

123 FERC ¶ 61,107
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 1, 2008

In Reply Refer To:
Saltville Gas Storage Company L.L.C.
Docket Nos. RP05-157-011 and
RP05-157-012

Saltville Gas Storage Company L.L.C.
P.O. Box 1642
Houston, Texas 77251-1642

Attention: David A. McCallum, Director, Rates and Tariffs

Reference: Negotiated Rate Service Agreements

Dear Mr. McCallum:

1. On April 1, 2008, in Docket No. RP05-157-011 and April 4, 2008, in Docket No. RP05-157-012, Saltville Gas Storage Company L.L.C. (Saltville) filed tariff sheets¹ pursuant to section 32 of the General Terms and Conditions (GT&C) of its tariff to disclose the details of 25 negotiated rate transactions between Saltville and various customers. Additionally, Saltville filed to reserve Sheet Nos. 23-30 for future use. Finally, Saltville requests waiver of the Commission's thirty-day notice requirement to permit the tariff sheets to become effective April 1, 2008 and April 4, 2008, respectively. Waiver is granted, and the referenced tariff sheets are accepted and suspended, effective April 1, 2008 and April 4, 2008, respectively, as shown on the Appendix, subject to refund and to the conditions discussed below.

2. The referenced tariff sheets identify and describe the negotiated rate agreements, including the exact legal name of the relevant shipper, the negotiated rate, the rate schedule (Rate Schedule FSS), the contract terms, and the contract quantities. In addition, the proposed tariff sheets include footnotes where necessary to provide further details regarding the negotiated rate agreement. All of the negotiated rate agreements contain language exempting the shipper from additional surcharges or fuel and lost and

¹ See the Appendix for listing of tariff sheets and effective dates.

unaccounted for, or electric power charges. One negotiated rate agreement gives Atmos Energy Corporation (Atmos) a right to make a one-time election to pay the maximum recourse rates instead of its negotiated rates.² Atmos' right to elect to pay the maximum recourse rate shall be exercised, if at all, within 60 days after the Commission order in Saltville's rate case in Docket No. RP08-257 becomes final and non-appealable.³

3. Public notice of the filings was issued on April 3, 2008 (RP05-157-011) and April 8, 2008 (RP05-157-012). Interventions and protests were due on or before April 14, 2008 and April 16, 2008, respectively. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2007)), 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 the proceeding or place additional burdens on existing parties. Sequent Energy Management, L.P. (Sequent) filed a protest regarding fuel exemption language contained in the negotiated rate agreements filed in the instant proceedings. The East Tennessee Group (ETG) and Saltville filed answers to Sequent's protest.⁴

4. Sequent states that it has serious concerns regarding the following language contained in the proposed negotiated rate agreements: "The rates specified above shall be all inclusive and Customer shall not be charged additional surcharges or fuel and lost and unaccounted for, or electric power charges."

5. Sequent argues that the instant negotiated rate agreements were negotiated with full prior knowledge of Saltville's pending rate case proposal in Docket No. RP08-257-000, to implement, for the first time ever, a stated fuel retainage charge.⁵ Thus, Sequent argues that all of the negotiated rate agreements raise significant issues of undue discrimination, particularly with respect to other similarly-situated Saltville customers who do not have any explicit contractual exemption from Saltville's imminent fuel charge.

² See FERC Gas Tariff, Original Volume No. 1, Original Sheet Nos. 22C and 22C.01, Contract No. 420009 with Atmos Energy Corporation.

³ See *Saltville Gas Storage Company L.L.C.*, 123 FERC ¶ 61,003 (2008).

⁴ Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to protests unless otherwise permitted by the decisional authority. 18 C.F.R. § 385.213(a)(2) (2007). The Commission will exercise its discretion and accept the answers of ETG and Saltville in order to address the concerns of the parties.

⁵ *Saltville Gas Storage Company L.L.C.*, 123 FERC ¶ 61,003 (2008). Assuming Saltville moves its suspended tariff sheets into effect at its earliest opportunity, the new fuel charge will become effective on September 1, 2008, subject to refund and to the outcome of the hearing, during the term of all the negotiated rate agreements filed herein.

