

108 FERC ¶ 61,152
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Unocal Windy Hill Gas Storage LLC

Docket No. CP04-367-000

ORDER GRANTING EXEMPTION
FOR TEMPORARY ACTS AND OPERATIONS

(Issued August 5, 2004)

1. On June 25, 2004, Unocal Windy Hill Gas Storage LLC (Windy Hill), filed a petition pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure.¹ Pursuant to section 7(c)(1)(B) of the Natural Gas Act (NGA), Windy Hill requests an exemption from the certificate requirements of NGA section 7(c) to drill a test well and perform other activities to determine the feasibility of developing a natural gas storage facility in Morgan County, Colorado.²

2. We find it is in the public interest to grant Windy Hill's requested exemption for the proposed activities, subject to the conditions herein, to facilitate the development of storage facilities.

Proposed Activities

3. Windy Hill is not a "natural-gas company" as defined by section 2(6) of the NGA and holds no NGA section 7 certificate. Windy Hill seeks an exemption from NGA section 7(c) certificate requirements to explore and assess the technical, economic, and environmental feasibility of developing an underground natural gas storage facility in Morgan County, Colorado. Windy Hill states that if it finds the development of a storage

¹ 18 C.F.R. § 385.207 (2003).

² Section 7(c)(1)(B) of the NGA permits the Commission to exempt "temporary acts or operations for which the issuance of a certificate will not be required in the public interest."

facility to be feasible, it will then file an application for NGA section 7(c) certificate authorization to construct and operate a new storage facility.

4. Windy Hill requests an exemption from NGA section 7(c) in order to: (1) drill a cavern and brine injection feasibility test well to assess the thickness, quality, and mechanical properties of salt at an approximate depth of 6,000 feet; (2) use the test well to determine the brine injection capacity of sandstone reservoirs at an approximate depth of 5,100 to 5,700 feet; (3) acquire 2-D seismic information to assess formation continuity and integrity; and (4) test and geophysically survey as required to assess the viability of available fresh water needed to provide the necessary supply for salt cavern development. Windy Hill anticipates that these proposed activities will take approximately six months. Prior to undertaking any construction activities, Windy Hill states that it will obtain permits from the Colorado Oil and Gas Conservation Commission and will conduct its proposed activities in compliance with the environmental conditions set forth in section 157.206(b) of the Commission's regulations. In the event Windy Hill elects not to go forward and develop a storage facility, it states it will restore the disturbed area in accordance with the Colorado Oil and Gas Conservation Commission's regulations and Colorado statutory requirements.

Notice and Intervention

5. Notice of Windy Hill's petition was published in the Federal Register on June 28, 2004.³ A timely, unopposed motion to intervene was filed by Totem Gas Storage Company L.L.C.⁴

Discussion

6. Windy Hill's proposed activities are a necessary preliminary phase in the development and construction of a natural gas interstate storage facility. Depending on the outcome of the tests, salt caverns for the storage of natural gas may or may not be developed. We therefore consider the proposed activities as a necessary phase in the construction of a jurisdictional storage facility, and as such, the proposed activities are subject to the certificate requirements of NGA section 7(c).

³ 69 Fed. Reg. 40891 (2004).

⁴ Timely, unopposed motions to intervene are granted by operation of Rule 214.18 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2003).

7. However, pursuant to NGA section 7(c)(1)(B), if we find it in the public interest, we may exempt certain temporary acts or operations from the certificate requirement that would otherwise apply. Previously, we have granted exemptions to allow operations of a temporary nature that have no effects on the ratepayer, on the quality of service provided by a pipeline, or on the public as a whole.⁵

8. Windy Hill emphasizes that its proposed exploratory activities are temporary and will be conducted in order to determine the feasibility of developing a salt cavern storage complex. No service will be rendered. The certificate authorization exemption will be used solely for discreet exploratory activities to obtain geological and engineering data. Since Windy Hill is not currently a natural-gas company and has no existing jurisdictional facilities, it has no current services or customers that might be affected.

