

111 FERC ¶ 61,054
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Freebird Gas Storage, LLC

Docket Nos. CP05-29-000
CP05-30-000
CP05-31-000

ORDER ISSUING CERTIFICATES

(Issued April 15, 2005)

1. On November 18, 2004, Freebird Gas Storage, LLC, (Freebird) filed an application under section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing it to acquire, own and operate the existing East Detroit Storage Facility in Lamar County, Alabama to accommodate the injection, storage, and subsequent withdrawal of natural gas for redelivery in interstate commerce. Freebird also requests authority to charge market-based rates for its proposed storage and delivery services. In addition, Freebird requests a blanket certificate under subpart G of Part 284 of the Commission's regulations to provide open access storage services. Further, Freebird requests a blanket construction certificate under subpart F of Part 157.

2. The Commission finds that Freebird's proposals will serve the public interest because the project will provide additional storage capacity for the interstate market and will provide prospective suppliers with more opportunities to meet their market needs. We find that Freebird's proposals serve the public convenience and necessity and grant Freebird authorization to charge market-based rates for its firm and interruptible storage services and issue the requested Part 284 and Part 157 blanket certificates.

I. Background

3. Freebird is a limited liability company organized and existing under the laws of the State of Alabama. Its principal office is located at 6363 Woodway, Suite 415, Houston, Texas. The primary interest owner of Freebird is MultiFuels, LP, a limited

partnership organized and existing under the laws of the State of Texas.¹ Freebird is a new company that does not currently provide transportation or storage services of any kind. Upon receipt of its requested certificate authorizations, Freebird will become a natural gas company within the meaning of section 2(6) of the NGA.

4. The East Detroit Storage Facility, located in Lamar County, Alabama, commenced operation in 2001. It was converted from a depleted natural gas reservoir to gas storage by Northwest Alabama Gas District (District), the current owner of the facility. MultiFuels and District entered into a memorandum of understanding under which MultiFuels created Freebird as the project entity that will develop, own, and operate an estimated 6 Bcf of additional working gas capacity in the East Detroit Field. Upon completion of the project, Freebird will have an 80 percent undivided ownership interest, and District will have a 20 percent undivided ownership interest, in all of the integrated assets.²

5. The Commission has determined that District is a municipality under section 2(3) of the NGA and therefore is not subject to the Commission's jurisdiction.³ After Freebird's expansion of the East Detroit Storage Facility, District will continue to use its existing capacity in the storage field to serve its local distribution customers in its six member municipalities which are all located in Alabama. Therefore, District's joint ownership of the storage facility with a jurisdictional storage company will not affect District's nonjurisdictional status.⁴

II. Proposals

A. Facilities

6. Freebird proposes to expand the East Detroit Field to provide high-deliverability storage services, which will be marketed in interstate commerce. Freebird plans a direct

¹ MultiFuels specializes in the acquisition, development, and operation of high value mid-stream natural gas and other energy assets, including natural gas gathering systems in Texas and Louisiana.

² District will retain 100 percent ownership of the existing 242,250 dekatherms of cushion gas in the East Detroit Field.

³ See *Northwest Alabama Gas District*, 42 FERC ¶ 61,371 (1988).

⁴ See, e.g., *El Paso Natural Gas Co.*, 47 F.P.C. 1527 (1972). See also *Sunshine Mining Co.*, 36 FERC 61,186 (1986).

interconnection from the storage facility to the 500 Leg Mainline of the Tennessee Gas Pipeline Company (Tennessee). The interconnection with Tennessee is located immediately downstream of Tennessee's interconnection with Transcontinental Gas Pipeline Corporation, Southern Natural Gas Company, and Florida Gas Transmission Company, thereby providing Freebird's customers with broad access to the interstate pipeline grid.

7. Freebird proposes to drill four new injection/withdrawal wells (from three new well pads) and install two connecting flow lines of approximately 0.65 and 0.41 miles within the existing boundaries of the storage project; install three new compressor units at the existing compressor station to increase the available compression from approximately 4,000 horsepower (hp) to 11,130 hp; and construct a 4.28-mile long, 16-inch lateral to connect to the Tennessee 500 Leg Mainline, upstream of Tennessee's Compressor Station 550, and to construct associated facilities.

8. When completed, the total storage inventory will be expanded to approximately 11.0 Bcf at 14.73 psia and 60 degrees Fahrenheit, with a maximum stabilized bottomhole reservoir pressure of 680 psia. With the proposed expansion, Freebird will be able to provide approximately 6.0 Bcf of storage capacity while maintaining 1.44 Bcf for District. The facility will have a withdrawal capacity of 160,000 Mcf/d.

9. Freebird held an open season from May 20, 2004, to June 18, 2004. Freebird states that many parties, including local distribution companies in the Northeast and natural gas marketers, have expressed strong interest in the project. It states that it continues to receive serious inquiries about the project from parties interested in long-term firm storage services beginning in the Fall of 2005.

B. Rates

10. Freebird requests authority to charge market-based rates for all of the storage services it will provide. To support its market-based rate proposal, Freebird included in its application a market power analysis using the Gulf Coast market area of Alabama, Louisiana, Mississippi, and East Texas.

11. Because it proposes to charge market-based rates, Freebird requests a waiver of the Commission's cost based regulations and accounting and reporting requirements in Part 201 and section 260.2 of the Commission's regulations. Freebird requests a generic waiver of the Commission's "shipper must hold title" policy to enable it to provide storage service on off-system capacity. Freebird also requests waiver of Order No. 637's segmentation requirement because, Freebird states, segmentation of storage and transportation is not feasible since its proposed project is a stand-alone storage facility that will not provide separate transportation services.

