

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

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

MoBay Storage Hub, LLC

Docket No. CP06-398-002

ORDER AMENDING CERTIFICATE

(Issued May 20, 2010)

1. On December 10, 2009, MoBay Storage Hub, LLC (MoBay) filed an application under section 7(c) of the Natural Gas Act (NGA) to amend its certificate of public convenience and necessity issued December 20, 2006 (December 2006 Order),¹ as modified by an order issued March 19, 2009.² MoBay requests authorization to add nine new injection/withdrawal wells, two new caisson structures, and to increase the total capacity and the working gas capacity of the storage facility authorized in the December 2006 Order. MoBay also requests that the Commission waive certain of its regulations and affirm that its approval of market-based rates for this project in the December 2006 Order will apply to the amended project as well. For the reasons discussed herein, we will grant MoBay's requests subject to the conditions set forth herein.

Background

2. The December 2006 Order authorized MoBay to construct and operate a high-delivery natural gas storage facility and associated pipeline facilities (MoBay Gas Storage Project) in South Mobile Bay County, Alabama. The authorized facilities consist of three underground depleted natural gas storage reservoirs³ located offshore in Alabama state waters; thirty new injection and withdrawal wells supported by ten offshore caissons and approximately seven miles of offshore distribution (storage field) pipeline; an onshore compressor station with 37,880 horsepower (hp) of compression; two 8,500 hp compressor units located offshore on an existing platform; three metering

¹ *MoBay Storage Hub, Inc.*, 117 FERC ¶ 61,298 (2006).

² *MoBay Storage Hub, LLC*, 126 FERC ¶ 61,241 (2009).

³ The three storage reservoirs are the North Dauphin Island Field, the Northwest Dauphin Island Field, and the Northeast Petite Bois Field.

stations and approximately 3.5 miles of 24-inch diameter pipeline laterals; and a 15-mile long, 36-inch diameter pipeline connecting the storage reservoirs to the onshore compressor station. The authorized MoBay Gas Storage Project includes approximately 83 billion cubic feet (Bcf) of total storage capacity and 50 Bcf of working gas storage capacity from the three fully-developed reservoirs. The storage facility will be capable of receiving and delivering natural gas at a maximum rate of 1.0 Bcf per day.

3. The Commission found that MoBay will lack market power and approved MoBay's request to charge market-based rates for firm and interruptible storage, hub, and wheeling services. The Commission provided that MoBay must notify the Commission if future circumstances significantly affect its present market power status, and specifically stated that its approval of market-based rates is subject to re-evaluation in the event that MoBay expands its storage capacity beyond the amount authorized in the December 2006 Order. In view of the decision to permit MoBay to charge market-based rates, the Commission also waived compliance with certain reporting and accounting requirements, as set forth in Ordering Paragraph (G) of the December 2006 Order.

Proposed Modifications

4. MoBay proposes to install nine new injection and withdrawal wells in addition to the 21 wells approved in the December 2006 Order, for a total of 30 wells. Of the nine new wells, two will be installed at new offshore locations and seven at previously approved well caisson structure locations. All the new wells will be within the North Dauphin Island storage reservoir. MoBay also proposes to add two offshore well caisson structures above the North Dauphin Island storage reservoir, each of which will support one of the new injection and withdrawal wells. Upon completion of the project, the total capacity of the storage facility will increase from the 83.04 Bcf certificated in the December 2006 Order to 86.74 Bcf. The certificated working gas capacity will similarly increase from 50 Bcf to 59.61 Bcf. All other aspects of the project as approved in the December 2006 Order, including maximum daily deliverability (injection and withdrawal rates) and maximum certificated reservoir pressures, will remain the same.

5. At the time the Commission certificated the MoBay Gas Storage Project, MoBay planned to use horizontal drilling at the storage facility. Since then, MoBay has conducted further analyses of the North Dauphin Island formation and reviewed and analyzed horizontal drilling conducted by third parties in similar geologic formations in the area. From this analysis, MoBay determined that horizontal well design and installation for the injection and withdrawal wells would present significant construction risks, such as pipe sticking, formation damage, and sand control problems, potentially jeopardizing the drilling operations.

