

130 FERC ¶ 61,113  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

Monroe Gas Storage Company, LLC

Docket Nos. RP09-447-000  
RP09-447-003

ORDER ON TARIFF SHEETS, NON-CONFORMING SERVICE AGREEMENTS,  
AND COMPLIANCE FILING

(Issued February 18, 2010)

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1. On March 10, 2009, Monroe Gas Storage Company, LLC (Monroe) filed, for the Commission’s review, proposed revisions to the Form of Service Agreements (FSAs) in its tariff. On July 23, 2009, Monroe made a compliance filing that supplemented its initial filing with public versions of six non-conforming service agreements. We accept Monroe’s July 23 compliance filing and we accept its revised FSAs and non-conforming agreements, effective on April 29, 2009, subject to the conditions discussed below.

**I. Procedural Background**

2. On March 10, 2009, Monroe Gas Storage Company, LLC (Monroe) filed its initial FERC Gas Tariff, Original Volume No. 1, in compliance with the Commission’s

December 21, 2007<sup>1</sup> and July 9, 2008<sup>2</sup> Orders in Docket No. CP07-406-000, *et al.* On March 10, 2009, Monroe also filed, for the Commission's review, proposed tariff revisions to its FSAs as well as six non-conforming service agreements that materially deviate from the revised FSAs. Monroe also proposed tariff revisions to comply with the capacity release requirements promulgated by Order Nos. 712 and 712-A,<sup>3</sup> and non-substantive tariff revisions. 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.

3. On April 14, 2009, the Commission accepted and suspended the non-conforming agreements and revised FSAs, to be effective on the in-service date of the Project, subject to refund and further review.<sup>4</sup> In addition, the Commission stated that the non-conforming service agreements were for jurisdictional service and Natural Gas Act (NGA) section 4 required that they be made public.<sup>5</sup> As such, the Commission 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.<sup>6</sup>

4. On May 4, 2009 in Docket No. RP09-447-001, as amended on May 18, 2009 in Docket No. RP09-447-002, Monroe filed tariff revisions to comply with the Commission's April 14 Order. In its May 18, 2009 filing, Monroe stated that the in-service date of the Monroe Gas Storage Project was April 29, 2009. In response to the

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<sup>1</sup> *Monroe Gas Storage Company, LLC*, 121 FERC ¶ 61,285 (2007) (December 21, 2007 Order).

<sup>2</sup> *Monroe Gas Storage Company, LLC*, Docket No. CP07-406-002 (July 9, 2008) (unpublished letter order).

<sup>3</sup> *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), *order on reh'g*, Order No. 712-B, 127 FERC ¶ 61,051 (2009).

<sup>4</sup> *Monroe Gas Storage Company, LLC*, 127 FERC ¶ 61,037 (2009) (April 14 Order). The Commission found that Monroe had complied with Order No. 712, and therefore it accepted the Order No. 712 compliance tariff sheets without suspension.

<sup>5</sup> 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)).

<sup>6</sup> *See* 18 C.F.R. § 388.112(d) (2009).

April 14 Order, Monroe attempted to justify the continued non-public treatment of the non-conforming service agreements. Subsequently, on July 16, 2009, the Commission denied the continued non-public treatment of the non-conforming service agreements and directed Monroe to file public versions of the six non-conforming agreements.<sup>7</sup> On July 23, 2009 in Docket No. RP09-447-003, Monroe filed to comply with this requirement.

## **II. Revisions to Form of Service Agreements (FSAs)**

5. Monroe has the following six FSAs, each applicable to specific Rate Schedules: Firm Agreement, applicable to Firm Storage Service; Interruptible Agreement, applicable to Interruptible Storage Service; Hub Agreement, applicable to Interruptible Parking, Interruptible Loan, Interruptible Wheeling, Interruptible Imbalance Trading, and Interruptible Balancing Services; Enhanced Hub Agreement, applicable to Enhanced Interruptible Parking and Enhanced Interruptible Loan Services; Capacity Release Umbrella Agreement (Umbrella Agreement), under Firm Storage Service; and Electronic Information Management System Agreement (Information Agreement), which is not applicable to, and does not fall under, a specific Rate Schedule. As discussed in the April 14 Order, Monroe made several minor changes to its FSAs, so that they would conform in style, form, and substance with each other and with the rest of the tariff, and also revised the substance of its FSAs.<sup>8</sup> We approve the reordering and other non-substantive changes to the FSAs, and will discuss each section of the FSAs in order below.

6. Monroe states that, by amending its FSAs, it is committing to incorporating the same language into service agreements with similarly situated customers (absent a future request by Monroe and subsequent approval by the Commission of a material deviation from these provisions). Thus, Monroe asserts that the revisions to the FSAs cannot serve to discriminate against, or result in any undue preference towards, any party. With the proposed revisions, Monroe's Firm, Interruptible, Enhanced Hub, and Hub Agreements are consistently formatted. The sections of the Umbrella and Information Agreements are generally in the same order as the sections of the other FSAs, except that these two agreements omit certain sections that are in the other FSAs.

7. Monroe revises section 1, Service to be Rendered, to reiterate previously-approved provisions in the applicable rate schedules. Four revisions are notable. First, this section of the Firm, Interruptible, and Hub Agreements now refers to restrictions imposed by Maximum Daily Quantities. This inclusion repeats quantity restrictions that the

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<sup>7</sup> *Monroe Gas Storage Company, LLC*, 128 FERC ¶ 61,033 (2009) (July 16 Order).

<sup>8</sup> April 14 Order at P 11-12.

Commission previously approved for inclusion in Exhibit A of the Agreements. Second, consistent with the Firm and Interruptible Agreements, the Enhanced Hub Agreement and Hub Agreement now incorporate the General Terms and Conditions (GT&C) of Monroe's tariff into the Agreements. Third, the Interruptible Agreement and Hub Agreement now cite the list of points of receipt and delivery in the previously approved Exhibit B of that agreement. Fourth, the Enhanced Hub Agreement and Hub Agreement now include the same language as the Firm, Interruptible, and Information Agreements on the parties' unilateral right to propose revisions to the Commission,<sup>9</sup> and all agreements now clarify that Monroe's right to propose revisions covers not only the GT&C and the Service Agreement, but also the relevant Rate Schedules.

8. Section 2, on Receipt and Delivery Points, is substantially unchanged in all FSAs.<sup>10</sup>

9. Monroe revises section 3, Rates, of its Firm and Interruptible Agreements to require the customer to reimburse Monroe for its *pro rata* share of taxes paid by Monroe, based on the customer's share of actual storage inventory. Monroe admits that its previously approved tariff does not explicitly call for the sharing to be *pro rata*, but states that this proposal is consistent with previously-approved provisions in the applicable rate schedules and in its GT&C. Monroe's Rate Schedule FSS section 4.1(j) and Rate Schedule ISS section 3.1(g) already provide that customers shall reimburse Monroe for all taxes associated with the quantities held for the customer in storage. Monroe also modifies section 3 of its Firm, Interruptible, Enhanced Hub, and Hub Agreements to clarify that the shipper is required to pay all charges set forth in the GT&C and the applicable rate schedules.

10. In section 4 of the Firm, Interruptible, Enhanced Hub, and Hub Agreements, Monroe proposes to replace the blank designated for the effective date of the agreement with a statement that service would commence on "the date [Monroe] commences services to Customer under this Agreement."<sup>11</sup> Monroe also modifies section 4 of its Interruptible Agreement, consistent with its Firm Agreement, which provides that its term is subject to any right of first refusal that a customer may have negotiated.

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<sup>9</sup> In the Umbrella Agreement, this language appears in section 3.

<sup>10</sup> The Umbrella and Information Agreements do not contain a section for "Receipt and Delivery Points." Instead, section 2 of these Agreements focuses on the "Term" of the Agreements, which is also substantially unchanged.

<sup>11</sup> Section 4 of the Enhanced Hub and Hub Agreements was enumerated as section 5 in the previously accepted versions.

11. In each FSA, Monroe proposes to change its Notices section<sup>12</sup> to provide updated contact information and to clarify that “[s]uch contact information shall be used until changed by either party by written notice.”

12. In the Firm and Interruptible Agreements, Monroe proposes to change section 6, Prior Agreements Cancelled, so that the list of cancelled agreements may include any agreements, not just Service Agreements. Monroe also adds an identical provision to its Enhanced Hub and Hub Agreements as a new section 6.

13. Monroe proposes to expand the Law of Agreement provision in each of its FSAs.<sup>13</sup> The provision now requires Monroe and its customers to consent to the jurisdiction of New York State courts. Monroe argues that the proposed provision does not go to the terms of service and simply serves both Monroe’s and the customer’s convenience.

14. Monroe proposes some corrections to its Warehousemen’s Lien section,<sup>14</sup> such as changing the phrase “customer’s tariff” to “operator’s tariff.”

