

128 FERC ¶ 61,254  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Mississippi Hub, LLC

Docket No. CP09-110-000

ORDER ISSUING CERTIFICATE

(Issued September 17, 2009)

1. On April 6, 2009, Mississippi Hub, LLC (MS Hub) filed an application under section 7(c) of the Natural Gas Act (NGA) for authority to: (1) enlarge the size of the two previously-authorized salt dome natural gas storage caverns; (2) construct and/or modify gas compression and withdrawal facilities, increasing the injection and delivery capacity of its facilities; and (3) construct two interstate natural gas pipeline interconnections and additional pipeline and metering facilities (MS Hub Expansion). MS Hub also requests the continuation of its existing authority to charge market-based rates for its storage and hub services, and a waiver of certain filing requirements. The Commission will authorize MS Hub's proposal, with appropriate conditions, as discussed below.

**I. Background and Proposal**

2. MS Hub is a limited liability company organized and existing under the laws of Mississippi and authorized to conduct business in Mississippi. MS Hub is a wholly-owned subsidiary of Mississippi Hub Acquisition, LLC. Mississippi Hub Acquisition, LLC is a wholly-owned subsidiary of Sempra Midstream, Inc., which in turn, is a wholly-owned subsidiary of Energy South, Inc., acquired by Sempra Global in October 2008. Sempra Energy, a publicly-owned company, owns 100 percent of Sempra Global.

3. On February 15, 2007, in Docket No. CP07-4-000, the Commission issued MS Hub a certificate of public convenience and necessity to construct and operate the MS Hub Gas Storage Project, a 17.34 Bcf high-deliverability salt dome natural gas storage facility in Covington, Jefferson Davis, and Simpson Counties, Mississippi.<sup>1</sup> The 2007 Order authorized MS Hub to construct two 8.67 Bcf salt dome storage caverns, each

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<sup>1</sup> *Mississippi Hub, LLC*, 118 FERC ¶ 61,099 (2007) (2007 Order).

having 6.0 Bcf of working gas capacity and 2.67 Bcf of cushion gas capacity. As authorized, the delivery capacity and injection capacity of the storage fields are 1.2 Bcf per day (Bcf/d) and 0.6 Bcf/d, respectively. The 2007 Order also authorized the construction of 11.31 miles of 36-inch diameter pipeline to connect the storage facilities to two interstate pipelines, Southern Natural Gas Company and Gulf South Pipeline Company, and an intrastate pipeline, CrossTex Energy. In addition, the order authorized gas compression and withdrawal facilities, a leaching plant, water withdrawal and brine disposal facilities, and bi-directional metering facilities at each pipeline interconnection. The facilities are scheduled for completion by February 15, 2012.<sup>2</sup>

4. With the MS Hub Expansion, MS Hub proposes to increase each storage cavern's capacity by 2.38 Bcf, comprised of 1.5 Bcf of working gas and 0.88 Bcf of cushion gas, resulting in two 11.05 Bcf storage caverns (each with 7.5 Bcf of working gas and 3.55 Bcf of cushion gas). The MS Hub Expansion will increase the total authorized capacity of the facility from 17.34 Bcf to 22.1 Bcf. MS Hub also proposes to add 15,800 horsepower (hp) of compression, raising the total storage field compression to 45,005 hp from the previously-approved 29,205 hp.<sup>3</sup> These additions will increase the storage field's maximum delivery capacity from 1.2 to 1.4 Bcf/d and maximum injection capacity from 0.6 to 0.8 Bcf/d. MS Hub is also proposing to add or modify a number of items of equipment that are part of the gas withdrawal facilities.<sup>4</sup>

5. Further, MS Hub proposes to construct two additional interstate pipeline interconnections with the Southeast Supply Header System (SESH) and Transcontinental Gas Pipe Line Company, LLC (Transco), with bi-directional gas metering stations.<sup>5</sup> MS Hub proposes to construct 14.2 miles of 24-inch diameter pipeline and 22.6 miles of 30-inch diameter pipeline connecting MS Hub's natural gas pipeline header system to SESH's and Transco's pipeline systems, respectively.<sup>6</sup>

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<sup>2</sup> An extension of time from 2009 to 2012 to complete MS Hub's initially authorized project was granted by letter order dated January 21, 2009.

