

138 FERC ¶ 61,097  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

Ryckman Creek Resources, LLC

Docket No. CP11-24-001

ORDER DENYING REHEARING AND GRANTING CLARIFICATION

(Issued February 3, 2012)

1. On August 26, 2011, Ryckman Creek Resources, LLC (Ryckman) filed a request for rehearing of the Commission's July 28, 2011 order in this proceeding.<sup>1</sup> The July 28 Order authorized the construction and operation of the Ryckman Creek Storage Project in Uinta County, Wyoming. Ryckman requests rehearing on whether it may negotiate storage ratchets with its customers. Ryckman also requests clarification of the July 28 Order regarding injection/withdrawal well RCU # 35H's designation as an alternative well site. As discussed below, this order denies rehearing and grants clarification.

**I. The July 28 Order**

2. The July 28 Order authorized Ryckman to (1) construct and operate a new interstate natural gas storage facility in the depleted Ryckman Creek (Nugget) Unit oil field; (2) acquire and incorporate into its storage project the existing Canyon Creek Compressor Station and its ancillary facilities located in Uinta County, Wyoming and currently owned by Canyon Creek Compression Company; and (3) charge market-based rates for its storage, hub, and wheeling services.

3. As relevant here, the July 28 Order required Ryckman to revise its tariff to eliminate its ability to negotiate storage ratchets<sup>2</sup> with its customers, as proposed in section 10 of its Firm Storage Service (FSS) Rate Schedule and in Exhibit A to its FSS *pro forma* service agreement, and instead provide customers with the option of choosing

---

<sup>1</sup> *Ryckman Creek Resources, L.L.C.*, 136 FERC ¶ 61,061 (2011) (July 28 Order).

<sup>2</sup> Storage ratchets limit a customer's ability to inject or withdraw its maximum daily quantity under a contract.

unratcheted storage service, or storage service ratcheted in accordance with percentages stated in actual tariff records.<sup>3</sup>

4. Also at issue here, the July 28 Order authorized six injection/withdrawal wells and identified injection/withdrawal site RCU #35H as a seventh, alternative well site. The order required Ryckman to notify the Commission if it plans on using the alternative injection/withdrawal site RCU # 35H, and to identify which one of the six authorized sites it would be replacing.<sup>4</sup>

## II. Discussion

### A. Storage Ratchets

5. Ryckman requests rehearing of the July 28 Order's requirement that Ryckman (1) eliminate the tariff provision enabling it to negotiate storage ratchets with its customers; and (2) instead, provide customers with the option of choosing unratcheted storage service, or storage service ratcheted in accordance with percentages stated in actual tariff records.

6. Ryckman argues that the Commission's holding in the July 28 Order that it may not negotiate storage ratchets with its customers was an arbitrary and capricious action in violation of section 706 of the Administrative Procedure Act because it goes against established Commission policy on ratchets.<sup>5</sup> Ryckman states that the Commission mischaracterizes the negotiation of storage ratchets as the negotiation of terms and conditions of service instead of a negotiation in quantity of a service.

7. Ryckman states that in Order Nos. 637 and 637-A, the Commission differentiated negotiated rate agreements from negotiated terms and conditions of services, stating "negotiated rate agreements can include the price, the term of service, the receipt and delivery points and the quantity."<sup>6</sup> Ryckman argues that because storage ratchets are

---

<sup>3</sup> July 28 Order, 136 FERC ¶ 61,061 at P 58.

<sup>4</sup> *Id.* at Engineering Condition No. 4.

<sup>5</sup> 5 U.S.C. § 706 (2006); *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983).

<sup>6</sup> *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,344 (2000); *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, at 31,648 (2000).

based on the customer's maximum daily quantity, the negotiation of ratchets is permitted by Order Nos. 637 and 637-A. Ryckman asserts that by not allowing the negotiation of storage ratchets the Commission is acting contrary to established Commission policy and further argues that the Commission did not explain why it was deviating from the established Commission policy as outlined in Order Nos. 637 and 637-A.<sup>7</sup> Ryckman calls the Commission's analysis of the negotiation of storage ratchets in *Golden Triangle Storage, Inc.*<sup>8</sup> truncated, conclusory and limited.

8. Ryckman's section 10 of its FSS Rate Schedule provides that:

[Ryckman] and Customer may mutually agree to storage injection and withdrawal ratchets on a non-discriminatory basis. Any such ratchets negotiated will be set forth in Exhibit A to the [FSS] Agreement.

