

128 FERC ¶ 61,033
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Monroe Gas Storage Company, LLC

Docket Nos. RP09-447-001
RP09-447-002

ORDER ON FILING AND DISCLOSURE OF NON-CONFORMING SERVICE
AGREEMENTS

(Issued July 16, 2009)

1. On May 4, 2009 in Docket No. RP09-447-001, as amended on May 18, 2009 in Docket No. RP09-447-002, Monroe Gas Storage Company, LLC (Monroe) filed tariff revisions to comply with the Commission's April 14, 2009 order.¹ The April 14 Order accepted Monroe's tendered tariff sheets, subject to Monroe submitting revised electronic media conforming to the hardcopy version of its proposed tariff, and accepted and suspended Monroe's non-conforming service agreements and revised Forms of Service Agreement (FSA), subject to refund and further review. The Commission also required Monroe to file comments justifying its request for non-public treatment of certain provisions in the non-conforming service agreements. In response to the April 14 Order, Monroe has attempted to justify the continued non-public treatment of the un-redacted non-conforming service agreements. Monroe has also submitted non-substantive corrections to the hardcopy version of its tariff to conform to the electronic version of its tariff. For reasons discussed below, the Commission generally denies the continued non-public treatment of the un-redacted non-conforming service agreements.

¹ *Monroe Gas Storage Company, LLC*, 127 FERC ¶ 61,037 (2009) (April 14 Order).

Background

2. On March 10, 2009, Monroe filed its initial tariff, with revisions to comply with the capacity release requirements promulgated by Order Nos. 712 and 712-A,² revisions to its FSAs, and other non-substantive revisions. As detailed in the Appendices of Monroe's March 10, 2009 filing, Monroe also submitted six non-conforming agreements, which potentially materially deviated from Monroe's revised FSAs.³ In its March 10, 2009 filing, Monroe included: a Firm Storage Service Agreement (Firm Agreement) and Enhanced Hub Service Agreement (Enhanced Hub Agreement) with Citigroup Energy Inc. (Citigroup); a Firm Agreement and an Interruptible Storage Service Agreement (Interruptible Agreement) with Morgan Stanley Capital Group Inc. (Morgan Stanley); and separate Firm Agreements with PPL Energyplus, LLC (Energyplus) and Sequent Energy Management (Sequent).

3. In the April 14 Order, the Commission accepted and suspended the non-conforming service agreements and the revisions to the FSAs, to be effective the later of April 15, 2009 or the in-service date of the project, subject to refund and further review. The Commission stated that the non-conforming service agreements were for jurisdictional service and NGA section 4 required that they be made public.⁴ As such, we granted Monroe 20 days from the date of the order to file comments justifying the continued non-public treatment of the un-redacted non-conforming service agreements.⁵ The Commission also accepted Monroe's proposed revisions to its tariff to comply with Order Nos. 712 and 712-A. Finally, we rejected any additional language appearing in the electronic media that did not appear in the hardcopy of Monroe's filing and directed Monroe to file revised electronic media that conforms to the hardcopy version of its proposed tariff.

² *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 73 Fed. Reg. 37,058 (June 30, 2008), FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g*, Order No. 712-A, 73 Fed. Reg. 72,692 (Dec. 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008).

³ The non-conforming service agreements filed on March 10, 2009 were filed as non-public, privileged information. On March 26, 2009, Monroe resubmitted its non-conforming service agreements in order to file redacted and un-redacted versions as public and privileged information, respectively.

⁴ April 14 Order at P 15 (citing *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,001-2 (2001); *SG Resources*, 125 FERC ¶ 61,191, at P 23-24 (2008)).

⁵ *See* 18 C.F.R. § 388.112(d) (2008).

4. In its May 4, 2009 and May 18, 2009 compliance filings, Monroe has removed language on Original Sheet Nos. 24 and 308 and other discrepancies on its electronic media that did not appear on the hardcopy version of its tariff submitted on March 10, 2009. In addition, Monroe has removed non-substantive typographical errors from the hardcopy version of its tariff to further bring the hardcopy and electronic versions of its tariff into conformity with one another. Finally, Monroe also submits a request for continued non-public treatment of the un-redacted non-conforming service agreements.

