

126 FERC ¶ 61,241
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;
Sudeen G. Kelly, and Marc Spitzer.

MoBay Storage Hub LLC

Docket No. CP06-398-001

ORDER AMENDING CERTIFICATE

(Issued March 19, 2009)

1. On December 20, 2006, the Commission issued a certificate under section 7 of the Natural Gas Act (NGA) to MoBay Storage Hub, Inc. (MoBay) (December 2006 Order)¹ authorizing it to construct and operate a natural gas storage facility and associated pipeline facilities (MoBay Gas Storage Project) in South Mobile Bay County, Alabama. The December 2006 Order also granted MoBay's request to charge market-based rates for its storage and hub services, and approved MoBay's *pro forma* tariff.² The authorized facilities are under construction at this time.

2. On May 9, 2008, pursuant to section 7 of the NGA and Part 157 of the Commission's regulations, MoBay requested authorization to amend its certificate to add two priority interruptible services to the services authorized in the December 2006 Order, and to charge market based rates for the proposed services. For the reasons set forth below, the Commission is granting the requested authorizations.

Background and Proposal

3. As approved in the December 2006 Order, MoBay's *pro forma* tariff provides for firm storage service (Rate Schedule FSS), interruptible storage service (Rate Schedule ISS), interruptible parking (Rate Schedule IPS), interruptible loaning (Rate Schedule ILS), interruptible wheeling service (Rate Schedule IWS), interruptible imbalance trading (Rate Schedule IBTS), interruptible balancing (Rate Schedule IBS), a sales service (Rate Schedule SS), and a firm hourly balancing service (Rate Schedule FHBS).

¹ In a letter filed December 22, 2006 accepting its certificate MoBay indicated that it had changed its name from MoBay Storage Hub, Inc., to MoBay Storage Hub LLC.

² See *MoBay Storage Hub, Inc.*, 117 FERC ¶ 61,298 (2006).

4. MoBay proposes to add an enhanced interruptible storage service under Rate Schedule EISS and an enhanced interruptible loan service under Rate Schedule EILS to the services already authorized in the December 2006 Order. MoBay states that the principal difference between the new enhanced interruptible services and the standard interruptible services is that Rate Schedules EISS and EILS will have a higher service priority than the standard interruptible services and the authorized overrun services. Unlike standard interruptible services, which are available subject to the nominations of firm shippers and the nominations of other interruptible shippers, MoBay states that the enhanced services it is proposing here will be subject only to the nominations of firm shippers, and, thus, will have a greater certainty of availability as compared to standard interruptible services.

5. MoBay states that a recent open season indicated shipper interest for higher priority interruptible services, contending that the combination of increased demand for natural gas, along with an increased demand for storage and hub services in the Southeast, has resulted in a desire by some shippers for the additional security afforded by services such as EISS and EILS. Shippers that do not require year-round firm storage service, avers MoBay, nonetheless desire to avoid interruption by other interruptible shippers when they are using their storage service entitlements. MoBay asserts that the proposed services will increase service options available to shippers, enhance shipper flexibility, and meet the needs of shippers seeking a greater level of certainty with respect to the availability and scheduling of interruptible service. MoBay states that these shippers are willing to commit to paying capacity charges in order to reserve that service priority.

6. MoBay states that, consistent with its *pro forma* tariff and the December 2006 Order, rates for Rate Schedule EISS service will be market-based (negotiable) and may include a capacity charge (which can be either a fee based on the shipper's maximum enhanced interruptible storage quantity or a volumetric fee), a storage injection charge, a storage withdrawal charge, and a fuel charge. Likewise, rates for Rate Schedule EILS service will be market-based (negotiable) and may include a loan charge (which can be either a fee based on the shipper's maximum enhanced interruptible loan quantity or a volumetric fee), an injection charge, a withdrawal charge, and a fuel charge.

