

124 FERC ¶ 61,209
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Saltville Gas Storage Company, L.L.C.

Docket No. RP08-479-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS
SUBJECT TO REFUND AND OTHER CONDITIONS,
AND ESTABLISHING A TECHNICAL CONFERENCE.

(Issued August 29, 2008)

1. On August 1, 2008, Saltville Gas Storage Company, L.L.C. (Saltville) filed proposed changes to certain tariff sheets¹ concerning, among other things, timelines and an allocation methodology for available capacity. Saltville requested waiver of the Commission's notice requirements in order to permit the tariff sheets to be effective August 1, 2008. Waiver is denied. As discussed below, we accept and suspend Saltville's proposal and the instant tariff sheets, subject to refund and other conditions, and the outcome of a technical conference, effective the earlier of a Commission order in this proceeding, or February 1, 2009.

Details of the Filing

2. Saltville currently allocates firm service on a "first-come, first-served" basis. In the instant filing, it proposes to switch to a "net present value" (NPV) allocation methodology, in accordance with current regulatory and market conditions and consistent with the Commission's goal of ensuring that capacity is allocated according to its value to shippers in the marketplace.

3. According to Saltville's proposed General Terms and Conditions (GT&C) section 3.8(i), once the quantity, rate, and term factors are accounted for, the resulting figure will be multiplied by the creditworthiness factor to determine the final NPV. Saltville defines the creditworthiness factor as one (1) minus the bidder's probability of default for the maximum bid term. The bidder's probability of default is determined based on Standard & Poor's most current "Cumulative Average Default Rates by Rating Modifier" table for

¹ See Appendix for list of tariff sheets.

a given credit rating and term. Saltville states that proposed GT&C section 3.8(8)(i)² also allows for bidders to increase the NPV of their bid by posting additional collateral, as specified under GT&C section 3.4, prior to the end of the open season. Saltville states that its creditworthiness calculation is in accordance with Commission precedent.³

4. Saltville proposes tariff revisions that would permit it to use an NPV methodology to evaluate bids for allocation of expansion capacity and for changes in primary receipt and delivery points. With regard to the allocation of expansion capacity, Saltville states that pursuant to proposed GT&C section 3.9(c) it will have the right, but not the obligation, to reserve for a future expansion project any unsubscribed capacity or capacity under expiring or terminating service agreements where such agreements do not have a right of first refusal or the subject shipper does not exercise its right of first refusal. Saltville's proposed language sets forth certain requirements for reserving capacity for a future expansion project, including that Saltville first hold an open season in which it states that it is planning to reserve the posted capacity for an expansion to the extent that other potential shippers do not purchase the capacity in that open season (reservation open season). Saltville states that the instant proposal is consistent with Commission policy and with provisions recently approved for other pipelines.⁴ Saltville states that proposed GT&C section 3.9(c) further provides that Saltville may, in conjunction with the reservation open season posting, elect to conduct a reverse open season for turnback capacity from Saltville's existing shippers. Saltville shall post a notice of the reverse open season in accordance with the provisions of new GT&C section 3.9(c)(4) no later than 90 days after the close of the open season for the expansion project.

5. Finally, Saltville proposes several miscellaneous revisions to its tariff, in order to conform its tariff with the above identified proposals.

² Saltville's Transmittal Letter mistakenly refers to GT&C section 5.8(a)(8).

³ Saltville August 1, 2008 Application at 4, citing *Gas Transmission Northwest Corporation*, 117 FERC ¶ 61,315 (2006).

⁴ *Id.* at 5, citing *Gas Transmission Northwest Corporation*, 117 FERC ¶ 61,315 (2006), *Texas Gas Transmission, LLC*, 111 FERC ¶ 61,135 (2005), *Tennessee Gas Pipeline Co.*, 84 FERC ¶ 61,304 (1998), *reh'g and clarification*, 86 FERC ¶ 61,066 (1999).