Notice of Filing

5. Public notices of the filings were published in the *Federal Register* with comments due on or before May 29, 2009. Pursuant to Rule 214,⁶ all timely filed motions to intervene and any motion to intervene out-of-time filed 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.

Discussion

6. The Commission accepts Monroe's proposed tariff revisions to rectify discrepancies between the electronic and hardcopy versions of its tariff. Further, the Commission finds that Monroe has not justified its request for privileged treatment of the redacted portions of its six non-conforming service agreements, to the extent that the non-conforming contractual provisions include redactions. We also find that Monroe has inadequately complied with the posting requirements under section 284.13(b) of the Commission's regulations.⁷ Finally, the Commission notes that it is still in the process of reviewing the FSAs and non-conforming service agreements and requires more time to determine whether Monroe's proposed FSA provisions and non-conforming agreements are just and reasonable and not unduly discriminatory, pursuant to section 4 of the NGA. Accordingly, the revisions to the FSAs and non-conforming service agreements remain subject to the refund condition established in the April 14 Order.

Disclosure of Non-Conforming Agreements

7. In its May 4, 2009 compliance filing, Monroe asserts that there is no need to make public the portions of the non-conforming service agreements for which it seeks privileged treatment, because it filed redacted versions of non-conforming service agreements which made all the terms and conditions in the agreements (except for rate

⁶ 18 C.F.R. § 385.214 (2008).

⁷ 18 C.F.R. § 284.13(b) (2008).

information) available for public inspection. Monroe asserts that the redacted information does not represent a non-conforming element of the executed service agreements because the only information redacted is rate information and Monroe's standard forms of service agreement do not specify rates. Monroe therefore argues that the redacted versions of the service agreements fully disclose all of the non-conforming aspects of those agreements. Monroe concludes that there is no compelling public interest reason for disclosing the rate information in those agreements.

8. Monroe also argues that disclosing the redacted rate information at this time would be harmful to Monroe in particular, and to competition in the gas storage market generally. Monroe explains that it conducted a second open season for available capacity on its gas storage project, and it is currently in the process of negotiating binding precedent agreements with potential customers. As such, Monroe asserts that disclosing market-based rate information that is commercially sensitive would unbalance the negotiation process between Monroe and its potential shippers for available capacity, giving the shippers an undue advantage not present when shippers negotiate market-based rates with other storage projects. Monroe claims that the Commission has exempted independent storage providers authorized to charge market-based rates, like Monroe, from the Commission's regulations relating to the provision of cost-of-service information.⁸ Monroe asserts that, in this regard, its approved tariff does not include rate and charge information.

9. Monroe clarifies that it is not proposing that the redacted rate information be kept confidential for all time. Instead, Monroe states that pricing information for the firm and interruptible storage and hub services provided by Monroe will be publicly available when Monroe posts the information to its website no later than the first nomination under a transaction as required by 18 C.F.R. § 284.13(b). Accordingly, Monroe requests that the Commission not disclose pricing information contained in the filed non-conforming service agreements until that information has been posted. Monroe states that this

⁸ Monroe May 4, 2009 transmittal at 3 (citing *Tarpon Whitetail Gas Storage, LLC*, 123 FERC ¶ 61,274 (2008); *Steckman Ridge, LP*, 123 FERC ¶ 61,248 (2008); *Enster Houston Hub Storage & Transp., LP*, 123 FERC ¶ 61,019 (2008); *Golden Triangle Storage, Inc.*, 121 FERC ¶ 61,313 (2007); *Mississippi Hub, LLC*, 118 FERC ¶ 61,099 (2007); *Liberty Gas Storage LLC*, 113 FERC ¶ 61,247 (2005); *Caledonia Energy Partners, L.L.C.*, 111 FERC ¶ 61,095 (2005); *Freebird Gas Storage, LLC*, 111 FERC ¶ 61,054 (2005); *Pine Prairie Energy Center, LLC*, 109 FERC ¶ 61,215 (2004); *Central New York Oil & Gas Co.*, 94 FERC ¶ 61,194 (2001)).