6. To avoid these risks, MoBay has determined not to use horizontal drilling. Instead, MoBay will employ what it calls a "more conventional slant well design." This design change will necessitate other design changes for the storage facility to meet

storage and deliverability requirements. Specifically, MoBay has determined that it will need the additional nine wells it proposes here, along with a reconfiguration of the number of wells per satellite caisson, and two additional caisson structures.

7. MoBay also proposes a change to the North Dauphin Island reservoir certificated storage capacity. MoBay states that revised geologic studies show a need to increase the North Dauphin Island reservoir capacity for gas in-place from 69.3 Bcf to 73.0 Bcf and for working gas from 44.08 Bcf to 53.2 Bcf. MoBay requests no changes in the certificated capacity of the other two storage reservoirs. MoBay has proposed no changes to the previously certificated maximum shut-in bottom hole storage pressures of each reservoir or to the deliverability of the project.

Interventions

8. Notice of the application was published in the *Federal Register* on December 29, 2009 (74 Fed. Reg. 68,814). No motions to intervene, notices of intervention, or protests to the application have been filed.

Discussion

9. The December 2006 Order analyzed MoBay's proposals in light of the Commission's Certificate Policy Statement⁴ and found that the proposals were required by the public convenience and necessity.⁵ Specifically, we found that, as conditioned in the December 2006 Order, existing customers will not subsidize the project, that the project will have no adverse impact on existing customers or services, as MoBay has no current customers or services, that the project will have no adverse impact on existing storage providers or their captive customers, and that there will also be no negative impact on landowners. We found that the MoBay Gas Storage Project will benefit the public because it will enhance storage options available to pipelines and their customers, thus increasing competitive alternatives.

10. MoBay's proposal to modify the MoBay Gas Storage Project will enhance the benefits expected from the project and accords with the Commission's previous findings that the project is consistent with the Certificate Policy Statement. Further, the project will have minimal impact on landowners and surrounding communities and no landowner

⁴ *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).

⁵ December 2006 Order at P 18.

has protested the proposed amendment. Accordingly, we will amend the December 2006 certificate to authorize MoBay to make the modifications it has proposed.

Market-Based Rates

11. We have approved market-based rates for storage services where applicants have demonstrated, under the criteria in the Commission's Alternative Rate Policy Statement,⁶ they lack significant market power or have adopted conditions that significantly mitigate market power. In prior orders, we have approved requests to charge market-based rates for storage services based on a finding that proposed projects would not be able to exercise market power due to small size, anticipated share of the market, and numerous competitors.⁷ We have also distinguished between production area storage facilities, such as MoBay's, and market area storage facilities.⁸ In general, alternatives to storage in a production area are less of a concern than in a market area, because production itself can serve as a substitute for storage. As noted above, the December 2006 Order granted MoBay's request to charge market-based rates for its storage and hub services, as described in its 2006 application.

12. MoBay proposes in the instant application to increase the total storage capacity of the storage facility from 83.04 Bcf to 86.74 Bcf and to increase the working gas capacity from 50 Bcf to 59.61 Bcf. This change in the storage capacity of the facilities requires that we conduct a new analysis of MoBay's market power before we can approve MoBay's request to charge market-based rates for the amended project.⁹

⁶ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services for Natural Gas Pipelines*, 74 FERC ¶ 61,076, *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *petitions denied and dismissed*, *Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir 1998).

⁷ *See, e.g., Liberty Gas Storage LLC*, 113 FERC ¶ 61,247 (2005) and *Freebird Gas Storage, LLC*, 111 FERC ¶ 61,054 (2005).

⁸ *See, e.g., Moss Bluff Hub Partners, L.P.*, 80 FERC ¶ 61,181 (1997); and *Steuben Gas Storage Company*, 72 FERC ¶ 61,102 (1995), *order on compliance filing and denying reh'g*, 74 FERC ¶ 61,060 (1996).

⁹ As a result of consultation with Commission staff, on March 12, 2010, MoBay resubmitted the market power study that it filed in the 2006 proceeding and stated that the increases in total and working gas capacity now sought will not increase MoBay's peak day or maximum deliverability at any receipt or delivery point above the levels described in the 2006 market power study.

