

132 FERC ¶ 61,171
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Arlington Storage Company, LLC

Docket Nos. CP10-99-000

New York State Electric & Gas Corporation

CP10-100-000

ORDER ISSUING CERTIFICATE AND APPROVING ABANDONMENT

(Issued August 26, 2010)

1. On March 24, 2010, New York State Electric & Gas Corporation (NYSEG) filed an application under section 7(b) of the Natural Gas Act (NGA) for authorization to abandon its Part 284.224 limited jurisdiction blanket certificate and related services provided through its Seneca Lake Storage Project located in Schuyler County, New York.¹ Also on March 24, 2010, Arlington Storage Company, LLC (Arlington) filed an application under section 7(c) of the NGA for a certificate of public convenience and necessity authorizing it to acquire and operate certain of the NYSEG storage facilities currently used to provide those services.²

2. Additionally, Arlington requests authority to charge market-based rates for the storage services it proposes to provide using the acquired facilities. Arlington also seeks waivers of certain filing, accounting and reporting requirements, approval of a revised pro forma gas tariff, and a finding that it will not be a “transmission provider” subject to the requirements of 18 C.F.R. Part 358 (2010).

¹ Section 284.224 of the Commission’s regulations provides for the issuance of blanket certificates to Hinshaw pipelines to provide open access transportation service to the same extent that and in the same manner that intrastate pipelines are authorized by Subpart C. 18 CFR § 284.224 (b)(3) (2010).

² Arlington filed supplements to its application on March 25, 2010 and July 9, 2010.

3. The Commission finds that NYSEG's and Arlington's proposals are required by the public convenience and necessity, and grants the requested authorizations and waivers, as more fully discussed and conditioned below.

I. Background

4. Arlington, a wholly-owned subsidiary of Inergy, LP (Inergy),³ is a natural gas company organized and existing under the laws of Delaware. Under certificate authority granted in the Commission's December 18, 2008 order in Docket No. CP08-96-000 (*Arlington Order*), Arlington began providing interstate natural gas storage and hub services at market-based rates from its Thomas Corners Project in Steuben County, New York in 2009.⁴

5. NYSEG is a public utility engaged in the generation, transmission, distribution, and sale of electricity, the purchase and sale of natural gas at wholesale, and the distribution and sales of natural gas to ultimate consumers within the State of New York. In its capacity as a local distribution company, NYSEG is regulated by the New York State Public Service Commission (New York PSC). NYSEG's natural gas facilities and most of its services are exempt from the Commission's jurisdiction pursuant to section 1(c) of the NGA.⁵ NYSEG is the owner of the Seneca Lake Storage Project in Schuyler County, New York.

³ Inergy, which acquired Arlington in 2007 for the purpose of constructing and operating the Thomas Corners Project, also owns Central New York Oil and Gas Company, LLC, which is the owner and operator of the Stagecoach Natural Gas Storage Project in New York.

⁴ *Arlington Storage Co.*, 125 FERC ¶ 61,306 (2008). The Commission recently approved revisions to Arlington's tariff to make it fully compliant with the capacity release requirements under Order No. 712 (*Promotion of a More Efficient Capacity Release Market*, Order No. 712, 73 Fed. Reg. 37,058 (June 30, 2008), FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g*, Order No. 712-A, 73 Fed. Reg. 72,692 (Dec. 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008), *order on reh'g*, Order No. 712-B, 127 FERC ¶ 61,051 (2009)). *Arlington Storage Co.*, Docket No. RP10-188-000 (December 23, 2009) (unpublished letter order).

⁵ In 1954, the Federal Power Commission declared that NYSEG's natural gas facilities qualify as Hinshaw facilities. *N.Y. State Elec. & Gas Corp.*, 13 FPC ¶ 1362 (1954). Section 1(c) of the NGA exempts from jurisdiction any person engaged in the transportation or sale for resale of gas in interstate commerce if (1) the gas is received within or at the boundary of a state, (2) all the gas is ultimately consumed within the

(continued...)

6. The Seneca Lake Storage Project has a storage capacity of 2.34 Bcf which includes 1.45 Bcf of working gas. NYSEG currently leases the storage cavern from US Salt, LLC. The other facilities comprising the storage project were constructed in three phases. The Phase I facilities consist of the Western Pipeline, extending from a compressor station at the storage cavern to an interconnection with the interstate transmission facilities of Dominion Transmission, Inc. (Dominion) in Big Flats, New York. The Phase II facilities consist of the Eastern Pipeline, extending from another interconnection with Dominion, in Danby, New York, to NYSEG's gas distribution facilities in the Binghamton, New York area. The Phase III facilities consist of two additional 2,587 horsepower natural-gas fueled compressors and appurtenant facilities located on the Western Pipeline at the storage cavern. NYSEG utilizes the leased storage cavern and the Phase I and III facilities to provide interstate storage services under its Part 284.224 blanket certificate.

7. NYSEG began providing service utilizing the Seneca Lake Storage Project in July 1996, subject to regulation by the New York PSC. On October 15, 1997, the Commission issued NYSEG a Part 284.224 blanket certificate to provide storage services in interstate commerce and authorized NYSEG to charge market-based rates for those services.⁶ NYSEG currently provides interstate gas storage service to two customers, Dominion and UGI Penn Natural Gas Inc. (UGI), under storage service agreements and NYSEG's Statement of Operating Conditions, on file with the Commission. The total storage capacity currently committed to Dominion and UGI (650,000 Dth) represents approximately 45 percent of the Seneca Lake Storage Project's total available storage capacity.

II. Proposals

8. NYSEG states that it has entered into an asset purchase agreement with Inergy Midstream, LLC (Inergy), whereby NYSEG has agreed to terminate its existing lease with US Salt, LLC with respect to the gas storage cavern and to sell all of the surface and subsurface facilities of the Seneca Lake Storage Project to Inergy for \$65,000,000. NYSEG requests authorization to: abandon its limited jurisdiction blanket certificate; abandon by assignment to Arlington certain interstate storage services agreements executed under the limited jurisdiction blanket certificate; cancel NYSEG's related Statement of Operating Conditions; and, to the extent required, abandon by assignment to Arlington the Operational Balancing Agreement entered into by NYSEG in support of its Seneca Lake Storage Project services. NYSEG states that after the sale it will no longer

state, and (3) a state Commission regulates the rates and service. A pipeline qualifying under section 1(c) is called a "Hinshaw" pipeline.

⁶ *New York State Electric & Gas Corp.*, 81 FERC ¶ 61,020 (1997).

own, operate, or provide interstate storage service using its Seneca Lake Storage Project. On its part, Inergy intends to transfer NYSEG's Phase I and Phase III facilities to its affiliate, Arlington. The Phase II facilities (i.e., the Eastern Pipeline) will be transferred to another affiliate, Inergy Pipeline East, LLC, which will continue to operate that facility subject to the jurisdiction of the NYPSC.

9. NYSEG states that the sale is conditioned on, among other things, NYSEG and Arlington obtaining all necessary authorization and approvals from the Commission and the New York PSC with acceptable conditions. NYSEG requests that the Commission's effectiveness of the abandonment authority requested herein be timed to coincide with the closing of the transaction, which is also the date on which Arlington will begin to provide service under its tariff over the subject facilities.

10. Coincidental with the termination of NYSEG's lease of the cavern, Arlington will enter into a new long-term storage lease giving Arlington the right to use the US Salt cavern for gas storage. Thus, upon the close of the transaction, Arlington will own or control all of the facilities (hereinafter referred to as the Seneca Lake Facility) necessary to provide its proposed storage service. Arlington seeks authority to offer firm and interruptible storage and hub services from the Seneca Lake Facility under Arlington's existing Part 284, Subpart G, blanket certificate and under the terms and conditions of its Commission-approved tariff, modified as proposed herein. Under its current tariff, Arlington offers the following open-access storage services at market-based rates: Firm Storage Service (Rate Schedule FSS), Firm No-Notice Storage Service (Rate Schedule NNSS), Interruptible Storage Service (Rate Schedule ISS), Firm Parking Service (Rate Schedule FP), Firm Loan Service (Rate Schedule FL), Interruptible Parking Service (Rate Schedule IP), Interruptible Loan Service (Rate Schedule IL), Interruptible Wheeling Service (Rate Schedule IW) and Interruptible Hourly Balancing Service (Rate Schedule IHBS). Arlington does not propose to offer interruptible wheeling service from the Seneca Lake Facility because that facility currently has only a single pipeline interconnection with Dominion. Arlington states that if modifications to interconnect the Seneca Lake Facility with additional pipelines are made in the future, it will file with Commission at that time to offer interruptible wheeling service from the facility.

