

133 FERC ¶ 61,186
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 30, 2010

In Reply Refer To:
Arlington Storage Company, LLC
Docket No. RP11-1415-000

Arlington Storage Company, LLC
c/o Husch Blackwell LLP
750 17th St. NW, Suite 1000
Washington, DC 20006

Attention: Marvin T. Griff, Esq.

Reference: Compliance Filing with Order Issuing Certificate

Ladies and Gentlemen:

1. On October 19, 2010, Arlington Storage Company, LLC (ASC) filed revised tariff records to its FERC Gas Tariff, First Revised Volume No. 1¹ and explanations of the material deviations in two existing storage contracts in compliance with the Commission's August 26, 2010 order² authorizing ASC to acquire and operate New York State Electric & Gas Corporation's (NYSEG) Seneca Lake Storage Project. ASC requests that the tariff changes be made effective November 19, 2010. In addition, ASC requests privileged treatment for the pricing terms of the two contracts until such time as the Seneca Lake facility sale is consummated and the contractual information is posted by the first nomination for service under the contracts as required by section 284.13(b) of the Commission's regulations. We accept ASC's revised tariff records to be effective November 19, 2010, subject to further conditions and require ASC to refile its nonconforming service agreements as directed by the August 26, 2010 Order.

¹ See Appendix.

² *Arlington Storage Company, LLC and New York State Electric & Gas Corporation*, 132 FERC ¶ 61,171 (2010) (August 26, 2010 Order).

2. Notice of ASC's compliance filing was issued on October 19, 2010. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.³ Pursuant to Rule 214,⁴ all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

3. The two contracts filed by ASC are service agreements which NYSEG executed with UGI Penn Natural Gas Inc. (UGI) and Dominion Transmission, Inc. (Dominion). As part of ASC's acquisition of the Seneca Lake Storage Project, those service agreements are being assigned to ASC. ASC has provided a detailed narrative highlighting the material deviations in the UGI and Dominion service agreements from its form of service agreement. ASC requests a waiver of the requirement that it provide a redline/strikeout version of the UGI and Dominion contracts, stating it is not helpful in demonstrating where deviations in the Agreements exist since the two contracts and the ASC form of service agreements are wholly unrelated in their provenance. Moreover, ASC states the UGI and Dominion contracts incorporate the NYSEG Operating Statement, while ASC's form of service agreement incorporates ASC's modified Tariff. ASC states the non-conforming provisions contained in the UGI and Dominion agreements should be permitted because they either do not result in a different quality of service than that offered to other customers under ASC's Tariff or the ASC Tariff has been revised to include generally applicable tariff language that makes the deviations permissible.

4. In addition, ASC requests continued privileged treatment pursuant to 18 C.F.R. § 388.112 of the agreements, limited to the pricing terms set forth in each of the Exhibits A to those contracts and Section 3.2 of the Dominion contract. ASC states that the current parties to those Agreements view these pricing terms as commercially sensitive provisions which should remain confidential until such time as the Seneca Lake facility sale is consummated and the information is posted by the first nomination for service under the contracts as required by section 284.13(b) of the Commission's regulations.

5. The August 26, 2010 Order rejected ASC's request that NYSEG's existing service agreements with UGI and Dominion be accepted as non-conforming agreements under ASC's tariff and that service to those customers remain in effect without disruption under the existing terms and conditions in those service agreements until the March 31, 2011

³ 18 C.F.R. § 154.210 (2010).

⁴ 18 C.F.R. § 385.214 (2010).

end of the current contract terms. The Commission pointed out that, when another natural gas storage provider with existing customers operating as a Hinshaw pipeline requested authorization to operate its storage facilities as jurisdictional services under the NGA, the Commission stated that the storage provider's rates, terms, and conditions of service must be those authorized under its Commission-approved tariff for NGA service. That storage provider stated that it would tender replacement contracts to its existing customers in the form specified in the form of service agreement in its tariff, to become effective on the same date that its Commission-approved tariff became effective.⁵ The Commission therefore required ASC to 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.