7. MoBay asserts that Rate Schedule EISS and EILS service will not degrade or adversely affect MoBay's firm services in any way because the enhanced services always remain subject to interruption to meet the needs of Rate Schedule FSS and FHBS shippers. MoBay states that it intends to sell a limited amount of these services based upon operational availability and as limited by the storage capacity of the field (for Rate Schedule EISS) and cushion gas requirements (for Rate Schedule EILS). Priority among Rate Schedule EISS and among Rate Schedule EILS service requests will be determined based on the highest present value to MoBay over the term of the agreement. MoBay asserts that its Rate Schedule EISS service is consistent with Commission policy and is

similar to other Commission-approved priority interruptible services or preferred services that have a priority between firm and interruptible services.³

Notice and Interventions

8. Notice of the proposed amendment was published in the *Federal Register* on May 15, 2008 (73 Fed. Reg. 29,499). Iberdrola Renewables, Inc. filed a timely, unopposed motion to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁴

9. Caledonia Energy Partners, L.L.C. (Caledonia) filed an unopposed motion to intervene out-of-time. Caledonia has shown an interest in this proceeding, and its participation will not delay the proceeding or prejudice the rights of any other party. Accordingly, for good cause shown, we will permit its late intervention.⁵

10. Florida Power & Light Company (Florida Power) filed a protest to the proposed amendment and MoBay filed an answer to Florida Power's protest. Although our rules do not permit answers to protests,⁶ they do provide that we may, for good cause, waive this provision.⁷ We find good cause to do so in this instance because MoBay's answer provides information that will assist us in our decision-making.

Florida Power's Protest.

11. Florida Power, a firm storage customer of MoBay, objects to the new services, contending that they are unnecessary, are contrary to Commission policy, and would degrade firm service flexibility under Florida Power's existing contract with MoBay. Florida Power avers that the Commission has traditionally considered overrun and interruptible services to be identical and has required that they have the same scheduling priority.

³ See *Caledonia Energy Partners, L.L.C.*, Docket No. RP08-57-000 (unpublished letter order) Nov. 30, 2007; see also *Northern Natural Gas Co.*, 101 FERC ¶ 61,203, at P 120 (2002) (*Northern Natural*).

⁴ 18 C.F.R. § 385.214 (2008).

⁵ 18 C.F.R. § 385.214(d) (2008).

⁶ 18 C.F.R. § 385.213(a)(2) (2008).

⁷ 18 C.F.R. § 385.101(e) (2008).

12. Florida Power states that it needs the flexibility to call upon authorized overrun service with the same priority as interruptible service when unexpected needs arise on downstream pipelines as a result of changing market conditions. Florida Power claims that, if approved, the new services will utilize MoBay's available operational working gas capacity at a higher priority than other interruptible and authorized overrun services. Florida Power asserts that this will impinge on MoBay's ability to provide authorized overrun service to firm shippers, thereby degrading the system flexibility firm shippers expected when they entered into their firm service agreements.

13. Florida Power contends, moreover, that MoBay already has provisions in its tariff for interruptible storage and loans nearly identical to the services proposed here and that MoBay has not shown a need for the proposed new services.

Mobay's Reply

14. MoBay avers in its answer to the protest that the market prompted it to develop the higher priority interruptible services it is proposing here. MoBay states that some shippers that do not require year-round firm storage service are nevertheless seeking to avoid interruption by other interruptible shippers and are willing to pay capacity charges to reserve a higher service priority. MoBay asserts that, contrary to Florida Power's suggestion, MoBay's existing interruptible service offerings are not meeting the anticipated demands of these shippers.

15. MoBay states that the priority of firm service is unaffected by the proposed new services. MoBay explains that overrun service is offered only on an interruptible basis for nominations that are in excess of the firm shipper's contract demand. Firm shippers, it states, are not paying a reservation charge for authorized overrun gas, but rather a usage charge like interruptible shippers.⁸ MoBay contends that authorized overrun service is entitled only to interruptible service priority. MoBay asserts that it is not proposing here to alter the interruptible scheduling priority of authorized overrun service.

16. MoBay asserts that Florida Power can have no realistic expectation that it is able to rely on authorized overrun service because Florida Power's executed service agreement provides that the rate for authorized overrun service is "negotiable" and MoBay's tariff provides that all interruptible services, including authorized overruns, are prioritized on the basis of net revenue. MoBay states that, because Florida Power could

⁸ MoBay cites *Elba Express Co., L.L.C.*, 119 FERC ¶ 61,015, at P 41 (2007); *Southern LNG, Inc.*, 120 FERC ¶ 61,258, at P 47 (2007).

be outbid by other shippers requesting overrun service, there is no certainty that Florida Power will be able to obtain overrun rights at any particular time.