13. MoBay's 2006 market power study for the storage market provides a description of the services for which market-based rates are proposed, defines the relevant product and geographic markets, measures market share and concentration, and evaluates other factors. For the purposes of its analysis, MoBay identifies the relevant product market as firm and interruptible storage services for natural gas, as well as various hub services consisting of interruptible parking and loaning, firm and interruptible balancing, imbalance trading, and wheeling services. The relevant geographic market for those products and service, except wheeling, is defined as consisting of eastern/southern Texas, Louisiana, Mississippi, and Alabama. MoBay states that it has further narrowed the potential market by removing from the 2006 market power study any facility that does not currently offer storage capacity and deliverability into the marketplace for the use of third parties. Interruptible wheeling, which is a transportation service, is also covered by MoBay's study for the geographic market that includes Texas, Louisiana, Mississippi, and Alabama.

14. As we explained in the December 2006 Order, the Commission uses the Herfindahl Hirschman Index (HHI) test to determine market concentration for gas pipeline and storage markets. The Alternative Rate Policy Statement states that a low HHI – generally less than 1,800 – indicates that sellers cannot exert market power because customers have sufficiently diverse alternatives in the relevant market. 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. MoBay's 2006 market power study shows an HHI calculation of 1,145 for working gas capacity, and an HHI calculation of 986 for peak day deliverability. MoBay's filing does not propose any revisions to deliverability; however, adjusting the working gas capacity in the 2006 market power study for the proposed increase in working gas capacity from 50 Bcf to 59.61 Bcf results in an increase in the HHI for working gas for the storage market from 1,145 to 1,178. These measures of market concentration are still well below the Commission's threshold of 1,800, thus indicating that MoBay would be unable to exert market power in the relevant market area after construction of its proposed storage facilities.

15. MoBay's 2006 market power study identifies 26 alternative storage facilities, affiliated with 13 other separate entities, in the relevant market area. The 2006 market power study showed a combined market working gas capacity of all the identified facilities, including MoBay, of 570.15 Bcf with MoBay and its affiliate, Falcon Gas Storage Company (Falcon), controlling 60 Bcf, or 10.5 percent of the market (Exhibit I-I, Attachment A). Adjusting the 2006 market power study for the increased working gas volumes proposed here results in a new combined working gas capacity for the storage market area of 579.76 Bcf, with MoBay and Falcon controlling 69.61 Bcf or 12 percent of the market. The 2006 market power study showed that MoBay's and Falcon's 1,300 MMcf per day of peak deliverability will be 8.0 percent of the total market peak day deliverability of 16,288 MMcf per day (Exhibit I-I, Attachment B). As MoBay's

proposal will not have any effect on deliverability, no adjustment is necessary to that figure. Thus, MoBay's aggregate share of the relevant storage market remains relatively small when adjusted for the additional capacities proposed here. Given the number of current storage providers, we reaffirm our conclusion in the December 2006 Order that the barriers to entry to the storage market in the relevant market area are low.

16. MoBay's 2006 market power study demonstrates that its proposed storage facilities will be in a highly competitive production area where numerous storage and hub service alternatives exist for potential customers. We find that MoBay's prospective market shares are low and that market area HHIs are below the threshold warranting further review. Thus, consistent with our finding in the December 2006 Order, we conclude that MoBay will lack market power. Further, MoBay's proposal for market-based rates is unopposed. The market shares and HHIs for the receipt and delivery point capacities at the interconnections between pipelines that are directly or indirectly connected to MoBay are the same as those contained in the December 2006 Order since no changes to those capacities are proposed in the instant filing. Therefore, we reaffirm our ruling in the December 2006 Order that MoBay lacks market power with respect to its wheeling service.

17. Accordingly, consistent with our findings in the December 2006 Order, we reaffirm our approval of market-based rates for MoBay's firm and interruptible storage, hub, and wheeling services as set forth above. As discussed in the December 2006 Order, MoBay must notify the Commission if future circumstances significantly affect its present market power status. Our approval of market-based rates for the indicated services is subject to re-evaluation in the event that: (a) MoBay expands its storage capacity beyond the amount authorized in this proceeding; (b) MoBay acquires additional transportation facilities or additional storage capacity; (c) an affiliate provides storage or transportation services in the same market area or acquires an interest in another storage field that can link MoBay's facilities to the market area; or (d) MoBay, or an affiliate, acquires an interest in or is acquired by an interstate pipeline. Since these circumstances would affect its market power status, MoBay shall notify the Commission within 10 days of acquiring knowledge of any such changes. The notification shall include a detailed description of the new facilities and the relationship to MoBay.¹⁰ The Commission also reserves the right to require an updated market power analysis at any time.¹¹

¹⁰ See, e.g., *Perryville Gas Storage LLC*, 130 FERC ¶ 61,065 (2010); *Port Barre Investments, L.L.C. d/b/a Bobcat Gas Storage*, 116 FERC ¶ 61,052 (2006); and *Pine Prairie Energy Center, LLC*, 109 FERC ¶ 61,215 (2004).

