

152 FERC ¶ 61,098  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Philip D. Moeller, Cheryl A. LaFleur,  
Tony Clark, and Colette D. Honorable.

Rager Mountain Storage Company LLC

Docket No. RP15-979-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued July 31, 2015)

1. On May 8, 2015, Rager Mountain Storage Company LLC (Rager Mountain) filed a petition for declaratory order requesting the Commission to grant Rager Mountain the authority to provide interruptible parking and lending storage service at market-based rates. To support its request, Rager Mountain incorporated by reference its updated comprehensive market power study filed on January 14, 2014 in Docket No. CP13-139-000, and filed *pro forma* tariff records setting forth the terms and conditions pertaining to its proposed new parking and lending storage service. As discussed below, the Commission will grant the market-based rate authority for interruptible parking and lending storage service as requested by Rager Mountain.

**Background**

2. Rager Mountain states that it leases 2 billion cubic feet (Bcf) of working gas storage capacity and 45,000 Dekatherms (Dth) per day of deliverability from its affiliate Allegheny Valley Connector LLC at the Rager Mountain storage facility located in Cambria County, Pennsylvania. Rager Mountain states that it provides firm and interruptible storage services at market-based rates.<sup>1</sup>

3. In the instant petition, Rager Mountain requests authority to add a new interruptible parking and lending storage service pursuant to Rate Schedule ILPS to its existing firm and interruptible storage services and to charge market-based rates for its

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<sup>1</sup> Rager Mountain Filing at 3 (citing *Rager Mountain Storage Company LLC*, 136 FERC ¶ 61,151 (2011) (Certificate Order)).

proposed new service. Rager Mountain states that the proposed service will allow customers to borrow gas to cover supply losses or market needs and to park gas to offset demand decreases. Rager Mountain also states that customers can also utilize this new proposed service to take advantage of short-term swings in the open market.

4. Rager Mountain asserts that Commission policy provides for the approval of market-based rates where applicants demonstrate, under the criteria established by the *Alternative Rate Policy Statement*, that they lack significant market power or have adopted conditions that significantly mitigate market power.<sup>2</sup> Rager Mountain alleges that the Commission's framework for evaluating requests for market-based rates has two principal elements: (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 and conditions of service.

### **Notice and Interventions**

5. Public notice of the filing was issued on May 18, 2015. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2014)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2014)), all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

### **Discussion**

6. Rager Mountain requests authority to add a new interruptible parking and lending storage service to its existing storage services and to charge market-based rates for its proposed service. The Commission's main concern in granting a pipeline the use of

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<sup>2</sup> Rager Mountain Petition at 5 (citing *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 (1996), *order on reh'g*, 75 FERC ¶ 61,024 (1996), *review denied sub nom.*, *Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (*Alternative Rate Policy Statement*); *modified*, *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs., ¶ 31,220, *order on reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006)).

market based rates for storage is the presence that the pipeline has in the relevant marketplace. Simply put, if the pipeline has market power over a service in the relevant marketplace, then the Commission will not permit it to charge market-based rates for that service.

7. Pursuant to *the Alternative Rate Policy Statement*,<sup>3</sup> the Commission has developed a framework for evaluating requests for market-based rates. This framework has two principal purposes: (1) to determine whether the applicant can withhold or restrict services and, as a result, increase price by a significant amount for a significant period of time; and (2) to determine whether the applicant can discriminate unduly in price or terms and conditions. To find that an applicant cannot withhold or restrict services, significantly increase prices over an extended period, or unduly discriminate, the Commission must find either that there is a lack of market power<sup>4</sup> because customers have good alternatives,<sup>5</sup> or that the applicant or the Commission can mitigate the market power with specified conditions.