15. Monroe proposes adding a section on Transfer and Assignment, previously approved in its Enhanced Hub Agreement, to its other FSAs.<sup>15</sup> The Transfer and Assignment provision incorporates GT&C section 23<sup>16</sup> by reference and otherwise emphasizes aspects of the FSAs that were already in the GT&C.

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<sup>12</sup> The Notices section is section 5 in all of the FSAs except the Umbrella Agreement, where it is section 4, and the Information Agreement, where it is section 3.

<sup>13</sup> The Law of Agreement provision is section 7 of the Firm, Interruptible, Enhanced Hub, and Hub Agreements, section 5 of the Umbrella Agreement, and section 4 of the Information Agreement.

<sup>14</sup> The Warehousemen’s Lien provision is section 8 of the Firm, Interruptible, Enhanced Hub, and Hub Agreements. This section is not in the Umbrella or Information Agreements.

<sup>15</sup> The Transfer and Assignment section is section 9 of the Firm, Interruptible, Enhanced Hub, and Hub Agreements; and section 7 of the Umbrella Agreement. This section is not proposed in the Information Agreement.

<sup>16</sup> Section 23 of the GT&C of Monroe’s proposed tariff provides that successors are entitled to the rights and subject to the obligations of its predecessors under a service agreement; restrictions on assignment shall not prevent the party from pledging or mortgaging its rights under a service agreement as security for indebtedness.

16. Monroe proposes a new section requiring both Monroe and its customers to waive their right to a jury trial as a condition of obtaining service.<sup>17</sup> Monroe argues that the proposed provision is for both Monroe's and the customer's convenience. The proposed Waiver of Jury Trial section states, in part, that "each party hereto hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this agreement or the transactions contemplated hereby."

17. Monroe also proposes adding a new Miscellaneous section<sup>18</sup> to address all remaining legal issues that were not previously discussed in its agreements. Paragraph (a) declares the completeness of the agreement, cancellation of prior agreements, and limits future modifications to the agreement to those agreed upon by both parties in writing. Paragraph (b) requires parties, in the event of court nullification of any provision, to continue with the other provisions of the agreement and to seek "to agree upon an equitable adjustment of the provisions of this Agreement with a view to effecting its purpose." Paragraph (c) declares that the identity of the drafting party should not in itself create any presumptions in favor of or against any party. Paragraph (d) declares that the agreement creates no rights or obligations for any third parties.

18. Finally, Monroe proposes several revisions to Exhibit A of the Firm Agreement. That exhibit includes blanks for filling in both the shipper's various types of contractual entitlements to service and the specific charges the shipper has agreed to pay. Monroe proposes to delete a phrase that refers to its Maximum Daily Withdrawal Quantity as "Working Gas Inventory" and that separates it into three ranges. Monroe proposes to rename the following charges: (1) from Capacity Reservation Charge to Storage Reservation Charge; (2) from Injection Charge to Storage Injection Charge; (3) from Withdrawal Charge to Storage Withdrawal Charge; and (4) from Title Transfer Fee to Title Transfer Charge. Finally, Monroe also proposes to add a blank space for filling in a "negotiable" "Imbalance Trading Charge" and a blank space for "Cycles." All other exhibits or addenda of Monroe's FSAs are either unchanged or changed in ways that are not substantive.

19. There were no protests of Monroe's proposed changes to its FSAs.

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<sup>17</sup> The proposed Waiver of Jury Trial section is section 10 of the Firm, Interruptible, Enhanced Hub, and Hub Agreements; and section 8 of the Umbrella Agreement. This section is not proposed in the Information Agreement.

<sup>18</sup> The proposed Miscellaneous section is section 11 of the Firm, Interruptible, Enhanced Hub, and Hub Agreements; and section 9 of the Umbrella Agreement. This section is not in the proposed Information Agreement.

## Discussion

20. The Commission accepts Monroe's proposed FSAs, subject to the conditions discussed below. First, both Monroe's Hub Services Agreement and its Enhanced Hub Services Agreement cover service under multiple rate schedules.<sup>19</sup> A shipper need not purchase service under all the rate schedules to which those FSAs are applicable, but may purchase service under one, some, or all of the applicable rate schedules. However, the FSAs do not contain any blank for filling in which of the applicable services the shipper has chosen to purchase. The Commission accepts Monroe's proposed Hub and Enhanced Hub Services Agreements, subject to the condition that it revise those agreements to include blanks for indicating which services the shipper has chosen to purchase and any other corresponding changes necessary to limit the agreement to the particular services that the shipper has chosen to purchase. This will eliminate the need for individual Hub Services or Enhanced Hub Services Agreements to include non-conforming provisions indicating which services the shipper has chosen to purchase.

21. Second, Section 3, Rates, of the existing Hub Services and Enhanced Hub Services Agreements contain three subsections. The first subsection requires the shipper to pay Monroe the rates set forth in Exhibit A to the agreement, the second subsection requires the shipper to pay the fuel reimbursement charges in Exhibit A, and the third subsection requires the shipper to pay "all other applicable taxes, fees and charges as set forth in the General Terms and Conditions and in" the applicable rate schedules. Monroe proposes to modify the first subsection to add a requirement that the shipper pay the charges in "the General Terms and Conditions of Monroe's tariff and under the applicable Rate Schedules." Monroe's proposed addition to the first subsection appears to be duplicative of the requirement already in the third subsection that the shipper pay these charges. Therefore, the Commission directs Monroe either to eliminate the proposed addition to the first subsection or clarify what charges are covered by the proposed addition to the first subsection that are not already covered by the third subsection.

22. Third, in section 4 of the Firm, Interruptible, Enhanced Hub, and Hub Agreements, Monroe proposes to replace the blank to be filled in with the effective date of the agreement with a statement that service would commence on "the date [Monroe] commences services to Customer under this Agreement." We reject this change, because

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<sup>19</sup> Hub Agreement is applicable to service under the Interruptible Parking, Interruptible Loan, Interruptible Wheeling, Interruptible Imbalance Trading, and Interruptible Balancing Services Rate Schedules. The Enhanced Hub Agreement is applicable to service under the Enhanced Interruptible Parking and Enhanced Interruptible Loan Services Rate Schedules.

it would create too much uncertainty as to when the terms of each of Monroe's service agreements started. The service agreements themselves would not contain the actual commencement date, nor would the date be based on a widely known date such as the date the pipeline went into service.

23. Fourth, with respect to Monroe's Warehousemen's Lien provision, the cross-references in section 8(b)(ii) appear to be inaccurate. As written, that section appears to state that the "rate of storage and handling charges" is described in section 8.1 of the GT&C, but that section is on the Notice of Offer of Capacity Release; that section also appears to state that the "description of the goods" is described in section 1.7 of the GT&C, but that section is on Critical Notices. We condition our acceptance of the Warehousemen's Lien section on Monroe correcting these cross-references.

24. Fifth, the proposed Waiver of Jury Trial section states, in part, that "each party hereto hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this agreement or the transactions contemplated hereby." We reject this provision. The Commission's longstanding position is that "shippers should not be required to give up these rights; [the pipeline] must delete this provision from the tariff."<sup>20</sup> The Commission will not allow a jury trial waiver to be a condition of obtaining the basic service that Monroe is obligated by its certificate to provide.<sup>21</sup>

25. Finally, the Commission requires Monroe to clarify its proposal to add to Exhibit A of its *pro forma* service agreement a blank space for an "Imbalance Trading Charge." First, it is not entirely clear what type of imbalance trades would be subject to this charge. Section 3.4 of Monroe's GT&C defines "Transportation Imbalances" as any difference between a shipper's receipts and deliveries. It appears likely that the imbalance trades

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<sup>20</sup> *Arkla Energy Resources*, 62 FERC ¶ 61,076, at 61,511 (1993) (*Arkla*) (citing *Natural Gas Pipeline Company of America*, 39 FERC ¶ 61,153, at 61,602 (1987)). In this case, the Commission rejected a provision proposed by Arkla that stated, "Any party subject to this Tariff hereby waives any and all rights to require a trial by jury with respect to any dispute or claim arising under this Tariff and/or a Service Agreement, or relating to services performed in accordance therewith."

<sup>21</sup> *Cf. New England Power Pool*, 87 FERC ¶ 61,353, at 62,357 (1999) (explaining that *Arkla* prohibits waiver of jury trial provisions that are so broad as to cover "any dispute or claim arising under the tariff" but not waivers that are limited in scope, such as a condition of obtaining a corporate guarantee, because "customers ... by exercising [] other options can obtain a jury trial" without losing their right to service from that provider).

subject to the proposed imbalance trading charge would be trades of such transportation imbalances. However, Monroe's proposed revision to Exhibit A contains no express reference to "transportation" imbalances or to section 3.4 of the GT&C. Therefore, Monroe must clarify what types of imbalance trades would be subject to its proposed negotiated charge. Second, assuming that the imbalance trades subject to the charge are trades of transportation imbalances, a charge for such trades is inconsistent with Commission policy in some circumstances. Section 284.12(b)(2)(iii) of the Commission's regulations requires pipelines to establish provisions permitting shippers to trade such imbalances with other shippers where such imbalances have similar operational impact on the pipeline's system. In Order No. 587-G, the Commission held that pipelines "must process, without charging a separate fee, imbalance trades submitted by shippers or third-parties acting to facilitate imbalance trading."<sup>22</sup> On the other hand, the Commission also stated that pipelines "can set up an imbalance trading or auction process by which shippers can arrange to trade imbalances and charge a separate fee for this service."<sup>23</sup> Accordingly, the Commission requires that Monroe clarify its proposed revision to Exhibit A to ensure that the imbalance trading charge does not extend to trades submitted by shippers or third-parties acting to facilitate imbalance trading, which must be processed without a fee.