C. Part 284, Subpart G Blanket Certificate

12. In Docket No. CP02-30-000, Freebird requests a blanket certificate under subpart G of Part 284 in order to provide open-access firm and interruptible storage services on behalf of others in interstate commerce.

D. Part 157, Subpart F Blanket Certificate

13. In Docket No. CP05-31-000, Freebird requests authority for a blanket certificate under subpart F of Part 157 in order to undertake certain routine construction, maintenance, and operational activities related to its proposals.

III. Interventions

14. Notice of Freebird's application was published in the *Federal Register* on December 7, 2004 (69 Fed. Reg. 70665). SG Resources Mississippi, L.L.C., Northwest Alabama Gas District, Caledonia Energy Partners, L.L.C., and Pine Prairie Energy Center, LLC filed timely, unopposed motions to intervene.⁵ No protests, comments, or petitions to intervene in opposition were filed.

IV. Discussion

15. Since the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction, acquisition, and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Certificate Policy Statement

16. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.⁶ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy

⁵ Timely unopposed motions to intervene are granted by operation of Rule 214.

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

Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, we balance the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

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

18. The threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Freebird is a new entrant in the natural gas storage market and has no existing customers. Thus there will be no subsidization. Moreover, under its market-based rate proposal, Freebird assumes the economic risks associated with the costs of the project's facilities to the extent that any capacity is unsubscribed. Thus, Freebird's proposal meets the threshold test of the Certificate Policy Statement.

19. There will be no negative impact on existing services since Freebird has no current customers. In addition, Freebird's storage project will be located in a competitive market and will serve new demand in a region where the market for storage services is large and competitive. Freebird's storage project will enhance storage options available to other pipelines and their customers. Also, no storage company in Freebird's market area protested the application here. Thus, we concluded that that Freebird's storage proposal will have no adverse impact on existing pipelines or their captive customers.

20. Freebird will construct the proposed wells on three new well pads within the East Detroit Field, and construct the compressor units by adding 2.65 acres to the existing compressor station in the East Detroit Field. All of the land on which the East Detroit Field is located is currently leased by District, therefore no eminent domain proceedings will be required to develop the storage field. In addition, the interconnecting lateral will

follow an existing roadway for much of its 4.28 miles. Freebird anticipates that it will acquire the necessary rights-of-way through negotiation with landowners. There is no landowner opposition to the proposal. Thus, we find that any adverse impacts on landowners and communities near the storage field or along the pipeline route will be minimal.

21. The proposal to construct and operate facilities includes injection and withdrawal wells and compression additions to the East Detroit Field, creating approximately 6 Bcf of new storage capacity. In addition, the facility is located in Alabama and numerous LNG facilities are proposed for the Gulf Coast region, which, if constructed, will lead to a significant increase in LNG imports and the need for new storage capacity. We conclude that the Freebird facility will further the development of the interstate natural gas infrastructure. We also find no identified adverse effect on existing customers, other pipelines, landowners, or communities. For these reasons, we find, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that the public convenience and necessity requires approval of Freebird's proposal.

B. Services and Market-Based Rates

22. Freebird's proposed tariff includes firm storage service under the FSS Rate Schedule. Freebird also proposes to provide five interruptible services. Specifically, Freebird proposes to provide interruptible storage service under the ISS Rate Schedule, interruptible parking service under the IPS Rate Schedule, interruptible loan service under the ILS Rate Schedule, interruptible imbalance trading service under the IBTS Rate Schedule and interruptible balancing service under the IBS Rate Schedule.

23. Freebird proposes to charge market-based rates for its firm and interruptible services. Freebird's application includes a market power report using the geographic Gulf Coast region of east Texas, Louisiana, Mississippi and Alabama to support its market-based rate proposal.

24. Freebird also proposes to transport gas for others using off-system capacity pursuant to its open access tariff and subject to Commission-approved rates.

25. We have approved market-based rates for storage services where applicants have demonstrated, under the criteria in the Commission's Alternative Rate Policy Statement, that they lack significant market power or have adopted conditions that significantly

mitigate market power.⁷ 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.⁸ We have also distinguished between production-area storage facilities, such as Freebird, and market-area storage.⁹ In general, market power in a production area is less of a concern due to the numerous alternative storage facilities.

26. Freebird's market power analysis for the storage market defines the relevant product and geographic markets, measures market share and concentration, and evaluates other factors. For the purpose of its analysis, Freebird identifies the relevant product market as firm and interruptible storage services and the relevant geographic market as consisting of east Texas, Louisiana, Mississippi, and Alabama.

27. Freebird's market power report identifies 43 storage facilities, associated with 22 separate entities, including Freebird, in the relevant market area. The study finds that the current combined market working gas capacity of all the included facilities, including Freebird, is 758,611 MMcf, with Freebird controlling 6,600 MMcf, or, 0.9 percent of the market. In addition, the report finds that Freebird's 250 MMcf/day of deliverability will be 1.1 percent of total market deliverability of 22,571 MMcf/day. Thus, we find that Freebird's market share will be relatively small.

28. We use 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 sources of supply in the

⁷ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines* (Alternative Rate Policy Statement), 74 FERC ¶ 61,076; *reh'g and clarification denied*, 75 FERC ¶ 61,024; *reh'g denied*, 75 FERC ¶ 61,066 (1996), *petition for review denied*, *Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, *et al.*, U.S. App. Lexis 20697 (D.C. Cir. 1998).