approach would allow Monroe to keep on equal footing with its competitors and meet the Commission's disclosure requirements under section 4 of the Natural Gas Act (NGA).⁹

10. In its May 18, 2009 filing, Monroe states that the in-service date of the Monroe Gas Storage Project was April 29, 2009.¹⁰

Discussion

11. Monroe's assertion that it has redacted only rate information from its filed service agreements and that the redacted versions of the agreements fully disclose all the non-conforming provisions is incorrect. Monroe has redacted portions of the very contractual provisions it states are material deviations. For example, Monroe states that sections 1.B, 4.A, and 4.B of its Firm Agreement with Citigroup contain material deviations. The material deviation in section 1.B gives Citigroup the right to submit nominations for additional withdrawals in excess of its Maximum Storage Quantity, subject to certain specified volumetric limits. Monroe has redacted those volumetric limits. The material deviations in sections 4.A and 4.B concern the commencement date of Citigroup's service including certain rights for the pipeline to delay the commencement date, an option for the shipper to extend the term of the service agreement, and the rate to be paid if the commencement date is delayed. Monroe has redacted the various specific dates from these provisions, as well as the rates to be paid if the commencement date is delayed. The Commission found similar information redacted in Monroe's Firm Agreements with Morgan Stanley, Energyplus, and Sequent. Finally, the Commission found quantities (section 1.A) and terms (section 5) redacted in the Enhanced Hub Agreement between Monroe and Citigroup.

12. For the reasons discussed below, the Commission finds that Monroe must make public the entirety of each non-conforming contractual provision for which it seeks Commission approval, and it must limit any redactions from the remainder of the service agreement to commercially sensitive provisions which are unrelated to consideration of the material deviation. In addition, if there have already been nominations for service under one of these agreements, it must file a public version of that agreement without any redactions.

13. Section 154.1(b) of the Commission's regulations sets forth the general requirement that pipelines must file all contracts related to their services.¹¹ Section

⁹ 15 U.S.C. § 717c(e) (2006).

¹⁰ May 18, 2009 Transmittal Letter at 2.

¹¹ See 18 C.F.R. § 154.1(b) (2008).

154.1(d) further provides that, for the purposes of section 154.1(b), any contract that conforms to the *pro forma* service agreement required to be included in the pipeline's tariff by section 154.110 need not be filed.¹² Sections 154.1(d) and 154.112(b) require that any contract or executed service agreement which deviates in any material aspect from the *pro forma* service agreement must be filed.¹³ In addition, section 284.13(b) requires pipelines to post on their internet website specific transactional information about all their contracts, including such items as the rate, term, contract demand, and other special details.¹⁴ That posting must take place by the first nomination for service under the contract.

14. When a pipeline files non-conforming service agreements pursuant to sections 154.1(d) and 154.112(b), it should not delete any portion of the non-conforming contractual provisions for which it seeks Commission approval. The Commission adopted those sections, together with the section 284.13(b) transactional posting requirements, as part of its implementation of NGA section 4(c). That section of the NGA provides that:

[E]very natural-gas company shall file with the Commission, within such time ... and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, *together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.*¹⁵

15. When a service agreement conforms to the pipeline's *pro forma* service agreement required by section 154.110 (and the other provisions of the pipeline's tariff), the requirements of NGA section 4 are satisfied by (1) the Commission's prior review and approval of the *pro forma* service agreement and (2) the pipeline's subsequent posting pursuant to section 284.13(b) of specific information about the service agreement. The pipeline's filing of the *pro forma* service agreement gives "the Commission and other interested parties ... an opportunity to determine that the form of service agreement

¹² 18 C.F.R. § 154.1(d) (2008).

¹³ *Id.*, see also 18 C.F.R. § 154.112(b) (2008).

¹⁴ See 18 C.F.R. § 284.13(b) (2008).