26. Except as noted above, we find that the proposed revisions to the FSAs either do not change the substance of the tariff, or else do so in minor ways that are just and reasonable, and we accordingly accept them.

### **III. Proposed Non-Conforming Agreements**

27. Monroe submits for Commission review six non-conforming agreements that contain material deviations from the FSAs (as modified in Monroe's initial, March 10, 2009 filing).<sup>24</sup> The six filed agreements are: a Firm Agreement and an Enhanced Hub Agreement with Citigroup Energy Inc. (Citigroup), a Firm Agreement and Interruptible Agreement with Morgan Stanley Capital Group Inc. (Morgan Stanley), a Firm Agreement with PPL Energyplus, LLC (Energyplus), and a Firm Agreement with Sequent Energy Management (Sequent). Monroe asserts that none of the deviations

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<sup>22</sup> Order No. 587-G, *Standards For Business Practices Of Interstate Natural Gas Pipelines*, FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000 ¶ 31,062, at 30,679 (1998).

<sup>23</sup> *Id.*

<sup>24</sup> Monroe March 10, 2009 filing, Appendix E (redline), Appendix F (clean).

change the conditions under which service is to be provided and none present a risk of undue discrimination.<sup>25</sup>

28. In general, when reviewing any provision that differs from a *pro forma* service agreement, the Commission first determines whether it is a material deviation. The Commission has held that a material deviation is any provision which (1) goes beyond filling in the blank spaces in the form of service agreement with appropriate information allowed by the tariff, and (2) affects the substantive rights of the parties. The Commission prohibits negotiated terms and conditions of service that result in a customer receiving a different quality of service than that offered to other customers under the pipeline's generally applicable tariff,<sup>26</sup> or that affect the quality of service received by others.<sup>27</sup> Finally, the Commission need not accept non-conforming provisions for which the filer has failed to provide "a detailed narrative outlining the terms of its negotiated contract, the manner in which such terms differ from its form of service agreement, the effect of such terms on the rights of the parties, and why such deviation does not present a risk of undue discrimination."<sup>28</sup>

29. We note that the non-conforming agreements contain some minor language changes from the text of the FSAs which do not affect the meaning as presented in the FSAs and thus are not material deviations (e.g. word substitutions and sentence and paragraph rearranging).<sup>29</sup> While we will allow these minor changes to remain except to the extent noted below, we remind Monroe that unnecessary deviations from the FSA "hinder the Commission's ability to assess whether the transaction is unduly

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<sup>25</sup> Monroe March 10, 2009 filing at 7-8.

<sup>26</sup> *Texas Eastern Transmission, LP*, 123 FERC ¶ 61,095, at P 14 n.6 (2008).

<sup>27</sup> *See Dominion Transmission, Inc.*, 93 FERC ¶ 61,177 (2000).

<sup>28</sup> *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, at P 33 (2003). *See also East Tennessee Natural Gas Co.*, 107 FERC ¶ 61,197, at P 10 (2004).

<sup>29</sup> For example, Monroe has proposed several word substitutions that do not change the substantive rights of a party and thus, are not considered material deviations. In addition, we find that "whereas" clauses do not constitute material deviations when, as here, they are solely a recitation of factual or descriptive information and do not affect the substantive rights of the parties.

discriminatory as well as the assessment of the transaction by shippers attempting to determine if they are similarly situated to the shipper in the negotiated transaction.”<sup>30</sup>

### **A. Non-Conforming Provisions in Multiple Agreements**

30. The proposed non-conforming provisions discussed below appear in more than one of Monroe’s filed agreements. In the interest of clarity, when portions of the agreement are quoted below, we use the Firm Agreement between Monroe and Citigroup as the first reference for material deviations and cite similar proposed deviations in Monroe’s other contracts in the footnotes.

31. Monroe entered into all of the submitted non-conforming agreements before commencing service. All six non-conforming agreements, as well as the FSAs on which they are based, contain a *Memphis* clause<sup>31</sup> authorizing Monroe, with the Commission’s approval, to make changes to its tariff that control and affect the service agreement (except for certain deviations discussed and rejected in the next few paragraphs). Accordingly, we review Monroe’s non-conforming agreements by comparing them to the newly revised FSAs as we have approved them above in this order. To the extent that this order rejects or conditionally accepts any language in the FSAs discussed above that also appears in the non-conforming agreements discussed below, Monroe is directed to make corresponding revisions to its non-conforming agreements as well. For example, in the preceding section, the Commission required Monroe to remove the waiver of jury trial provision from its FSAs. Therefore, Monroe must also eliminate any such provision from the individual non-conforming service agreements discussed below.

#### **1. Referencing Quantities**

32. In the second paragraph of section 1 of all four non-conforming Firm Agreements, Monroe replaces “Exhibit A” with “Exhibit B” as follows, to state that Monroe shall:

...receive for injection into storage for Customer’s account, a quantity of Gas up to Customer’s Maximum Daily Injection Quantity (“MDIQ”) as set forth on Exhibit B...”

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<sup>30</sup> *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, at P 31 (2003) (*Policy Statement on Negotiated Rates*).

<sup>31</sup> *See United Gas Pipe Line Co. v. Memphis Light, Gas and Water Division* 358 U.S. 103 (1958). A *Memphis* clause allows a pipeline to reserve the right to make section 4 filings to propose changes in the rates and terms and conditions of service, which the Commission evaluates under the just and reasonable standard of review.

Monroe proposes a similar revision in section 1 with regards to withdrawals. Despite this language, in the non-conforming agreements as well as the current FSA, the customer's quantities are in fact outlined in Exhibit A, not B. Accordingly, we find this provision to be erroneous, and direct Monroe to refer to "Exhibit A" in section 1 of its Firm Agreement.

## **2. Unilateral Right to File**

33. Section 1(C) of the Citigroup Firm Agreement does not include the phrase "any provision of Rate Schedule FSS" in the following excerpt, although Monroe is concurrently proposing to add that phrase to its firm FSA:

Customer agrees that Monroe shall have the unilateral right to file with the appropriate regulatory authority to make changes effective in (a) the terms and conditions of this Service Agreement, pursuant to which service hereunder is rendered, (b) *any provision of Rate Schedule FSS* or (c)...<sup>32</sup>  
(deletion in italics).

34. Monroe provides no justification for not including the phrase "any provision of Rate Schedule FSS." Accordingly, we reject this deletion as not justified and direct Monroe to use this language from its FSA, as approved above, in its non-conforming agreements.

## **3. Releasing the Customer from Fuel Reimbursement Obligations**

35. Section 3 of the Firm Agreement between Monroe and Citigroup deletes "including Fuel Reimbursement" from the following provision:

"Customer shall pay [Monroe] the charges as described in Rate Schedule FSS, the General Terms and Conditions of [Monroe's] Tariff, and as specified in Exhibit A to this Service Agreement, *including Fuel Reimbursement.*"<sup>33</sup>  
(deletion in italics)

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<sup>32</sup> Monroe proposes similar deviations in the second paragraph of section 1 of its non-conforming Firm Agreements with Morgan Stanley, Energyplus, and Sequent. Further, the phrase "any provision of Rate Schedule ISS" is omitted from the non-conforming Interruptible Agreement with Morgan Stanley and the phrase "any provision of Rate Schedule EPS and ELS" is omitted from the non-conforming Enhanced Hub Agreement with Citigroup.

<sup>33</sup> Monroe proposes a similar revision in its Firm Agreements with Morgan  
(continued)

36. Monroe, as authorized by its certificate, provides storage services at market-based rates. Since Monroe has no captive customers paying cost-based rates, its customers are free to negotiate rates that include or omit in-kind terms without adversely affecting the interests of incumbent or future customers who may include or omit the same in-kind terms from their rates. Accordingly, we accept this material deviation as not unduly discriminatory.