<sup>3</sup> Four 7,700 hp electric motor-driven compressors will be installed in lieu of three 5,000 hp electric motor-driven units previously authorized. Three previously-authorized 4,735 hp gas turbine-driven units will also be installed. In addition, MS Hub proposes to install three gas filter separators, each with a capacity of 250,000 Mcf/day instead of the two 300,000 Mcf/day gas filter separators previously authorized.

<sup>4</sup> See Application at 11.

<sup>5</sup> The SESH metering station site will consist of a .86-acre tract, while the Transco metering station site will consist of a 2.07-acre tract.

<sup>6</sup> The MS Hub Expansion Project also includes the construction of limited non-jurisdictional electric facilities by an unaffiliated electric utility.

6. MS Hub conducted an open season to determine the amount of market interest in additional storage and hub services. MS Hub asserts that a diverse group of market participants responded, expressing interest for an aggregate level of firm storage capacity exceeding the incremental capacity that would be available through the expansion, as well as for the new receipt and delivery points that would be made available through the interconnections with SESH and Transco. MS Hub proposes to use the expansion facilities to provide the same type of storage and hub services it was previously authorized to provide, e.g., firm storage services, and interruptible wheeling and park and loan services. MS Hub will provide all services from the storage field under the terms of its existing pro forma tariff approved by the Commission in the 2007 Order.

7. MS Hub requests authority to charge market-based rates for the storage and hub services to be provided using the expansion facilities and seeks the continuation of the market-based rate authority previously granted in the 2007 Order after the expansion facilities are placed into service. MS Hub supports its request with an updated market power analysis at Exhibit I to its application. MS Hub also requests waiver of certain filing and other requirements, discussed further below.

## **II. Notice, Interventions, and Comments**

8. Notice of MS Hub's application was published in the *Federal Register* on April 22, 2009 (74 Fed. Reg. 18,370). Lavores R. Oliver, *et al.* (the Olivers), an affected landowner, filed a timely motion to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations.<sup>7</sup>

9. In response to the notice, several landowners filed comments on MS Hub's proposal. The Olivers raise concerns regarding the proximity of the project to their residence and the fairness of the easement negotiation process with MS Hub. Leta Gay and William Benson Webster (the Websters) filed comments in opposition to the project. The Websters raise concerns regarding the routing of the pipeline across their property, the appropriate compensation for the loss of the use of their land and timber production, MS Hub's use of eminent domain prior to receiving a certificate, and the unfairness of co-locating pipelines on one landowner's property. In addition, Billy W. and Janice S. Hutcheson (the Hutchesons) filed comments raising concerns similar to those of the Websters. These comments are addressed below and in the Environmental Assessment (EA) prepared for the project.

## **III. Discussion**

10. Since MS Hub will use the proposed expansion facilities to provide natural gas service in interstate commerce subject to the jurisdiction of the Commission, the

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<sup>7</sup> 18 C.F.R. § 385.214(a)(3) (2009).

construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

**A. Certificate Policy Statement**

11. The Certificate Policy Statement provides guidance as to how the Commission will evaluate proposals for certificating new construction.<sup>8</sup> The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, and the avoidance of the unnecessary exercise of eminent domain or other disruptions of the environment.

12. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

13. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. We authorized MS Hub to charge market-based rates in the 2007 Order. That order found that MS Hub satisfied the threshold requirement of the Certificate Policy Statement of no subsidization because MS Hub was a new entrant in the natural gas storage market and had no existing customers. The 2007 Order also found that under its market-based rate proposal, MS Hub would assume the economic risks associated with the costs of the project's facilities to the extent that any capacity is unsubscribed.<sup>9</sup>

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<sup>8</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

<sup>9</sup> *Mississippi Hub, LLC*, 118 FERC ¶ 61,099, at P 16 (2007).

Similarly, under its market-based rate proposal here, MS Hub assumes the economic risks associated with the costs of the expansion facilities to the extent that any capacity is unsubscribed or revenues are not sufficient to recover costs. Thus, the Commission finds that MS Hub has satisfied the threshold requirement of the Certificate Policy Statement.