6. Sequent asserts that the timing of these filings demonstrates that Saltville has been actively negotiating new agreements that exempt shippers from its new fuel charges at a time it had already decided to impose these new charges on its other customers. Sequent argues that it will end up subsidizing the fuel exemptions Saltville has handed out to the customers in the 25 new negotiated rate agreements.

7. Sequent argues that Saltville's negotiated rate tariff provisions do not permit it to negotiate fuel exemptions. Specifically, Sequent states that section 32.1 (Definition) of Saltville's GT&C provides the following:

A negotiated rate may be less than, equal to, or greater than the Maximum Recourse Rate; *shall not be less than the Minimum Rate*; may be a rate design other than straight fixed-variable; and may include a minimum quantity. A negotiated rate may utilize Gas commodity basis differential pricing mechanisms. The recourse rate will be available to any Customer that does not wish to negotiate a rate.⁶

8. Sequent argues that because the Commission equates minimum rates with variable costs, and because this tariff provision prohibits Saltville from charging negotiated rates that are below the minimum rate, Saltville has no authority under that provision to exempt any shipper from its new fuel charge. Accordingly, Sequent requests that the Commission reject the fuel exemption feature in the instant negotiated rate agreements, and clarify that all of the instant customers will become subject to Saltville's fuel charge when that fuel charge becomes effective on September 1, 2008. Further, Sequent requests that the Commission make clear that it will reject fuel exemption or discounting provisions of all other negotiated rate agreements until such time as Saltville secures adequate fuel discounting authority under its negotiated rate tariff provisions.

9. In its answer, ETG argues that the language that Sequent objects to is common and simply reflects the character of the bargain negotiated by the parties. ETG asserts that there is nothing to suggest that such clauses reflect any undue discrimination, and states that the Commission has already approved and accepted agreements between Saltville and its customers containing such clauses, most recently on March 20, 2008 in Docket No. RP05-157-010.⁷ ETG argues that these Commission approvals demonstrate that these clauses do not violate Saltville's tariff. Further, ETG states that section 3.2 of Saltville's FSS Rate Schedule, provides that "Saltville and Customer may mutually agree in writing to rates, rate components, charges or credits for service under this Rate

⁶ FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 156 (*emphasis added*).

⁷ See FERC Gas Tariff, Original Volume No. 1, Original Sheet Nos. 15, 17, 18, 19, 20 and 21, each of which has been already accepted and is in effect.

Schedule...”⁸ ETG states that this authority is broad enough to cover the clauses in question. ETG argues that Sequent’s suggestion that the quoted clauses render the negotiated rate less than the minimum rate under Saltville’s tariff is unsupported.

10. In its answer, Saltville states that its negotiated rate provisions are not discriminatory, do not result in subsidization, and are permitted by its tariff. Saltville states that the negotiated rates are all-inclusive and include a charge for fuel embedded in the rate. Saltville states that the negotiated rate is higher than the currently-effective recourse rate. Accordingly, Saltville argues that the negotiated rates are not below the minimum rate.

11. Pipelines are not required to offer negotiated rates. If pipelines choose to offer negotiated rates, they must request this authority from the Commission, may limit its application, and must memorialize the conditions in its tariff.⁹ The Commission has permitted pipelines to negotiate with shippers for fuel charges below minimum rates, under negotiated rate agreements, provided, that the pipeline has adequate negotiated rate authority under its tariff.¹⁰

12. Contrary to ETG’s assertion, we find that the language of section 3.2 of Saltville’s Rate Schedule FSS quoted above does not permit Saltville to negotiate rates below the minimum rate. Saltville argues that the negotiated rate is not below the minimum rate because the negotiated rate includes a charge for fuel embedded in that rate. However, once Saltville’s rates in Docket No. RP08-257-000 become effective, other customers will pay an in-kind surcharge for fuel in the form of a fuel retention percentage.¹¹ These negotiated rate shippers, on the other hand, will not have any fuel retained. Therefore, they will not be paying the minimum fuel retention rate. Thus, the quoted language exempting the shipper from “additional surcharges or fuel and lost and unaccounted for, or electric power charges” proposed in Saltville’s negotiated rate agreements is not permitted by its tariff.¹²

⁸ FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 32.