8. Consistent with the methodology provided by the *Alternative Rate Policy Statement*, the Commission's analysis of whether Rager Mountain has the ability to exercise market power includes three major steps. First, the Commission will review whether Rager Mountain has specifically and fully defined the relevant markets to determine which specific products or services are identified, and the suppliers of the products and services that provide good alternatives to the applicant's ability to exercise market power. Additionally, as part of this first step, the Commission will require that

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<sup>3</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076, *reh'g denied*, 75 FERC ¶ 61,024 (1996), *petitions for review denied and dismissed 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).

<sup>4</sup> 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.

<sup>5</sup> A good alternative is an alternative 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 an applicant's service. *Id.* at 61,231.

Rager Mountain identify the relevant geographic market. Second, the Commission will assess Rager Mountain's market share and market concentration. Lastly, the Commission will evaluate other relevant factors such as ease of entering the market.

### **Relevant Markets**

9. Parking and lending services are storage related services<sup>6</sup> and Rager Mountain's market power study showing lack of market power with respect to storage also supports market-based rates for the proposed parking and lending services. Rager Mountain has incorporated by reference in its filing a comprehensive market power study filed on January 14, 2014 as required by the Commission in Docket No. CP13-139-000.<sup>7</sup> In response to a June 11, 2015 Commission data request, on June 18, 2015, Rager Mountain filed updates to Appendices 3 and 4 of the January 14, 2014 market power study containing new market share numbers and reflecting facilities that have been vacated, abandoned, or placed into service since the prior study's completion.<sup>8</sup> This analysis purports to define the relevant product and geographic markets, to measure market share and concentration, and to evaluate the ease of entry into the relevant market. As such, Rager Mountain identifies the relevant product market as underground natural gas storage facilities offering both firm and interruptible storage service in the relevant market. The Commission agrees that the relevant product market for Rager Mountain's proposed interruptible parking and lending service is underground natural gas storage facilities offering both firm and interruptible gas storage service as these products are similar in nature and is the same product market utilized and adopted by the Commission in Rager Mountain's prior application for market-based storage rate authority.<sup>9</sup>

10. Rager Mountain identifies the relevant geographic market for its proposed service as Pennsylvania and New York, which Rager Mountain states is consistent with the Commission's approach for defining the geographic market for storage projects located in Pennsylvania and New York. The Commission agrees that the appropriate geographic

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<sup>6</sup> See e.g., *Leaf Energy Center, LLC*, 125 FERC ¶ 61,131, at P 42 (2008).

<sup>7</sup> *Rager Mountain Storage Company LLC*, 145 FERC ¶ 61,194, at Ordering Paragraph J (2103).

<sup>8</sup> See June 18, 2015 Response by Rager Mountain to Staff's June 11, 2015 Data Request (June 18 Response).

<sup>9</sup> *Rager Mountain Storage Company LLC*, 136 FERC ¶ 61,151 (2011).

market area for the proposed interruptible parking and lending service is Pennsylvania and New York which is the same geographic area utilized and adopted by the Commission in Rager Mountain's prior application for market-based storage rate authority.<sup>10</sup>

### **Market Share and Market Concentration**

11. Rager Mountain's June 18, 2015, updated market power study reflects 81 natural gas storage fields, including the Rager Mountain facility, which are owned or controlled by 13 companies. These fields have a total working gas capacity of approximately 551,961 million cubic feet (MMcf) and an aggregate daily deliverability of 12,187 MMcf per day.<sup>11</sup>