14. Since the MS Hub Expansion will serve increased market demand, there will be no negative impact on existing storage providers or their captive customers. As discussed below, the proposed project will be located in a competitive market and will serve new demand in a region that is experiencing rapid growth in natural gas availability and use. The proposal also will enhance storage options available to existing pipelines and their customers, and thus, will increase competitive alternatives. Further, no storage company in MS Hub's market area protested MS Hub's application.

15. In addition, there will be minimal adverse impacts on landowners and surrounding communities associated with the construction and operation of the MS Hub Expansion. MS Hub is modifying two caverns that are currently under development and all new construction will occur on the existing gas storage site or along the existing utility corridor of MS Hub or other pipelines.

16. However, as noted, several affected landowners raise concerns regarding the impact of the project on the use of their land. The Oliver family's homes are situated within 50 feet of the pipeline right of way. The Olivers state that landowners who reside close to the project site should be fully compensated, but that the easement agreements proposed by MS Hub are unfair. The Websters and the Hutchesons state that they do not wish to sign an easement agreement until MS Hub receives a certificate from the Commission. The Websters are also concerned by MS Hub's representations that it may utilize eminent domain to obtain its property before obtaining the Commission certificate. In addition, the Websters request an annual rental payment for the use of the right of way to compensate for the loss of current and future timber production.

17. The easement acquisition process is designed to compensate landowners for loss of use during construction, loss of non-renewable or other resources, including timber production, damage to property during construction, allowable uses of the permanent right of way after construction, and any perceived loss of property value. As part of the negotiations between the pipeline company and the individual landowners, the landowners can inform the company as to what they believe would be appropriate compensation.

18. Nevertheless, if an easement cannot be negotiated with a landowner and the Commission issues a certificate for the project, MS Hub can use the right of eminent domain under section 7(h) of the NGA to obtain the necessary rights of way to construct and operate the pipeline. Through the eminent domain process, MS Hub will be required to compensate the landowner for the right of way and for any construction-related

damages. However, issues of compensation for land taken by a pipeline under the eminent domain provisions of the NGA are matters for a state or federal court. The Commission has no authority to determine what constitutes just compensation.

19. The Websters are concerned that MS Hub will utilize eminent domain before it has obtained its certificate. Depending on individual state law, pipeline companies may petition for eminent domain under state jurisdiction prior to the issuance of a Commission certificate. However, a pipeline does not have the authority under the NGA to use eminent domain to take property, nor may it commence construction, prior to obtaining a certificate from the Commission. MS Hub states that it is committed to using all reasonable efforts to reach mutually acceptable easement agreements with the affected property owners before exercising its right of eminent domain.

20. We conclude that any adverse impacts on landowners and communities will be minimal. There will be no negative impact on existing storage providers or their captive customers. The proposed project will be located in a competitive market and is intended to serve new demand. Further, the MS Hub Expansion will increase the availability of high-deliverability natural gas storage capacity in the Gulf Coast area, thereby enhancing the interstate pipeline transportation system. Based on the benefits the MS Hub Expansion will provide to the market and the lack of any identified significant adverse effect on existing customers, other pipelines, or landowners and communities, we find, consistent with the Certificate Policy Statement and NGA section 7, that the public convenience and necessity requires approval of MS Hub's expansion project, subject to the conditions discussed below.

#### **B. Market-Based Rates**

21. MS Hub requests that the Commission reaffirm MS Hub's authority granted by the 2007 Order to charge market-based rates for its storage and hub services, seeking confirmation that after the expansion facilities are placed into effect, MS Hub will not be able to exercise market power with respect to its storage and hub services and that its market-based rate authority will continue in effect. MS Hub's updated market power analysis evaluates the storage and delivery capacity of both the previously-authorized facilities and the expansion facilities, as well as the storage and delivery capacity of the other natural gas storage projects in which MS Hub's parent, Sempra Energy, owns an interest. MS Hub maintains that because its facilities will be located in a major gas production area with numerous competitors (the Gulf Coast), it lacks market power over both the relevant natural gas storage and hub services markets.