Notice, Interventions and Protests

6. Public notice of the filing was issued on August 12, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁵ Pursuant to Rule 214,⁶ all timely motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Sequent Energy Management, L.P. (Sequent) filed a protest, and the East Tennessee Group (ETG)⁷ filed comments. Nexen Marketing U.S.A., Inc., filed an out-of-time motion to intervene and an out-of-time protest on August 22, 2008. While we accept Nexen's protest, Nexen makes no substantive arguments that differ from those raised by the other parties. Saltville also filed a motion to Answer on August 22, which we allow because it aids in the explication of the issues.⁸

Sequent Energy Management, L.P.

7. Sequent protests two aspects of Saltville's filing: (1) its use of the creditworthiness factor in determining NPV, and (2) the wording of one clause concerning reverse open seasons. With regard to its creditworthiness proposal, Sequent begins by arguing that Saltville is relying on weak precedent.

8. Sequent states that Saltville's proposed tariff language makes clear that the creditworthiness factor is a mathematical component to the NPV calculation, on par with rate and term. Sequent protests that the proposal could therefore lead to anomalous instances where a more-creditworthy party could receive capacity over a less-creditworthy party who was nevertheless willing to pay the same or even a greater rate and/or commit to a longer term.

9. Sequent asserts that potential customers with higher credit ratings, will, solely by virtue of Saltville's creditworthiness proposal, be granted an automatic, structural bidding advantage over other bidders. As a result, these higher-rated shippers will be free to propose lower rates or shorter bid terms and yet still win bids against lower-rated

⁵ 18 C.F.R. § 154.210 (2008).

⁶ 18 C.F.R. § 385.214 (2008).

⁷ The East Tennessee Group is an ad hoc, voluntary association of 28 jurisdictional customers of Saltville Natural Gas, LLC, each of which is engaged in the retail distribution of natural gas.

⁸ See 18 C.F.R. §385.213(a)(2) (2008).

shippers. Sequent further asserts that lower-rated shippers cannot upgrade their credit rating in any meaningful time frame, and therefore, they will be forced into a collateral bidding process in order to stay competitive.

10. Sequent argues that this result not only subverts the Commission's allocative efficiency goal that underpins the NPV process, but also undermines the Commission's carefully-crafted policy imposing general limits on the amount of collateral that can be demanded of potential shippers by pipelines. Sequent questions the fundamental validity of the creditworthiness factor, and urges the Commission to reject the factor on that basis alone.

11. If the Commission accepts the proposed creditworthiness language, Sequent asserts that it must at a minimum require Saltville to clarify that the creditworthiness factor does not apply if the bidding parties are able to meet Saltville's first tier creditworthiness standards under Section 3.4 of its tariff's General Terms and Conditions. Sequent states that once Saltville has determined that a potential bidder is minimally creditworthy, there is no need to force that party into an expensive collateral bidding process designed solely to raise its creditworthiness score; rather, capacity should be allocated to minimally creditworthy parties on the basis of rate and term alone.

12. Sequent's second concern is that the proposed Section 3.9(c) merely states that Saltville "may" conduct a reverse open season, giving existing shippers an opportunity to turn back capacity, before seeking an expansion. Sequent contends that, under existing Commission policy, a pipeline *must* conduct a reverse open season before seeking an expansion.⁹ Sequent asserts that a reverse open-season provides critical information to a pipeline, and to the Commission, in its determination of the necessity of an expansion. In addition, it provides greater transparency to the market on its system and in the larger market area of the project's geographic region.

East Tennessee Group

13. ETG notes that Saltville's proposed GT&C sections 3.8(b) and 3.9(c) provide that capacity under expiring or terminating service agreements will be made available through open seasons to the extent such service agreements do not have a right of first refusal or the shipper does not exercise its right of first refusal. ETG urges that the proposed tariff language should be revised to clarify that even shippers having long-term contracts with negotiated or discounted rates have a right to extend their contracts to the extent they

⁹ Sequent August 13, 2008 Protest at 5, citing *Certification of New Interstate Natural Gas Pipeline Facilities*, 90 FERC ¶ 61,128, at 61,392 (2000).

agree to pay the maximum rate, and thus their capacity will not be put up for bid in an open season unless they choose not to exercise that right.