9. The Commission denies rehearing. Ryckman argues that storage ratchets are a term related to quantity and that the Commission has long-held that such terms may be negotiated.<sup>9</sup> The Commission does provide pipelines with flexibility in negotiating individual rate provisions through negotiated rate authority; however, the Commission has long characterized the negotiation of storage ratchets as an impermissible negotiation of terms and conditions of service, since application of such ratchets would fundamentally change the nature of the service and create the potential that two parties contracting for the same service might not receive service that is equal or even similar in quality.<sup>10</sup>

10. The Commission allows items such as price, term of service, receipt and delivery point and quantity to be negotiated because negotiating these provisions does not alter the basic service being provided by the pipeline under a rate schedule. However, the Commission does not view storage ratchets as simply a term related to quantity; we view

---

<sup>7</sup> Ryckman also cites, *Alternatives to Traditional Cost-Of-Service Ratemaking for Natural Gas Pipelines, Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *clarified*, 74 FERC ¶ 61,194, *reh'g denied* 75 FERC ¶ 61,024 (1996), as evidence of Commission policy on negotiated rate agreements.

<sup>8</sup> *Ryckman*, 136 FERC ¶ 61,061, at P 56 (citing *Golden Triangle Storage, Inc.*, 121 FERC ¶ 61,313, at P 54 (2007) (*Golden Triangle*)).

<sup>9</sup> Request for Rehearing at 5.

<sup>10</sup> *Orbit Gas Storage, Inc.*, 126 FERC ¶ 61,095, at P 60 (2009) (*Orbit*); *Texas Eastern Transmission, LP*, 123 FERC ¶ 61,095, at P 14, n.6 (2008); *Golden Triangle*, 121 FERC ¶ 61,313 at P 54.

a storage ratchet as a critical component that defines the nature of the storage service being provided. Altering the storage ratchets is likely to result in two similarly situated customers receiving vastly different services under the same rate schedule. For example, a customer with limited ratchets would receive a high deliverability type service, while another customer with more extensive ratchets would have more of a seasonal or baseload service.

11. The Commission has been consistent with its negotiation policy on storage ratchets. In *BGS Kimball Gas Storage, LLC*, the Commission rejected a request to negotiate storage ratchets, finding that shippers negotiating individualized limitations on injection and withdrawal rights to correspond to the percentages of gas held in their storage inventory relative to their maximum storage quantities would not receive the same quality of service as other shippers selecting the same underlying service option.<sup>11</sup> In *Golden Triangle* the Commission required Golden Triangle to remove Exhibit A from the *pro forma* service agreement for Rate Schedule FSS, reiterating Commission policy that ratchets may not be negotiated because allowing shippers to do so would fundamentally change the nature of the service, such that two parties contracting for the same service may no longer be receiving a service that is equal or even similar in quality.<sup>12</sup> Further, section 284.7(b)(2) of the Commission's regulations provides that "[a]n interstate pipeline that offers transportation service on a firm basis . . . must provide each service on a basis that is equal in quality for all gas supplies transported under that service . . ."<sup>13</sup> The Commission's rejection of Ryckman's request to negotiate storage ratchets is consistent with past Commission determinations.

12. Ryckman also argues that the negotiation of storage ratchets is appropriate in this situation because the July 28 Order granted Ryckman authority to charge market-based rates for all firm and interruptible storage and hub services, including interruptible wheeling services, with the requisite finding that it does not possess market power. Ryckman further states that no customer filed protests or comments requesting Ryckman and its customers not be allowed to negotiate storage ratchets.

13. The Commission has required other storage providers granted market-based rate authority due to lack of market power to eliminate their ability to negotiate storage ratchets with their customers.<sup>14</sup> While the Commission has allowed storage providers

---

<sup>11</sup> *BGS Kimball Gas Storage, L.L.C.*, 117 FERC ¶ 61,122, at P 35 (2006).

<sup>12</sup> *Golden Triangle*, 121 FERC ¶ 61,313 at P 54.

<sup>13</sup> 18 C.F.R. § 284.7(b)(2) (2011).

<sup>14</sup> *Orbit*, 126 FERC ¶ 61,095 at P 23, 61; *Golden Triangle*, 121 FERC ¶ 61,313 at P 33, 54; *Bluewater Gas Storage, L.L.C.*, 117 FERC ¶ 61,122, at P 31, 33-35 (2006).

with market-based rate authority to negotiate certain rate-related provisions,<sup>15</sup> the Commission does not view storage ratchets as a rate item that can be negotiated.

14. Ryckman maintains that there is an operational reason to allow the negotiation of storage ratchets. Ryckman asserts that although it has modeled the performance of the storage field on the best available information, actual operational experience may result in changes to the storage field's performance parameters. Ryckman explains that the level of ratchets that can be offered is dependent on the levels of service a customer takes on an individual basis and how it impacts the level of services that all customers take on an aggregate basis. Ryckman also contends that without the flexibility to negotiate storage ratchets, it may be faced with revising the ratchets percentages in its tariff on a consistent basis to match a change in the performance of the storage field balanced by the levels of service the customers take.