22. Generally, the Commission evaluates requests to charge market-based rates for storage under the analytical framework of its Alternative Rate Policy Statement.<sup>10</sup> Under that policy, the Commission will approve market-based rates for storage providers where the applicant demonstrates that it lacks market power<sup>11</sup> or has adopted conditions that significantly mitigate market power.<sup>12</sup> The Commission has previously approved requests to charge market-based rates for storage services based upon findings that the proposed projects would not be able to exercise market power because of their small size, anticipated share of the market, and the existence of numerous competitors.<sup>13</sup>

23. The Commission's analysis of whether an applicant has the ability to exercise market power consists of three major steps: (1) definition of the relevant markets;<sup>14</sup> (2) measurement of a firm's market share and concentration; and (3) evaluation of other relevant factors. If an applicant is unable to, or elects not to, demonstrate that it lacks

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<sup>10</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (Alternative Rate Policy Statement), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *petitions for review denied sub nom., Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998), *criteria modified, Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220 (2006), Order No. 678-A, *order on clarification and reh'g*, 117 FERC ¶ 61,190 (2006).

<sup>11</sup> The Commission defines "market power" as "the ability of a pipeline to profitably maintain prices above competitive levels for a significant period of time." See Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,230 (citation omitted).

<sup>12</sup> See *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220 (2006), *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

<sup>13</sup> See, e.g., *Arlington Storage Co., LLC*, 125 FERC ¶ 61,306 (2008); *Tarpon Whitetail Gas Storage, LLC*, 123 FERC ¶ 61,274 (2008); *Tres Palacios Gas Storage, LLC*, 120 FERC ¶ 61,253 (2007).

<sup>14</sup> This includes the relevant product market, which consists of the applicant's service and other services that are good alternatives to the applicant's services, and the relevant geographic market. See Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,231. In Order No. 678, the Commission expanded the definition of the relevant product market and permitted storage applicants to include non-storage products and services, including pipeline capacity, local production and LNG supply in calculating their market concentration and market share. See Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 26.

market power, it may still receive market-based rates if such rates are deemed to be in the public interest to encourage construction of natural gas storage facilities and customers are adequately protected.<sup>15</sup>

24. The Commission finds that MS Hub's updated market power analysis satisfies the three factors considered in our standard analysis.<sup>16</sup> First, MS Hub identifies the relevant product market as firm and interruptible natural gas storage and hub services. MS Hub defines the relevant geographic market region as East Texas, Louisiana, Mississippi and Alabama (the Gulf Coast Production Region).

25. The market power analysis identifies 46 storage facilities unaffiliated with the MS Hub project that offer similar services in the Gulf Coast Production Region.<sup>17</sup> The market power analysis shows that the expanded MS Hub facility, together with the affiliated Bay Gas and Liberty Gas storage projects, will have a market share of approximately 7.8 percent of the total working gas capacity in the relevant geographic market, and 16.4 percent of available deliverability in the Gulf Coast production region. These relatively small market shares indicate that MS Hub is unlikely to exercise market power within the Gulf Coast storage market, which offers numerous alternatives.

26. Next, the Commission uses the Herfindahl-Hirschman Index (HHI) to determine market concentration for gas pipeline and storage markets.<sup>18</sup> The Alternative Rate Policy Statement states that a low HHI (generally less than 1,800) indicates that sellers are less likely to be able to exert market power because customers have sufficiently diverse alternatives in the relevant market.<sup>19</sup> While a low HHI suggests a lack of market power, a high HHI (generally greater than 1,800) requires closer scrutiny in order to make a determination about a seller's ability to exert market power. MS Hub's market power analysis shows that its HHI calculation is 765 for working gas capacity and 714 for peak

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<sup>15</sup> See Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 102 (quoting 15 U.S.C. § 717c (f) (2006)).

<sup>16</sup> MS Hub included in its market power study its affiliated storage fields in the production area. These storage fields are the Bay Gas Storage and Liberty Gas Storage projects, which also provide Commission-approved market-based rate storage service.

<sup>17</sup> See Exhibit Nos. 4, 5, and 6 of Exhibit I of MS Hub's Application.

<sup>18</sup> See Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,235.