11. NYSEG has executed 10-year agreements with Arlington for firm and no-notice storage service from the Seneca Lake Facility. Under the service agreements, NYSEG will have 510,000 Dth of firm storage rights, and firm withdrawal and injection rights of 51,000 Dth/day and 25,500 Dth/day, respectively. NYSEG will hold 51,000 Dth/day of capacity at each receipt and delivery point on the Western Pipeline.

12. UGI and Dominion are the only existing customers receiving interstate service from the Seneca Lake Facility. NYSEG's currently-effective contracts with UGI and Dominion will be assigned to Arlington. Arlington proposes that both service agreements remain in effect without disruption, with service to be provided under the state-approved terms and conditions of service and market-based rates, through the end of

their current terms (March 31, 2011). Arlington requests Commission approval of the continuation of these service agreements as a transitional matter, and requests that such agreements be accepted as non-conforming agreements under Arlington's tariff. After the closing of the transaction, and upon the expiration of the remaining terms of these agreements, any further service to these customers would be provided under the terms of new conforming service agreements specified under Arlington's tariff. All other services from the Seneca Lake Facility will be provided by Arlington under the general terms and conditions of its Commission-approved tariff.

13. In conjunction with the subject acquisition, Arlington proposes to install electronic flow equipment and controls at certain aboveground interconnects in order to permit the custody transfer of gas and communication of relevant flow gas data to and from existing control facilities. No ground disturbance would be required. In addition, Arlington requests authorization as may be necessary to remove the existing odorization equipment required by New York State at the discharge locations of the storage facility.

III. Requests for Waivers

14. Since NYSEG is seeking abandonment of a section 284.224 blanket certificate and the services provided pursuant to that certificate, NYSEG requests that the Commission grant it a waiver from filing certain exhibits required to support an application to abandon facilities pursuant to sections 157.14 and 157.18 of the Commission's regulations. These exhibits are: Exhibits A, B, C, D, F, F-1, G, G-I, G-II, H, I, J, K, L, M, N, O, P, V, X, Y, and Z.

15. Because it proposes to charge market-based rates for service from the Seneca Lake Facility, Arlington requests waiver of certain of the Commission's filing, accounting, and reporting requirements applicable to cost-based rate proposals, which the Commission has previously found inapplicable to storage providers that are granted market-based rate authority. These regulations include: (1) section 157.6(b)(8) (applicants to submit cost and revenue data) and section 157.20(c)(3); (2) sections 157.14(a)(13), (14), (16), and (17) (cost-based exhibits); (3) the accounting and reporting requirements of Part 201 and sections 260.1 and 260.2 (relating to the cost-of-service rate structure, i.e., Form 2A); (4) section 284.7(e) (reservation charge); and (5) section 284.10 (straight fixed-variable rate design methodology).

16. Arlington also requests waiver of several additional Commission regulations and policies. Since Arlington proposes to provide only natural gas storage service, and no stand-alone transportation services from the Seneca Lake Facility, it requests waivers of the section 284.7(d) requirement pertaining to segmentation. Further, as a natural gas storage provider authorized to charge market-based rates for the services, Arlington asks the Commission to confirm that Arlington will continue to qualify for the storage provider exemption and that the Standards of Conduct will not be applicable to Arlington after its acquisition of the Seneca Lake Facility.

IV. Notices and Interventions

17. Notice of Arlington's application was published in the *Federal Register* on April 7, 2010 (75 Fed. Reg. 17,707) with comments due on April 20, 2010. Notice of NYSEG's application was published in the *Federal Register* on April 16, 2010 (75 Fed. Reg. 19,957) with comments due on April 20, 2010. A timely, unopposed motion to intervene in both dockets was filed by Dominion. Tenaska Gas Storage, LLC. filed a timely intervention in Docket No. CP10-99-000.⁷ New York PSC filed a late motion to intervene in both dockets. The Commission finds that granting the motion to intervene out of time will not delay, disrupt, or otherwise prejudice this proceeding, or place an additional burden on existing parties. Therefore, for good cause shown, we will grant the motion.⁸ No comments or protests have been filed.

V. Discussion

18. Since the facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the abandonment, acquisition, and operation of the facilities are subject to the requirements of subsections (b), (c) and (e) of section 7 of the NGA.⁹

A. NYSEG's Abandonment

19. NYSEG asserts that, after the sale of its Seneca Lake Storage Project, it will no longer have the capability to provide gas storage services in interstate commerce. Accordingly, NYSEG requests authorization to abandon its section 284.224 limited jurisdiction blanket certificate and to abandon the storage services being provided pursuant to the blanket certificate. NYSEG states that this abandonment is one part of a transaction which will ultimately enable the existing interstate services to be provided by an existing interstate natural gas storage provider pursuant to a section 7(c) certificate. NYSEG states that this transaction will increase the amount of storage capacity available for service in interstate commerce while providing for continued service to Dominion, UGI, and NYSEG's local distribution system customers.

20. No currently-jurisdictional service would be discontinued as a result of the proposed transaction. Rather, the provider of those services would change. Thus, the pertinent issues are the economic impact on NYSEG's present customers and whether

⁷ Timely unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2010).

⁸ 18 C.F.R. § 385.214(d) (2010).

⁹ 15 U.S.C. § 717f (b), (c) and (e) (2006).

arrangements have been made for continuation of service.¹⁰ Since no facility will be constructed or removed from service, the proposal raises no environmental issues.

21. NYSEG states that the sale of the Seneca Lake Facilities as proposed will provide NYSEG continued access to the storage capacity required to support its local distribution system; after the closing of the transaction, Arlington will provide Firm Storage Service and Firm No-Notice Storage Service to NYSEG. NYSEG asserts therefore, that the proposed abandonment will not affect NYSEG's ability to supply natural gas to its distribution system customers. NYSEG currently provides interstate firm storage service at market-based rates to Dominion and UGI under service agreements and a Statement of Operating Conditions. NYSEG states that storage services to Dominion and UGI will not be adversely affected by its abandonment of service and the transfer of facilities to Arlington, since Arlington will continue to provide service to those customers at market-based rates.

22. We note that no current firm or interruptible shipper of either Arlington or NYSEG has protested the proposed abandonment or sale of the facilities. Therefore, since the abandonment will have no adverse impact on existing services, the requested abandonment authority and the cancellation of NYSEG's Statement of Operating Conditions is permitted by the public convenience or necessity, subject to the conditions contained in this order.

23. The ultimate transfer of NYSEG's facilities to Arlington will expand the storage capacity available for interstate service in the New York-Pennsylvania market area. Also, the transfer will not adversely impact NYSEG's continued access to the storage capacity required to support its local distribution system. As noted, Arlington will provide Firm Storage Service and Firm No-Notice Storage Service to NYSEG. Therefore, the proposed abandonment will not affect NYSEG's ability to supply natural gas to its distribution system customers. We note that no NYSEG customer has protested the abandonment proposal.

24. As discussed above, the proposal provides that Arlington will provide service to Dominion and UGI at currently-approved rates, terms and conditions of services through the end of their existing service agreements. Thus, there will be no adverse effects on present or future customers or the gas supply market.

¹⁰ *KN Energy Inc.*, 69 FERC ¶ 61,377, at 62,428 (1994). See also *Gulf Oil v. FERC*, 575 F.2d 67, 69-70 (3d Cir. 1978); *Farmland Industries, Inc. v. Kansas-Nebraska Natural Gas Co.*, 349 F.Supp. 670, 680-81 (D.C. Neb. 1972), *aff'd*, 486 F.2d 315 (3d Cir. 1973).

25. In view of the above considerations, the Commission finds that the proposed abandonment is permitted by the public convenience or necessity.

B. Arlington's Proposal and the Certificate Policy Statement

26. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction by establishing criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest.¹¹ A proposal to acquire facilities with no related construction of facilities, such as in this proceeding, does not educe the Policy Statement's concerns with overbuilding, disruptions of the environment and the exercise of eminent domain. However, the threshold requirement under the Policy Statement, that a pipeline must be prepared to financially support the project without relying on subsidization from its existing customers, is equally applicable to acquisitions. Similarly, whether the applicant has made efforts to eliminate or minimize any adverse effects the proposal might have on the applicant's existing customers and existing pipelines in the market and their captive customers is also relevant to our evaluation.