6. ASC has not entered into replacement contracts with UGI and Dominion, using the *pro forma* service agreement in its tariff. Instead, it has filed the previous agreements between UGI/Dominion and NYSEG and an explanation of the deviations. Its filing does not contain a redline/strikeout version of the filed service agreements showing the deviations from ASC's form of service agreement, because "the language and syntax used in the UGI and Dominion Contracts as compared to the ASC form of service agreement render a redline/strikeout comparison effectively useless because nearly everything appears to be different." The Commission requires the form of service agreement in a pipeline's tariff to be used as the starting point in drafting a shipper's service agreement.⁶ When the service agreement deviates from the form of service agreement, the pipeline must file the service agreement for Commission approval,⁷ and its filing must clearly delineate differences between its negotiated contractual terms and the form of service agreement in redline and strikeout.

7. ASC has not complied with the requirement to use the form of service agreement as the starting point for its UGI and Dominion service agreements and clearly delineate the deviations from the form of service agreements. The Commission adopted these requirements in order minimize the burden on it and other interested parties in analyzing whether material deviations in a service agreement are permissible and do not present a substantial risk of discrimination. As the Commission has explained, when the form of

⁵ August 26, 2010 Order, 132 FERC ¶ 61,171 at P 51 (citing *BGS Kimball Gas Storage, LLC*, 117 FERC ¶ 61,122, at P 58 (2006)).

⁶ *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, at P 33 (2003).

⁷ 18 C.F.R. § 154.112(b) (2010).

service agreement is not used as the starting point for drafting a service agreement, “provisions may be worded differently from similar provisions in the form of service agreement, but it is not immediately apparent whether the parties intended the provisions to be substantively different.”⁸ This unnecessarily expands the number of provisions in the service agreement which the Commission and other interested parties must analyze to determine whether they are permissible. That is the case here, where ASC’s explanation of the deviations in the UGI and Dominion service agreements must discuss virtually every provision of each service agreement, while attempting to explain why a number of the provisions are not significantly different from the provisions of its form of service agreement. Moreover, the failure to replace the existing UGI and Dominion service agreements with new agreements using ASC’s form of service agreement as the starting point results in such anomalies as provisions in the filed agreements⁹ referring to provisions in NYSEG’s previous Operating Statement, rather than to ASC’s tariff.

8. In these circumstances, a full analysis of the nonconforming provisions in the UGI and Dominion service agreements cannot be completed until ASC revises the UGI and Dominion agreements utilizing ASC’s form of service agreement as the basis for the new agreements and submits the revised agreements, highlighting through redline/strikeout any remaining deviations. Therefore, ASC is directed to file redline/strikeout versions of the agreements using ASC’s form of service agreement, clearly highlighting those provisions that deviate from the form of service agreement. ASC must also revise its explanation of the material deviations consistent with the revised agreements.

9. The Commission will grant ASC’s request for continued privileged treatment of the pricing provisions of these agreements until the relevant provisions of the contracts are required to be posted on ASC’s internet website pursuant to section 284.13(b) of the Commission’s regulations. No one has protested the request and section 284.13(b)(1)(iii) requires that the rate charged under each contract be posted no later than the first nomination under the transaction.

10. Finally, section 154.1(d)¹⁰ of the Commission’s regulations provides that any contract that conforms to the Form of Service Agreement set forth in the pipeline's tariff need not be filed, but that any contract that deviates in any material aspect from the Form

⁸ *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 at P 31.

⁹ For example, force majeure, scheduling, possession, title and risk of loss and creditworthiness.