<sup>19</sup> See Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 55 (noting that the Commission is not changing the 1,800 HHI threshold level).

day deliverability.<sup>20</sup> These measures of market concentration are significantly below the 1,800 HHI level, indicating that MS Hub does not have market power in the relevant market area.

27. Lastly, MS Hub cannot exercise market power because the relevant market is easy to enter. The Commission has found previously that barriers to entry in the Gulf Coast production region are not significant.<sup>21</sup> In addition, the services to be provided by the project are offered by twelve competing hubs and market centers in the region.

28. Based on these factors, the Commission finds that MS Hub's analysis demonstrates that its proposed project will be in a highly competitive area where numerous storage service alternatives exist for potential customers. The Commission also finds that MS Hub's analysis properly identifies good alternatives<sup>22</sup> and that MS Hub's entry will increase the storage alternatives in the Gulf Coast production region. Furthermore, the Commission finds that, within the relevant market, MS Hub's prospective market shares are low and that the measures of market concentration are well below the threshold which would require closer scrutiny. Finally, the Commission finds that barriers to entry are likely to be low in the relevant market. Thus, the Commission concludes that MS Hub will lack significant market power.

29. Traditionally, in evaluating whether shippers of an applicant seeking market-based rate authority for interruptible wheeling and other hub-related services could obtain the same services from alternative providers, the Commission has used a matrix, referred to as a "bingo-card," which identifies all possible interconnections for pipelines attached to a hub and indicates whether good alternatives exist.<sup>23</sup> MS Hub's "bingo-card" analysis<sup>24</sup> shows that there are a number of alternative paths available to shippers desiring to wheel natural gas between interstate natural gas pipelines in the Gulf Coast production region. In addition, MS Hub's market power study shows that MS Hub's market share for

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<sup>20</sup> See Exhibits 4 and 6, respectively, of Exhibit I.

<sup>21</sup> See, e.g., *Tarpon Whitetail Gas Storage, LLC*, 123 FERC ¶ 61,274, at P 28 (2008); *Enstor Houston Hub Storage and Transportation, LP*, 123 FERC ¶ 61,019, at P 32 (2008); *Port Barre Investments, L.L.C.*, 116 FERC ¶ 61,052, at P 25 (2006).

<sup>22</sup> 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 it for an applicant's proposed service. See *Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 at 61,231.

<sup>23</sup> See, e.g., *Enstor Houston Hub Storage and Transportation, LP*, 123 FERC ¶ 61,019 (2008); *PetroLogistics Natural Gas Storage, LLC*, 122 FERC ¶ 61,193 (2008).

<sup>24</sup> See Exhibit 7 of Exhibit I.

wheeling delivery capacity at alternative hubs and market centers in the Gulf Coast production region will be 10.8 percent and its market share for receipt capacity will be 9.9 percent.<sup>25</sup> These percentages are similar to the percentages the Commission has accepted in the past.<sup>26</sup> The HHI for delivery capacity is 928.6 and for receipt capacity 959.7, both of which are well below the 1,800 threshold set forth in the Alternative Rate Policy Statement. The market power study also shows that MS Hub will be unable to exercise market power because ample competitive alternatives exist for MS Hub's proposed interruptible wheeling services and alternative interconnection paths exist for every possible flow of gas among the pipelines with which the MS Hub Expansion Project will interconnect.

30. For these reasons, the Commission approves MS Hub's request to charge market-based rates for all firm and interruptible storage, hub, and wheeling services. Nevertheless, MS Hub must notify the Commission if future circumstances significantly affect its present market power status. Thus, the Commission's approval of market-based rates for the indicated services is subject to re-examination in the event that: (a) MS Hub adds storage capacity beyond the capacity authorized in this order; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to MS Hub; or (d) MS Hub, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to MS Hub. Since these circumstances could affect its market power status, MS Hub shall notify the Commission within ten days of acquiring knowledge of any such changes. The notification shall include a detailed description of the new facilities and their relationship to MS Hub.<sup>27</sup> The Commission also reserves the right to require an updated market power analysis at any time.<sup>28</sup>

### C. Waivers of Filing, Reporting and Accounting Requirements

31. In light of its request for authority to charge market-based rates and the fact that it has no existing interstate pipeline operations, MS Hub requests that the Commission waive section 157.6(b)(8) of the Commission's regulations, which would require MS Hub to submit cost and revenue information otherwise necessary for the Commission to make an up-front determination of the rate treatment for the project. MS Hub also

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<sup>25</sup> See Exhibits 9 and 10 of Exhibit I.