9. Under the circumstances described in Windy Hill's petition, we find that the proposed activities constitute temporary acts or operations within the meaning of NGA section 7(c)(1)(B), and we find it in the public interest to exempt the proposed activities from the certificate requirements of NGA section 7(c). Given the increase in gas production in the vicinity of the potential storage site, we acknowledge the potential benefit a new storage facility could provide. Further, we find that without performing the proposed activities, Windy Hill cannot make an informed business and engineering decision regarding the feasibility of developing a new storage complex. In view of the above, we will exempt Windy Hill from the NGA section 7(c) certificate requirements in order to engage in the activities specified herein, subject to the conditions set forth below.

10. Windy Hill's proposed activities pose the potential to cause adverse environmental impacts. Consequently, the Commission prepared an environmental assessment (EA) for Windy Hill's proposed exploratory activities. We conclude that the described activities will not constitute a major federal action significantly affecting the quality of the human environment, provided Windy Hill complies with the same environmental conditions that apply to jurisdictional companies' activities under Part 157 blanket certificates.⁶ Therefore, as proposed by Windy Hill in its petition, the NGA section 7(c) exemption will be conditioned on Windy Hill's adherence to the Part 157 environmental conditions of our regulations. In addition, all areas disturbed under this exploration and testing program shall be completely restored to their pre-existing condition if Windy Hill decides

⁵ See, e.g., Desert Crossing Gas Storage and Transportation system LLC, 98 FERC ¶ 61,277 (2002); Copper Eagle Gas Storage L.L.L., 97 FERC ¶ 62,193 (2001); and Central New York Oil and Gas Company, 89 FERC ¶ 61,006 (1999).

⁶ See 18 C.F.R. § 157.206(b) (2003).

not to submit a certificate application. We will require Windy Hill to photograph and document pretest conditions prior to any ground-disturbing activity, and photograph and document its restoration (including restoration of all areas used as newly-constructed access roads), and file this documentation within two months of the date of completion of work permitted by this order. Restoration must be approved in writing by the Director of the Office of Energy Projects (OEP).

11. Based on the limited and temporary nature of the proposed activities and the requirements to comply with all applicable environmental laws and regulations and restore disturbed areas, we conclude that Windy Hill's proposed activities will not constitute a major federal action significantly affecting the human environment.

12. The certificate exemption granted herein is without prejudice to any decision the Commission may make regarding any application Windy Hill may file for authorization for a storage project at the site or related pipeline construction.

13. At a hearing held on July 28, 2004, 2004, all evidence, including the petition submitted in support of the authorization sought herein, became part of the record in this proceeding.

The Commission orders:

(A) Upon the terms and conditions of this order pursuant to NGA section 7(c)(1)(B), Windy Hill is granted an exemption from the NGA section 7(c) certificate requirements to undertake the activities specified in this order and in Windy Hill's petition.

(B) Windy Hill shall notify the Commission within 10 days after commencing activities within the exemption granted in Ordering Paragraph (A).

(C) Windy Hill shall allow inspection by Commission staff at any time.

(D) The exemption granted in Ordering Paragraph (A) is effective upon issuance of this order.

(E) The exemption granted in Ordering Paragraph (A) may be revoked if the actions are determined to be inconsistent with this order or with state or federal law and regulations. The Commission may halt work authorized under this exemption until any required consistency determination is completed.

(F) The authorized drilling and testing activities shall be completed within one year of the date of this order.

(G) Windy Hill shall comply with the environmental requirements of section 157.206(b) of the Commission's regulations in implementing the drilling and testing activities.

(H) Windy Hill shall photo document pretest conditions prior to any ground-disturbing activity and file that documentation along with photo documentation of restoration (including restoration of all areas used as access roads) with the Secretary, within two months from the date of completion of work approved by this order. Restoration must be approved in writing by the Director of the Office of Energy Projects.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.