⁸ *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002); *Egan Hub Partners, L.P.*, 95 FERC ¶ 61,395 (2001); *Moss Bluff Hub Partners, L.P.*, 80 FERC ¶ 61,181 (1997); *Egan Hub Partners, L.P.*, 77 FERC ¶ 61,016 (1996).

⁹ *Steuben Gas Storage Company*, 72 FERC ¶ 61,102 (1995), *order on compliance filing, issuing certificates, and denying reh'g*, 74 FERC ¶ 61,024 (1996).

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. Freebird’s market power report shows an HHI calculation of 961 for working gas capacity and 860 for deliverability without Freebird and an HHI calculation of 935 for working gas capacity and 841 for deliverability with Freebird. Freebird asserts that this demonstrates that the market concentration will decrease when Freebird enters the market, meaning that Freebird’s entry will increase competition in the market. The above measures of market concentration are well below the Commission’s threshold level of 1,800, indicating that Freebird would be unable to exert market power in the relevant market area after the construction of its proposed storage facilities.

29. The above HHI calculations include only existing facilities in the market power analysis. Those facilities that are under construction or are in the planning stage are not included in the calculations. Freebird asserts that up to 250,000 MMcf of working gas capacity is planned for Texas, Louisiana, Mississippi and Alabama. This represents an approximately 30 percent expansion of working gas capacity in the relevant market area. In light of this information, we conclude that the barriers to entry to the storage and hub markets in the relevant market area are low.

30. Freebird asserts that in the relevant market area there are a minimum of six interstate pipelines, several intra-state pipelines and market hubs that provide good alternatives to Freebird’s proposed storage service.¹⁰ Freebird also asserts that these pipelines have the following common characteristics that enable them to provide interruptible transportation services in competition with Freebird’s storage and deliverability services: 1) they are large in size relative to Freebird, 2) they provide interruptible services, 3) they have the authority to discount rates, 4) they frequently operate at less than full capacity and 5) they are all regulated by the Commission.

31. In sum, we find that Freebird’s proposed storage facilities will be in a highly competitive production area where numerous storage service alternatives exist for potential customers. We also find that Freebird’s prospective market shares are low and that market area HHIs are below the threshold for further review. Thus, we conclude that

¹⁰ Interstate pipelines in the relevant market area include ANR Pipeline Company, Columbia Gulf Transmission Company, Gulf South Pipeline Company LP, Tennessee Gas Pipeline Company, Texas Gas Transmission LLC, Texas Eastern Transmission, LP and Trunkline Gas Company, LLC.

Freebird will lack market power. Further, Freebird's proposal for market-based rates is unopposed. For these reasons, we will approve Freebird's request to charge market-based rates for firm and interruptible storage services.

32. Nevertheless, Freebird must notify the Commission if future circumstances significantly affect its present market power status. Thus, our approval of market-based rates is subject to re-examination in the event that: (a) Freebird adds storage capacity beyond the capacity authorized in this order; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to Freebird; or (d) Freebird, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to Freebird. Since these circumstances could affect its market power status, Freebird 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 their relationship to Freebird.¹¹

33. We note that the Commission convened a technical conference in Docket Nos. PL04-17-000 and AD04-11-000 on October 21, 2004, to initiate an industry dialogue focused on policy issues related to underground storage, including the appropriate reporting requirements for storage providers granted market-based rate authority. The authorization granted to Freebird here will be subject to the outcome of the proceeding in Docket Nos. PL04-17-000 and AD04-11-000.

C. Waivers

34. Because it proposes to charge market-based rates and does not have any existing interstate pipeline operations, Freebird requests waiver of the following Commission regulations: Part 201 (Uniform System of Accounts), section 260.2 (Annual Report), section 284.7(e) (Reservation Fee), section 284.10 (Rates), section 157.6(b)(8) (Cost of Service Data), section 157.14(a)(13) (Cost of Facilities), section 157.14(a)(14) (Financing), section 157.14(a)(16) (Revenues-Expenses-Income) and section 157.14(a)(17) (Depreciation and Depletion). Freebird also requests waiver of section 157.14(a)(10) of the Commission's regulations, which pertains to the total gas supply data, because it will not provide any natural gas sales services, except for minor sales incident to its operations.

35. The cost-related information required by these regulations is not relevant in light of our approval of market-based rates for Freebird's storage services. Thus, consistent

¹¹ See *Copiah County Storage Company*, 99 FERC ¶ 61,316 (2002); *Egan Hub*, 99 FERC ¶ 61,269 (2002).

with our findings in previous orders¹², we will grant Freebird's request for waivers with one exception. We will grant the requested waiver of Section 260.2 (Form No 2-A) of the regulations except for information necessary for the Commission's assessment of annual charges. Freebird is required to file pages 520 and 520a of Form 2A, reporting the gas volume information which is the basis for imposing an ACA charge.¹³ We will also require Freebird to maintain sufficient records consistent with the Uniform System of Accounts should the Commission require Freebird to produce these reports in the future.

D. Freebird's Proposed Tariff

36. Freebird proposes to offer firm and interruptible storage services on an open-access basis under the terms and conditions set forth in the pro forma tariff attached as Exhibit P to the application. We find that Freebird's proposed tariff generally complies with Part 284 of the regulations; however, certain provisions are discussed further below.