<sup>26</sup> See, e.g., *Arlington Storage Co., LLC*, 125 FERC ¶ 61,306 (2008).

<sup>27</sup> See, e.g., *Port Barre Investments, L.L.C.*, 116 FERC ¶ 61,052 (2006); *Copiah County Storage Co.*, 99 FERC ¶ 61,316 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002).

<sup>28</sup> See, e.g., *Mississippi Hub, LLC*, 118 FERC ¶ 61,099, at P 29 (2007); and *MoBay Storage Hub, Inc.*, 117 FERC ¶ 61,298, at P 34 (2006).

requests that the Commission waive the filing requirements of sections 157.14(a)(13), (14), (16) and (17), which require submission of Exhibits K (Cost of Facilities), Exhibit L (Financing), Exhibit N (Revenues, Expenses, and Income), and Exhibit O (Depreciation and Depletion), since these exhibits are required for cost-based rate authority. MS Hub requests such additional waivers of the Commission's regulations as necessary to carry out the authorizations requested in its application and as are customarily issued.

32. For the same reasons, MS Hub requests waiver of the accounting and annual reporting requirements under Part 201 (accounting and reporting requirements of Uniform System of Accounts) and sections 260.1 and 260.2 (which require natural gas companies to file annual reports in FERC Form Nos. 2 and 2-A) of the Commission's regulations. MS Hub also requests waiver of the rate and cost information filing requirements of sections 157.14(a)(10) and 157.20(c)(3) to submit total gas supply data, as being inapplicable to natural gas storage services.

33. The cost-related information required by the above-described regulations is not relevant in light of the Commission's approval of market-based rates for MS Hub's proposed services. Thus, consistent with previous orders,<sup>29</sup> the Commission grants MS Hub's request for waiver of the regulations requiring cost-based related information for these services. The Commission also grants a waiver of sections 157.14(a)(10) and 157.20(c)(3), which require an applicant to submit gas supply data, which is inapplicable to storage operations.

34. In addition, the Commission grants the requested waiver of the requirement to file an annual report (Form Nos. 2 and 2-A), contained in section 260.2 of the Commission's regulations, except for the information necessary for the Commission's assessment of annual charges.<sup>30</sup> MS Hub is required to file page 520 of Form No. 2-A, reporting the gas volume information which is the basis for imposing an Annual Charge Adjustment (ACA) charge.<sup>31</sup>

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<sup>29</sup> See, e.g., *Port Barre Investments, L.L.C.*, 116 FERC ¶ 61,052, at P 33 (2006); *SG Resources Mississippi, L.L.C.*, 101 FERC ¶ 61,029, at P 26 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269, at 62,142 (2002); *Egan Hub Partners, L.P.*, 95 FERC ¶ 61,395, at 62,473 (2001).

<sup>30</sup> MS Hub, however, is required to maintain sufficient records of cost and revenue data, consistent with the Uniform System of Accounts, should the Commission require MS Hub to produce this report in the future.

<sup>31</sup> See *Wyckoff Gas Storage Co., LLC*, 105 FERC ¶ 61,027, at P 65 (2003).

**D. Engineering Analysis**

35. The Commission's staff completed an engineering analysis of both the proposed interconnecting pipeline facilities and the modifications to the two caverns, including a review of the design capacity of the proposed project. Based on this analysis, the Commission concludes that the geological and engineering parameters for the underground natural gas salt cavern storage facilities proposed by MS Hub are well defined. The Commission finds that the facilities are appropriately designed to inject gas at a maximum rate of 0.8 Bcf per day and withdraw gas at a maximum rate of 1.4 Bcf per day and to provide a gas storage inventory of 22.10 Bcf (11.05 Bcf for each cavern) at 14.73 psia and 60° F.