¹¹ See, e.g., *BGS Kimball Gas Storage, L.L.C.*, 117 FERC ¶ 61,122, at P 32 (2006); and *Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141, at P 40 (2005).

Waiver Requests

18. In light of its request for continued authority to charge market-based rates, MoBay requests that the Commission waive section 157.6(b)(8) of the Commission's regulations, which requires an applicant to provide the Commission with the information otherwise necessary for the Commission to make an up-front determination on the rate treatment for the MoBay project. MoBay also requests that the Commission waive its filing requirements under sections 157.14(a)(13), (14), (15), (16), and (17), which require submission of Exhibit K (cost of facilities), Exhibit L (financing), Exhibit N (revenues, expenses and income), and Exhibit O (depreciation and depletion). MoBay states that these exhibits are required of applicants seeking cost-based rate treatment, and are not relevant here as MoBay is seeking to continue to charge market-based rates.¹² In addition, in view of its request to continue to charge market-based rates, MoBay requests waiver of the accounting and reporting requirements under Part 201 and section 260.2 of the Commission's regulations, which requires the filing of annual reports in Form No. 2-A, and of the general rate design requirements of section 284.10 and of section 284.7(e), which requires that rates be designed on a straight fixed-variable methodology. MoBay also requests waiver of the section 157.14(a)(10) requirement to provide total gas supply information.

19. As we explained in the December 2006 Order, we have determined that where the market is sufficiently competitive to warrant market-based rates, the submission of cost-based data is not relevant. Thus, in view of our decision to permit MoBay to continue to charge market-based rates for its storage and hub services, consistent with the December 2006 Order, we will grant MoBay's request to waive compliance with section 157.6(b)(8) and the section 157.14 requirement to submit Exhibits K, L, N, and O. We will also grant MoBay's requested waiver of the requirement to provide total gas supply information contained in section 157.14(a)(10), since this requirement does not pertain to storage operations.

20. Likewise, because we are affirming MoBay's authorization to continue to charge market-based rates, there is no ongoing regulatory need to have cost-based financial statements prepared in accordance with the Commission's Uniform System of Accounts. Accordingly, as in the December 2006 Order, we will grant MoBay's request to waive the Commission's accounting requirements in Part 201. In addition, we will also grant MoBay's request for waiver of section 260.2 (Form No. 2-A) and sections 284.10 and 284.7(e) (pertaining to reporting requirements which presume that cost-of-service rates are charged), but note that such waiver does not extend to the information necessary to

¹² MoBay notes that the Commission waived these requirements in the December 2006 Order.

determine the Annual Charge Assessment (ACA). Consistent with our determination in the December 2006 Order, MoBay is required to file pages 520 and 520A of Form No. 2-A, reporting the gas volume information which is the basis for imposing an ACA charge. In addition, we will require MoBay to continue to maintain sufficient records of cost and revenue data consistent with the Uniform System of Accounts should the Commission require MoBay to produce this report in the future.

21. We are granting these waivers because of the approval of MoBay's market-based rates. However, the waivers are subject to re-examination in the event that MoBay's market power or market-based rates need to be re-examined, as discussed above. In addition, at some future time, the Commission may need to review records and data showing MoBay's costs. Accordingly, the waivers are conditioned upon MoBay's maintaining accounts and financial information of its facilities consistent with generally accepted accounting principles.

NAESB Standards

22. MoBay must ensure that its tariff complies with the currently-effective version of the NAESB (North American Energy Standards Board) standards at the time of the compliance filing to this order.¹³

Engineering

23. The Commission's staff completed an engineering analysis of the project proposed by MoBay. Based on this analysis, we conclude that the MoBay storage facility is properly designed to provide a total capacity of 86.74 Bcf with a working gas capacity of 59.61 Bcf. MoBay shall continue to comply with all engineering conditions previously set forth in the December 2006 Order.