37. Freebird requests an exemption from Order No. 637's segmentation requirement,¹⁴ contending that it is a stand-alone storage facility that does not provide separate transportation services and therefore segmentation of storage and transportation services is not possible. In *Clear Creek Gas Storage Company*, we found that the requirements of section 284.7(d) did not apply to pipelines engaged solely in natural gas storage and which did not provide other transportation services.¹⁵ Freebird meets the requirements in *Clear Creek*. Thus, we hold that the requirements of section 284.7(d) do not apply to Freebird. We also find that other tariff requirements related to segmentation, such as the allocation of primary point rights in segmented release and within-the-path scheduling, do not apply to Freebird.

¹² See *SG Resources Mississippi, L.L.C.*, 101 FERC ¶ 61,029 at P 26 (2004); *Egan Hub Partners, L.P.*, 95 FERC ¶ 61,395 at p. 62,473 (2001) and 99 FERC ¶ 61,269 at p. 62,142 (2002).

¹³ See *Wyckoff Gas Storage Co., LLC*, 105 FERC ¶ 61,027, at P 65 (2003).

¹⁴ Section 284.7(d) of the Commission's regulations provides that an interstate pipeline must permit a shipper to make use of the firm capacity for which the shipper has contracted by segmenting that capacity into separate parts for the shippers own use, or for the purpose of releasing that capacity to replacement shippers to the extent that segmentation is operationally feasible.

¹⁵ 96 FERC ¶ 61,071 (2001).

38. Section 284.12(b)(2)(v) of the Commission's regulations provides that pipelines may only include transportation penalties in their tariff to the extent necessary to prevent the impairment of reliable service and that pipelines may not retain penalty revenues, but must credit them to shippers net of cost. The FSS, ISS, IPS and IBS Rate Schedules allow Freebird to retain gas improperly left in storage by customers under certain circumstances and to dispose of the retained gas by auction. In addition, section 26 of Freebird's pro forma tariff provides for the auction proceeds to be credited to all shippers other than the shipper whose gas was sold. In *Blue Lake Gas Storage Company*, the Commission held that the retention of gas left in storage at the end of the applicable withdrawal period is an operationally justified deterrent to shipper behavior that could threaten the system or degrade service to firm shippers.¹⁶ Thus, we will accept the proposal to retain gas improperly left in storage, including the proposal to credit net proceeds to non-offending shippers.

39. Freebird requests a waiver of the "shipper must hold title" policy for any off-system capacity it may need to obtain in order to provide storage services. Section 25 of the general terms and conditions of its pro forma tariff provides that Freebird will only transport gas for others using off-system capacity acquired from other interstate and intrastate pipeline companies under its open-access tariff and subject to rates approved by the Commission. This language implements the Commission's policy with respect to pipelines' acquisition of off-system capacity. In a December 14, 2000 Order on Remand in *Texas Eastern Transmission Corporation (TETCO)*,¹⁷ the Commission found that pipelines no longer need to obtain prior approval to acquire capacity on another pipeline provided the acquiring pipeline filed tariff language specifying that it would only transport for others on off-system capacity pursuant to its existing tariff and rates. Freebird's proposed tariff language is consistent with the requirements set forth in *TETCO* and authorizations granted other storage companies authorized to charge market-based rates, and is accepted with the following clarification. Because Freebird has only proposed to offer storage, parking, loan, imbalance trading, and balancing services, and has proposed no rates or tariff provisions relating to any transportation services other than these, Freebird may only use its header facility and capacity obtained on other pipelines pursuant to *TETCO* in order to move gas into and out of storage. That is, Freebird may not use capacity on other pipelines to transport gas which will not physically or contractually enter its storage facility unless and until it has received Commission

¹⁶ 96 FERC ¶ 61,164 (2001).

¹⁷ *Texas Eastern Transmission Corporation*, 93 FERC ¶ 61,273 (2000), reh'g denied, 94 FERC ¶ 61,139 (2001); *Texas Eastern Transmission Corporation*, 95 FERC ¶ 61,056 (2001); *Texas Eastern Transmission Corporation*, 95 FERC ¶ 61,298 (2001).

authorization to provide such transportation services. Furthermore, Freebird's authorized use of the *TETCO* waiver to provide storage service shall be limited to the geographic area covered by Freebird's market study.

40. In order to ensure that Freebird uses acquired off-system capacity in a manner consistent with its market-based rate authority and tariff provisions, and in order to satisfy our responsibility to monitor and prevent the exercise of market power, we will direct Freebird, once it becomes operational, to make an annual informational filing on its provision of service using off-system capacity, as detailed below.

41. Within 30 days after its first full year of operation, and every year thereafter, Freebird is directed to file, for each acquisition of off-system capacity:

- a. the name of the off-system provider;
- b. the type, level, term and rate of service contracted for by Freebird;
- c. a description of the geographic location - boundaries, receipt and delivery points, and segments comprising the capacity;
- d. the operational purpose(s) for which the capacity is utilized;
- e. a description of how the capacity is associated with specific transactions involving customers of Freebird; and
- f. an identification of total volumes, by Freebird' rate schedule and customer, that Freebird has nominated on each off-system provider during the reporting period.

42. Freebird uses the phrase "sole discretion" in section 2.2 on Original Sheet No. 35 of the ILS Rate Schedule, which pertains to interruptions of service and replenishment of gas. Freebird is directed to replace the phrase "at its sole discretion" with the phrase "with reasonable and nondiscriminatory discretion."