**E. Environment**

36. On September 15, 2008, in Docket No. PF08-29-000, the Commission approved a request by MS Hub to use the Commission's pre-filing review process for the MS Hub Expansion Project. As part of the pre-filing review, on October 27, 2008, the Commission issued a Notice of Intent to Prepare an Environmental Assessment (NOI). In response to the NOI, the Commission received comments from Kevin and Lucille Durr (the Durrs), James Scott, the Olivers, the Mississippi Department of Wildlife, Fisheries, and Parks (MDWFP), Natural Heritage Program, and the Department of Health & Human Services, Public Health Service. The comments addressed impacts on residential areas, property values, land use, wildlife habitat, wetlands, waterbodies, stormwater runoff, pipeline routing, human health and safety, landowner compensation, and the easement negotiation process. During staff's public site visit of the project area, additional verbal comments were received regarding general pipeline construction impacts and noise/vibration impacts.

37. Following the NOI scoping period, the Commission received a request to intervene and comment from the Olivers and additional comment letters from the MDWFP, the Websters and the Hutchesons raising issues concerning pipeline routing and co-location, landowner compensation, and the eminent domain process.

38. The Commission staff prepared an EA for the MS Hub Expansion Project, as required by the National Environmental Policy Act of 1969. The EA was issued and placed in the record on July 17, 2009. The EA addresses geology and soils, water resources and wetlands, fisheries, vegetation and wildlife (including threatened and endangered species), land use, recreation, visual resources, cultural resources, air quality and noise, safety and reliability, cumulative impacts, and alternatives. The EA also addresses all substantive environmental issues raised in the scoping comments and in the comments filed subsequent to MS Hub's filing of its application.

39. The Durrs expressed comments regarding the potential impacts from the project on their property. As the EA explains, the Durrs' property is located approximately two

miles north of the proposed facilities and would not be directly impacted by the project. James Scott requested to be kept informed and notified if his property will be used for the project, to which MS Hub agreed.

40. The Websters and the Hutchesons each own a 20-acre tract of timberland across which MS Hub proposes to lay a pipeline south of and parallel to the existing SESH pipeline, which also crosses their properties. Both families request that MS Hub re-route the pipeline closer to their respective property lines, locating the pipeline north, rather than south, of the SESH pipeline right of way, to avoid cutting into the main portions of their properties. The Commission staff evaluated the Websters' and the Hutchesons' suggested route alternative in the EA. However, the EA determined that such route changes would result in corresponding impacts to other landowners, without significant environmental advantage.<sup>32</sup> As the EA explains, due to the orientation of the property boundaries and the angle of the pipeline route in this area, moving the route closer to the boundary of one tract would result in the pipeline being closer to the interior of the adjacent tract.<sup>33</sup> The Commission finds that transferring similar impacts from one set of landowners to another set of landowners without environmental advantages is not a sufficient justification for modifying a pipeline route. As a result, the Commission concludes that the requested route variation is not preferable to the proposed location.

41. With respect to the Websters' and Hutchesons' concerns regarding the burden on individual landowners from the co-location of pipelines, we note that that the co-location of pipelines reduces numerous environmental impacts but that the Commission strives to achieve a balance between the benefits of co-location and the economic and land use impacts on individual landowners.<sup>34</sup>

42. Regarding the Olivers' concerns regarding the proximity of the pipeline to their residences, the Commission notes that MS Hub worked with the Olivers to address construction impacts to their property, agreeing to use a horizontal bore technique to minimize surface impacts to the greatest extent practicable.

43. The Commission's Notice of Availability of the Environmental Assessment was published in the *Federal Register* on July 24, 2009 (74 Fed. Reg. 36,694), and established a deadline of August 17, 2009 for comments on the EA. The EA was mailed to federal, state, and local agencies; elected officials; interested groups and individuals; newspapers and libraries in the project area; and parties to this proceeding. The MDWFP and the Mississippi Department of Archives and History (MDAH) filed comments on the EA. In its comment letter, the MDWFP confirms that the proposed project is likely to pose no

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<sup>32</sup> EA at 36.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

adverse threat to state or federally listed species or their habitats. The MDAH states that based upon its review, it has no objections to the EA. None of the landowners who commented during the scoping process filed comments on the EA.