#### **4. Term Extensions**

37. The introductory paragraph of section 4 of the Firm Agreement between Monroe and Citigroup adds the following rollover provision:

provided that Customer shall have the option to extend the term of this Agreement for an additional period of up to five (5) additional years (“Renewal Term”) by providing written notice of such extension and length of additional term (in multiples of 1 year) desired to [Monroe] by January 1, 2013. To the extent the Commencement Date occurs prior to March 31, 2009, the period until March 31, 2009 is referred to herein as the “Initial Term” and the period from April 1, 2009 through March 31, 2013 is referred to as the “Primary Term.”<sup>34</sup>

38. Monroe states that the FSA expressly anticipates that the issues addressed in the additional language would be subject to negotiation between Monroe and the customer. Monroe states that, in particular, in section 4 of the FSA blanks appear for the beginning and ending dates of the contract term. Monroe further states that, because the changes do not alter the conditions under which service is provided, and merely represent the fleshing out of provisions as contemplated by the tariff and FSA, the Commission should hold that this provision is not a material deviation and is, therefore, permissible.

39. The Commission has only permitted a pipeline to negotiate provisions giving shippers the right to extend their contracts if its tariff contains a provision offering to

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Stanley, Energyplus, and Sequent. In addition, Monroe similarly proposes to delete the fuel reimbursement obligations of its customer from section 1(b) of its Interruptible Agreement with Morgan Stanley.

<sup>34</sup> Monroe provides a similar rollover provision under its Firm Agreements with Morgan Stanley and Energyplus. Monroe does not define a renewal term in the introductory paragraph of section 4 of its Firm Agreement with Sequent.

negotiate such provisions on a not unduly discriminatory basis.<sup>35</sup> Monroe's tariff does not contain such a provision. In addition, while section 4 of the FSA does have a blank for the ending date of the service agreement, such a blank may not be used to set forth a rollover provision of the type at issue here, without some indication in the pipeline's tariff and/or FSA that the pipeline offers such rollover provisions. As previously discussed, a material deviation includes any provision which goes beyond filling in the blank spaces in the form of service agreement with the appropriate language allowed by the tariff and that affects the substantive rights of the parties. A rollover provision giving defined rights and procedures for extending a service agreement goes beyond simply filling in a blank for an ending date for the service agreement.<sup>36</sup> Accordingly, we direct Monroe to either remove the contract extension provisions or else make negotiation of term extensions available to all similarly situated shippers via a generally applicable tariff provision.

### **5. Right of First Refusal**

40. Section 4(A) of the Citigroup Firm Agreement declares that pre-granted abandonment shall apply upon termination of the agreement, subject to any right of first refusal Customer may have negotiated with Monroe, pursuant to the following conditions:

- a. Monroe discontinuing service to Customer at the end of the Primary Term or any Renewal Term of this Agreement unless Customer exercises its Right of First Refusal (ROFR) for all or a portion of the capacity covered by this Agreement by matching the best bid offered to Monroe by any potential replacement customer during an open season conducted pursuant to Monroe's Tariff.
- b. No earlier than twelve (12) months and no later than nine (9) months prior to the end of the Primary Term and each subsequent extended term, Customer and Monroe shall negotiate in good faith a mutually agreeable extension of the then existing term. In the event the parties are unable to agree on an extension within 60 days of the start of negotiations, an open season will be held for the capacity under this Agreement. This open season will be conducted pursuant to Monroe's Tariff. Bids from potential replacement customers who desire, in whole or in part, the capacity made

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<sup>35</sup> *Northern Natural Gas Co.*, 113 FERC ¶ 61,002, at P 11 (2005). *See also Kinder Morgan Interstate Gas Transmission LLC*, 107 FERC ¶ 61,096, at P 5 (2004).

<sup>36</sup> *E.g., Transcontinental Gas Pipe Line Company, LLC*, 127 FERC ¶ 61,193, at P 6 (2009) (citing *Columbia*, 97 FERC ¶ 61,221, at 62,002 (2001)).

available upon the termination or expiration of this Agreement will be reviewed by Monroe within the timeframe set forth in the open season notice. Upon expiration of the open season, Monroe will select the best acceptable bid received from a potential replacement customer and communicate the terms of that bid to Customer, who may elect, within fifteen (15) days or such greater time as Monroe may specify, to execute a renewal Firm Agreement upon the same terms. If Customer does not elect to match the terms of the best bid, this Agreement will expire at the conclusion of its term and Monroe will be deemed to have all necessary abandonment authorization under the Natural Gas Act with respect to such service. Monroe may enter into a new Firm Agreement with the potential replacement customer who submitted the best bid. Regardless of any bids received, Monroe shall retain the right to require minimum rate or term of Service, which shall be market-based, for bids during any such open season.

- c. If during the open season, Monroe receives no bids or rejects all bids, Monroe and Customer may negotiate for continuation of Service under mutually satisfactory rates, terms and conditions.<sup>37</sup>

41. Monroe argues that the FSA expressly anticipated that the issues addressed in the additional language would be subject to negotiation between Monroe and the customer. In particular, section 4 of the FSA provides, “Pre-granted abandonment shall apply upon termination of this Agreement, subject to any right of first refusal Customer may have negotiated with [Monroe].” Monroe also states that the additional language clarifying the right of first refusal is consistent with section 7 (Right of First Refusal) of the tariff’s Rate Schedule FSS (Firm Storage Service). Monroe further argues that, because the changes do not alter the conditions under which service is provided to Citigroup, and merely represent the fleshing out of provisions as contemplated by the tariff and FSA, the Commission should hold that the non-conforming term provision is permissible.

42. Unlike the situation with respect to the rollover provision discussed in the preceding section, section 4 of the FSA and section 7 of the tariff’s Rate Schedule FSS contemplate and authorize individually negotiated rights of first refusal. Accordingly,

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<sup>37</sup> Monroe proposes similar right of first refusal provisions under its Firm Agreements with Morgan Stanley, Energyplus, and Sequent. Morgan Stanley’s version specifies that the Customer’s notice period is between 6 and 12 months before expiration, instead of between 9 and 12 months.

these provisions do not deviate from the FSAs and are permissible conforming provisions.<sup>38</sup>

## **6. Commencement Date Delays**

43. Section 4(A) of the Citigroup Firm Agreement provides that, to the extent the Commencement Date occurs prior to March 31, 2009, the period until March 31, 2009 is referred to herein as the “Initial Term” and the period from April 1, 2009 through March 31, 2013 is referred to as the “Primary Term.”<sup>39</sup>

44. Section 4(B) of the Citigroup Firm Agreement provides that the Commencement Date shall be between November 1, 2008 and April 1, 2009 (but not later than April 1, 2009), when Monroe’s Facility becomes operational as aforesaid, unless delayed in accordance with detailed timing provisions.<sup>40</sup>

45. Further, section 4(C) of the Firm Agreements with Citigroup, Morgan Stanley, and Sequent provide that, if the Commencement Date will not occur by May 2009 (actual date specific to customer), then Monroe shall notify Customer and specify the new Commencement Date, triggering a right of termination for the Customer.

46. Monroe began providing service on April 29, 2009. The Commencement Date conditions have been satisfied, so the pre-service provisions are now moot. As such, they are unique to the service provided to founding shippers and do not result in undue discrimination to any of Monroe’s other shippers. Accordingly, we approve the provision.

## **7. Creditworthiness**

47. Section 6 of the Firm Agreement between Monroe and Citigroup is modified to allow the creditworthiness provisions contained in sections 2c and 2d and as set forth in Exhibit D of the precedent agreement to survive the termination of the precedent agreement, and Section 6 of the Firm Agreement expressly incorporates them by reference. The provision further states that, to the extent there is a conflict between the

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<sup>38</sup> See *Iroquois Gas Transmission System*, 108 FERC ¶ 61,234, at P 4 (2004).

<sup>39</sup> Monroe proposes similar provisions in its Firm Agreement with Morgan Stanley.

<sup>40</sup> Monroe proposes similar extension provisions under its Firm Agreements with Morgan Stanley and Sequent. Monroe does not propose revisions concerning commencement date delays in its Firm Agreement with Energyplus.

precedent agreement creditworthiness provisions and Monroe's tariff, then the precedent agreement creditworthiness provisions shall control.<sup>41</sup>

48. Monroe states that the "Prior Agreements Cancelled" provision has been revised to include language preserving the creditworthiness provisions of Monroe's precedent agreement with Citigroup.<sup>42</sup> Monroe states that the creditworthiness provisions in the precedent agreement are generally based on the provisions approved by the Commission in the December 21, 2007 Order, subject to certain modifications. Monroe states that it revised the creditworthiness provisions to comply with the Commission's *Policy Statement on Creditworthiness*.<sup>43</sup> Monroe states that there are organizational and language differences between the creditworthiness provisions in the precedent agreement and Monroe's tariff due to the timing of the precedent agreement negotiation process.

49. For Citigroup, Monroe clarifies that the differences between its precedent agreement and the GT&C of its tariff include that:

- i. the precedent agreement provides the customer with three business days (as opposed to five business days as provided in section 2.3(a)(3) of the GT&C) to notify Monroe regarding the Customer's bankruptcy, liquidation, and solvency status if the Customer fails to satisfy the minimum credit standard, if changes occur to the Customer's credit status, or Customer provides an alternative form of credit support.