¹⁵ 15 U.S.C. § 717c (2006) (emphasis added).

provided for in the tariff is just and reasonable and not unduly discriminatory.”¹⁶ As a result, there is no need for subsequent conforming agreements to be filed with the Commission for its review to determine whether they comply with the requirements of the NGA.¹⁷ Moreover, the section 284.13(b) posting ensures public disclosure of all significant information which the parties to the conforming agreement have included in the blanks in the *pro forma* service agreement. This permits the Commission and interested parties to monitor individual conforming transactions for undue discrimination, without the need for any filing with the Commission.¹⁸

16. However, these procedures only comply with the filing and public disclosure requirements of NGA section 4 when the shipper’s service agreement truly conforms to the form of service agreement. When the service agreement contains a material deviation, the Commission cannot be considered to have already reviewed the service agreement when it reviewed the *pro forma* service agreement. Accordingly, as the Commission held in *Columbia Gas Transmission Corp.*, “[s]ince NGA section 4 requires the filing of all contracts which affect the pipeline’s service ‘in any manner,’ the statute requires the filing of such a service agreement.”¹⁹ For that reason, sections 154.1(d) and 154.112(b) require pipelines to file all contracts containing material deviations with the Commission. The purpose of such a filing is not only to allow the Commission to review the material deviation, but also to allow other interested parties to review the provision and present their views to the Commission as to whether the provision is just and reasonable and not unduly discriminatory. That purpose cannot be accomplished if parts of the very material deviation which the pipeline has filed for Commission approval are redacted and thus not available for review by other interested persons. For example, in this case the material deviation in section 1.B of the Citigroup service agreement gives the shipper the right to submit nominations for additional withdrawals in excess of its

¹⁶ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001).

¹⁷ *Id.*

¹⁸ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,320-31,326 (Order No. 637), *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099 (Order No. 637-A), *reh’g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff’d in part and remanded in part sub nom. Interstate Natural Gas Ass’n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh’g*, 106 FERC ¶ 61,088 (2004), *aff’d sub nom. American Gas Ass’n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

¹⁹ *Columbia Gas Transmission Corp.*, 97 FERC at 62,002.

Maximum Storage Quantity, subject to certain specified volumetric limits, but those volumetric limits are redacted. The level of those volumetric limits could be relevant to other customers of Monroe in determining how the material deviation might affect them.

17. The Commission recognizes that section 284.13(b), as adopted by Order No. 637-A, permits the pipeline's posting of transactional information about individual contracts not to take place until the first nomination for service under that contract, and Monroe stated in its May 4 filing that it would post all the information for which it has sought privileged treatment in this proceeding by the first nomination for service under each of these contracts, as required by that section. However, such after-the-fact posting is insufficient to carry out the purposes of the requirement in sections 154.1(d) and 154.112(b) that pipelines file contracts with material deviations for Commission approval. That is because such a posting generally does not give interested persons an opportunity to comment on any redacted portion of the material deviation by the deadline for comments or protests to the pipeline's filing. Pipelines must file contracts containing material deviations at least 30 days before their effective date, absent waiver of that requirement,²⁰ and the Commission generally does not grant waivers that would allow an effective date before the filing of the contract. As a result, the first nomination for service under the contract may not take place until well after the deadline for comments or protests on the pipeline's filing.²¹ For these reasons, the Commission concludes that, if a pipeline chooses to include a material deviation in a service agreement, then its filing of that contract for Commission approval must make public the entire material deviation with no redactions and all other aspects of the contract relevant to an understanding of the material deviation and its effect on other shippers.

18. When a pipeline files a non-conforming contract, the Commission is willing to consider requests, pursuant to section 388.112 of our regulations,²² for privileged treatment of commercially sensitive portions of the agreement which are unrelated to consideration of the material deviation. For example, the rate agreed to between the parties is generally not itself a material deviation and is generally not relevant to consideration of whether the material deviation should be permitted. Order No. 637-A permitted pipelines to delay posting transactional information, including the rate, until the first nomination for service in order to minimize any adverse competitive effects on the pipeline from the release of such information immediately upon execution of the

²⁰ 18 C.F.R. § 154.207 (2008).

²¹ Section 154.210 requires such comments or protests to be filed within twelve days after the filing, unless the Commission provides otherwise.