27. Arlington provides service to its existing customers at the Thomas Corners Storage Project at market-based rates. NYSEG's existing customers of the Seneca Lake Storage Project receive service at market-based rates. Arlington also proposes to provide its services from the Seneca Lake Facilities at market-based rates. As a consequence, Arlington will assume all financial risk associated with the operation of the Seneca Lake Facility and there can be no subsidization of the new service by any existing customers. Thus, the Commission finds that Arlington has satisfied the no subsidy threshold requirement of the Certificate Policy Statement.

28. The Commission is also satisfied that the proposed project will have no adverse impact on the service of existing customers. Arlington proposes to continue to provide existing customers storage services under their current contract terms and conditions through the remainder of the terms of those contracts. NYSEG will have continued access to necessary storage capacity under a new service agreement with Arlington.

29. We find that the acquisition of the Seneca Lake Facility will enable Arlington to expand the storage capacity available for interstate storage service in the New York-Pennsylvania market area, while providing for continued service for Dominion, UGI, and NYSEG's local distribution system customers. NYSEG states that the Seneca Lake

¹¹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

Facility has a working gas capacity of 1.45 Bcf, of which approximately 290,000 Dth of storage capacity will be freed by NYSEG at closing,¹² and subsequently available for interstate storage service. Arlington states that market demand exists for the proposed new jurisdictional services involving the Seneca Lake Facility and that it has service commitments with current and new customers for the full capacity available at the Seneca Lake Facility.

30. Therefore, we find that the Arlington's proposal will not result in adverse operational or economic impacts on existing customers or on any other pipelines or their customers. Based on the benefits the proposed project will provide to the market and the lack of adverse effects on existing customers, other pipelines, landowners, or communities, we find that the public convenience and necessity requires the approval of Arlington's proposal to acquire, and operate the Seneca Lake Facilities subject to the conditions described in this order.

C. Market Based Rates

31. Arlington requests authority to charge market-based rates for the storage and hub services it will provided from the Seneca Lake Facilities. As noted above, NYSEG's jurisdictional Part 284.224 storage services are currently being provided at market-based rates. As also noted, Arlington currently provides storage and hub services from its Thomas Corners facilities at market-based rates.

32. Generally, the Commission evaluates requests to charge market-based rates for storage under the analytical framework of its 1996 Alternative Rate Policy Statement (Alternative Rate Policy Statement).¹³ Under the Alternative Rate Policy Statement, the Commission's framework for evaluating requests for market-based rates has two principal purposes: (1) to determine whether the applicant can withhold or restrict services and, as a result, increase prices by a significant amount for a significant period of time; and (2) to determine whether the applicant can discriminate unduly in price or terms

¹² NYSEG will continue to use 510,000 Dth of storage capacity under Firm Storage Service and No-Notice agreements with Arlington.

¹³ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076; *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *petitions for review denied sub nom., Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement); *criteria modified, Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220 (2006), *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

and conditions of service.¹⁴ To find that an applicant cannot withhold or restrict services, increase prices over an extended period, or discriminate unduly, the Commission must first find that there is a lack of market power¹⁵ because customers have good alternatives¹⁶ or that the Commission can mitigate the market power with specified conditions.¹⁷

33. The Commission's analysis of whether an applicant has the ability to exercise market power consists of three major steps. First, the Commission reviews whether the applicant has specifically and fully defined the relevant markets¹⁸ to determine which specific products or services are identified and the suppliers of those products and services that provide good alternatives to the applicant's ability to exercise market power.¹⁹ Additionally, as part of the first step, the applicant must identify the relevant geographic market.²⁰ Second, the Commission measures an applicant's market share and market concentration.²¹ Third, the Commission evaluates other relevant factors, such as ease of entering the market.

¹⁴ See *Blue Sky Gas Storage, LLC*, 129 FERC ¶ 61,210 (2009); *Orbit Gas Storage, Inc.*, 126 FERC ¶ 61,095 (2009).

¹⁵ The Commission defines "market power" as "the ability of a pipeline to profitably maintain prices above competitive levels for a significant period of time." See *Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 at 61,230.

¹⁶ A good alternative is an alternative to the proposed project that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative for the applicant's service. See *Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 at 61,230.

¹⁷ Generally, an applicant will include in its application a market study in support of its request. See *Application*, Exhibit I. A market power study usually defines the relevant products and geographic markets, measures market shares and concentrations, and evaluates other factors such as replacement capacity, ease of entry, and non-storage alternatives.

¹⁸ The relevant product market consists of the applicant's service and other services that are good alternatives to the applicant's services. See *Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 at 61,231.

¹⁹ See *Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 at 61,231.

²⁰ *Id.* at 61,232-234.

²¹ *Id.* at 61,234.

34. In support of its request to charge market-based rates for the Seneca Lake Facility services, Arlington incorporates by reference the market-based rate and market power study summary submitted with its Thomas Corners Project application in Docket No. CP08-96-000, updated with a market power study to reflect the impact of Inergy's acquisition of the Seneca Lake Facility.²² As further discussed below, the Commission finds that Arlington's market power analysis demonstrates that the Seneca Lake facilities are located in a highly competitive market area where numerous storage and hub service alternatives exist for potential customers such that Arlington lacks market power.

1. Storage and Hub Services

35. Arlington identifies the relevant product market as firm and interruptible natural gas storage and hub services. Arlington identifies the relevant geographic market as New York and Pennsylvania. Arlington states that this geographic market definition is consistent with the definition the Commission has adopted in evaluating numerous market area natural gas storage projects also located in New York and Pennsylvania that have received market-based rate authority.²³ Arlington asserts that it would have been appropriate for it use a broader market definition, pointing to a proceeding where the Commission approved market-based rates for Steckman Ridge, LP based on a "Greater Mid-Atlantic Market" that included Maryland, Pennsylvania, Virginia, New York, Ohio, West Virginia, and Kentucky.²⁴ However, Arlington states it has been conservative in its analysis by limiting the geographic market to New York and Pennsylvania.

36. As noted above, Arlington is owned by Inergy.²⁵ Inergy is a provider of natural gas storage services in the Northeast and Mid-Atlantic United States, and owns the US Salt facility which will be used by Arlington to provide the proposed services. Inergy

²² Arlington Storage Co. LLC, Application, Docket No. CP08-96-000, Section V, 17-23 (filed March 23, 2008).

²³ See, e.g., *Avoca Natural Gas Storage*, 68 FERC ¶ 61,045 (1994); *Steuben Gas Storage Co.*, 72 FERC ¶ 61,102 (1995) and 74 FERC ¶ 61,060 (1996); *New York State Electric & Gas Corp.*, 81 FERC ¶ 61,020 (1997); *NE Hub Partners, LP.*, 83 FERC ¶ 61,043 (1998); *Honeoye Storage Corp.*, 91 FERC ¶ 62,165 (2000); *Central New York Oil and Gas Co., LLC (Central New York)*, 94 FERC ¶ 61,194 (2001); *Seneca Lake Storage, Inc.*, 98 FERC ¶ 61,163 (2002); *Wyckoff Gas Storage Co., LLC*, 105 FERC ¶ 61,027 (2003) (*Wyckoff*); *Central New York*, 116 FERC ¶ 61,277 (2006).

²⁴ *Steckman Ridge, LP*, 123 FERC ¶ 61,248 (2008).

²⁵ Inergy is the controlling partner in Arlington; other limited partners not affiliated with Inergy include National Grid, Honeoye Storage, and John Hancock.

also owns Central New York Oil and Gas Company, L.L.C., the owner and operator of the Stagecoach Natural Gas Storage Project in Tioga County, New York and Bradford County, Pennsylvania. Arlington is the majority owner and operator of Steuben Gas Storage Company, which owns and operates the Adrian natural gas storage facility located in Steuben County, New York.²⁶ Arlington also owns the Thomas Corners facility in Steuben County, New York.

37. A company can exercise market power if it has a large market share, enabling it to raise prices acting alone, or if it can act with others to raise prices.²⁷ Arlington's market-power analysis identifies 12 companies providing storage from a total of 74 fields, including the Seneca Lake Facilities, and Arlington's existing Thomas Corners facility, as well as the affiliated Adrian and Stagecoach facilities, currently operating in Arlington's geographic market with a total working gas capacity of 522.33 Bcf. Including Seneca Lake's 2 Bcf of storage capacity (1.45 Bcf of existing working gas capacity plus the 0.55 Bcf of anticipated expansion working gas capacity²⁸), Arlington and its affiliates will have 41.45 Bcf of working gas capacity, or approximately 7.9 percent of the total market area working gas capacity. The same 12 companies have a total market area withdrawal capacity of 10,605 MMcf per day. Including Seneca Lake's 145 MMcf per day of withdrawal capacity, Arlington and its affiliates will have 845 MMcf per day, or approximately 8 percent of the total market area withdrawal capacity. These market shares are similar to the 7.6 percent of working gas capacity and 6.9 percent of withdrawal capacity which the Commission concluded would not enable Arlington to exert market power at its Thomas Corners facility.²⁹ We therefore find that the relatively small market shares contained in Arlington's updated market power analysis will not enable Arlington to exert market power in the relevant market area.