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<sup>41</sup> Monroe proposes a similar provision in its Firm Agreements with Morgan Stanley, Energyplus, and Sequent, specific to the dates and section numbers of the precedent agreements between the respective entities. Monroe also includes similar provisions in section 6 of the Morgan Stanley Interruptible Agreement and section 9 of the Citigroup Enhanced Hub Agreement. Monroe and Morgan Stanley's precedent agreement to the Firm Agreement also includes an insurance provision, which, as Monroe proposes, will also survive the termination of the precedent agreement.

<sup>42</sup> Monroe March 10, 2009 filing at G-2. Monroe states that the creditworthiness provisions are included with Appendix F (Clean Version of Non-conforming Service Agreements) of Monroe's March 10, 2009 filing. Upon inspection, staff could not locate the creditworthiness provisions of the precedent agreement in Appendix F.

<sup>43</sup> *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, FERC Stats. & Regs., Regulation Preambles 2001-2005 ¶ 31,191 (2005) (*Policy Statement on Creditworthiness*).

- ii. the precedent agreement provides that Monroe may serve a notice of termination of the service agreement effective fifteen days from the date of notice (compared to section 2.3(d)(1) of the GT&C, which provides for a thirty day time period).

50. For Morgan Stanley, Monroe clarifies that the differences between its precedent agreement and the GT&C also include that:

- i. Monroe shall refund any unused prepayment within five business days, including interest due to Customer;
- ii. Monroe should post an irrevocable letter of credit in the amount of \$2,500,000 and failure to do so allows the Customer to suspend its obligations under the Firm Agreement and Interruptible Agreement upon written notice to Monroe.
- iii. the precedent agreement insurance provision (section 2.e of the precedent agreement) shall survive termination of the precedent agreement and control over the tariff.

According to Monroe, the insurance clause provides casualty insurance for Morgan Stanley, which is available to other Customers pursuant to Monroe's tariff.<sup>44</sup> Monroe's currently effective insurance provision in section 29 of its GT&C provides that Monroe may obtain, in its sole discretion and for the Customer's benefit, insurance coverage against casualty events. Also, at Monroe's request, the Customer shall reimburse Monroe for all costs paid by Monroe for insurance coverage.

51. For Energyplus and Sequent, Monroe clarifies that the differences between its precedent agreement and the GT&C also include the provision that the customer may post a letter of credit as an alternative form of security for an amount equal to the rates payable for twelve months of service.<sup>45</sup>

52. In addition to these changes to section 6, section 11(a) of the non-conforming Firm Agreements repeats that, "*With the exception of those Precedent Agreement provisions*

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<sup>44</sup> Monroe March 10, 2009 filing at G-6, *citing* section 29 of Monroe's tariff, Original Sheet No. 201.

<sup>45</sup> In contrast, section 2.3(c) of the tariff states that alternative forms of security shall be at least three month's worth of service charges, plus the current market value of loaned gas and for service that requires operator to construct new facilities.

*specified in Section 6 which are incorporated herein by reference,...* this Agreement sets forth all understandings and agreements between the Parties...” (proposed language in italics).<sup>46</sup>

53. Monroe argues that its inclusion of creditworthiness provisions in the precedent agreement and not the tariff is justified by the *Policy Statement on Creditworthiness*, which provides that “Issues relating to collateral for construction projects should be determined in the precedent agreements at the certificate stage, and collateral requirements for new construction projects should not ordinarily be included in the pipeline’s tariff.”<sup>47</sup> Monroe further states that the *Policy Statement on Creditworthiness* notes that the creditworthiness provisions of the precedent agreements normally “would continue to apply to [the] initial shippers even after the project goes into service.”<sup>48</sup> Monroe asserts that the *Policy Statement on Creditworthiness* also recognizes that in cases of new construction, particularly project-financed projects, the project owners and their lenders might reasonably impose higher security requirements than would otherwise be the case in order to justify committing funds to the project.<sup>49</sup> Monroe states that, although the more stringent security requirements imposed by Monroe go to timing matters, rather than the amount of collateral requirement, the concept is the same: greater certainty is required to justify the level of investment required to construct a project than to invest later in the project life cycle. Monroe further states that, in project-financed projects, such as Monroe’s, lenders expect the contracts to minimize risk.

54. As Monroe states, the *Policy Statement on Creditworthiness* permits pipelines to include higher security requirements in the service agreements of the initial shippers on a project. The non-conforming creditworthiness provisions at issue here fall within the scope of the *Policy Statement*. As such, we accept them as not resulting in undue discrimination to any other shippers.

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<sup>46</sup> Monroe proposes similar revisions in its non-conforming Interruptible and Enhanced Hub Agreements. The Firm and Interruptible Agreements with Morgan Stanley differs slightly by, rather than citing section 6, stating that, “The creditworthiness provisions contained in Sections 2b. and 2c., and as set forth in Exhibit D of the Precedent Agreement and the insurance provision of Section 2e. of the Precedent Agreement shall survive.” Monroe similarly expands its Firm Agreement with Sequent.

<sup>47</sup> Monroe March 10, 2009 filing at G-3, *citing Policy Statement on Creditworthiness*, 111 FERC ¶ 61,412 at P 18, *citing North Baja Pipeline, LLC*, 102 FERC ¶ 61,239, at P 15 (2003).

<sup>48</sup> *Policy Statement on Creditworthiness*, FERC Stats. & Regs. ¶ 31,191 at P 19.

<sup>49</sup> *Id.* at P 11.

## 8. Location of Gas Delivery

55. In the Firm Agreement between Monroe and Citigroup, Monroe deletes “Exhibit B of this Agreement” from the following section 8 (Warehousemen’s Lien) (b)(ii):

“The location of the warehouse, to whom the gas will be delivered, rate of storage and handling charges, and description of the goods are as set forth, respectively, in the General Terms and Conditions, *Exhibit B of this Agreement*, the monthly schedule (as described in Section 8.1 of the General Terms and Conditions) and Section 1.7 of the General Terms and Conditions,....”<sup>50</sup>

56. Monroe provides no justification for deleting the reference to Exhibit B of the agreement and actually concurrently proposes the insertion of this provision in its FSA applicable to Rate Schedule FSS (Firm Storage Service). Currently, Exhibit B describes points of receipt and points of delivery. Thus, Exhibit B appears to be a necessary descriptor of where the goods will be delivered. Accordingly, we find this provision to be erroneous, and direct Monroe to use the conforming provision in its FSA.<sup>51</sup>

## 9. Quantities and Charges

57. In Exhibit A of the non-conforming Firm Agreements, we find four major non-conforming deviations. Monroe states that these changes involve matters that the *pro forma* tariff and relevant FSA contemplated would be the subject of negotiations. Thus, Monroe asserts, these changes should not be deemed to be prohibited material changes to the approved conditions of service.

58. First, in its Firm Agreements with Citigroup and Sequent, Monroe deletes the Maximum Hourly Withdrawal and Injection Quantity categories (MHWQ and MHIQ, respectively) and relevant notes to such categories. Monroe fails to provide justification for the deletion of the maximum hourly quantities and associated language. We find the deletion to be an impermissible material deviation from Monroe’s FSA because such a deletion allows Citigroup and Sequent to enjoy hourly flow rights that are not currently available to all of Monroe’s customers. In *Columbia*, the Commission specifically mentioned that it would consider a provision allowing a shipper to deviate from uniform

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<sup>50</sup> Monroe proposes similar revisions in the Warehousemen’s Lien section of all of its non-conforming Firm, Interruptible, and Enhanced Hub Agreements.

<sup>51</sup> We note that the FSA’s conforming provision is subject to further Commission approval, subsequent to Monroe’s submittal of corrected cross-references within its Warehousemen’s Lien provisions. *See, supra*, P 20.

hourly flow requirements to be a negotiated term and condition of service and therefore to be an impermissible material deviation.<sup>52</sup> By providing maximum hourly quantities for some customers, but not others, Monroe is relieving some customers of a major term of service to a degree that constitutes undue discrimination. Accordingly, we reject the non-conforming versions as unduly discriminatory and direct Monroe to either use the conforming provision in the FSA or else revise its FSA to offer this option to all of its customers.

59. Second, Monroe deletes the “Excess Capacity Charge” category from Exhibit A of all of its non-conforming Firm Agreements. We find that the proposed deletion is equivalent to specifying that the Excess Capacity Charge is equal to zero, which would be a permissible rate agreement. Accordingly, we accept the provision as not unduly discriminatory.

60. The third major non-conforming deviation in Exhibit A of all of Monroe’s Firm Agreements is an additional phrase specifying that the Fuel Reimbursement charges are only “on injections.” We find that the FSA’s version of Exhibit A labels the Fuel Reimbursement charge as subject to negotiation. The proposal to include Fuel Reimbursement on injection only is an acceptable outcome of such rate negotiation. Accordingly, we accept the non-conforming provision as not unduly discriminatory.