12. Rager Mountain's January 14, 2014 market power study shows a market share for working gas of 5.3 percent and a market share for maximum peak daily deliverability of 5.0 percent. The calculated HHIs are 1,986 for working gas and 2,018 for maximum daily deliverability. On June 18, 2015, Rager Mountain provided updated numbers showing a new market share of working gas of 5.1 percent and a new maximum peak daily deliverability of 5.4 percent, and updated Herfindahl-Hirschman Index (HHI) levels of 1,965 for working gas and 2,063 for maximum daily deliverability.<sup>12</sup> The Commission finds these HHI levels are above the 1,800 threshold, and thus the market concentration for both working gas capacity and peak day deliverability generally would be considered concentrated. As Rager Mountain asserts, however, the concentration observed in the Pennsylvania/New York storage market is almost entirely due to the presence of a single storage provider, Dominion Resources (Dominion). Based on this fact, and the fact that the majority of storage services in that market, including Dominion's, are provided at cost based rates, the market power potential of small market participants is diminished and market concentration is not a significant factor. The Commission finds that while the HHI level of 1,965 for maximum peak day deliverability and 2,063 for working gas is above the Commission's threshold of 1,800, this will be mitigated by Rager Mountain's relatively small market shares of 5.1 percent and 5.4 percent, respectively, for each service.

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<sup>10</sup> *Id.*

<sup>11</sup> *See* June 18 Response.

<sup>12</sup> *Id.*

### **Other Relevant Factors Mitigating Potential Market Power**

13. Rager Mountain maintains that there are no significant barriers to entry in the natural gas storage market in the New York and Pennsylvania region market. In support, Rager Mountain cited numerous recent increases in the storage capacity in or near the New York and Pennsylvania market, either through the development of new facilities, or expansion of existing facilities.<sup>13</sup> Rager Mountain cited at least 15 proposed storage expansions in the same region under various stages of development.<sup>14</sup>

14. Since 1994, the Commission has found that the storage market in the New York and Pennsylvania region is competitive for small independent operators and has authorized market-based rates for numerous storage facilities in the area.<sup>15</sup> Further, since 1994, the HHI index in the New York and Pennsylvania market area has decreased from 4,900<sup>16</sup> to 2,251,<sup>17</sup> demonstrating ease of entry into the market place.<sup>18</sup>

15. Nevertheless, the Commission will require Rager Mountain to notify the Commission if future changes in circumstances significantly affect its present market power status. Thus, the Commission's approval of market-based rates for the indicated services is subject to reexamination in the event that: (a) Rager Mountain seeks to add

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<sup>13</sup> Application, Appendix 6 of Exhibit I.

<sup>14</sup> *Id.*

<sup>15</sup> See, e.g., *Avoca Natural Gas Storage (Avoca)*, 68 FERC ¶ 61,045 (1994); *Steuben Gas Storage Co.*, 72 FERC ¶ 61,102, *order on reh'g*, 74 FERC ¶ 61,060 (1996); *New York State Electric & Gas Corp.*, 81 FERC ¶ 61,020 (1997); *Honeoye Storage Corp.*, 91 FERC ¶ 62,165 (2000); *Central New York Oil & Gas Co. LLC*, 94 FERC ¶ 61,194 (2001) and 117 FERC ¶ 62,261 (2006); *Wyckoff Gas Storage Co.*, 105 FERC ¶ 61,027 (2003); *UGI LNG, Inc.*, 119 FERC ¶ 61,056 (2007); *Steckman Ridge, LP*, 123 FERC ¶ 61,248 (2008); *Arlington Storage Co., LLC*, 125 FERC ¶ 61,306 (2008); *Chestnut Ridge Storage LLC*, 128 FERC ¶ 61,210 (2009); *UGI Storage Co.*, 133 FERC ¶ 61,073 (2010), *reh'g denied* 134 FERC ¶ 61,239 (2011).

<sup>16</sup> *Avoca*, 68 FERC ¶ 61,045 at 61,151.

<sup>17</sup> *UGI Storage Co.*, 133 FERC ¶ 61,073 at P 81.