38. The Commission uses the Herfindahl Hirschman Index (HHI), which is used to analyze whether a competitive market exists for a specific product, to determine market concentration for gas pipeline and storage markets.³⁰ The Alternative Rate Policy

²⁶ Steuben currently provides its storage services at cost-based rates.

²⁷ See Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,234.

²⁸ Arlington states at the bottom of page 4 of Exhibit I, that upon closing the transaction with NYSEG, Arlington anticipates expanding the Seneca Lake Facility by an additional 0.55 Bcf of working gas capacity, with no increase in the existing maximum withdrawal capacity.

²⁹ *Arlington Order*, 125 FERC ¶ 61,306 at P 52.

³⁰ See Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,235.

Statement states that a low HHI (generally less than 1,800) indicates that sellers are less likely to be able to exert market power because customers have sufficiently diverse alternatives in the relevant market.³¹ 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.

39. The Arlington market power analysis for storage services shows an HHI calculation of 2,121 for working gas capacity and an HHI calculation of 2,057 for maximum daily withdrawal capability (peak day deliverability). Although these HHI's are less than the 2,141 HHI for working gas capacity and 2,120 HHI for peak day deliverability found to be acceptable in our analysis of Arlington's Thomas Corners Project,³² they are above the 1,800 level cited in the Alternative Rate Policy Statement as requiring closer scrutiny.

40. As we noted in our review of the Thomas Corner Project, the concentration observed in the New York/Pennsylvania market is the result almost entirely of the presence of a single storage provider, Dominion. Although the New York/Pennsylvania storage market is considered concentrated based on an HHI analysis, the Commission has found in a number of cases that since the majority of the storage services in this market, including those of Dominion, are regulated and provided at cost-based, not market-based rates, the degree of market concentration was not a factor, thus alleviating the market power potential of relatively small applicants, such as Arlington.³³

41. The Commission has stated that companies with Commission-regulated cost-based rates cannot exercise market power to increase prices above the cost-based rate cap.³⁴ In

³¹ See Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 55 (If the HHI is above 1,800 the Commission will give the applicant closer scrutiny because the index indicates that the market is more concentrated and the applicant may have significant market power. Conversely, an HHI below 1,800 would result in less scrutiny of the applicant's potential to exercise significant market power because it would indicate that the market is less concentrated.).

³² See *Arlington Order*, 125 FERC ¶ 61,306 at P 53.

³³ See, e.g., *Honeoye Storage Corp.*, 91 FERC ¶ 62,165 (2000); *Central New York*, 94 FERC ¶ 61,194 (2001); *Seneca Lake Storage, Inc.*, 98 FERC ¶ 61,163 (2002); *Wyckoff Gas Storage Company, LLC, et al.*, 105 FERC ¶ 61,027 (2003) (Wyckoff); *Central New York*, 116 FERC ¶ 61,277 (2006).

³⁴ *Central New York*, 94 FERC ¶ 61,194 at 61,706-07 (2001).

Central New York,³⁵ the Commission stated that, in order to attract customers seeking interruptible services, companies must offer those customers services that will lower their delivered gas prices and, in *Wyckoff*,³⁶ the Commission found that Commission-regulated, just and reasonable rates offer an incentive to market services at or below the regulated rates. Accordingly, the existence of Commission-regulated cost-based rates in a market area acts to prevent companies with market-based rates from exercising market power, even where market concentration is high.³⁷

2. Commission Determination

42. Consistent with our finding with regard to Arlington's Thomas Corners Project, the Commission finds that Arlington's updated market power study demonstrates that its proposed storage and hub services from the Seneca Lake Facilities will be provided in a competitive market area where substantial storage and hub service alternative exist for potential customers. We also find that Arlington's market power study properly identifies good alternatives and that Arlington's acquisition of the Seneca Lake Facility will increase the interstate storage alternatives in the New York/Pennsylvania market area. We find that, within the relevant market, Arlington's prospective market shares are low and, although the market concentration is above the threshold which would require closer scrutiny, we find that barriers to entry are likely to be low in the relevant market, as demonstrated by the numerous recent storage projects that have been developed in this market, as well as the proposed development of over 65 Bcf of additional working gas capacity over the next few years.³⁸ We also note that neither Arlington, nor any of Arlington's affiliates own any of the pipelines that will be capable of transporting gas from Arlington's or its affiliates' storage facilities to end-users in the market. As such, Arlington will continue to have to rely upon the transportation services provided by independent, non-affiliated interstate pipelines for its storage services to be utilized and provided to the ultimate end-users. Moreover, most of the interstate pipelines with which Arlington and its affiliates are directly and indirectly interconnected, i.e., Dominion, Transcontinental Gas Pipe Line Corporation, Columbia Gas Transmission, LLC, National Fuel Gas Supply Corporation, and Texas Eastern Transmission, LP, have their own market area storage that can be marketed in competition with Arlington's storage services. For all these reasons, we conclude that Arlington will continue to lack

³⁵ *Id.*

³⁶ 105 FERC ¶ 61,027, at P 60 (2003).

³⁷ *See Central New York*, 94 FERC ¶ 61,194; *Wyckoff*, 105 FERC ¶ 61,027, at P 60 (2003).

³⁸ *See Updated Market Power Study* at 11-13.

significant market power after the acquisition of the Seneca Lake Facility. Further, Arlington's proposal for market-based rates is unopposed. For these reasons, we will approve Arlington's request to charge market-based rates for all firm and interruptible storage services for the Seneca Lake Facility.

43. Nevertheless, Arlington must notify the Commission if future circumstances significantly affect its present market power status. Thus, our approval of market-based rates for the indicated services is subject to re-examination in the event that:

(a) Arlington adds storage capacity to the project beyond the capacity authorized in this order; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to the project; or (d) Arlington, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to the project. Since these circumstances could affect its market power status, Arlington must notify the Commission within 10 days of acquiring knowledge of any such changes. The notification must include a detailed description of the new facilities and their relationship to Arlington and the project.³⁹ The Commission also reserves the right to require an updated market power analysis at any time.

D. Tariff Provisions

44. Arlington proposes to offer firm and interruptible storage services from the Seneca Lake Facility on an open-access basis under the terms and conditions set forth in its proposed modified tariff. The tariff sheets containing the proposed modifications to its existing tariff are attached as Exhibit P to the application. Exhibit Z-1, a redline/strikeout version of the proposed modifications, shows that most of the modifications consist of adding the Seneca Lake Facility to the tariff where currently only the Thomas Corners facility is specified. Arlington also proposes to modify section 5.2 of Rate Schedule FSS on First Revised Sheet No. 22A to specify that Arlington and a customer may negotiate options for a renewal term; if Arlington and the customer do not agree on negotiated options for a renewal term, the existing language pertaining to the renewal of service applies. Arlington would also modify section 8.1 of Rate Schedule FSS on First Revised Sheet No. 22, pertaining to the disposition of the gas remaining in storage at the expiration of the term of the service agreement. Under the existing tariff, all of the customer's gas remaining in storage at the expiration of the term is deemed sold to Arlington at a price equal to 80 percent of the price realized for the gas at an auction. This provision would be modified to exclude a customer's base gas. A sentence has been added to section 8.1 to provide that a customer's base gas will now be returned to the customer upon expiration of the service agreement pursuant to mutually agreeable commercially reasonable terms and conditions relating to the timing of, and rate at which,

³⁹ See, e.g., *Port Barre Investments*, 116 FERC ¶ 61,052 (2006); *Copiah County Storage Co.*, 99 FERC ¶ 61,316 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002).

the base gas will be returned to the customer. The Commission will accept Arlington's proposed modifications subject to the condition that the phrase "and not unduly discriminatory" be added after "mutually agreeable" in section 8.1.

1. Segmentation

45. 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 shipper's own use, or for the purpose of releasing that capacity to replacement shippers to the extent that segmentation is operationally feasible. Arlington requests a waiver of the Order No. 637 segmentation requirements contained in section 284.7(d), contending that it will not be offering stand-alone firm transportation services from the Seneca Lake Facility; all firm services will be provided as part of Arlington's storage services.