61. Fourth, Monroe expands the Quantities and Charges section to include initial and primary terms, with the initial term defined as service provided prior to March 31, 2009.<sup>53</sup> Given that Monroe actually commenced service on April 29, 2009, as clarified above, an initial term could not have occurred. The proposed expansion of the Quantities and Charges sections of Exhibit A into initial and primary terms is therefore moot. As such, they are unique to the service provided to the initial shippers and do not result in undue discrimination to any of Monroe’s other shippers. Accordingly, we approve the provision.

## **10. Ratchets**

62. Exhibit B of the Citigroup Firm Agreement adds new “Ratchets” tables to indicate the schedule by which Citigroup may inject/withdrawal quantities.<sup>54</sup> Specifically,

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<sup>52</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001) (*Columbia*). See also *Northern Natural Gas Co.*, 123 FERC ¶ 61,014, at P 13 (2008); *Transwestern Pipeline Co., LLC*, 121 FERC ¶ 61,110, at P 12 (2007).

<sup>53</sup> Monroe proposes these revisions under its Firm Agreements with Citigroup and Morgan Stanley but not under its Firm Agreements with Energyplus and Sequent.

<sup>54</sup> Monroe proposes similar revisions in its Firm Agreements with Morgan Stanley,  
(continued)

Monroe determines a new set of Maximum Storage Injection/Withdrawal Quantities according to the total amount of gas currently held in a customer's account relative to the customer's maximum storage quantity. Monroe states that this change involves matters that the *pro forma* tariff and relevant FSA contemplated would be the subject of negotiations.<sup>55</sup> Thus, Monroe states, the changes should not be deemed to be a prohibited material change to the approved conditions of service.

63. The Commission allows storage service providers to offer customers the option of receiving either ratcheted or un-ratcheted storage service, but requires specific and generally applicable ratchet percentages to be stated in the tariff when implemented.<sup>56</sup> Monroe's FSAs and tariff currently do not provide any generally applicable terms for ratcheting. Without such generally applicable terms, this non-conforming provision would result in a customer receiving a different quality of service than that provided to other customers under the pipeline's tariff.<sup>57</sup> Monroe states that it is willing to offer equivalent terms to any of its firm storage customers upon request.<sup>58</sup> Accordingly we accept Monroe's non-conforming ratchet provisions on the condition that Monroe revise its tariff and the FSA of its Firm Agreement to provide storage ratchets on generally applicable terms.<sup>59</sup>

64. In addition, Monroe amends Exhibit B of its Firm Agreement with Morgan Stanley, such that for each designated point of receipt:

Customer's Maximum Daily Receipt Quantity (MDRQ) shall be *the higher of* Customer's [Maximum Daily Injection Quantity (MDIQ)] *or the average MDIQ for the Ratchet (calculated as the simple average of the highest and lowest injection quantities within each ratchet)*. Customer's aggregate daily nominated receipt quantity shall not exceed Customer's MDIQ *or the average MDIQ for the Ratchet*.

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Energyplus, and Sequent.

<sup>55</sup> Monroe March 10, 2009 filing at G-4.

<sup>56</sup> *Windy Hill Gas Storage, LLC*, 119 FERC ¶ 61,291, at P 43-44 (2007).

<sup>57</sup> *Id.*

<sup>58</sup> Monroe March 10, 2009 filing at G-7.

<sup>59</sup> *Golden Triangle Storage Inc.*, 121 FERC ¶ 61,313, at P 54 (2007); *Orbit Gas Storage, Inc.*, 126 FERC ¶ 61,095, at P 60 and 61 (2009).

*Notwithstanding the foregoing, Monroe's obligation to inject on a Firm basis shall be limited to Customer's MDIQ.*  
(Proposed language in italics)

Monroe links the Maximum Daily Delivery Quantity to the Maximum Daily Withdrawal Quantity. Monroe also proposes similar revisions in its Firm Agreement with Energyplus, except that Monroe does not provide the “higher of” option; thus linking Energyplus’ Maximum Daily Receipt and Delivery Quantities to the average Maximum Daily Injection and Withdrawal Quantities, respectively, for the Ratchet.

65. Monroe states that these revisions allow the customer to nominate potentially higher amounts for injection or withdrawal by Monroe on an as-available basis based on ratchets keyed to the amount of gas being stored for the customer at any given time relative to the firm storage capacity reserved by the customer. Monroe further states that sections 3.1 and 3.2 of the *pro forma* tariff contemplated that a customer could tender or take gas in amounts exceeding the MDIQ and MDWQ, respectively, subject to Monroe’s consent. Monroe also states that GT&C section 6.1 did not contain any express limitation on the quantity of gas that could be nominated for injection or withdrawal. Monroe states that it is willing to offer equivalent terms to any of its firm storage customers upon request.

66. We find that sections 3.1, 3.2, and 6.1 of the GT&C do not adequately contemplate that a customer could tender or take gas in amounts exceeding the Maximum Daily Injection/Withdrawal Quantities. Sections 3.1 and 3.2 provide that the customer shall not exceed maximum quantities without Monroe’s written consent. Section 6.1 provides that “Overrun quantities shall be requested as separate transactions.” These provisions contemplate overruns as exceptional, sporadic activity; they do not contemplate an established schedule that would allow a customer to exceed the Maximum Daily Injection/Withdrawal Quantities as a matter of right. We find that this provision presents a significant risk of undue discrimination. Accordingly, Monroe must either withdraw these non-conforming provisions in its Firm Agreements with Morgan Stanley and Energyplus or else amend its tariff to make storage ratchets and overrun rights generally available pursuant to not unduly discriminatory conditions.

## **11. Delivery Terminology**

67. Also in Exhibit B, in each of its non-conforming Firm Agreements, Monroe replaces the final use of the word “delivery” in the following provision:

For each designated point of delivery, Customer’s Maximum Daily Delivery Quantity (MDDQ) shall be the Customer’s MDWQ. Customer’s aggregate daily nominated *delivery* quantity shall not exceed Customer’s MDWQ.

In the case of Morgan Stanley, Energyplus, and Sequent, the non-conforming agreement replaces “delivery” with “withdrawal.” In the case of Citigroup, however, the non-conforming agreement replaces “delivery” with “receipt.”

68. Since the sentence deals specifically with the Maximum Daily Withdrawal Quantity, the replacement term “withdrawal” is appropriate and is accepted. The replacement of “delivery” with “receipt”, however, introduces a term that is a mirror image of the original term. In essence, the deviating provision would make the customer’s receipt, or injection, quantities dependent on the customer’s Maximum Daily Withdrawal Quantity. Monroe fails to justify or explain the meaning of this change. We find that this change to the Citigroup agreement either constitutes a typographical error, or else a material deviation that substantially affects the quality of service provided to the customers. Monroe must either (i) restore the word “delivery,” (ii) use the word “withdrawal,” or (iii) file an explanation of how the use of “receipt” is not unduly discriminatory in this context.

## **B. Non-Conforming Provisions in Individual Firm Agreements**

### **1. Coordination Between Service Agreements**

69. Monroe inserts a section 1(B) to its Citigroup Firm Agreement detailing the amounts that Citigroup may nominate under Rate Schedule ELS (Enhanced Interruptible Loan Service) and its Enhanced Hub Agreement. Monroe states that this provision merely ensures coordination between the Citigroup Firm and Enhanced Hub Agreements.

70. Upon review, we find that the proposed provision in section 1(B) of Monroe and Citigroup’s Firm Agreement is copied generally verbatim from section 1(A) (Scope of Agreement) of Monroe and Citigroup’s Enhanced Hub Agreement, the latter of which is the appropriate location for such terms. Monroe is directed to strike proposed section 1(B) of its Firm Agreement with Citigroup and rely on Rate Schedule ELS and the Enhanced Hub Agreement, or, alternatively, to file an explanation of why it would not be sufficient to rely on the Enhanced Hub Agreement for these provisions.

### **2. Exempting Rates from Refiling**

71. In its Firm Agreement with Energyplus, Monroe also revises section 1 to state that:

[Monroe] shall have the unilateral right to file with the appropriate regulatory authority to make changes effective in  
(a) the terms and conditions of this Service Agreement  
*(except for the rates set forth in Exhibit A),...*  
(Proposed language in italics).

Monroe states that this addition limits its right to seek changes in the rates to be paid by Energyplus for service. Monroe argues that this addition should be permissible because the terms regarding rates are the proper subject of negotiation between the parties and the Commission retains its authority under sections 4 and 5 of the NGA to ensure that rates are just and reasonable.<sup>60</sup>

72. Because Monroe provides storage services at market-based rates and has no captive customers paying cost-based rates, its customers are free to negotiate for the certainty provided by fixed rates. Accordingly, we accept this material deviation as not unduly discriminatory.