Environmental Review

24. On November 6, 2006, the Commission issued its environmental assessment (EA) for the original MoBay Gas Storage Project (November 2006 EA). Based on the analysis in the November 2006 EA and supplementary material submitted by MoBay, we concluded in the December 2006 Order that if MoBay constructs the facilities in accordance with its application, as supplemented, and the conditions set forth in the

¹³ See *Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-U, 75 Fed. Reg. 16,337 (April 1, 2010), FERC Stats. & Regs. ¶ 31,307 (2010) (incorporating by reference into its regulations Version 1.9 of the standards adopted by the Wholesale Gas Quadrant of the NAESB).

order, approval of the project would not constitute a major federal action significantly affecting the quality of the human environment.¹⁴

25. Commission staff prepared an EA for the amended project involved here, which it placed in the public record on March 10, 2010 (March 2010 EA). The March 2010 EA addresses estuarine fisheries and essential fish habitats, federally-listed species, land use, cultural resources, cumulative impacts, and alternatives to the proposal. Noting that any additional impacts from the proposed amendment to the project approved in 2006 will affect less than 0.1 additional acre, and determining that construction and operation of MoBay's amended facilities will impose impacts similar to those already addressed in the November 2006 EA, the March 2010 EA incorporates the November 2006 EA by reference, and adopts the discussion and recommendations contained in that EA.

26. Commission staff consulted with the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) concerning marine species protected under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and section 7 of the Endangered Species Act. The purpose of the consultations was to determine, as lead federal agency, if the Biological Opinion and Essential Fish Habitat (EFH) Assessment prepared for the original project in 2006 are still valid for the amended project.

27. On February 23, 2010, the NMFS notified the Commission that because MoBay's amended project would not result in new impacts on threatened or endangered species, no additional mitigation is required. Accordingly, we find that re-initiation of section 7 consultation pursuant to the Endangered Species Act is not required.

28. Regarding consultation with NMFS pursuant to the Magnuson-Stevens Act, the March 2010 EA concludes that the limited disturbance (0.1 acre) resulting from MoBay's amended project facilities would not result in impacts on the 24 previously-identified EFH species beyond those addressed for the 2006 EFH Assessment, and that no additional conservation measures are warranted as a result of the proposed amendment. On March 16, 2010, NMFS indicated that it had no objections to the revised project and had no EFH recommendations. NMFS stated that the 2006 EFH Assessment remains sufficient for the amended project.¹⁵

¹⁴ 117 FERC ¶ 61,298 at P 57.

¹⁵ At the time of issuance of the March 2010 EA the NMFS had not yet responded to staff's request for consultation. Accordingly, the March 2010 EA included a recommendation that would have prohibited construction of MoBay's amended facilities until Commission staff concluded EFH consultation with NMFS. With the March 16, 2010 filing by the NMFS, consultation is now complete, and this order,

(continued)

29. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage 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.¹⁶

30. At a hearing held on May 20, 2010, the Commission on its own motion, received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) MoBay's certificate issued on December 20, 2006, is amended as described more fully in the application and in the body of this order. In all other respects, the December 2006 Order shall remain in full force and effect.

(B) Maximum inventory of natural gas stored in the MoBay Gas Storage Project shall not exceed the certificated levels of 86.74 Bcf (59.61 Bcf working gas and 27.13 Bcf base gas) at 14.73 psia and 60 degrees Fahrenheit. The Maximum Inventory of the North Dauphin Island Field shall not exceed the certificated level of 73.0 Bcf (53.2 Bcf working gas and 19.8 Bcf base gas) at 14.73 psia and 60 degrees Fahrenheit. MoBay shall continue to comply with all other engineering conditions in the December 2006 Order.

(C) MoBay shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies MoBay. MoBay shall

therefore, does not include a condition requiring consultation with the NMFS.

¹⁶See, 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., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

By the Commission. Commissioner Moeller is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Environmental Conditions

As recommended in the Environmental Assessment, this authorization includes the following conditions:

1. MoBay 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 March 2010 EA and the November 2006 EA, unless modified by this order. MoBay 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.
2. 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 this 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.
3. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, MoBay shall file with the Secretary documentation that it has received all authorizations required under federal law (or evidence of waiver thereof).
4. MoBay shall comply with all applicable environmental conditions set forth in Appendix B to the December 20, 2006 Order.