46. In *Clear Creek Gas Storage Company*,⁴⁰ we found that the requirements of section 284.7(d) do not apply to pipelines engaged solely in natural gas storage, i.e. which do not provide stand-alone transportation services. Arlington's operation of the Seneca Lake Facility meets the *Clear Creek* requirement. Thus, we hold that the requirements of section 284.7(d) do not apply to Arlington's Seneca Lake Facility. Other tariff provisions related to segmentation, such as the allocation of primary point rights in segmented release and within-the-path scheduling, also do not apply to Arlington's Seneca Lake Facility.

2. Non-conforming Agreements

47. As noted above, NYSEG currently has service agreements with UGI and Dominion for firm storage service at the Seneca Lake Facility that are to be assigned to Arlington, and which expire on March 31, 2011. On March 25, 2010, Arlington filed as a supplement to its application public and non-public versions of the non-conforming UGI contract as Exhibit I-I and of the Dominion contract as Exhibit I-II, with portions of the public versions redacted. Arlington states that the redacted portions of the contracts contain commercially sensitive information which, if publicly disclosed, would cause competitive harm to the parties. Therefore, Arlington requests privileged treatment of the commercially sensitive information under section 388.112 of the Commission's regulations.

48. Arlington also filed executed contracts with NYSEG, which are new ten-year Part 284 non-conforming service agreements under Arlington's FSS and NNSS Rate Schedules for service from the Seneca Lake Facility. Arlington filed public versions of

⁴⁰ 96 FERC ¶ 61,071 (2001) (*Clear Creek*).

the NYSEG contracts as Exhibit I-IV and the explanations of the non-conforming provisions of the NYSEG contracts as Exhibit Z-2.

a. Dominion and UGI Contracts

49. Arlington requests that the Dominion and UGI contracts be accepted as non-conforming agreements under its tariff. Arlington proposes that service remain in effect without disruption under the previously-negotiated market-based rates and terms and conditions of service through March 31, 2011, the end of the current contract terms. Arlington asserts that the Commission has previously permitted existing agreements to remain in effect as a transitional matter and requests that the existing agreements with UGI and dominion be accepted as non-conforming agreements under Arlington's tariff, consistent with the Commission's rulings in other proceedings, citing *BGS Kimball*,⁴¹ *Equitrans*⁴² and *Columbia Gas*.⁴³ Arlington states that when the two contracts expire, it intends to provide any further service to Dominion and UGI under new conforming service agreements.

50. We believe Arlington has misinterpreted the cited cases. The existing agreements in those proceedings were not permitted to remain in effect simply as transitional matters. We found in those proceedings either that the agreements complied with the form of service agreement, that the material deviations were permissible or that the tariff and form of service agreement must be revised so that the agreements would be conforming agreements.

51. In *BGS Kimball*, Bluewater Gas Storage, LLC (Bluewater), a natural gas storage provider with existing customers operating as a Hinshaw pipeline under state regulation, requested authorization to operate its storage facilities as jurisdictional facilities under the NGA. The Commission stated that Bluewater's rates and terms and conditions of service must be those authorized by its Commission-approved tariff. Bluewater stated that it would tender replacement agreements to its existing customers, to become effective on the same date that its Commission-approved tariff becomes effective, in the form specified in its pro forma tariff.⁴⁴ Therefore, Bluewater's agreements complied with its form of service agreement when its jurisdictional tariff became effective. In *Equitrans*

⁴¹ *BGS Kimball Gas Storage, LLC*, 117 FERC ¶ 61,122 (2006) (*BGS Kimball*).

⁴² *Equitrans, L.P.*, 91 FERC ¶ 61,041 (2000) (*Equitrans*).

⁴³ *Columbia Gas Transmission Corp.*, 95 FERC ¶ 61,218 (2001), *order on rehearing and clarification*, 97 FERC ¶ 61,221 (2001) (*Columbia Gas*).

⁴⁴ *See BGS Kimball*, 117 FERC ¶ 61,122 at P 58.

we found that a non-conforming minimum transportation obligation was an acceptable element of a negotiated rate.⁴⁵ Therefore, this provision was a permissible material deviation.

52. In *Columbia Gas*, Columbia was required to file 159 existing jurisdictional contracts that contained conditions that would constitute material deviations from its pro forma service agreement. After reviewing the filed agreements the Commission, while noting that it would not cancel the contracts as they had been ongoing for some time and had been relied upon by the parties, nevertheless required Columbia to revise its tariff and form of service agreement so that no material deviations or negotiated terms and conditions of service remain.⁴⁶ Arlington does not propose to revise its form of service agreement to encompass any impermissible deviations in the existing UGI or Dominion contracts.

53. Sections 154.1(d) and 154.112(b) of the Commission's regulations require that any contract or executed service agreement which deviates in any material aspect from the pro forma service agreement must be filed (section 154.1(d))⁴⁷ and must be referenced in the pipeline's open access transmission tariff (section 154.112(b)).⁴⁸ The Commission has previously stated that, when a pipeline files non-conforming service agreements pursuant to sections 154.1(d) and 154.112(b), it should not delete any portion of the non-conforming contractual provisions for which it seeks Commission approval. The Commission adopted those sections, together with the section 284.13(b) transactional posting requirements, as part of its implementation of NGA section 4(c).⁴⁹ The purpose of such a filing is not only to allow the Commission to review the material deviation, but also to allow other interested parties to review the provision and present their views to the Commission as to whether the provision is just and reasonable and not unduly discriminatory. That purpose cannot be accomplished if parts of the material deviation which the pipeline has filed for Commission approval are redacted and thus not available for review by other interested persons.⁵⁰ Therefore, if a pipeline chooses to include a

⁴⁵ See *Equitrans*, 91 FERC ¶ 61,041 at 61,151.

⁴⁶ *Id.* at 62,010.

⁴⁷ *Id.*; see also 18 C.F.R. § 154.112(b) (2010).

⁴⁸ See *Columbia Gas*, 97 FERC ¶ 61,221 at 62,003.

⁴⁹ See *Monroe Gas Storage Co., LLC*, 128 FERC ¶ 61,033, at P 14 (2009) (*Monroe*).

⁵⁰ *Id.* P 16.

material deviation in a service agreement, then its filing of that contract for Commission approval must make public the entire material deviation with no redactions and all other aspects of the contract relevant to an understanding of the material deviation and its effect on other shippers.⁵¹

54. We note, however, that the Commission is willing to consider requests, pursuant to section 388.112 of our regulations,⁵² for privileged treatment of commercially sensitive portions of agreements which are unrelated to consideration of the material deviation. If an interested person believes that access to any such redacted information is necessary for it to be able to comment on the pipeline's filing, it may request access to such information through a protective order. Once an interstate pipeline files its justification for privileged treatment, section 388.112(c)(1)(i) of the Commission's regulations clarifies that the "Commission retains the right to make determinations with regard to any claim of privilege or CEII status, and the discretion to release information as necessary to carry out its jurisdictional responsibilities."⁵³

55. Arlington's filing does not comply with Commission requirements in other ways. Arlington did not file redline/strikeout versions of the UGI and Dominion contracts showing the deviations from its form of service agreement and provide a detailed narrative justifying the deviations as required by section 154.204 of the Commission's regulations.⁵⁴ Furthermore, the non-public versions of the contracts did not highlight the differences between the public and non-public versions.

56. Based upon the above discussion, when Arlington files its actual tariff sheets (at least 30 but not more than 60 days prior to the commencement of service), it must file redline/strikeout versions of the UGI and Dominion contracts showing the deviations from its form of service agreement and provide a detailed narrative justifying the deviations. Furthermore, if Arlington chooses to file public and non-public versions of the agreements, it must include all material deviations from its form of service agreement in the public version. Also, Arlington must highlight the differences between the public and non-public versions of the agreements.

57. Finally, we note that section 284.13(b) of the Commission's regulations requires pipelines to post on their internet website specific transactional information about all their

⁵¹ *Id.* P 17.

⁵² 18 C.F.R. § 388.112 (2010).

⁵³ *See Monroe*, 128 FERC ¶ 61,033 at P 18.