<sup>18</sup> *Rager Mountain Storage Company LLC*, 136 FERC ¶ 61,151, at P 44 (2011).

storage capacity beyond the capacity authorized in this proceeding; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to Rager Mountain; or (d) Rager Mountain, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to Rager Mountain. Since these circumstances could affect its market power status, Rager Mountain shall notify the Commission within 10 days of acquiring knowledge of any such changes. The notification shall include a detailed description of the new facilities and their relationship to Rager Mountain.<sup>19</sup> The Commission also reserves the right to require an updated market power analysis at any time.<sup>20</sup>

### **Tariff Provisions**

16. Rager Mountain proposes *pro forma* tariff records incorporating the new Interruptible Lending and Parking Service (ILPS) Rate Schedule and the corresponding Lending and Parking Service Agreement. Rager Mountain states that upon issuance of the requested declaratory order, Rager Mountain proposes to submit an NGA section 4 filing to place the *pro forma* tariff records into effect.

17. The Commission finds the changes as provided for by the *pro forma* tariff records acceptable and directs Rager Mountain to file actual tariff records not less than 30 days before the interruptible parking and lending service at market-based rates is to commence. As a reminder, Rager Mountain must comply with the Commission's electronic filing requirements set forth in Order No. 714<sup>21</sup> and Part 154 of the Commission's regulations.<sup>22</sup>

### **Waiver of Cost-Based Regulations**

18. Rager Mountain states that the Certificate Order granted certain waivers of the Commission's cost-based rate regulations, including section 284.7(e), section 284.10, and the accounting and reporting requirements in Part 201 and sections 260.1, 260.2, 260.3,

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<sup>19</sup> See, e.g., *Port Barre Investments, L.L.C. d/b/a Bobcat Gas Storage*, 116 FERC ¶ 61,052 (2006); *Copiah County Storage Co.*, 99 FERC ¶ 61,316 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002).

<sup>20</sup> See, e.g., *Floridian Natural Gas Storage Co. LLC*, 124 FERC ¶ 61,214, at P 33 (2008).

<sup>21</sup> *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

<sup>22</sup> 18 C.F.R. § 154.4 (2014).

and 260.300. Rager Mountain requests that the waivers granted in the Certificate Order continue in effect.

19. In light of the Commission's approval of market-based rates for Rager Mountain's storage services, the cost-related information required by the above-described regulations is not relevant. Thus, consistent with findings in previous orders,<sup>23</sup> the Commission will grant Rager Mountain's request to continue the waivers granted in the Certificate Order concerning 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). In addition, the Commission will also grant Rager Mountain's request to waive reporting requirements, 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), but the Commission notes that such waivers do not extend to the annual charge assessment (ACA).<sup>24</sup> Therefore, Rager Mountain 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.<sup>25</sup>

The Commission orders:

(A) The petition for declaratory order requesting authority to provide interruptible parking and lending storage service at market-based rates is granted.

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<sup>23</sup> See, e.g., *Orbit Gas Storage, Inc*, 126 FERC ¶ 61,095 (2009) (*Orbit Gas*); *Port Barre*, 116 FERC ¶ 61,052 at PP 33-34; *Liberty Gas Storage, LLC*, 113 FERC ¶ 61,247, at PP 54-55 (2005).

<sup>24</sup> See *BGS Kimball Gas Storage, LLC*, 117 FERC ¶ 61,122 at P 49.

<sup>25</sup> *Id.*; *Unocal Windy Hill Gas Storage, LLC*, 115 FERC ¶ 61,218, at P 38 (2006).

(B) The language proposed in the *pro forma* tariff records is accepted subject to Rager Mountain filing actual tariff records reflecting the approved language at least 30 days prior to the date the interruptible lending and parking service is to commence.

(C) Rager Mountain shall notify the Commission within 10 days of acquiring knowledge of: (a) Rager Mountain adding storage capacity beyond the capacity authorized in this order; (b) an affiliate's increasing storage capacity; (c) an affiliate's linking storage facilities to Rager Mountain; or (d) Rager Mountain or an affiliate's acquisition of an interest in, or being acquired by, an interstate pipeline connected to Rager Mountain. The notification shall include a detailed description of the new facilities and their relationship to Rager Mountain.

(D) Waiver of cost-based regulations as discussed above is granted.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.