43. Freebird's pro forma tariff contains numerous references¹⁸ to "sufficient" in discussing capacities. Freebird is directed to revise its tariff to define "sufficient."

44. Section 22.3 of the GT&C provides that "Freebird may waive any of its rights hereunder or any obligations of Customer on a basis which is not unduly discriminatory." The section further provides that such waiver does not constitute waiver of any future

¹⁸ These references are contained on Original Sheet Nos. 20, 24, 29, 34, 41, 105, 111, 112, 129 and 135.

default in performance. Consistent with the Commission's order issued in *Northern Border Pipeline Company*,¹⁹ we find the quoted tariff language to be overly broad, with the potential for unreasonable and unjust application. As we stated in *Northern Border*, this language could be interpreted as giving the service provider almost unfettered discretion to include non-conforming material terms and conditions into a transportation agreement without seeking Commission approval. Therefore, Freebird is directed to revise Section 22.3 to clarify that this waiver only applies to specific defaults that have already happened.

E. NAESB Standards

45. The initial review of Freebird's tariff revealed that Freebird failed to file all of the required North American Energy Standards Board (NAESB) standards²⁰ and

¹⁹ 110 FERC ¶ 61,023 (2005).

²⁰ *Standards For Business Practices of Interstate Natural Gas Pipelines*, Order No. 587, 61 Fed. Reg. 39053 (July 26, 1996), FERC Stats. & Regs., Regulations Preambles [July 1996-December 2000] ¶ 31,038 (July 17, 1996); Order No. 587-B, 62 Fed. Reg. 5521 (February 6, 1997), FERC Stats. & Regs., Regulations Preambles [July 1996-December 2000] ¶ 31,046 (January 30, 1997); Order No. 587-C, 62 Fed. - Reg. 10684 (March 10, 1997), FERC Stats. & Regs., Regulations Preambles [July 1996-December 2000] ¶ 31,050 (March 4, 1997); Order No. 587-G, 63 Fed. Reg. 20072 (April 23, 1998), FERC Stats. & Regs., Regulations Preambles [July 1996-December 2000] ¶ 31,062 (April 16, 1998); Order No. 587-H, 63 Fed. Reg. 39509 (July 23, 1998), FERC Stats. & Regs., Regulations Preambles [July 1996-December 2000] ¶ 31,063 (July 15, 1998); Order No. 587-I, 63 Fed. Reg. 53565 (October 6, 1998), FERC Stats. & Regs., Regulations Preambles [July 1996-December 2000] ¶ 31,067 (September 29, 1998); Order No. 587-K, 64 Fed. Reg. 17276 (April 9, 1999), FERC Stats. & Regs., Regulations Preambles [July 1996-December 2000] ¶ 31,072 (April 2, 1999); Order No. 587-M, 65 Fed. Reg. 77285 (December 11, 2000); FERC Stats. & Regs., Regulations Preambles [July 1996-December 2000] ¶ 31,114 (November 30, 2000); Order No. 587-N, 67 Fed. Reg. 11906 (March 18, 2002), III FERC Stats. & Regs. ¶ 31,125 (March 11, 2002); Order No. 587-O, 67 Fed. Reg. 30788 (May 8, 2002), III FERC Stats. & Regs., Regulations Preambles ¶ 31,129 (May 1, 2002); Order No. 587-R, 68 Fed. Reg. 13813 (March 21, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,141 (March 21, 2003).

Recommendation R02002 and R02002-2 standards.²¹ Furthermore, it was not clear from the filing that certain standards were filed verbatim. Therefore, staff sent a data request asking for additional information with respect to the standards.

46. In its response to the data request, Freebird provided tables listing the standards that were not included in the pro forma tariff but which Freebird states will be filed by reference or verbatim when Freebird files its actual tariff sheets. Freebird is directed to file the following omitted standards, which it has agreed to file, either by reference or verbatim, when it files its actual tariff sheets: 1.2.3, 1.3.8, 2.2.2, 2.2.3, 2.3.9, 2.3.30, 2.3.40-2.3.50, 2.4.7-2.4.16, 3.3.10, 4.2.11, 4.2.12, 4.2.18, 4.2.19, 4.3.2, 4.3.8-4.3.15, 4.3.55, 4.3.80-4.3.84, 4.3.88, 5.2.3, 5.3.8, 5.3.26-5.3.28, 5.3.30, 5.3.41, 5.3.42, 5.3.49, 5.3.50, 5.3.57, and 5.3.58. Freebird is further directed to file any other omitted NAESB Version 1.6 and Recommendation R02002 and R02002-2 standards when it files its actual tariff sheets.

47. Finally, in its data response, Freebird stated that it omitted standards 1.3.11 and 3.3.9, which pertain to multiple receipt and delivery points, since it has only one receipt and delivery point. Freebird states that if any standard becomes applicable to Freebird's operations, it will file to modify its tariff accordingly. In *Trans-Union Interstate Pipeline, L.P.* (Trans Union),²² the Commission stated that to the extent a NAESB standard does not apply because of unique system characteristics or other operational aspects, the pipeline does not need to ask for specific waivers of such standards. However, in accordance with our ruling in *Trans Union*, if circumstances change and a standard becomes applicable to Freebird's operations, then Freebird must file to modify its tariff to comply and otherwise act to comply with the standard.

