannot withhold or restrict services, significantly increase prices over an extended period, or unduly discriminate, the Commission must find that either there is a lack of market power because customers have good alternatives,¹⁶ or that the applicant or the Commission can mitigate the market power with specified conditions.

8. Consistent with the methodology provided by the *Alternative Rate Policy Statement*, our analysis of whether Katy Gas Storage has the ability to exercise market power includes three major steps. First, we will review whether Katy Gas Storage has specifically and fully defined the relevant markets to determine which specific products or services are identified, and the suppliers of the products and services that provide good alternatives to the applicant's ability to exercise market power.¹⁷ Additionally, as part of the first step, we will identify the relevant geographic market. Second, we will assess Katy Gas Storage's market share and market concentration. We use market share and the Herfindahl-Hirschman Index (HHI) as screens in assessing whether a pipeline has the ability to exercise market power in defined product and geographic markets. However, HHI is just one factor we may evaluate.¹⁸ The *Alternative Rate Policy Statement* recognizes that having a large market share in a concentrated market does not constitute market power if ease of entry and other competitive factors can prevent the applicant from exercising significant market power.¹⁹ Third and lastly, we will evaluate other relevant factors such as ease of entering the market.

¹⁶ A "good alternative" is an alternative that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative for an applicant's service. *Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 at 61,231.

¹⁷ The relevant product market consists of the applicant's service and other services that are good alternatives to the applicant's services. *Id.*

¹⁸ For example, the Commission has accepted an HHI of 1,800 as the threshold indicating the potential ability for an applicant to exercise market power. In cases where the HHI was higher than 1,800, the Commission has performed further review to determine whether other competitive factors nevertheless will prevent the applicant from being able to exercise market power. *See, e.g., UGI Storage Co.*, 133 FERC ¶ 61,073 (2010); *Arlington Storage Co., LLC*, 125 FERC ¶ 61,306 (2008); *Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141 (2005).

¹⁹ In the *Alternative Rate Policy Statement*, the Commission stated that its consideration of a market-based rate proposal will include an examination of market

Relevant Product and Geographic Markets

9. In its market power study, Katy Gas Storage states that the relevant product markets for its study consist of firm and interruptible storage service, as well as hub services, defined as parking, loaning, and wheeling.²⁰ Katy Gas Storage proposes to use the same geographic market as in its previous market-based rate order: the Gulf Coast Market Region, which spans Texas, Louisiana, Mississippi and Alabama.²¹

10. We find that the relevant geographic market for Katy Gas Storage's service is the Gulf Coast Market Region, as Katy Gas Storage has proposed. We also find that the

concentration. Further, it explained that:

[t]o measure market concentration, one generally considers the summary measure of market concentration known as the Herfindahl-Hirschman Index (HHI). If the HHI is small then one can generally conclude that sellers cannot exercise market power in this market. A small HHI indicates that customers have sufficiently diverse sources of supply in this market that no one firm or group of firms acting together could profitably raise market price. If the HHI is higher then additional analysis may be needed to determine if the seller can exercise market power.

The Commission will analyze the HHI calculation for the relevant markets. The HHI will be evaluated for each relevant path and/or origin market and each destination market utilizing the relevant data for each mainline receipt point (origin market) and each delivery point (destination market). If an applicant wishes to argue for either a broader or narrower market definition, it should also include calculations for its market definitions. Only sales or capacity figures associated with good alternatives should be used in calculating the HHI. In addition, applicants should aggregate the capacity of affiliated companies into one estimate for those affiliates as a single seller.

Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,234 (footnote omitted); *see also Golden Triangle*, 152 FERC ¶ 61,158 at P 11 & n. 10.

²⁰ Katy Gas Storage Petition at 5.

²¹ *Id.*

relevant product market includes firm and interruptible storage service, as well as hub services, as listed in Katy Gas Storage's market power study.

