

140 FERC ¶ 61,167
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinohoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Floridian Natural Gas Storage Company, LLC

Docket No. CP12-100-000

ORDER AMENDING CERTIFICATE

(Issued August 31, 2012)

1. On March 30, 2012, Floridian Natural Gas Storage Company, LLC (Floridian) filed an application to amend the authorization granted by the Commission to Floridian on August 29, 2008,¹ to construct and operate a new liquefied natural gas (LNG) storage facility near Indiantown in Martin County, Florida (Storage Project). Construction of the new Storage Project has not yet commenced. Floridian states that it is not proposing to construct any new facilities. Rather, it seeks authorization to utilize the truck loading station authorized in the August 29, 2008 Order to deliver liquefied natural gas into trucks during the normal course of business, instead of only during emergency situations. For the reasons discussed herein, the Commission will grant the certificate amendment, subject to conditions.

I. Background and Proposal

2. As approved by the Commission, Floridian's Storage Project would be constructed in two phases which, upon completion, would include: (1) two full-containment storage tanks, each with a working capacity of 4 Bcf; (2) a liquefaction system with the capacity to process 100 MMcf/d of natural gas; (3) a vaporization system with the capacity to process 800 MMcf/d of natural gas; and (4) a natural gas liquids storage system that could store up to 240,000 gallons of heavy hydrocarbons.

3. To provide access from its storage facilities to the interstate pipeline system, Floridian is authorized to construct and operate two parallel four-mile pipelines to interconnect with Gulfstream Natural Gas System, L.L.C. (Gulfstream) and Florida Gas

¹ *Floridian Natural Gas Storage Co.*, 124 FERC ¶ 61,214 (2008) (August 29, 2008 Order).

Transmission Company (FGT).² The authorized facilities also include a fully functional truck loading station that was originally anticipated to be used in emergency situations only.

4. Under its proposed amendment, Floridian would operate the truck loading station in the normal course of business. The proposed amendment would not require any modification to the authorized truck loading facility to accommodate the loading of trucks on a regular basis.

5. Both the FSS and ISS Rate Schedules of Floridian's *pro forma* FERC Gas Tariff currently include a Truck Delivery Charge and terms governing truck loading. However, because it was anticipated that such truck deliveries would occur only in emergency circumstances, Section 3.6 of both Rate Schedules provides that the option of withdrawals by truck shall be available "[i]n the event of, and in order to address, an unanticipated contingency or emergency, and only in such event and for such purpose. . . ." Floridian proposes to eliminate this clause and to make additional changes to clarify the conditions for Floridian's truck loading operations in the normal course of business.³

6. Floridian states that the maximum daily send out capacity of natural gas in liquefied state via the truck loading station would be equivalent to approximately 40 MMcf/d. The addition of this liquefied sendout volume to the 800 MMcf/d currently certificated for vaporized gas would result in a combined sendout capacity of 840 MMcf/d for the Storage Project.

7. Floridian explains that when the Storage Project was originally conceived, it expected it could serve the emergency needs of local distribution companies, power plants, industrial users and public facilities such as hospitals during times when natural gas transmission and distribution systems were disrupted by delivering natural gas in its liquefied state to trucks. However, Floridian asserts that there is now demand for liquefied natural gas on a regular basis in a variety of sectors, including truck motor fuel and marine, agricultural and industrial applications. Floridian states that its proposed amendment will enable it to serve this emerging market demand for regular truck loading service. Floridian requests expedited approval for its amended application so that it can

² As originally proposed, Floridian was to interconnect with Gulfstream and Florida Power and Light (FPL). FPL recently sold its relevant facilities to FGT so that Floridian will interconnect with FGT rather than FPL.

³ Floridian's *Pro Forma* FERC Gas Tariff, Original Vol. No. 1, at Exhibit P to the amended application. On May 2, 2012, Floridian filed a revised page 36 to the *Pro Forma* FERC Gas Tariff to propose an additional change to Section 11.1 of the General Terms and Conditions and correcting Exhibit P.

secure financing and begin construction upon concluding commercial arrangements with prospective customers who have immediate market needs for truck loading of LNG.

II. Public Notice, Interventions, and Comments

8. Public notice of Floridian's amended application was published in the *Federal Register* on April 18, 2012 (77 Fed. Reg. 23,241). FPL filed a timely motion to intervene and comments. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁴ On May 17, 2012, Floridian filed a response to FPL's comments.⁵

9. FPL states that it has an interest in this proceeding as a major gas consumer and pipeline shipper in Florida and that its customers may be directly affected by Commission action in this proceeding. While FPL's filing takes no position on Floridian's application, it raised several questions relative to the application. First, FPL asks whether Floridian still intends to build the storage facilities in two phases and whether it still intends to interconnect with the pipeline facilities of Gulfstream and the facilities formerly owned by FPL.

10. FPL also requests an explanation of how trucking customers will acquire gas supply. It asks whether the customers will become shippers on FGT and Gulfstream and transport gas to Floridian for liquefaction and storage or whether Floridian will transport gas to its storage facilities on these shippers' behalf and sell it to these customers. FPL notes that pipeline capacity to Florida is often constrained during peak seasons and that this kind of information is critical for large shippers like FPL so they can understand whether pipeline flows and system demand will change.

11. Finally, FPL requests clarification as to whether Floridian intends to seek an extension of time by which to commence construction and place the facilities in service. FPL notes that the amended certificate application states that commercial operation will begin by January 1, 2016, although Floridian's current certificate requires that the facilities be made available for service by August 29, 2013.