44. Based on the discussion in the EA, we conclude that if MS Hub constructs and operates the MS Hub Expansion in accordance with MS Hub's application and supplements, and in compliance with the environmental conditions in Appendix A to this order, approval of this proposal will not constitute a major federal action significantly affecting the quality of the human environment.

45. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>35</sup>

46. At a hearing held on September 17, 2009, the Commission on its own motion, received and made a part of the record all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon considerations of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to MS Hub to construct and operate the proposed natural gas storage facilities, as described more fully in the application and in the body of this is order.

(B) The certificate authorization granted in Ordering Paragraph (A) is conditioned on MS Hub's compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e) and (f) of section 157.20 of the regulations.

(C) Pursuant to section 157.20(b) of the Commission's regulations, MS Hub must construct and make available for service the authorized expansion project facilities within three years of the date of this order.

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<sup>35</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(D) MS Hub's request for authorization to continue to charge market-based storage rates is approved, as discussed in this order.

(E) Pursuant to section 284.504(b) of the Commission's regulations, MS Hub must notify the Commission within 10 days of acquiring knowledge of significant changes that could affect its market power. The notification shall include a detailed description of the new facilities and their relationship to MS Hub. The Commission also reserves the right to require an updated market power analysis at any time.

(F) MS Hub shall file, not less than 30 days nor more than 60 days, prior to its proposed effective date, actual tariff sheets in compliance with the requirements of the 2007 Order in Docket No. CP07-4-000.

(G) MS Hub is granted waiver of Commission regulations that are not applicable to storage providers with market-based rate authority, as discussed in this order.

(H) Except as provided in this order, MS Hub shall comply with the engineering conditions set forth in Appendix A to the 2007 Order in Docket No. CP07-4-000.

(I) The maximum inventory of natural gas stored in MS Hub's Cavern Nos. 1 and 2 shall not exceed the certificated level of 22.1 Bcf at 14.73 psia and 60° F (11.05 Bcf per cavern).

(J) MS Hub shall comply with the environmental conditions set forth in Appendix A to this order.

(K) MS Hub shall notify the Commission's environmental staff by telephone, e-mail, or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies MS Hub. MS Hub shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

## Appendix A

### Environmental Conditions for the MS Hub Gas Storage Project

1. MS Hub shall continue to comply with the environmental conditions set forth in Appendix B to the February 15, 2007 Order Issuing Certificate in Docket No. CP07-4-000.
2. MS Hub shall follow the construction procedures and mitigation measures described in its application and supplements, including responses to staff data requests, and as identified in the EA, unless modified by the Order. MS Hub must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
3. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of the Order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
4. **Prior to any construction**, MS Hub shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
5. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. As soon as they are available, and before the start of construction, MS Hub shall file with the Secretary any revised detailed survey

alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

MS Hub's exercise of eminent domain authority granted under NGA section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. MS Hub's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

6. MS Hub shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by MS Hub's *Erosion and Sediment Control Plan*, minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
7. **Within 60 days of the acceptance of a certificate and before construction begins**, MS Hub shall file an Implementation Plan with the Secretary for review

and written approval by the Director of OEP. MS Hub must file revisions to the plan as schedules change. The plan shall identify:

- a. how MS Hub will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
  - b. how MS Hub will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
  - e. the locations and dates of the environmental compliance training MS Hub will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
  - f. the company personnel (if known) and specific portion of MS Hub's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) MS Hub will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the environmental compliance training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
8. MS Hub shall employ at least one environmental inspector for all phases of project construction. The environmental inspector shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (*see* condition 7 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;

- d. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - e. responsible for maintaining status reports.
9. Beginning with the filing of its Implementation Plan, MS Hub shall file updated status reports with the Secretary on a biweekly basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
  - a. an update on MS Hub's efforts to obtain the necessary federal authorizations;
  - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;
  - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by MS Hub from other federal, state, or local permitting agencies concerning instances of noncompliance, and MS Hub's response.
10. MS Hub must receive written authorization from the Director of OEP **before commencing service** from each phase of the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the certificated facilities in service**, MS Hub shall file an affirmative statement with the Secretary, certified by a senior company official:

- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
- b. identifying which of the certificate conditions MS Hub has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.