### **3. Requesting Injection**

73. Section 1 of the Firm Agreement between Monroe and Sequent is amended to read, “[Monroe] shall, *on request*, on any Day, receive for injection into storage for Customer’s account” quantities up to Customer’s Maximum Daily Injection Quantity and shall store the Customer’s Maximum Storage Quantity (proposed language in italics). Monroe provides no justification for its proposal and is concurrently proposing the insertion of “on request” in its FSA.

74. We find that this clause does not degrade Sequent’s quality of service. According to section 6.1 of Monroe’s GT&C, all customers must submit a nomination to Monroe to inject, withdraw, or wheel gas. As such, we interpret the addition of “on request” as merely a clarification that Sequent must submit a nomination. Therefore, we find that the insertion of “on request” into section 1 of the Firm Agreement between Monroe and Sequent does not affect the substantive rights of the parties, and accept it accordingly.

### **4. Limitation of Liability**

75. In section 7 of the Firm Agreement between Monroe and Energyplus, Monroe adds “Limitation of Liability” provisions. Specifically, Monroe provides that:

“Neither party shall be liable to the other party under this agreement for any special, indirect, incidental, punitive or consequential damages of any nature however arising, including without limitation any lost profits, even if such party has been made aware of the possibility of such damages.”

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<sup>60</sup> Monroe March 10, 2009 filing at G-8.

76. Monroe states that the addition of a limitation of liability is a permissible deviation from the *pro forma* agreement because the provision is symmetrical, carrying no inherent preference for or discriminatory effect against the customer. Monroe adds that it is willing to offer an equivalent provision to any similarly situated customer.

77. Monroe's proposed revisions limit the rights of both parties. Monroe effectively states that neither party shall be liable to the other party for certain damages that one party imposes on another. As Monroe offers to provide this condition to other customers, we accept the proposed additional limitation of liability, subject to Monroe revising its FSA as applicable to offer this option to all of its customers.

### **5. Replacing “preservation” with “reservation”**

78. In section 8(a) (Warehouseman's Lien) of its Firm Agreement with Sequent, Monroe proposes to replace “preservation” with “reservation” in the phrase “for expenses necessary for preservation of the received gas.” Monroe fails to provide any justification for its proposal.

79. Given that there are actual reservation charges presented in Exhibit A of the agreement, the words “preservation” and “reservation” do not constitute simple word substitutions. This provision may be erroneous, and if not may constitute undue discrimination. Monroe must either restore the original word, or else file an explanation that demonstrates this change is both reasonable, given the terms' different meanings, and not unduly discriminatory.

### **6. Quality Specifications**

80. In its Firm Agreement with Sequent, Monroe proposes an additional section 11(e) that states “All natural gas delivered by Customer shall meet the quality specifications of any interconnecting pipeline.”

81. Monroe states that, because gas delivered by Sequent will be through the interconnecting pipelines, the language merely makes explicit that which was an implicit requirement of the agreement. However, as proposed, this language materially deviates from the tariff's minimum quality specifications for receipts onto Monroe's system, and thus poses a substantial risk of undue discrimination.<sup>61</sup> While gas delivered by a customer to Monroe will presumably meet the quality specifications of the delivering pipeline, Monroe may interconnect with other pipelines, and the specifications of those

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<sup>61</sup> Cf. *Saltville Gas Storage Company*, 110 FERC ¶ 61,324, at P 11 (2005) (rejecting a deviation that deleted the phrase “as amended from time to time” from the FSA's requirement that shippers meet minimum quality specifications).

pipelines may vary. This provision essentially requires gas delivered to Monroe by Sequent to meet the specifications of all interconnected pipelines, regardless of which pipeline Sequent uses to transport the gas to Monroe. Accordingly, Monroe must either revise the Sequent agreement to remove this additional quality specification, or else amend its FSA so that the provision is binding to all shippers.

## **7. Miscellaneous**

82. Monroe also adds a section 11(e) to its Firm Agreement with Energyplus, which states that “[t]his Agreement may be executed in counterparts, and all such executed counterparts shall form part of this Agreement. A signature delivered by facsimile or electronically shall be deemed to be an original signature [for] all purposes.”

83. Monroe states that the additional language does not constitute a prohibited material change to the FSA and constitutes neither a preference toward nor undue discrimination against any customer. Monroe adds that it is willing to offer the same terms to any similarly situated customer. For the purpose of a simple convenience such as these miscellaneous changes, we find that any customer would qualify as similarly situated. Accordingly, we accept the provision, subject to Monroe revising its FSA to offer this option to all of its customers.

## **8. Imbalance Trading Charges**

84. Exhibit A of Monroe’s current *pro forma* Firm Service Agreement does not include any blank for filling in an Imbalance Trading Charge. Exhibit A to Morgan Stanley’s firm service agreement includes a provision that Monroe will charge Morgan Stanley \$0.01/Dth for imbalance trades that Monroe arranges, and will charge \$100/transaction for trades that Morgan Stanley self-arranges with another customer. Monroe states that it is under no obligation to provide or use such services. Monroe further asserts that, because the customer is not required to use imbalance trading services and Monroe is not required to perform them, this addition does not represent a material change in the conditions of service. Further, Monroe states that it is willing to provide the same language to all similarly situated customers. In fact, as discussed earlier in this order, Monroe has proposed to include a blank space in Exhibit A of its *pro forma* service agreement for filing in an “Imbalance Trading charge.”

85. As an initial matter, Monroe is incorrect in stating that it is not required to perform an imbalance trading service. Section 284.12(b)(2)(iii) of the Commission’s regulations requires pipelines to establish provisions permitting shippers to trade such imbalances with other shippers where such imbalances have similar operational impact on the pipeline’s system. Moreover, such service is required by NAESB standards 2.3.4.2

through 2.3.5.0, which Monroe has incorporated into section 16 of its GT&C, as required by section 284.12(a)(1)(iii) of the Commission's rules and regulations.<sup>62</sup>

86. As discussed earlier in this order, the Commission is requiring Monroe to clarify its proposal to modify Exhibit A to its *pro forma* Firm Service Agreement to include a blank for filling in an Imbalance Trading Charge. Among other things, consistent with the requirement in Order No. 587-G that pipelines process imbalance trades submitted by shippers, or third-parties acting to facilitate imbalance trading, without charging a separate fee, the Commission is requiring Monroe to clarify its proposed revision to Exhibit A to ensure that the imbalance trading charge does not extend to imbalance trades submitted by shippers. The \$100/transaction fee in Morgan Stanley's firm service agreement for imbalance trades which it self-arranges with another customer would appear to be inconsistent with the requirement that trades submitted by shippers must be processed without a fee. The Commission finds that Monroe has not justified including any imbalance trading charge in its service agreement with Morgan Stanley which would materially deviate from Exhibit A of its *pro forma* service agreement, as revised consistent with the discussion earlier in this order. Accordingly, the Commission requires Monroe to modify Exhibit A to Morgan Stanley's firm service agreement as necessary to make it conform to the revised *pro forma* Exhibit A required by this order.

### **C. Non-Conforming Provisions in Morgan Stanley Interruptible Agreement**

87. Many of the revisions proposed by Monroe in its Interruptible Agreement with Morgan Stanley are similar to ones proposed in Monroe's Firm Agreements, as described above. The following constitute Monroe's proposed Interruptible Agreement non-conforming provisions that have yet to be discussed.

#### **1. Service to be Rendered**

88. In its Interruptible Agreement with Morgan Stanley, Monroe proposes to delete "less applicable Fuel Reimbursement" and replace "Exhibit B" with "Exhibit A" in the following portion of section 1(b):

"Customer shall have the right to cause [Monroe] on an interruptible basis to withdraw and redeliver a thermally equivalent quantity of gas, less applicable Fuel Reimbursement, to Customer at the Point(s) of Delivery as specified on Exhibit B attached hereto."

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<sup>62</sup> 18 C.F.R. § 284.12(a)(1)(iii) (2009).

89. The Commission has authorized Monroe to provide storage services at market-based rates. Since Monroe has no captive customers paying cost-based rates, its customers are free to negotiate rates that include or omit in-kind fuel charges without adversely affecting the interests of incumbent or future customers who may include or omit the same in-kind terms from their rates. Thus the non-conforming deletion of the phrase “less applicable Fuel Reimbursement” does not result in undue discrimination to any of Monroe’s other shippers, and we accept it accordingly.

90. However, Monroe provides no specific justification for replacing “Exhibit B” with “Exhibit A.” Exhibit A does not apply to the referenced points of delivery; rather, Exhibit B does. Accordingly, we find this provision to be erroneous, and direct Monroe to either restore the original reference to Exhibit B, or else file an explanation justifying the change.

## **2. Receipt and Delivery Points Revisions**

91. Monroe proposes to change the word “is” to “in” in the following section 2 (Receipt and Delivery Points) of its Interruptible Agreement with Morgan Stanley:

“The point(s) at which the gas is tendered by Customer to [Monroe] under this contract and the point(s) at which the gas *is* tendered by [Monroe] to Customer under this contract shall be at the point(s) located on [Monroe’s] Facility designated on Exhibit B hereto.”  
(Proposed change in italics).