⁹ *Natural Gas Pipeline Negotiated Rate Policies and Practices, Modification of Negotiated Rates Policy*, 104 FERC ¶ 61,134 (2003).

¹⁰ *See Dominion Transmission, Inc.*, 108 FERC ¶ 61,109 (2004).

¹¹ The Commission cannot determine what portion of the negotiated rates constitutes a charge for fuel.

¹² Contrary to ETG, acceptance for filing of other unprotected negotiated rate agreements containing the same exemption provision does not constitute approval of such provision and has no precedential impact.

13. Accordingly, Saltville is directed to either revise the subject agreements and file revised tariff sheets, within 15 days of the issuance of this order, to remove the exemption language from the proposed negotiated rate agreements or, as an alternative, file to revise its negotiated rate tariff authority in section 32 to permit negotiated rates below the minimum rate. We note that acceptance of revised negotiated rate tariff authority would also moot any potential issue of tariff authorization regarding any other Saltville agreement containing the same exemption provision. However, if Saltville chooses the latter option, Saltville still would be at risk for any under-recovery of fuel charges not collected from its negotiated rate shippers at such time its proposed fuel charge becomes effective, so that there would be no subsidy by recourse rate shippers.¹³ The Commission notes that Sequent previously raised concerns, which were set for hearing, regarding the lack of a fuel tracker and an associated true-up mechanism in Saltville's section 4 general rate case proceeding in Docket No. RP08-257-000.¹⁴ Therefore, the subsidy concern raised by Sequent in the instant filing is already set for hearing in Docket No. RP08-257-000.

14. Lastly, Sequent points out that in footnote no. 3 of the negotiated rate agreement filed in Docket No. RP05-157-011, with Eagle Energy Partners,¹⁵ Saltville has referenced a section 4.5 of Rate Schedule FSS that does not exist in its tariff. We find that consistent with the remaining negotiated rate agreements filed in RP05-157-012, the correct reference should be to section 3.2 of Rate Schedule FSS. Accordingly, Saltville is directed to file a revised tariff sheet to reflect the correct reference, as noted above, within 15 days of the issuance of the order.

15. Based on a review of the filings, the Commission finds that the proposed tariff sheets listed in the Appendix to this order have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept such tariff sheets for filing and suspend their effectiveness for the period set forth below, subject to the conditions set forth in this order.

16. The Commission's policy regarding suspensions is that tariff 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.¹⁶ It is recognized, however, that shorter

¹³ See *NorAm Gas Transmission Co.*, 77 FERC ¶ 61,011, at p. 61,036 (1996).

¹⁴ See *Saltville Gas Storage Company L.L.C.*, 123 FERC ¶ 61,003, at P 7 (2008).

¹⁵ FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 21A, Footnote No. 3.

¹⁶ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.¹⁷ Here, where Saltville is filing several negotiated rate agreements, the Commission will exercise its discretion to accept and suspend these tariff sheets for a minimal period, to become effective April 1, 2008 (Docket No. RP05-157-011) and April 4, 2008 (Docket No. RP05-157-012), subject to refund and other conditions of this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: All Parties
Public File

¹⁷ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

APPENDIX

**Saltville Gas Storage Company, L.L.C.
FERC Gas Tariff, Original Volume No. 1**

**Docket No. RP05-157-011
Accepted and Suspended to be Effective April 1, 2008**

Original Sheet No. 21A

**Docket No. RP05-157-012
Accepted and Suspended to be Effective April 4, 2008**

Original Sheet No. 22
Original Sheet No. 22A
Original Sheet No. 22B
Original Sheet No. 22C
Original Sheet No. 22C.01
Original Sheet No. 22D
Original Sheet No. 22E
Original Sheet No. 22F
Original Sheet No. 22G
Original Sheet No. 22H
Original Sheet No. 22I
Original Sheet No. 22J
Original Sheet No. 22K
Original Sheet No. 22L
Original Sheet No. 22M
Original Sheet No. 22N
Original Sheet No. 22O
Original Sheet No. 22P
Original Sheet No. 22Q
Original Sheet No. 22R
Original Sheet No. 22S
Original Sheet No. 22T
Original Sheet No. 22U
Original Sheet No. 22V
Original Sheet No. 22W
Sheet Nos. 23 - 30