

128 FERC ¶ 61,160  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

August 17, 2009

In Reply Refer To:  
Hardy Storage Company, LLC  
Docket No. RP09-812-000

Hardy Storage Company, LLC  
5151 San Felipe, Suite 2500  
Houston, TX 77056

Attention: James R. Downs  
Director of Regulatory Affairs

Reference: Order on Uncontested Stipulation and Settlement Agreement

Dear Mr. Downs:

1. On July 1, 2009, Hardy Storage Company, LLC (Hardy) filed a petition requesting that the Commission approve an Uncontested Stipulation and Settlement Agreement (Agreement) between Hardy and its firm customers. The settlement would revise the Hardy Maximum Daily Withdrawal Quantity limits (Storage Ratchets) set forth in section 4(b) of Hardy's Rate Schedule Hardy Storage Service (HSS). The Commission approves the Agreement and directs Hardy to file actual tariff sheets pursuant to section 4(d) of the Natural Gas Act (NGA) which implement the Agreement consistent with its terms.
2. On April 25, 2005, in Docket No. CP05-151-000, Hardy filed an application pursuant to section 7(c) of the NGA and Parts 157 and 284 of the Commission's regulations to seek authorization for the development and operation of a new underground natural gas storage facility in two partially depleted gas production fields located in Hampshire and Hardy Counties, West Virginia (Hardy Storage Project). On

November 1, 2005, the Commission issued a certificate authorizing Hardy to develop and operate the Hardy Storage Project. The new storage field was placed into service on April 1, 2007.<sup>1</sup>

3. In this docket, Hardy filed, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,<sup>2</sup> an uncontested Agreement between Hardy and its firm customers to increase the level of its Storage Ratchets, which require that its customers have a minimum amount of gas in storage in order to be able to withdraw gas up to 100 percent of their Hardy Maximum Daily Storage Quantity (HMDSQ). Hardy states that it originally anticipated, when it designed its storage facilities, that it would be able to allow each of its customers to withdraw 100% of its HMDSQ on any day that customer's inventory balance was greater than or equal to 30% of its Hardy Storage Contract Quantity (HSCQ). However, Hardy states that it also anticipated that additional wells could be required to meet Hardy's contractual obligations, depending upon its operational experience with the new field. Hardy further states that two years of operational experience since service commenced has indicated that the wells developed will not accommodate Hardy's current firm withdrawal obligations of 176,000 Dth when inventory balances are depleted. Based on its experience to date, Hardy states that it now anticipates that it can only deliver withdrawals from storage at a level equal to the HMDSQ on those days when a customer's remaining gas in inventory is greater than or equal to 40% of its HSCQ.

4. Hardy states that on April 23, 2009, it met with each of its firm shippers<sup>3</sup> to discuss the available options to mitigate the potential deliverability issues. Hardy explained that in order to meet its full deliverability obligations of 176,000 Dth with 30% of HSCQ remaining for the upcoming 2009-2010 winter heating season and in the future, Hardy would need to either: (1) purchase and inject additional base gas into the Hardy storage facilities; or (2) increase the Storage Ratchets to 40% of the shipper's HSCQ. Hardy explained that, while drilling additional contingency wells could be another long-term solution, it would not resolve the deliverability shortfall in time for the 2009-2010 winter heating season. Hardy states that, as a result of those meetings, the Hardy Firm Shippers have agreed that the most efficient and least-cost solution is to increase the Storage Ratchets to 40%. Hardy states that the increase to the Storage Ratchets will

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<sup>1</sup> *Columbia Gas Transmission Corporation, et al.*, 113 FERC ¶ 61,118 (2005).

<sup>2</sup> 18 CFR § 207(a)(5) (2009).

<sup>3</sup> Currently, Hardy's Firm Shippers are: Baltimore Gas and Electric Company (BG&E), Piedmont Natural Gas Company (Piedmont), and Washington Gas Light Company (WGL)(together, the Hardy Firm Shippers).

enable it to meet its firm withdrawal obligations without imposing any additional costs on the Hardy Firm Shippers. Accordingly, Hardy and the Hardy Firm Shippers have agreed to support the Agreement. Therefore, Hardy submits the Agreement, which is described below, to the Commission for its approval, together with a *pro forma* tariff sheet for implementation.

5. Article I of the Agreement provides that Hardy will file with the Commission no later than July 1, 2009, a tariff filing to revise Hardy's Rate Schedule HSS to reflect the amended Storage Ratchets, to be effective August 1, 2009,<sup>4</sup> and a request for approval of the Agreement to amend the Storage Ratchets as follows:

<u>% of HSCQ in Inventory</u>	<u>HMDWQ as a % of HMDSQ</u>
100% to 40%	100%
less than 40% to 30%	80%
less than 30% to 20%	65%
less than 20% to 10%	50%
less than 10% to 0%	35%

6. Article II of the Agreement describes how Hardy anticipates that additional years of operating experience could result in improved operational capability of the Hardy storage facilities. Accordingly, Hardy agrees to meet with all then-existing firm shippers no later than June 1, 2011, and annually thereafter for the remaining initial term of the Hardy Firm Shippers' contracts, to discuss the actual operating capabilities of the Hardy storage facilities at that time. If Hardy can accommodate less restrictive Storage Ratchet levels than those set forth in Article I, then Hardy will submit an application with the Commission to revise the Storage Ratchets provisions of the tariff in order to reflect the additional actual operating experience for the Hardy storage facilities. Unless otherwise agreed to in writing by Hardy and all of the then-existing Hardy Firm Shippers, Hardy will make any filing required by this Article II no later than October of the applicable year, to be effective November 1 of that year.

7. Article III of the Agreement sets forth that the provisions of this Agreement are not severable and will become binding and effective on the date of a Final Order approving this Agreement as to all its terms without material modifications, reservations or conditions. A Final Order is defined as a final Commission order, no longer subject to rehearing or appeal. Article III further provides that this Agreement will continue in full force and effect through the initial term of the Hardy Firm Shipper's contracts.

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<sup>4</sup> The Commission directs Hardy to file actual tariff sheets upon Commission's approval of the proposed Agreement.

8. Article IV of the Agreement provides that this Agreement represents a negotiated resolution of only the specified matters addressed herein, and except as specifically provided in this Agreement, no party will be deemed to have waived any claim or right in a future proceeding. Article V further provides that this Agreement represents the entire agreement of the parties with respect to the matters set forth herein; and that no party will be deemed to have approved, accepted, agreed to or otherwise consented to any concept, policy or principle purported to underlie the provisions of this Agreement, except as specifically provided in this Agreement.

9. Notice of Hardy's filing was issued on July 7, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.<sup>5</sup> Pursuant to Rule 214,<sup>6</sup> all timely filed 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. Motions to intervene were filed by each of the Hardy Firm Shippers (Piedmont, BG&E and WGL). No adverse comments or protests were filed.

10. The Commission finds that the Agreement is fair, reasonable, and in the public interest. The Agreement is therefore approved, subject to Hardy filing actual tariff sheets pursuant to section 4(d) of the NGA which implement the Agreement consistent with its terms. The Commission's approval of this Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>5</sup> 18 C.F.R. § 154.210 (2009).

<sup>6</sup> 18 C.F.R. § 385.214 (2009).