²² 18 C.F.R. § 388.112 (2008).

contract.²³ Accordingly, consistent with Order No. 637-A, privileged treatment of the rates in a non-conforming contract may be appropriate until that rate is posted consistent with the requirements of section 284.13(b). Of course, if an interested person believes that access to any such redacted information is necessary for it to be able to comment on the pipeline's filing, it may request access to such information either by having the Commission make it public or through a protective order.²⁴

19. In its May 4 compliance filing in this case, Monroe clarified that it was only seeking privileged treatment of the redacted information in the six service agreements until the first nomination for service under each agreement, at which time it would post the relevant information on its internet website as required by section 284.13(b). In its May 18 filing, Monroe stated that it had commenced service on April 29, 2009. From a review of the transactional postings on its internet website,²⁵ it appears that there have been nominations for service under at least five of the six non-conforming service agreements at issue here. To the extent there have been nominations for service under any of these service agreements, there is no justification for further privileged treatment of any portion of those service agreements.

20. The Commission directs that Monroe refile public versions of the six service agreements at issue here, consistent with the above discussion. If there have been nominations for service under an agreement, it must file a public version of that agreement without any redactions. If there has not been a nomination under an agreement, it must file a public version of that agreement and request privileged status under section 388.112 for any redactions limited to commercially sensitive portions of the agreement which are unrelated to consideration of the material deviation.

Compliance with section 284.13(b) posting requirements

21. Finally, upon further inspection of the postings on Monroe's website, the Commission found that Monroe has not posted the following information required by section 284.13 of the Commission's regulations to its internet website:

²³ Order No. 637-A, at 31,613.

²⁴ Once an interstate pipeline files its justification for privileged treatment, section 388.112(c)(1)(i) of the Commission's regulations clarifies that the "Commission retains the right to make determinations with regard to any claim of privilege or CEII status, and the discretion to release information as necessary to carry out its jurisdictional responsibilities."

²⁵ <http://www.gasnom.com/ip/monroe/>.

- (1) the full legal name of *all* customers (*e.g.* Citigroup Energy Inc.), as required by sections 284.13(b)(1)(i) and 284.13(b)(2)(i) of the Commission's regulations;
- (2) receipt and delivery points of all contracts, as required by sections 284.13(b)(1)(vi) and 284.13(b)(2)(iv); and
- (3) special terms and conditions of all contracts (*i.e.* non-conforming material), as required by sections 284.13(b)(1)(viii) and 284.13(b)(2)(vi) of the Commission's regulations.

22. As such, Monroe is not in compliance with section 284.13(b) of the Commission's regulations. In accordance with our Order Approving Audit Report and Directing Compliance and Other Corrective Actions involving Southern Star Central Gas Pipeline, Inc.,²⁶ the Commission directs Monroe to review all web site postings for compliance with the requirements of section 284.13(b) of the Commission's regulations and correct all inaccurate or incomplete postings.

The Commission orders:

- (A) The Commission accepts the tariff sheets listed in the Appendix to this order to be effective on April 29, 2009.
- (B) Within 10 days of the date of this order, Monroe must file public versions of the six non-conforming agreements for which it seeks Commission approval, consistent with the discussion in the body of this order.
- (C) The Commission directs Monroe to review all web site postings for compliance with the requirements of section 284.13(b) of the Commission's regulations and correct all inaccurate or incomplete postings.

²⁶ *Southern Star Central Gas Pipeline, Inc.*, 125 FERC ¶ 61,082 (2008).

(D) The six non-conforming service agreements remain subject to the refund condition established in the April 14 Order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Monroe Gas Storage Company, LLC
FERC Gas Tariff, Original Volume No. 1
Tariff Sheets to be Effective April 29, 2009

Substitute Original Sheet No. 17
Substitute Original Sheet No. 24
Substitute Original Sheet No. 101
Substitute Original Sheet No. 116
Substitute Original Sheet No. 152
Substitute Original Sheet No. 157
Substitute Original Sheet No. 169
Substitute Original Sheet No. 170
Substitute Original Sheet No. 176
Substitute Original Sheet No. 201

Monroe Gas Storage Company, LLC
FERC Gas Tariff, Original Volume No. 1
Tariff Sheets to be Effective April 29, 2009, Subject to Refund and Further Review

Substitute Original Sheet No. 302
Substitute Original Sheet No. 308
Substitute Original Sheet No. 326
Substitute Original Sheet No. 327