⁵⁴ *See also Southern LNG, Inc.*, 130 FERC ¶ 61,146, at P 51 (2010).

contracts, including such items as the rate, term, contract demand, and other special details. That posting must take place by the first nomination for service under the contract. Therefore, Arlington must post the required information for the Dominion, UGI and NYSEG contracts on its website on the effective date of its modified tariff if Dominion, UGI or NYSEG are receiving service on that date.

b. NYSEG Contracts' Material Deviations

58. Arlington states that the proposed FSS and NNS Service Agreements between Arlington and NYSEG have material deviations and will qualify as non-conforming service agreements. Arlington argues that the Commission should accept these agreements because the non-conforming provisions do not result in NYSEG receiving a different quality of service than that offered to other customers under Arlington's tariff and do not affect the quality of service received by others. Arlington states that these non-conforming provisions provide a central basis on which the sale of the storage assets can proceed. Arlington argues that approval of the non-conforming provisions in these circumstances is consistent with Commission precedent in which Commission has permitted material deviations involving the sale of assets intended to keep the seller in the "same operational and financial position as before the sale."⁵⁵ Arlington states that NYSEG is comparable to a foundation shipper on a newly constructed pipeline, and the Commission routinely allows non-conforming provisions in service agreements with foundation shippers.⁵⁶ Arlington states that, similar to when making decisions regarding new construction, the non-conforming provisions are those that the parties believe are necessary in order for the transaction to go forward.

59. Article I of the agreements states that the effectiveness of the agreements are contingent upon receipt of all necessary regulatory or other approvals and the closing of the transaction contemplated under the Asset Purchase Agreement. Arlington argues that this provision recognizes the fact that the agreements cannot become effective until after Arlington obtains regulatory approval and closes on the purchase and sale transaction following receipt of Commission authorization. Arlington asserts that this provision poses no risk of undue discrimination or preference and should be approved by the

⁵⁵ See, e.g., *El Paso Natural Gas Co.*, 115 FERC ¶ 61,391, at P 20 (2006).

⁵⁶ See, e.g., *Fayetteville Express Pipeline LLC*, 129 FERC ¶ 61,235, at P 40-46 (2009); *Dominion Cove Point LNG, LP*, 129 FERC ¶ 61,073, at P 11 (2009); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 74-83 (2008); *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 74-78 (2006); *Gulf South Pipeline Co., LP*, 115 FERC ¶ 61,123, at P 5-6 (2006); *Midwestern Gas Transmission Co.*, 114 FERC ¶ 61,257, at P 50 (2006); *Gulf South Pipeline Co., LP*, 98 FERC ¶ 61,318, at P 3-4 (2002).

Commission. The Commission finds that this provision is not unduly discriminatory and is necessary to ensure that the agreements do not become effective prior to obtaining all regulatory approvals and the closing of the sale.

60. Article I of the proposed FSS Service Agreement contains the following provision: “Customer shall have a Base Gas carrying requirement of 170,000 Dth.” Arlington asserts that this provision is included because Arlington is not acquiring title to the base gas owned by NYSEG in the Seneca Lake Facility. Arlington states that NYSEG, for commercial and regulatory reasons related to its role as a local distribution company with substantial state service obligations, did not desire to sell the base gas in the Seneca Lake Facility. Arlington argues that retention of the NYSEG-owned base gas by NYSEG is a benefit for both parties, reducing Arlington’s acquisition cost to a level justified by the market-based rates Arlington anticipates charging and preserving NYSEG’s ownership of the base gas to serve NYSEG’s local distribution system. The Commission finds that this provision is not unduly discriminatory.

61. Article III of the proposed FSS Service Agreement and Article II of the proposed NNS Service Agreements contain identical negotiated *Mobile-Sierra*⁵⁷ language wherein the parties agree that they will not seek unilaterally from the Commission or any other authority an order or relief of any kind amending or changing any provision of the agreement under any standard of review or based upon a contention that: the market in which the agreement was made was not competitive or appropriately functional; or, either party had the ability to compel the other to agree to or otherwise accept a rate, term or condition that did not reflect the then-current market rate, term or condition for the agreement; or, that it was not just and reasonable. The parties also agree that, in the event that a standard of review is undertaken by the Commission or any other authority with respect to any unilateral request for a change to any rate, charge, classification, term or condition of the agreement or any individual service hereunder, whether proposed by a party, a non-party or the Commission, the applicable standard of review shall be the strictest standard of review permissible.

62. Arlington states that this language is taken directly from the Asset Purchase Agreement and was negotiated by the parties to assure that future regulatory actions do not upset the economic bargain struck by the parties. Arlington argues that the provision is just and reasonable in the context of the Arlington acquisition of the Seneca Lake Facility from NYSEG because the language assures Arlington that the market-based future revenue stream which supports the acquisition price paid by Arlington, will not be

⁵⁷ See *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (where parties have negotiated a contract which denies either party the right to change prices unilaterally, the Commission may abrogate that contract only if the public interest requires.)

undermined by future regulatory actions and assures NYSEG that the market-based rates it has negotiated for future service will not be increased over NYSEG's objection based on application of cost-of-service or other rate making principles. Arlington states that it did not propose tariff language to render this provision conforming because the relationships between Arlington and its other storage customers lack the unique attributes of the Arlington/NYSEG relationship which warrant inclusion of the negotiated *Mobile-Sierra* language. The Commission finds that this language is not unduly discriminatory.

63. Article IV of the FSS Agreement and Article III of the NNSS Agreement contain the additional sentence:

In the event of a conflict between any provision of this [FSS/NNSS] Agreement and a provision of the [FSS/NNSS] Rate Schedule or ASC's FERC Gas Tariff, the provision of this [FSS/NNSS] Agreement shall control.

64. Arlington asserts that these provisions are a logical extension of the *Mobile-Sierra* provision discussed in the previous section. Arlington argues that the Commission routinely approves such provisions in the case of nonconforming agreements that have been filed and approved.⁵⁸ As discussed below, the Commission is directing herein that the non-conforming aggregation provisions either be removed from the agreements or that the form of service agreement be revised so that the aggregation provision is conforming. As we noted in *Southern LNG*,⁵⁹ if the agreement conforms with the *pro forma* service agreement, it complies with the tariff and the matter of which document governs conflicts is irrelevant; and if the Commission finds that the deviating agreement is just and reasonable and not unduly preferential, the parties have every expectation that their reasonable agreement will be upheld and will control any conflict with the pipeline's tariff. Therefore, the Commission accepts this provision subject to the approval of Arlington's filing to comply with the aggregation directives.

65. Article V of the FSS Agreement and Article IV of the NNSS Agreement contain the following identical language: "This Agreement shall be effective upon the closing of the transaction contemplated in the Asset Purchase Agreement dated January 9, 2010 between Customer and Arlington (the Effective Date)." Arlington asserts that the form of service agreement contains blanks for insertion of a specific date. Arlington states that since the date when the service agreements may become effective is dependent on Commission approval of the transaction and, therefore, is not known, in lieu of a specific

⁵⁸ See, e.g., *Southern LNG, Inc.*, 130 FERC ¶ 61,146, at P 24 (2010)(*Southern LNG*); *Egan Hub Storage, LLC*, 126 FERC ¶ 61,075, at P 4 (2009).

⁵⁹ *Id.*

date the parties have described the date that would otherwise be inserted into the blanks on the form agreements. Arlington believes this language should not be considered “non-conforming,” but if it is, the language poses no risk of undue discrimination or preference and should be approved by the Commission. The Commission finds that the subject language is not unduly discriminatory.

66. Arlington states that Exhibit B to the proposed FSS Service Agreement contains the following additional note:

3. For Seneca Lake, for a given Day, receipt nominations (except for Seneca Lake - Storage Interconnect) (expressed as a positive value) shall be aggregated with delivery nominations (except for Seneca Lake Storage Interconnect) (expressed as negative value), and the sum shall be the amount added to (if positive) or subtracted from (if negative) Customer’s FSS Storage Inventory as an injection or withdrawal, respectively, subject to the limits of Customer’s MDIQ, MDWQ, MSQ, and Storage Inventory.

67. Arlington further states that Exhibit A to the proposed NNSS Service Agreement contains the following similar note:

2. For Seneca Lake, for a given Day, deviations from nominated receipts (except for Seneca Lake Storage Interconnect) (expressed as a positive value if a positive deviation and as a negative value if a negative deviation) shall be aggregated with deviations from nominated deliveries (except for Seneca Lake storage Interconnect) (expressed as negative value if a positive deviation and as a positive value if a negative deviation); and the sum shall be the amount of firm No-Notice Storage Service deemed received by Customer for that Day, which amount shall be added to (if positive) or deducted from (if negative) Customer’s FSS Storage Inventory as described in Article I of this No-Notice Stage Agreement subject to the limits of Customer’s MDIQ, MDWQ, MSQ, Storage Inventory, and Customer’s NNMDRQ and NNMDQ.

68. Arlington asserts that these notes are required by the existence of multiple receipt and delivery points on the West Lateral, which is connected to the Seneca Lake storage facility. Arlington states that the historical FSS and NNSS Service Agreements applicable to the Thomas Comers storage facility did not need to address these issues because storage receipt and delivery nominations to the Thomas Comers storage facility occurred at two pipeline interconnects, with gas flowing directly into and out of the storage facility from and to one or the other interconnect. Arlington further states that the Seneca Lake Facility-specific notes address the peculiar circumstances of the Seneca Lake storage facility and the West Lateral.