15. While it is natural for a storage field's performance parameters to change, that is no reason to allow Ryckman to negotiate ratchets with its customers and potentially provide vastly differently services to similarly situated customers under the same rate schedule. In addition, it is not uncommon for pipelines to file to update a storage field's performance parameters.<sup>16</sup>

16. Lastly, Ryckman contends that the Commission afforded a storage provider and its customers flexibility for what Ryckman terms a "quantity" provision similar in nature to ratchets in *MoBay Storage Hub*.<sup>17</sup> Ryckman states that Exhibit A to MoBay's *pro forma* FSS Rate Schedule provided that the maximum daily withdrawal quantity would have three ranges of unspecified flexibility with only a fill in the blank needed to complete the form. Ryckman avers that although the Commission did not explicitly reference this rate schedule in the order approving MoBay's project, the Commission approved the entirety of MoBay's tariff holding that "MoBay's tariff sheets comply with the Commission's regulations and policies."<sup>18</sup> Thus, Ryckman argues that the Commission in this

---

<sup>15</sup> See, e.g., *Golden Triangle Storage, Inc.*, 134 FERC ¶ 61,036, at 61,134 (2011) (allowing storage provider with market-based rate authority to negotiate reservation charge credits in non-force majeure situations).

<sup>16</sup> See *Colorado Interstate Gas Co., L.L.C.*, 137 FERC ¶ 61,094 (2011) (filing revised tariff records to change the Totem Storage Available Daily Withdrawal Quantity curve and the associated references to reflect the updated predicted reservoir performance.).

<sup>17</sup> *MoBay Storage Hub*, 117 FERC ¶ 61,298 (2006) (*MoBay*).

<sup>18</sup> *Id.* P 42.

proceeding should have afforded Ryckman the same degree of flexibility with respect to “quantity” in the negotiation of storage ratchets.

17. As Ryckman acknowledges, in *MoBay* the Commission accepted the cited tariff provision without specifically addressing the appropriateness of the provision. However, as the Commission explained in *North Baja Pipeline, LLC*, “[i]n the absence of protests, the Commission may simply have accepted [proposed tariff] provisions without examining whether they conformed to Commission policy and precedent. Under such circumstances, [acceptance of a pipeline’s tariff] provisions does not necessarily establish a generic Commission policy or precedent regarding similar tariff provisions.”<sup>19</sup>

18. Accordingly, the Commission denies Ryckman’s proposal to negotiate storage ratchets with its customers. Ryckman must revise its tariff to eliminate its ability to negotiate storage ratchets with its customers, as proposed in section 10 of its FSS Rate Schedule and in Exhibit A to its FSS *pro forma* service agreement, and instead provide customers with the option of choosing unratcheted storage service, or storage service ratcheted in accordance with percentages that are stated in actual tariff records at the time the records are filed.<sup>20</sup>

**B. Horizontal Natural Gas I/W WELL RCU # 35H**

19. Ryckman requests a limited clarification of the July 28 Order with respect to RCU # 35H’s designation as the alternative site. Specifically, Ryckman asserts that it did not state in its application or data responses, nor was it stated in the Environmental Assessment,<sup>21</sup> that RCU # 35H is the designated alternative well site.

18. The Commission will grant Ryckman’s request for clarification of the July 28 Order with respect to RCU # 35H’s designation as the alternative site. In Ryckman’s

---

<sup>19</sup> *North Baja Pipeline, L.L.C.*, 117 FERC ¶ 61,146, at 61,786 (2006); *See also Gas Transmission Northwest Corp. v. FERC*, 504 F.3d 1318, at 1320 (D.C. Cir. 2007) (FERC’s acceptance of a pipeline’s tariff sheets does not turn every provision of the tariff into “policy” or “precedent”).

<sup>20</sup> *See, e.g., Bluewater Gas Storage, L.L.C.*, Docket No. CP06-351-001 (Dec. 1, 2006) (delegated letter order) (accepting Original Sheet Nos. 24 and 207, which eliminate the option for customers to negotiate storage ratchets under Rate Schedule FSS, but provide customers the option to (1) elect ratcheted or unratcheted services, and (2) choose the level of injection and withdrawal ratchets from five options).

<sup>21</sup> Environmental Assessment, Docket No. CP11-24-000 (issued for comment on April 22, 2011).

application, Figures 19 and 20 label the following six well sites as injection/withdrawal wells: RCU #1, RCU #2, RCU #9, RCU #12, RCU #20, and RCU #36. The seventh well site, RCU #35H, is labeled as both an injection/withdrawal well and an Enhanced Oil Recovery (EOR) oil well, which is why it was designated in the order as the alternative well site. The July 28 Order does not prohibit Ryckman Creek from using the RCU #35H well site as an injection/withdrawal well site. The order does limit Ryckman to six injection/withdrawal wells, and requires Ryckman to notify the Commission which of the injection/withdrawal well sites it does not use. Thus, we clarify that RCU #35H has not been designated as an alternative well site. However, Ryckman must notify the Commission which of the seven approved well sites it will not use as an injection/withdrawal well site.

The Commission orders:

(A) Ryckman's request for rehearing is denied, as discussed in the body of this order.

(B) Ryckman's request for clarification is granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.