12. Floridian responds to FPL's requests by stating that Floridian is not proposing any construction-related modifications to its previously authorized project. Thus, it still plans to construct the project in two phases. The same applies to pipeline interconnections:

⁴ 18 C.F.R. § 385.214(c) (2012).

⁵ The Commission waives 18 C.F.R. § 385.213 (2012) to allow consideration of Floridian's answer because it assists in the Commission's analysis and provides a more complete record.

Floridian states that it will connect directly to Gulfstream and to FGT, now that FGT's Phase VIII expansion is in service. Next, as stated in its original application, the acquisition and transportation of gas supplies to and from Floridian's storage facility on the FGT and Gulfstream pipelines is the responsibility of Floridian's customers. Floridian will not acquire or sell gas to its customers, but will provide liquefaction, storage and regasification services, and redeliver gas to its customers via a pipeline or truck. Finally, Floridian states that it is aware of the requirements of its authorization regarding completion of construction and will seek an extension at the appropriate time.

III. Discussion

13. The Certificate Policy Statement provides guidance as to how the Commission will evaluate proposals for new construction.⁶ It provides that a pipeline must financially support a project without relying on subsidization from its existing customers. The Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Policy Statement explains that in deciding whether to authorize the construction of the new pipeline facilities, the Commission balances the public benefits against the potential adverse impacts.

14. In its August 29, 2008 Order, the Commission found that Floridian is a new storage company with no existing customers and that, therefore, there is no potential for subsidization by existing customers. Likewise there are no existing shippers that could be adversely affected. Further, under its market-based rate proposal Floridian assumed the economic risk associated with the project. Floridian's proposed amendment to institute a regular truck loading service does not affect the Commission's prior finding of no subsidization.

15. No new facilities are requested by Floridian. All the facilities necessary for the proposed truck loading operations have been authorized for construction in the August 28, 2008 Order. What will change is the potential frequency of redeliveries of stored gas by truck loading, since such deliveries will now be authorized to occur in the regular course of business rather than in emergency situations only. As discussed more fully below, and in the Environmental Assessment of this project, these operations are not expected to have any significant adverse impact on the environment, with the conditions imposed.

⁶ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

16. The Commission found in its August 29, 2008 Order that Floridian would not possess market power and authorized Floridian to charge market-based storage rates for firm and interruptible hub services, but required Floridian to notify the Commission of any changed circumstances that could affect its market power status, including the addition of storage capacity beyond the capacity authorized. Floridian states that the ability to deliver liquefied natural gas into trucks in the normal course of business will increase its currently certificated delivery capacity by about five percent (40 MMcf/d). In order for the Commission to determine whether this increase will materially affect our prior determination regarding Floridian's lack of market power, we will require Floridian to submit a revised market power analysis when it files tariff sheets to place this project into service.

17. Based on the findings of this order, the Commission reaffirms its finding that Floridian's Storage Project is in the public interest and is required by the public convenience and necessity.

IV. Environmental Analysis

18. The Final Environmental Impact Statement (FEIS) for the original Floridian Natural Gas Storage Project in Docket CP08-13-000 was issued on July 11, 2008. The FEIS concluded that the proposed project, with the appropriate mitigation measures as recommended, would have limited adverse environmental impact. On May 9, 2012, the Commission issued a Notice of Intent to Prepare an Environmental Assessment (EA) for the Floridian Natural Gas Amendment Project and Request for Comments on Environmental Issues (NOI). The NOI was mailed to approximately 87 entities, including federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; other interested parties; and local libraries and newspapers. This list also included landowners located within 0.5 mile of the existing approved facility. We received no comments in response to the NOI. The EA for the proposed amendment, which incorporates the prior FEIS by reference, was placed into the public record on June 29, 2012.

19. The August 29, 2008 Order in Docket No. CP08-13-000 included 97 environmental conditions. Those previous environmental conditions still apply to construction and operation of the Storage Project.

20. The proposed amendment involves no new facilities or modifications to previously-authorized facilities. We have determined that the proposal would not impact or significantly impact: vegetation, fish, and wildlife (including migratory birds); water resources, including surface and groundwater; cultural resources; geology and soils; land use; and noise.

21. In addition, we have determined that the amended proposal does not alter our previous determinations that the project would have no effect on historic properties and,

with the agreed upon mitigation, would not be likely to adversely affect any federally listed threatened or endangered species. Therefore, our consultation is complete for the National Historic Preservation Act and the Endangered Species Act.

22. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Floridian's application and supplements, and in compliance with the environmental conditions included in the August 29, 2008 Order, our approval of the proposed amendment would not constitute a major federal action significantly affecting the quality of the human environment.

23. Any state or local permits issued with respect to jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁷

24. For the reasons set forth herein, and subject to the conditions set forth below, we find that granting authorization under section 7(c) of the NGA for Floridian's proposal is required by the public convenience and necessity. Thus, we grant the requested authorization to Floridian.

25. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) The certificate issued to Floridian on August 29, 2008, in Docket No. CP08-13-000, is amended to allow Floridian, in the normal course of business, to redeliver gas in liquefied state to transporting vehicles provided by its customers.

(B) Floridian is required to file actual tariff sheets at least 60 days prior to the in-service date of the proposed facilities. That filing must include an updated market

⁷ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

power analysis demonstrating that the increased capacity approved in this amendment has not affected its current market power status.

(C) Floridian shall continue to comply with all the requirements and conditions set forth the in the August 29, 2008 Order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.