69. Arlington asserts that the notes confirm that the operation and balancing of the Seneca Lake Facility, as currently performed by NYSEG, will carry forward in a substantially similar fashion on a firm basis after the proposed transaction when NYSEG becomes a customer of Arlington. Arlington states that NYSEG currently operates the Seneca Lake Facility as part of its local distribution system subject to New York PSC jurisdiction to provide reliability and balancing services to its customers. Arlington further states that the notes have been included to demonstrate to the New York PSC that NYSEG will continue to provide similar reliability and balancing services to its local distribution customers after the closing of the transaction. Arlington argues that these notes are uniquely applicable to the facts of NYSEG's historical ownership and continued control of receipt and delivery points that NYSEG alone is likely to utilize. Arlington asserts that these notes pose no risk of undue discrimination or preference and should be approved by the Commission.

70. The Commission finds that the aggregation provisions in Exhibit B to the proposed FSS Service Agreement and Exhibit A to the proposed NNS Service Agreement are prohibited negotiated terms and conditions of service and may be unduly discriminatory. NYSEG is not the only customer using the West Lateral of the Seneca Lake Facility and, after Arlington's acquisition, the West Lateral will be operated on an open-access basis. Arlington does not explain why the aggregation provisions should not apply to other current Seneca Lake Facility customers using the West Lateral, or future customers using the West Lateral. Arlington also does not provide any reason why these provisions should not be placed into its tariff or form of service agreement for the Seneca Lake Facility. Arlington is therefore directed to either remove these provisions from the NYSEG agreements or place a general aggregation provision in its tariff or form of service agreement for the Seneca Lake Facility whenever it files its actual tariff sheets. Furthermore, if Arlington chooses to place a general aggregation provision in its tariff or form of service agreement for the Seneca Lake Facility, it should explain, whenever it files its actual tariff sheets, how the aggregation provision will work in conjunction with the Dominion Operational Balancing Agreement (OBA) at the meter points contained in Exhibit 1 of the Dominion OBA.

71. Arlington states that Article V of the proposed FSS Agreement and Article IV of the proposed NNS Agreement contain the following identical negotiated language relating to renewal options:

Customer shall have the right, in Customer's sole discretion, to renew for two (2) additional terms of five (5) years each (each, a "Renewal Term"), each of which may be exercised upon at least sixty (60) days notice given prior to the expiration of the Primary Term or, if exercised, the first Renewal Term. The storage reservation charge during the Renewal Term shall be adjusted to reflect the change in the average Consumer Price Index

determined over the Primary Term relative to the Consumer Price Index at the commencement of the Renewal Term.

72. Arlington states that this renewal option language is a product of the Asset Purchase Agreement and NYSEG's desire to assure that it can continue to meet its local service obligations for the foreseeable future. In order to assure that renewal options are negotiated on a nondiscriminatory basis,⁶⁰ Arlington has proposed to include generally applicable tariff language in both the FSS and NNSS Rate Schedules (at Sheet Nos. 22A and 26, respectively) authorizing Arlington and its customers to negotiate options for renewal terms to be included in an FSS or NNSS Service Agreement for storage at either Thomas Corners or the Seneca Lake Facility. The Commission accepts this provision since it is approving the proposed tariff revisions and this renewal option will then conform to Arlington's tariff.

E. Waivers

73. Sections 157.14 and 157.18 of the Commission's regulations require that an applicant provide certain exhibits in support of an application to abandon facilities or services. NYSEG asserts that much of the information required by these exhibits relates to abandonment of facilities and is not applicable to an application for abandonment of a section 284.224 blanket certificate and the services provided pursuant to that certificate. NYSEG requests that the Commission grant it a waiver from filing Exhibits A, B, C, D, F, F-1, G, G-I, G-II, H, I, J, K, L, M, N, O, P, V, X, Y, and Z. The omitted exhibits are not relevant since NYSEG is seeking abandonment authorization and in light of NYSEG's existing market-based rates and our approval of the continuation of market-based rates for Arlington's proposed services. Accordingly, we will grant NYSEG's request for waiver of these exhibits.

74. Arlington requests waiver of certain filing, accounting, and reporting requirements applicable to cost-based rate proposals, which the Commission previously found inapplicable to storage providers that are granted market-based rate authority. These regulations include: (1) sections 157.6(b)(8), 157.20(c)(3), and 157.14 of the Commission's regulations which require the submission of Exhibits K, L, N, and O; (2) section 157.14(a)(10) of the Commission's regulations which requires the submission of gas supply data; (3) the accounting and reporting requirements in Part 201 and sections 260.1, 260.2, 260.3, and 260.300 (relating to the cost-of-service rate structure, i.e., Form Nos. 2 and 2A); (4) section 284.7(e) (reservation charge); (5) section 284.10 (cost-based rate design methodology); and (6) any other waivers necessary and appropriate for the authorizations requested herein.

⁶⁰ See *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 37-39 (2010).

75. In light of the Commission's approval of market-based rates for Arlington's storage and hub services, the cost-related information required by the above-described regulations is not relevant. Thus, consistent with our findings in previous orders,⁶¹ the Commission will grant the request for waivers of the regulations requiring the filing of cost-based information, reservation charges, and the use of a straight fixed-variable rate design. The Commission also grants a waiver of section 157.14(a)(10), requiring an applicant to submit gas supply data, which does not pertain to natural gas storage service. The Commission has also found in previous orders no ongoing regulatory need to have cost-based financial statements prepared in accordance with the Commission's Uniform System of Accounts. Accordingly, the Commission will grant the request to waive accounting requirements as provided in Part 201 (Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act). The Commission will also grant the request to waive reporting requirements prescribed in section 260.1, FERC Form No. 2, Annual Report for Major Natural Gas Companies (Form 2), and section 260.2, FERC Form No. 2-A, Annual Report for Nonmajor Natural Gas Companies (Form 2-A), as well as in section 260.300, FERC Form No. 3-Q, as mandated in section 260.2 (FERC Form No. 2-A, Annual Report for Non-major Natural Gas Companies), and section 260.300 (FERC Form No. 3-Q, Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies). Such waivers do not extend to the annual charge assessment (ACA).⁶² Therefore, Arlington is required to file the Gas Account-Natural Gas Schedule currently at page 520 of Form No. 2-A, reporting the gas volume information which is the basis for imposing an ACA charge.⁶³ In addition, the Commission directs Arlington to maintain records to separately identify the original cost and related depreciation on its storage gas facilities as the Commission may require Arlington to produce these reports in the future.

76. Arlington requests waiver of the Commission's "shipper must have title" policy for the Seneca Lake Facility for any off-system capacity that Arlington may obtain in the future to provide storage or hub services. Arlington asserts that the Commission has previously granted Arlington this waiver for its existing storage service.⁶⁴ Arlington states that, in the event that acquisition of off-system capacity requires Commission

⁶¹ See e.g., *Orbit Gas Storage, Inc*, 126 FERC ¶ 61,095 (2009) (*Orbit Gas*); *Port Barre*, 116 FERC ¶ 61,052 at P 33-34; *Liberty Gas Storage, LLC*, 113 FERC ¶ 61,247, at P 54-55 (2005).

⁶² See *BGS Kimball*, 117 FERC ¶ 61,122 at P 49.

⁶³ *Id.*; see also *Unocal Windy Hill Gas Storage LLC*, 115 FERC ¶ 61,218, at P 38 (2006).

⁶⁴ See *Arlington Order*, 25 FERC ¶ 61,306 at P 76-80.

approval or reauthorization of any market-based rate authority, it will seek such approval or authority at the appropriate time. Arlington submitted an updated market power analysis in the instant proceeding for the same market area as contained in Arlington's original certificate application. The Commission granted Arlington a waiver of the shipper must have title policy in the *Arlington Order* on Arlington's original certificate application. We will grant a continuation of the shipper must have title policy in the instant docket, with the same clarifications, conditions and directives as contained in the *Arlington Order*.