Market Share and Market Concentration

11. In its market power study, Katy Gas Storage calculates that the total market share of itself and its affiliates is 7.9% for working gas capacity and 12.9% for storage deliverability in the relevant market.²² Katy Gas Storage calculates that the HHI market concentration for the relevant market is 1,093 for working gas capacity and 802 for maximum storage deliverability. Katy Gas Storage argues that these calculations show that it cannot exercise market power, and that the relevant markets are not concentrated.²³

12. As set forth above, in order to ascertain whether additional scrutiny is needed, we examine concentration in the relevant market using HHI. The *Alternative Rate Policy Statement* states that an HHI of less than 1,800 indicates that sellers cannot exert market power because customers have sufficiently diverse alternatives in the relevant market.²⁴ If the HHI is above 1,800 we will give the applicant more scrutiny in order to make a determination about a seller's ability to exercise market power because the market is more concentrated.

13. We find Katy Gas Storage's calculations to be accurate. Katy Gas Storage has satisfactorily shown that, within the relevant market, its prospective market share is not so high as to demand additional examination and that the market's concentration is below the HHI 1,800 threshold we would require before we would need to undertake further scrutiny.

14. With respect to the product market for wheeling service, the Commission has traditionally used a matrix, referred to as a "bingo card," in evaluating whether shippers of an applicant seeking market-based rate authority for wheeling transportation service could obtain the same services from alternative providers. The bingo card identifies all possible interconnections for pipelines attached to a hub and indicates whether good alternatives exist to the subject service. In essence, the Commission relies upon the bingo card analysis to determine whether shippers can avoid the pipeline interconnections

²² Katy Gas Storage July Market Power Study at 24.

²³ *Id.* at 26.

²⁴ *Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 at 61,235.

provided by the applicant by using alternative interconnections available between the pipelines that are directly or indirectly connected to the applicant.²⁵

15. Katy Gas Storage provides separate filled-in bingo cards for interstate and intrastate pipeline interconnections. In all, Katy Gas Storage states that there are interconnections with 15 different pipelines, including five interstate entities and 10 intrastate entities.²⁶ Katy Gas Storage also provides an analysis of how its system interconnects with neighboring, competing pipelines. Katy Gas Storage states that for wheeling, shippers have 121 incoming options and 125 outgoing options among the 15 pipelines that are connected to Katy Gas Storage.²⁷

16. To evaluate the level of competition among the hubs, Katy Gas Storage analyzed the HHI for hubs in the Gulf Coast Supply Region. Katy Gas Storage states the HHI for Maximum Daily Deliverability of hubs in the geographic market is 1,417, based on a total daily deliverability of 34.8 Bcf per day. Katy Gas Storage states this HHI is well below the 1,800 threshold used by the Commission to indicate a possible market power concern.

17. We find that in light of the vast number of alternate transportation paths and pipeline interconnections, Katy Gas Storage's limited market share and its proximity to the numerous Texas and Louisiana hubs, Katy Gas Storage will not be capable of exercising market power in a non-concentrated market for the hub services that it proposes to offer to its customers.

Other Relevant Factors Mitigating Potential Market Power

18. Katy Gas Storage asserts that three factors make market power more unlikely for Katy Gas Storage. First, Katy Gas Storage states that neither it nor its parent, Enstor Gas, LLC (Enstor), engage in interstate natural gas transmission pipeline operations, liquefied natural gas production/storage, or natural gas production that would comprise customer alternatives to its storage and hub services. Second, according to Katy Gas Storage, the four other Enstor affiliates within the Gulf Coast Market region are nearly 500 miles distant from Katy Gas Storage, so the geographic area nearest to Katy Gas Storage is populated heavily with competitors. Last, according to Katy Gas Storage, Enstor does

²⁵ *Tres Palacios Gas Storage LLC*, 153 FERC ¶ 61,331, at P 14 (2015).

²⁶ Katy Gas Storage July Market Power Study at 22.