F. Transmission Provider Standards of Conduct

48. Part 358 of the Commission's regulations established new standards of conduct to ensure that transmission providers cannot extend their market power over transmission by

²¹On March 12, 2003, in Docket No. RM96-1-024, the Commission issued Order No. 587-R (102 FERC ¶ 61,273) which amends the Commission's regulations to incorporate by reference the Version 1.6 standards of the NAESB's Wholesale Gas Quadrant (WGQ) and the standards governing partial day recalls adopted by the WGQ in Recommendations R02002 and R02002-2.

²² 104 FERC ¶ 61,315 at P 20 (2003).

giving energy affiliates undue preferential treatment.²³ In Order No. 2004-A, we granted a generic exemption to independent storage service providers that are authorized to charge market-based rates and are not interconnected with an affiliated transmission provider.²⁴

49. Freebird contends that it qualifies for the exemption in Order No. 2004-A because it is not interconnected with an affiliated interstate gas pipeline, has no exclusive franchise area, has no captive customers, and has no market power. Nevertheless, Freebird included in section 20 of its tariff a statement that it will voluntarily comply with the provisions in Part 358. We will accept the language in section 22 of Freebird's tariff which states that it will comply with the provisions of Part 358.

G. Creditworthiness

a. Determination of Creditworthiness

50. Sections 3.3 and 3.5 (g) of the GT&C of Freebird's proposed tariff provide that acceptance of a service request is contingent upon a satisfactory credit appraisal by Freebird. Section 3.5 (g) outlines the information that the customer must supply to Freebird in order to establish creditworthiness. Section 3.3 (i) provides that Freebird shall not be required to provide or continue to provide service to any customer who becomes insolvent or fails to demonstrate creditworthiness.

51. Consistent with our ruling in *Natural Gas Pipeline Company of America (Natural)*, we will require Freebird to include objective criteria in its tariff for determining whether a shipper is creditworthy.²⁵ We find that the tariff language providing that service is contingent upon a "satisfactory credit appraisal" allows Freebird too much discretion, does not meet the Commission's requirement that criteria for determining creditworthiness must be clear and objective, and allows for the possibility of undue discrimination. For example, the tariff does not specify what companies or sources Freebird will rely upon to rate shippers, the minimally acceptable credit rating,

²³ *Standards of Conduct for Transmission Providers*, Order No. 2004, 68 Fed. Reg. 69,134 (December 11, 2003), III FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, 69 Fed. Reg. 23,562 (April 29, 2004), III Stats. & Regs. ¶ 31,161 (2004).

²⁴ Order No. 2004-A at P 39.

²⁵ See *Natural*, 102 FERC ¶61,355 at P 69 (2003); *Tennessee Gas Pipeline Co.*, 103 FERC ¶61,275 at P 41 (2003).

whether a shipper that does not have a rating from a nationally recognized credit rating agency may establish a rating from a private source or through Freebird, or whether Freebird considers factors in addition to a shipper's credit rating in making its creditworthiness determination.²⁶ In *Natural*,²⁷ we stated that it is important that the creditworthiness evaluation process be open and objective. Therefore, as we required in that order, Freebird is directed to set forth in its tariff the objective financial analyses and criteria that it will use to determine a shipper's creditworthiness.

52. Furthermore, while Freebird appears to have outlined the information that needs to be supplied and the criteria for creditworthiness as discussed above, other requirements set by *Natural* have not been met.

53. It is not clear how or when Freebird intends to communicate its determinations on creditworthiness to shippers and whether it will specify the reasons for any denial of creditworthiness in such communication. In *Natural* we held that if a service provider finds a shipper to be uncreditworthy it must communicate that finding in writing and state the reasons for its finding. We also required that the written communication be made within 10 days of the determination, and that the shipper be provided recourse to challenge the finding.²⁸ Therefore, as we required in that order, Freebird is directed to revise its tariff to state that it will communicate an uncreditworthy finding in writing within 10 days of the determination, to state the reasons for its finding and to provide shippers recourse to challenge the finding.

b. Financial Assurances by Non-Creditworthy Shippers

54. Section 3.5 (i) of the GT&C describes options available to a shipper that is required to provide financial assurances. Such assurances may consist of either a standby irrevocable letter of credit or guarantee, acceptable to Freebird, by another person or entity which satisfies the credit requirements of Freebird, in an amount equal to: (1) in

²⁶In recent orders, the Commission has approved a range of criteria for determining creditworthiness which it considers clear and objective, while allowing a service provider to exercise discretion in its determination. *See, e.g., Gulf South Pipeline Co., LP*, 107 FERC ¶61,273 at P 20 (2004) (*Gulf South*); *Natural*, 106 FERC ¶ 61,175 at P 84 (2004).

²⁷ 102 FERC ¶61,355 at P 69 (2003).

²⁸ *Natural*, 106 FERC ¶ 61,175 at P 80 (2004); *Tennessee*, 103 FERC ¶ 61,275 at P 45 (2003).

the case of Firm storage services, three months or the duration of the Shipper's bid or Service Agreement, whichever is shorter, of Storage Reservation Charges at the rate specified in Shipper's bid for service or Service Agreement; or (2) in the case of Interruptible storage services, three months or the duration of the Shipper's Service Agreement, whichever is shorter, of the Interruptible charge(s) calculated on a one hundred percent (100%) load factor basis, plus the market value of any quantities of gas loaned to the shipper pursuant to Exhibit A of the Hub Services Agreement.