F. Standards of Conduct

77. In Order No. 2004-A, the Commission "generically exempt[ed] from the definition of Transmission Provider natural gas storage providers authorized to charge market-based rates that are not interconnected with the jurisdictional facilities of any affiliated interstate natural gas pipeline, have no exclusive franchise area, no captive ratepayers and no market power."⁶⁵ The Commission affirms that Arlington qualifies for the generic exemption pursuant to section 358.3(k)(3) of the Commission's regulations.⁶⁶

G. Blanket Certificates

78. In response to Arlington's requests, we confirm that the Part 284, Subpart G blanket transportation certificate issued to Arlington in Docket No. CP08-96-000 (*Arlington Order*, 125 FERC ¶ 61,306) authorizes Arlington to provide open access natural gas storage and hub services on behalf of others in interstate commerce. We also confirm that the Part 157, Subpart F blanket certificate issued at the same time authorizes construction and operation of certain facilities and certain amendments and abandonments all as described in Part 157, Subpart F of the Commission's regulations. Further, Arlington's proposed minor construction and installation of certain measurement and control equipment is authorized under its Part 157 blanket certificate.

⁶⁵ *Standards of Conduct for Transmission Providers*, Order No. 2004, 68 Fed. Reg. 69,134 (December 11, 2003), FERC Stats. & Regs., ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, 69 Fed. Reg. 23,562 (April 29, 2004), FERC Stats. & Regs. ¶ 31,161 (2004), *order on reh'g*, Order No. 2004-B, 69 Fed. Reg. 48,371 (August 10, 2004), FERC Stats. & Regs. ¶ 31,166 (2004), *order on reh'g*, Order No. 2004-C, 70 Fed. Reg. 284 (January 4, 2005), FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated in part, sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006).

⁶⁶ 18 CFR § 358.3(k)(3) (2010).

H. NAESB standards

79. Arlington must ensure that its tariff complies with the currently-effective version of the NAESB (North American Energy Standards Board) standards at the time of the compliance filing to this order.⁶⁷

I. Engineering Analysis

80. Commission staff completed an engineering analysis of the Seneca Lake Facility. Commission staff concludes that the geological and engineering parameters for the underground natural gas salt cavern storage facility are well defined. Staff analyses indicate that the Seneca Lake Facility is appropriately designed to inject gas at a maximum rate of 72.5 MMcf per day and withdraw gas at a maximum rate of 145 MMcf per day and that the storage cavern will provide a total capacity of 2.34 Bcf (1.45 Bcf working gas and 0.89 Bcf base gas) at 14.73 psia and 60° F. Arlington is required to follow all of the engineering conditions set forth in the Appendix to this order, many of which are standard reporting requirements for natural gas storage operations.

81. Arlington states that it anticipates expanding the Seneca Lake Facility by an additional 0.55 Bcf of working gas upon closing the transaction with NYSEG. Arlington is reminded that it needs to obtain the necessary certificate authorization before it can expand the Seneca Lake Facility.⁶⁸

J. Environmental Analysis

82. The proposed abandonment, acquisition, construction, and requests for blanket certificate authority under Parts 157 and 284 qualify as categorical exclusions under sections 380.4(a)(29), (27), (24), (21), and (22) of the Commission's regulations, respectively.⁶⁹

83. The Commission on its own motion, received and made a part of the record in this proceeding all evidence, including the application, submitted in this proceeding and upon consideration of the record,

⁶⁷ See *Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-U, 75 Fed. Reg. 16,337 (April 1, 2010), FERC Stats. & Regs. ¶ 31,307 (2010) (incorporating by reference into its regulations Version 1.9 of the standards adopted by the Wholesale Gas Quadrant of the NAESB).

⁶⁸ Arlington Storage Co. LLC, March 24, 2010 Application, Ex. I at 4.

⁶⁹ 18 C.F.R. § 380.4(a) (21), (22), (24), (27) and (29) (2010).

The Commission orders:

(A) In Docket No. CP10-100-000, NYSEG is granted permission and approval under section 7(b) of the NGA to abandon its service obligations as more fully described in the application and the body of this order.

(B) In Docket No. CP10-100-000, NYSEG shall notify the Commission within 10 days of the date of abandonment and the cancellation of its Statement of Operating Conditions.

(C) In Docket No. CP10-100-000, NYSEG's request for waiver of the exhibits required by sections 157.14 and 157.18 of the Commission's regulations, is granted.

(D) In Docket No. CP10-99-000, Arlington is issued a certificate of public convenience and necessity under NGA section 7(c) authorizing it to acquire and operate the Seneca Lake Facility as described more fully in this order and in Arlington's application.

(E) In Docket No. CP10-99-000, the certificate issued in Ordering Paragraph (D) is conditioned upon NYSEG and Arlington obtaining all necessary authorizations and approvals from the NYPSC and Arlington's compliance with all applicable Commission regulations under the Natural Gas Act, particularly the provisions set forth in Parts 154, 157 and 284, and paragraphs (a), (d), (e) and (f) of section 157.20 of the regulations.

(F) In Docket No. CP10-99-000, Arlington is directed to file the actual tariff sheets for its modified tariff at least 30 but not more than 60 days prior to the commencement of service under its modified tariff.

(G) In Docket No. CP10-99-000, Arlington is directed to file, at least 30 but not more than 60 days prior to the commencement of service under its modified tariff, redline/ strikeout versions of the UGI and Dominion contracts showing the deviations from its form of service agreement and to provide a detailed narrative justifying the deviations, subject to the conditions discussed herein.

(H) In Docket No. CP10-99-000, if Arlington chooses to file public and non-public versions of the Dominion and UGI contracts, it must include all material deviations from its form of service agreement in the public version and it may request privileged treatment of the remainder of the agreements, along with its justification for the privileged treatment.

(I) In Docket No. CP10-99-000, Arlington must post the required information for the Dominion, UGI and NYSEG contracts on its website on the effective date of its modified tariff if Dominion, UGI or NYSEG are receiving service on that date.

(J) In Docket No. CP10-99-000, Arlington is directed to either remove the aggregation provisions from the NYSEG agreements or place a general aggregation provision in its tariff or form of service agreement for the Seneca Lake Facility whenever it files its actual tariff sheets. If Arlington chooses to place a general aggregation provision in its tariff or form of service agreement for the Seneca Lake Facility, it is directed to explain, whenever it files its actual tariff sheets, how the aggregation provision will work in conjunction with the Dominion OBA at the meter points contained in Exhibit 1 of the Dominion OBA.

(K) In Docket No. CP10-99-000, the Commission grants a continuation of the waiver of the “shipper must have title policy,” with the same clarifications, conditions and directives as contained in P 76-80 of the *Arlington Order*.

(L) In Docket No. CP10-99-000, Arlington must ensure that its tariff complies with the currently-effective version of the NAESB standards whenever it files the actual tariff sheets for its modified tariff.

(M) NYPSC’s motions to intervene out of time are granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

APPENDIX

Engineering Conditions

1. The maximum inventory of natural gas stored in the Seneca Lake Facility shall not exceed the certificated level of 2.34 Bcf (1.45 Bcf working gas and 0.89 Bcf base gas) at 14.73 psia and 60° F; the maximum gas storage shut-in stabilized pressure gradient of the cavern shall not exceed 0.75 psi/ft.
2. Before commencing gas storage operations, Arlington shall:
 - (a) Establish and maintain a subsidence monitoring network over the cavern storage area; and,
 - (b) Assemble, test and maintain an emergency shutdown system.
3. The cavern's well will be periodically logged to check the integrity of each casing string. Additionally, every five years, Arlington shall conduct sonar surveys of the cavern to monitor its dimensions and shape, including the cavern roof, and to estimate pillar thickness between openings throughout the storage operations, and file results with the Commission.
4. Arlington shall conduct an annual inventory verification study on each cavern, and file results with the Commission.
5. Arlington shall operate the Seneca Lake Facility in such a manner as to prevent gas loss or migration.
6. Arlington shall file with the Commission semi-annual reports (to coincide with the maximum and minimum storage pressures) containing the following information in accordance with section 157.214 (c) of the Commission's regulations (volumes shall be stated at 14.73 psia and 60 °F, and pressures shall be stated in psia):
 - (a) The daily volume of natural gas injected into and withdrawn.
 - (b) The inventory of natural gas and shut-in wellhead pressure for each cavern at the end of each reporting period.
 - (c) The maximum daily injection and withdrawal rates experienced for the storage field during the reporting period; and, the average working pressure on such maximum days taken at a central measuring point where the total volume injected or withdrawn is measured.
 - (d) The results of any tests performed to determine the actual size, configuration, or dimensions of each storage cavern.
 - (e) A discussion of current operating problems and conclusions.

- (f) Other data or reports which may aid the Commission in the evaluation of the storage project.
- 7. Arlington shall continue to file the above semi-annual reports in accordance with section 157.214(c) of the Commission's regulations for a period of one year following the date facility operation at maximum level is initiated.