²⁷ *Id.*

not engage in ownership of capacity in any competitor's facilities, and therefore has no leverage over how competitors use their storage capabilities.²⁸

Commission Determination

19. Katy Gas Storage has satisfactorily shown that, within the storage market, its prospective market share is not so high as to demand additional examination, and the market's concentration is below the threshold the Commission would require before it would need to undertake closer scrutiny. As set forth above, in order to ascertain whether additional scrutiny is needed, the Commission examines concentration in the relevant market using the HHI. The *Alternative Rate Policy Statement* states that an HHI of less than 1,800 indicates that sellers cannot exert market power because customers have sufficiently diverse alternatives in the relevant market.²⁹ For the underground natural gas storage product market, the HHI values of 1,093 and 802, for working gas capacity and maximum deliverability, respectively, are below the 1,800 Commission threshold. For these reasons, and the fact that Katy Gas Storage's proposal to continue charging market-based rates for storage is unopposed, we accept its request to continue providing market-based rates for storage.

20. In the hub product market, we note that the HHI for daily deliverability is 1,407. Further, Katy Gas Storage's market share (including all affiliates in the Gulf Coast Supply Region) is 18.3 percent. We find that barriers to entry are likely to be low in the relevant market and that alternative products are available to shippers in the relevant geographic area.

21. Accordingly, upon examination of the material and studies presented by Katy Gas Storage, we find that it lacks significant market power in the relevant geographic area for the proposed market-based firm wheeling service. Furthermore, Katy Gas Storage's proposal for market-based rates is unopposed, and Commission precedent allows us to consider firm wheeling transportation service under market-based rates for a storage provider.³⁰ Accordingly, we accept Katy Gas Storage's request to charge market-based rates for firm wheeling transportation service.³¹

²⁸ Katy Gas Storage Petition at 7.

²⁹ *Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 at 61,235.

³⁰ *Golden Triangle*, 152 FERC ¶ 61,158 at P 15.

³¹ Katy Gas Storage's filing included a request for market-based rate authority for an additional new firm wheeling service. An NGPA section 311 pipeline requesting additional market-based rate authority must file under sections 284.123(b)(2) and 284.503 of the Commission's regulations; it may not use the optional notice procedures

Statement of Operating Conditions

22. We find that the revised SOC filed in this docket accurately reflects Katy Gas Storage's market-based rate authorization. Further, we find that the proposed revisions that are not necessary for market-based rate authorization, such as revisions related to no-notice service and the use of operator discretion, are fair and equitable. Accordingly, we accept the revised SOC.

Change in Circumstances

23. The Commission's regulations require that Katy Gas Storage notify the Commission if future changes in circumstances significantly affect its present market power status, as required by the Commission's regulations.³² Any event which would affect Katy Gas Storage's ability to withhold or restrict services or increase its ability to discriminate unduly in price or terms of service must be reported to the Commission within 10 days of acquiring knowledge of any such changes. Failure to timely file a change in circumstance report or failure to comply with the reporting requirements would constitute a violation of the Commission's regulations. We also reserve the right to require an updated market power analysis at any time.³³

The Commission orders:

(A) Katy Gas Storage's request for authority to provide the proposed firm wheeling transportation at market-based rates, and to continue the previously approved market-based rate services, is granted.

(B) Katy Gas Storage's revised SOC as referenced in Footnote 5 in this Order is accepted, effective May 4, 2020, as requested. Additionally, the tariff record filed in Docket No. PR20-56-000 is rejected as moot.

in section 284.123(g). *See Revisions to Procedural Regulations Governing Transportation by Intrastate Pipelines*, Order No. 781, 144 FERC ¶ 61,034, at P 27 (2013). A Hinshaw pipeline requesting additional market-based rate authority for a new service must petition for a declaratory order under sections 284.224 and 284.503.

³² 18 C.F.R. § 284.504(b) (2020). For filing guidance, see also *Jefferson Island Storage & Hub, L.L.C.*, 163 FERC ¶ 61,049, at P 19 (2018).

³³ *Golden Triangle*, 152 FERC ¶ 61,158 at P 24.

(C) Katy Gas Storage must notify the Commission, as required by section 284.504(b) of the Commission's regulations, if future changes in circumstances affect its market power status. Katy Gas Storage must notify the Commission within 10 days of acquiring knowledge of any such changes. The notification must include a detailed description of the new facilities and their relationship to Katy Gas Storage.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.