14. With regard to Saltville's proposed NPV allocation system for requests to change primary receipt or delivery points, ETG characterizes the proposed process as cumbersome, and states that many requests for point changes by existing capacity holders will not add revenues to Saltville, and therefore, would have an NPV of zero. ETG contends that Saltville should be required to grant requests for point changes to the maximum extent possible, consistent with the Commission's policy objectives of maximizing point flexibility. ETG contends, however, that Saltville's proposal would add severe additional strictures to its willingness to accept point changes, as listed in proposed GT&C section 3.7(b)(2). ETG states that these additional strictures appear subjective, overbroad, unnecessary and redundant, and that Saltville should not be given the discretion to refuse requested point amendments on the grounds set forth in the proposed GT&C section 3.7(b)(2).

15. ETG notes that Saltville currently has a general rate case pending in Docket No. RP08-257, in which Saltville has proposed to roll into its rates the costs associated with two additional storage facilities that Saltville recently acquired pursuant to the Commission's approval of its blanket certificate filing in Docket No. CP08-39. ETG states that any litigated or settled resolution of the rate case could conceivably affect the use of the points associated with the three different storage facilities. Accordingly, ETG asserts that any approval of Saltville's instant proposal should allow for implementation of any point changes that may become part of such a resolution of the pending rate case.

Discussion

16. While the Commission does not require an NPV methodology, we have generally found it to be consistent with our goal of allocating capacity to the highest-valued use in those cases where pipelines have proposed it.¹⁰ The parties have raised many issues that require further review. The particular issue that concerns us is the inclusion of a creditworthiness factor in the proposed NPV evaluation. Saltville has failed to provide sufficient evidence for us to justify that aspect of its proposal at this point. Therefore, the Commission denies Saltville's request for waiver of its notice requirements, and accepts and suspends the tariff sheets, to become effective February 1, 2009, subject to refund and condition. The Commission also directs Staff to establish a technical conference to examine the issues raised in the instant filing. Staff is further directed to report the

¹⁰ See e.g., *Tennessee Gas Pipeline Company*, 121 FERC ¶ 61,149, at P 23 (2007); *Northern Natural Gas Company*, 118 FERC ¶ 61,053, at P 51 (2007); *ANR Pipeline Company*, 116 FERC ¶ 61,201, at P 9 (2006).

results of the technical conference to the Commission within 120 days of the issuance of this order.

17. Based upon a review of this filing, the Commission finds that the proposed tariff language has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission accepts Saltville's revised tariff language for filing and suspends its effectiveness for the period set forth below.

18. The Commission's policy regarding suspensions is that filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.¹¹ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.¹² Such circumstances do not exist here. Accordingly, the Commission shall suspend the effectiveness of the sheets shown on the Appendix for the full five months, until the earlier of a date set by a subsequent Commission order or February 1, 2009, subject to further Commission order.

The Commission orders:

(A) The tariff sheets in the instant filing are accepted and suspended, subject to refund and condition, and subject to the outcome of a technical conference as established by this order, to become effective February 1, 2009.

(B) Staff shall report the results of the technical conference to the Commission within 120 days of the issuance of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹¹ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

¹² See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

APPENDIX

**Saltville Gas Storage Company L.L.C.
Docket No. RP08-479-000
FERC Gas Tariff, Original Volume No. 1
Accepted, Subject to Refund and Other Conditions,
and Subject to the Outcome of a Technical Conference,
Effective February 1, 2009:**

Fifth Revised Sheet No. 107
Second Revised Sheet No. 111A
Original Sheet No. 111A.01
First Revised Sheet No. 111B
Original Sheet No. 111B.01
Second Revised Sheet No. 111C
Original Sheet No. 111C.01
Original Sheet No. 111C.02
Fifth Revised Sheet No. 112
Original Sheet No. 112.01
Original Sheet No. 112.02
Original Sheet No. 112.03
Second Revised Sheet No. 112A
Original Sheet No. 112A.01