Monroe provides no justification for this replacement.

92. Given the lack of clarity that this proposed change creates, we find this provision to be erroneous, and direct Monroe to either restore the original word, or else file an explanation justifying the change.

## **3. Tax Reimbursement**

93. In section 3 (Rates) of its Interruptible Agreement with Morgan Stanley, Monroe proposes to remove the customer’s obligations to “reimburse [Monroe] for Customer’s pro rata portion, based on actual storage inventory of all customers, of all ad valorem taxes, property taxes, and/or other similar taxes assessed against and paid by [Monroe].” Monroe proposes to further clarify the Customer’s obligation with regards to taxes by proposing, in section II (Charges) of Exhibit A of the Interruptible Agreement, that, in addition to the charges listed, the Customer must pay “any other Taxes, Regulatory Fees and Charges, as applicable, *as may be mutually agreed to by [Monroe] and Customer* pursuant to Section 3 of the Rate Schedule ISS [Interruptible Storage Service].”  
(Proposed addition in italics).

94. As discussed above, the Commission has authorized Monroe to provide storage services at market-based rates. Since Monroe has no captive customers paying cost-based rates, its customers are free to negotiate rates that include or omit set-aside payments without adversely affecting the interests of incumbent or future customers who may include or omit the same set-aside payments from their rates. The Commission finds that this provision does not result in undue discrimination to any of Monroe's other shippers, and we accept it accordingly.

#### **D. Non-Conforming Provisions in Citigroup Enhanced Hub Agreement**

95. Monroe's Enhanced Hub Services FSA is applicable to services provided by Monroe under Rate Schedules EPS (Enhanced Interruptible Parking Service) and Rate Schedule ELS (Enhanced Interruptible Loan Service). Citigroup entered into an Enhanced Hub Services Agreement for Rate Schedule ELS service. It has not purchased any Rate Schedule EPS service. Monroe has revised and rearranged entire sections of its Enhanced Hub Agreement with Citigroup. For example, the second paragraph of section 1 (Service to be Rendered) has been moved to the second paragraph of proposed section 4 (Incorporation of Rate Schedules and Tariff Provisions); section 9 (Transfer and Assignment of All Agreements) has been moved to become section 7; and section 6 (Prior Agreements Cancelled) has been moved to become section 9. Except as discussed below, these and various other stylistic edits in the Citigroup Enhanced Hub Agreement are not material deviations, because they do not affect the substantive rights of the parties. However, we again remind Monroe that unnecessary revisions "hinder the Commission's ability to assess whether the transaction is unduly discriminatory as well as the assessment of the transaction by shippers attempting to determine if they are similarly situated to the shipper in the negotiated transaction."<sup>63</sup>

96. Below, we discuss the deviations which are material and which have not been discussed above in this order.

#### **1. Scope of Agreement**

97. The Enhanced Hub Agreement with Citigroup deletes the entire first paragraph of section 1 (Service to be Rendered) of the Enhanced Hub Agreement FSA, which details the basic terms and conditions established by the agreement. In its place, Monroe adds a "Scope of Agreement" section. While this section is stylistically very different, in substance the material differences are as follows:

- a. The Citigroup Enhanced Hub Agreement provides that Citigroup may only receive loans of natural gas under Rate Schedule ELS (Enhanced

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<sup>63</sup> *Policy Statement on Negotiated Rates*, 104 FERC ¶ 61,134 at P 31.

Interruptible Loan Service) when its “Maximum Storage Quantity (‘MSQ’) [under Citigroup’s firm storage service agreement] is equal to zero and for a time period up to the maximum duration, not to exceed 90 days, as specified in this agreement.” The FSA does not contain these limits on a shipper’s rights to use the Rate Schedule ELS service.

- b. When ELS loan volumes are outstanding, the Citigroup Enhanced Hub Agreement: 1) suspends Citigroup’s Firm Agreement rights; 2) credits storage injections against outstanding ELS loan volumes; and 3) credits any further injections against Citigroup’s MSQ in its Firm Agreement. The Enhanced Hub Services FSA contains no such restriction, and the tariff’s Rate Schedule ELS section 2 instead handles ELS deficits by compelling the Customer to pay for replacement gas.

98. Monroe argues that the Commission should hold the Scope of Agreement provision to be permissible because it is consistent with sections 1 and 2 of the tariff’s Rate Schedule ELS and section 6 of the tariff’s GT&C concerning scheduling priorities. Monroe argues that the provision does not discriminate against other customers and that it is willing to offer the same terms regarding Rate Schedule ELS or EPS service to any similarly situated customer.

99. There is nothing in sections 1 and 2 of Rate Schedule ELS or section 6 of its GT&C which authorizes Monroe to impose limits on Citigroup’s ability to use Rate Schedule ELS services similar to those described above. While the tariff provisions cited by Monroe provide for firm service to have priority over the interruptible Rate Schedule ELS service, they do not prohibit a shipper, while it has gas in storage under its firm storage service, from using Rate Schedule ELS service. Accordingly, these provisions of Citigroup’s Hub Service Agreement are impermissible negotiated terms and conditions of service different from those provided in the tariff. Monroe states that it is willing to offer the same terms regarding its enhanced park and loan services to any similarly situated customer. Accordingly, we condition our acceptance of this non-conforming section upon Monroe either restoring section 1 to match the FSA, or else filing amendments to its FSA offering all similarly situated customers the option of choosing the conditions imposed on Citigroup noted above, instead of the conditions laid out in the tariff and FSA.<sup>64</sup>

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<sup>64</sup> The Citigroup Enhanced Hub Agreement also deletes concurrently proposed language modifying the *pro forma* Enhanced Hub Agreement to state that those services are subject to the provisions of Part 284 of the Commission’s Regulations, 18 C.F.R. Part 284 (2009). As Monroe’s Enhanced Hub Services are offered pursuant to its blanket certificate to provide open access services under Part 284, we see no reason to remove

(continued)

## **2. Term of Renewal**

100. Monroe revises section 5 (Term) of its Enhanced Hub Agreement with Citigroup such that the Citigroup Enhanced Hub Agreement terminates on a specific date (March 31, 2013) unless renewed, whereas the FSA continues unless terminated by 30 days' notice. Further, the Citigroup Enhanced Hub Agreement gives Citigroup the right to extend the term of the agreement for a period of up to three additional years; no such clause exists in the FSA. Monroe argues that the section 5 term provision should be held as permissible because it is consistent with section 2.9 of the GT&C and does not result in discrimination against or undue preference for any customer.

101. The Commission has only permitted a pipeline to negotiate provisions giving shippers the right to extend their contracts if its tariff contains a provision offering to negotiate such provisions in a service agreement on a not unduly discriminatory basis.<sup>65</sup> Section 2.9 of the GT&C does not authorize the negotiation of such provisions in a service agreement. Section 2.9 only provides that, during the term of an existing service agreement, the pipeline and the shipper may negotiate to amend the service agreement to extend its term. Accordingly, we direct Monroe to either remove the contract extension provisions or else make the right to term extensions available to all similarly situated shippers via a generally applicable tariff provision.

## **IV. Compliance Filing**

102. In the July 16 Order, the Commission directed Monroe to file public versions of the six non-conforming agreements within 10 days of the date of the order. In its July 23 compliance filing, Monroe submitted the unredacted, public version of each non-conforming service agreement that was originally filed on March 10, 2009.

103. Public notice of Monroe's filing in Docket No. RP09-447-003 was issued on July 27, 2009. Comments were due as provided in section 154.210 of the Commission's regulations.<sup>66</sup> No comments or protests were filed.

104. We accept the public versions of Monroe's non-conforming agreements, submitted by Monroe in its July 23 compliance filing, as substantively equivalent to Monroe's

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such a reference from the Citigroup's Enhanced Hub Agreement and direct Monroe to reinsert this reference.

<sup>65</sup> *Northern Natural Gas Co.*, 113 FERC ¶ 61,002 at P 11. *See also Kinder Morgan Interstate Gas Transmission LLC*, 107 FERC ¶ 61,096, at P 5 (2004).

<sup>66</sup> 18 C.F.R. § 154.210 (2009).

previously redacted non-conforming agreements and, accordingly, find that Monroe's July 23 compliance filing meets the terms of the Commission's July 16 Order.

The Commission orders:

- (A) Monroe's revised Form of Service Agreements are accepted, effective April 29, 2009, subject to the conditions discussed in this order, with Monroe's compliance filing due within 30 days of the date of this order;
- (B) Monroe's non-conforming agreements are accepted, effective April 29, 2009, subject to the conditions discussed in this order, with Monroe's compliance filing due within 90 days of the date of this order; and
- (C) The Commission accepts Monroe's July 23 compliance filing.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.