55. As we held in *Tennessee*,²⁹ the amounts held as collateral or security against default are not prepayments for service. Therefore, Freebird is directed to clarify in its tariff to provide that such prepayments are considered collateral held for security and not advance payments for services. Furthermore, Freebird is directed to revise its tariff to provide that shippers that opt to pay collateral equal to three months of reservation charges as financial assurance under section 3.5(i) must have an opportunity to earn interest on such prepayments either by Freebird's paying the interest itself at the Commission's interest rate, or by the shipper designating an interest-bearing escrow account to which Freebird may have access to payments for services provided if needed.³⁰

H. Suspension of Service

56. Section 13.4 of the GT&C states that Freebird, in addition to all other legal remedies available to it, shall have the right and option to suspend further deliveries of gas until such default shall have been cured if shipper's failure to pay the undisputed portion of any invoice rendered thereunder continues beyond thirty days after the due date of such invoice. Section 13.4 further states that Freebird, in addition to all other legal remedies available to it, shall have the right and option to terminate service if shipper's failure to pay the undisputed portion of any invoice continues beyond sixty days after the due date of such invoice. Section 23.2 of the GT&C provides that Freebird may suspend service to any shipper, prior to termination of service, who fails to comply with the GT&C, the applicable rate schedule or the shipper's service agreement.

57. Sections 13.4 and 23.2 have no notice requirement and no provision for withdrawal of notice for the suspension of service prior to termination. Freebird is directed to revise its tariff to give the shipper two business days written prior notification,

²⁹ *Tennessee*, 105 FERC ¶ 61,120 at P 17-24 (2003).

³⁰ *See Tennessee*, 103 FERC ¶ 61,275 at P 21 (2003); *reh. denied*, 105 FERC ¶ 61,120 at P 17-24.

setting out the reasons for the suspension. Freebird is also directed to revise its tariff to provide that Freebird will consider the notice as withdrawn if the shipper corrects the default in full before the end of the notice period. Furthermore, sections 13.4 and 23.2 do not address whether the shipper whose service is suspended will continue to be billed reservation charges by Freebird. In accordance with prior Commission orders,³¹ we direct Freebird to revise its tariff to clarify that shippers cannot incur reservation charges when their service is suspended.

I. Environmental Assessment

58. On December 2, 2004, we issued a Notice of Intent to Prepare an Environmental Assessment for the proposed Freebird Gas Storage Project and Request for Comments on Environmental Issues (NOI). Comments were provided by the United States Fish and Wildlife Service. Our staff addressed all substantive comments in the environmental assessment (EA) for Freebird's proposal. The EA addresses land requirements, water use and quality, fish, vegetation, wildlife, cultural resources, air quality, noise quality, land use, project alternatives, and PCB's. Based on the discussion in the EA, we conclude that approval of Freebird's proposal would not constitute a major federal action significantly affecting the quality of the human environment, if the project is constructed and operated in accordance with Freebird's application and supplements.

59. 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.³²

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

³¹*See, e.g., Natural*, 106 FERC ¶ 61,175 at P 53.

³² *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).

J. Engineering

61. The engineering staff analyzed Freebird's application and concluded if constructed as proposed the total storage inventory should be approximately 11 Bcf with a maximum stabilized bottomhole reservoir pressure of 680 psia. Freebird will be able to provide approximately 6 Bcf of storage capacity with a withdrawal rate of 160,000 Mcf/d.

K. Blanket Certificates

62. Freebird requested authority for a Part 284, subpart G, blanket certificate in order to provide open-access storage services. Under a Part 284 blanket certificate, Freebird is not required to obtain individual authorizations to provide storage services to particular customers. Freebird filed a pro forma Part 284 tariff to provide open-access storage services. Since a Part 284 blanket certificate is required for Freebird to offer those storage services, we will grant Freebird's request, subject to the conditions imposed herein.

63. Freebird requested authority for a Part 157, subpart F, blanket certificate. A subpart F blanket certificate accords a natural gas company section 7 authorizations automatically, or after prior notice, to construct certain eligible facilities and perform certain eligible activities. We will grant Freebird's request for a subpart F blanket certificate, subject to the conditions imposed herein.

64. At a hearing held on April 13, 2005, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) In Docket No. CP05-29-000, a certificate of public convenience and necessity is issued to Freebird authorizing it to acquire, construct and operate the storage facilities and to construct and operate the associated pipeline facilities, as described more fully in this order and in the application.

(B) In Docket No. CP05-30-000, a blanket transportation certificate is issued to Freebird under subpart G of Part 284.

(C) In Docket No. CP05-31-000, a blanket construction certificate is issued to Freebird under subpart F of Part 157.

(D) The certificates issued in ordering paragraphs (A), (B), and (C) are conditioned on Freebird's compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (d), (e), and (f) of Section 157.20 of the regulations.

(E) Freebird's request to charge market-based rates for firm and interruptible storage services is approved, as conditioned in the body of this order.

(F) Freebird's requests for waivers of the Commission's regulations are granted, as discussed in the body of this order.

(G) Freebird shall submit actual tariff sheets that comply with the requirements contained in the body of this order no less than 30 days or more than 60 days prior to the commencement of operations.

(H) The certificates issued in Ordering Paragraphs (A), (B), and (C) are conditioned upon Freebird's compliance with the environmental conditions set forth in the appendix to this order.

(I) Freebird's facilities shall be made available for service within eighteen months of the date of the order in this proceeding as required by section 157.20(b) of the Commission's regulations.