¹⁰ 18 C.F.R. § 154.1(d) (2010).

of Service Agreement set forth in the pipeline's tariff must be filed. Consistent with our finding in *Dominion Transmission, Inc.*¹¹ in Docket No. RP10-1025-000, ASC's filing is not in compliance with the Commission's regulations and Order No. 714 with regard to the filing of the three non-conforming service agreements. In Order No. 714, the Commission adopted regulations that established electronic filing requirements for filings affecting tariffs, rate schedules, service agreements, and jurisdictional contracts in order to establish an electronic database of these jurisdictional agreements accessible to the Commission and the public.¹² The Commission stated that the database would consist of all "tariffs, rate schedules, jurisdictional contracts, and other jurisdictional agreements that are required to be on file with the Commission."¹³ The Commission required that these filings be made according to the electronic formatting requirements prescribed by the Commission.¹⁴ Under these electronic filing rules, all tariffs, rate schedules, and jurisdictional contracts, including service agreements such as those filed here, are required to be filed as "tariff records" so they will be included as part of the electronic database for the company.¹⁵

11. In the instant filing, ASC has not complied with the requirement to file the non-conforming service agreements as tariff records, so that the agreements would appear in the ASC database as jurisdictional agreements. The purpose of Order No. 714 was to ensure that all such jurisdictional agreements would appear in the pipeline's electronic tariff so that they would be transparent to the public and could be easily searched.

¹¹ 132 FERC ¶ 61,179 (2010). *See also Columbia Gas Transmission, LLC*, 132 FERC ¶ 61,147, at P 14 (2010).

¹² *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 9-12 (2008).

¹³ *Id.*, P 13 and n.11.

¹⁴ 18 C.F.R. § 154.4(a) and (c) (2010) (requiring the electronic filing of "tariffs, rate schedules, service agreements, and contracts, or parts thereof.... The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form").

¹⁵ The Implementation Guide states that a tariff record is "the actual 'text' or 'content' of the tariff, rate schedule, or service agreement along with its associated metadata." Office of the Secretary of the Commission, *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings*, at 14, 20, available at <http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf>.

Therefore, we condition our acceptance on ASC filing the three non-conforming service agreement as tariff records within 30 days of the date of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Arlington Storage Company, LLC
Arlington Storage Company, FERC Gas Tariff, First Revised Volume No. 1
FERC NGA Gas Tariff

Tariff Records Effective November 19, 2010, Subject to Condition:

Cover Page, Arlington Storage - FERC Gas Tariff, 1.0.0
Table of Contents, 1.0 Table of Contents, 1.0.0
Preliminary Statement, 2.0 Preliminary Statement, 1.0.0
FSS Rate Schedule, 5.1 FSS Rate Schedule, 1.0.0
NNS Rate Schedule, 5.2 NNS Rate Schedule, 1.0.0
FP Rate Schedule, 5.3 FP Rate Schedule, 1.0.0
FL Rate Schedule, 5.4 FL Rate Schedule, 1.0.0
ISS Rate Schedule, 5.5 ISS Rate Schedule, 1.0.0
IHBS Rate Schedule, 5.6 IHBS Rate Schedule, 1.0.0
IP Rate Schedule, 5.7 IP Rate Schedule, 1.0.0
IW Rate Schedule, 5.8 IW Rate Schedule, 1.0.0
IL Rate Schedule, 5.9 IL Rate Schedule, 1.0.0
Definitions, 6.2 Definitions, 1.0.0
Request for Service, 6.3 Request for Service, 1.0.0
Quality, 6.10 Quality, 1.0.0
Injection/Withdrawal Rate, 6.11 Injection/Withdrawal Rates, 1.0.0
Title and Risk of Loss, 6.12 Title and Risk of Loss, 1.0.0
Default and Termination, 6.27 Default and Termination, 1.0.0
Form of Service Request, 6.32 Form of Service Request, 1.0.0
FSS Agreement, 7.1 Firm Storage Service Agreement, 1.0.0
NNS Agreement, 7.2 NNS Agreement, 1.0.0
FP Service Agreement, 7.3 Firm Parking Service Agreement, 1.0.0
FL Service Agreement, 7.4 Firm Loan Service Agreement, 1.0.0
ISS Agreement, 7.5 ISS Agreement, 1.0.0
IHBS Agreement, 7.6 IHBS Agreement, 1.0.0
HUB Services Agreement, 7.7 HUB Services Agreement, 1.0.0
Cap Release Umb Agrmt, 7.8 Capacity Release Umbrella Agreement, 1.0.0