Discussion

17. MoBay's proposed priority interruptible services were developed to answer the desire of some interruptible shippers for a higher degree of supply security than currently available under MoBay's traditional interruptible service. These shippers do not require year-round firm storage service but seek to avoid interruption by other interruptible shippers. These shippers have demonstrated that they are willing to pay capacity charges for this higher degree of supply security.

18. The proposed higher priority interruptible services will benefit shippers by increasing service options, enhancing shipper flexibility, and meeting the needs of shippers seeking a greater level of certainty regarding the availability and scheduling of interruptible services. The Commission, moreover, has long held that a pipeline may offer a higher priority interruptible service,⁹ and the services proposed here are consistent with the Commission's policy that capacity must be allocated to the shipper that places the highest value on the capacity.¹⁰ For these reasons, the Commission will approve Rate Schedules EISS and EILS.

19. Florida Power's firm service will not be degraded by the proposed higher priority interruptible services as the proposed services will have a lower priority than firm service. The Commission stated in a number of proceedings that authorized overrun service is not firm service.¹¹ While authorized overrun service is associated with a firm rate schedule, it is still an interruptible service and indistinguishable from other interruptible services. Under MoBay's proposal, authorized overrun service will continue to have the same service priority as standard interruptible service. If Florida Power is concerned about the reliability and sufficiency of its firm service, it may consider

⁹ See *Texas Eastern Transmission Corp.*, 62 FERC ¶ 61,015 (1993); and *Northern Natural*, 101 FERC ¶ 61,203 (2002).

¹⁰ See *Central New York Oil and Gas Co.*, 114 FERC ¶ 61,105 (2006) (*Central New York*); and *Florida Gas Transmission Co.*, 102 FERC ¶ 61,217, at P 23 (2003).

¹¹ See *Central New York*, 114 FERC ¶ 61,105, at P 9 (2006); *Portland Natural Gas Transmission System*, 106 FERC ¶ 61,289, at P 50 (2004); *TriState Pipeline, L.L.C.*, 88 FERC ¶ 61,328, at p. 62,006 (1999); *Puget Sound Energy, Inc.*, 84 FERC ¶ 61,347, at p. 62,516 (1998); and *CNG Transmission Corp.*, 81 FERC ¶ 61,346, at p. 62,592 (1997).

purchasing more firm capacity or the enhanced interruptible service proposed here.¹² Thus, the Commission will deny Florida Power's protest.

20. In the December 2006 Order, the Commission approved MoBay's request to charge market-based rates for firm and interruptible storage, hub, and wheeling services. The Commission found that MoBay had demonstrated that its proposed storage facilities will be in a highly competitive production area where numerous storage and hub service alternatives exist for potential customers. The Commission also found that MoBay's prospective market shares are low and that market area HHIs (Herfindahl Hirschman Index numbers) are below the threshold warranting further review. Thus, the Commission concluded that MoBay lacked market power. The market-power analysis contained in the December 2006 Order will not change as a result of authorizing Rate Schedules EISS and EILS. Therefore, the Commission will grant MoBay authority to charge market-based rates for EISS and EILS services.

21. At a hearing held on March 19, 2009, 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 authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) MoBay's certificate, issued December 20, 2006, is amended to authorize MoBay to provide Rate Schedule EISS and EILS services, as described in the body of this order.

(B) The Commission grants market-based rate authority for the proposed EISS and EILS services, subject to the same conditions as the market-based rate authority granted in the December 2006 Order.

(C) In accordance with the NGA and Part 154 of the Commission's regulations, MoBay shall file, not less than 30 days nor more than 60 days, prior to the commencement of service, actual tariff sheets consistent with the authorization issued herein and the conditions and ordering paragraphs contained in the Commission's December 2006 Order in this proceeding.

¹² MoBay's tariff prioritizes interruptible and authorized overrun service on the basis of net revenues. Therefore, if Florida Power's authorized overrun service does not result in the highest net revenue to MoBay, Florida Power might not be able to obtain authorized overrun service when it needs it, even in the absence of the proposed priority interruptible service.

(D) In all other respects, the December 2006 Order shall remain in full force and effect.

By the Commission. Commissioner Moeller is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.