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

(K) The certificates issued are further conditioned upon the following:

1. Maximum inventory of natural gas stored in the East Detroit Field shall not exceed the certificated levels of 11,000 MMcf at 14.73 psia and 60 degrees Fahrenheit, and the maximum bottom hole storage pressure shall not exceed 680 psia, without prior authorization of the Commission.
2. The East Detroit Field shall be operated in such manner as to prevent/minimize gas loss or migration.

3. Freebird shall submit semiannual reports (to coincide with the termination of the injection and withdrawal cycles) containing the following information (volumes shall be stated at 14.73 psia and 60 degrees Fahrenheit and pressures shall be stated in psia):
 - (1) The daily volumes of natural gas injected into and withdrawn from the storage reservoir.
 - (2) The volume of natural gas in the reservoirs at the end of the reporting period.
 - (3) The maximum daily injection and withdrawal rates experienced during the reporting period. Average working pressure on such maximum days taken at a central measuring point where the total volume injected or withdrawn is measured.
 - (4) Results of any tracer program by which the leakage of injected gas may be determined. If leakage of gas exists, the report should show the estimated total volume of gas leakage, the volume of recycled gas, and the estimated remaining inventory of gas in the reservoir at the end of the reporting period.
 - (5) Any surveys of pressures in gas wells, and the results of back-pressure tests conducted during the reporting period.
 - (6) The latest revised structural and isopach maps showing location of the wells and the location of the gas-water contact. These maps need not be filed if there is no material change from the maps previously filed.
 - (7) For the reporting period, a summary of wells drilled, worked over, or recompleted with subsea depth of formation and casing settings. Copies of any new core analyses, back-pressure tests, or well log analyses.
 - (8) Discussion of current operating problems and conclusions.
 - (9) Such other data or reports which may aid the Commission in the evaluation of the storage project.

- (10) Reports shall continue to be filed semiannually until the storage inventory volume and pressure have reached or closely approximate the maximum permitted in this order. Thereafter, the reports shall continue on a semiannual basis for a period of one year.

(L) Within 30 days after its first full year of operation, and every year thereafter, Freebird is directed to file an annual informational filing on its provision of service using off-system capacity, as detailed in this order.

By the Commission. Commissioner Brownell concurring with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

Environmental Conditions for Freebird's Project

1. Freebird 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 environmental assessment (EA), unless modified by this Order. Freebird must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (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 delegation 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.
3. **Prior to any construction**, Freebird shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. Freebird shall file a noise survey with the Secretary **no later than 60 days** after placing the Freebird Compressor Station in service. If the noise attributable to the operation of the Freebird Compressor Station at full load exceeds an L_{dn} of 55 dBA at any nearby NSAs, Freebird shall install additional noise controls to meet

that level **within 1 year** of the in-service date. Freebird shall confirm compliance with the L_{dn} of 55 dBA requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

5. Freebird shall install silencers on the blowdown stacks ensuring that they do not exceed 55 dBA L_{dn} at the closest NSAs.
6. Freebird shall conduct noise surveys at nearby residences upon initiation of the horizontal directional drill and the drilling of wells. Where the surveys indicate the noise attributable to the drilling activities exceeds a day-night sound level (L_{dn}) of 55 decibels on the A weighted scale (dBA), Freebird shall:
 - a. stop drilling and mitigate noise near residences during drilling activities to bring L_{dn} levels at those residences at or below 55 dBA;
or
 - b. offer temporary housing until L_{dn} levels at the residence is below 55 dBA.
7. Freebird shall defer construction and use of facilities, storage, and temporary work areas and new or to-be-improved access roads **until**:
 - a. Freebird files the Alabama State Historic Preservation Office's (SHPO) comments on the additional information for standing structures HSS-01 and HSS-02;
 - b. Freebird files the SHPO's comments regarding the additional information for directional drill of site LA-01; and
 - c. the Director of OEP notifies Freebird in writing that it may proceed.
8. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets, and shall include all of the staff's recommended facility locations identified in the EA. **As soon as they are available, and before the start of construction**, Freebird shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.
9. Freebird's exercise of eminent domain authority granted under NGA (NGA) section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Freebird's right of eminent domain granted under NGA section 7(h) does not authorize it to increase

the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

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

This requirement does not apply to route variations required herein or extra workspace allowed by the Upland Erosion Control, Revegetation, and Maintenance Plan, minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and
- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Freebird Gas Storage, L.L.C.

Docket Nos. CP05-29-000,
CP05-30-000
and CP05-31-000

(Issued April 15, 2005)

BROWNELL, Commissioner, concurring:

For the first time, we attach conditions to the use of the *Tetco* waiver. We limit Freebird's use of the *Tetco* waiver to the geographic area covered by Freebird's market study and require Freebird to make an annual informational filing detailing its use of the *Tetco* waiver. We attach these conditions without explanation. These conditions strike me as solution in search of a problem. Freebird requests the *Tetco* waiver for any off-system capacity it may need to obtain in order to provide storage services. Given how Freebird plans to use the *Tetco* waiver, I have no objection to the geographic area limitation. However, the order fails to explain the nexus between the relevant geographic market for storage service and third-party transportation service. In the order, we do note that the annual information filing detailing Freebird's use of the *Tetco* waiver is necessary to satisfy our responsibility to monitor and prevent the exercise of market power. I do not take issue with that statement. It strikes me, however, that the larger issue is approving market-based rates for storage service without some type of periodic update of the underlying market power analysis.

For these reasons, I concur with today's order.

Nora Mead Brownell
Commissioner