153 FERC ¶ 61,278
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Central New York Oil And Gas Company, L.L.C. Docket No. RP15-1218-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued December 4, 2015)

1. On August 27, 2015, Central New York Oil And Gas Company, L.L.C. (CNYOG)[1] filed a petition for a declaratory order from the Commission to grant CNYOG the authority to provide interruptible parking and lending (PAL) storage service at market-based rates. CNYOG states that authorization to provide this service at market-based rates would be consistent with its current market-based rate authorization applicable to all of its existing firm and interruptible storage services and interruptible wheeling services furnished through the Stagecoach Storage Facility. As discussed below, the Commission will grant the requested authority for CNYOG to provide interruptible PAL storage service at market-based rates.

I. Background

2. CNYOG states that it owns and operates the Stagecoach Storage Field, a depleted natural gas reservoir that has been converted to an underground natural gas storage facility, as well as interconnected natural gas pipeline facilities (collectively, the Stagecoach Storage Facility). Through the Stagecoach Storage Facility, CNYOG states that it stores, wheels and transports natural gas in interstate commerce under

[1] Subsequent to the instant filing, CNYOG notified the Commission that it was changing its name from “Central New York Oil And Gas Company, L.L.C.” to “Stagecoach Pipeline & Storage Company, LLC.” *See Stagecoach Pipeline & Storage Pipeline Company, LLC*, Docket No. RP16-102-000, November 20, 2015 (delegated letter order).

various certificates of public convenience and necessity issued under section 7 of the Natural Gas Act (NGA).[2] CNYOG further states that the Commission has previously found that CNYOG is incapable of exercising market power as to the storage and interruptible wheeling services it provides in the relevant geographic market through the Stagecoach Storage Facility.[3] Therefore, CNYOG states that the Commission has authorized it to charge market-based rates for all of the storage and interruptible wheeling services it currently provides under its FERC Gas tariff.[4]

3. CNYOG states that Stagecoach Storage Facility customers interested in purchasing park and loan services have contacted CNYOG at various times in the recent past. In response to that interest, CNYOG proposes to modify its tariff to add Rate Schedule PAL – Interruptible Park and Loan Service. CNYOG states that the proposed service will complement CNYOG's existing menu of services by offering customers the opportunity to use natural gas parking and lending to balance their natural gas supply positions. CNYOG also states that the Commission's regulations encourage interstate natural gas pipelines to provide park and loan services.[5] Further, CNYOG states that the park and loan services it is proposing are essentially identical to the park and loan services that the Commission recently authorized another storage provider to offer in the same geographic market.[6]

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[2] Petition for Declaratory Order at 2 (citing *Central New York Oil And Gas Co., LLC*, 94 FERC ¶ 61,194 (2001 Order), *reh'g & clarification*, 95 FERC ¶ 61,096 (2001)).

[3] *Id.* (citing 2001 Order, 94 FERC ¶ 61,194, at 61,705-07 (authorization to provide firm and interruptible storage services at market-based rates); *Central New York Oil And Gas Co., LLC*, 116 FERC ¶ 61,277, at P 35 (2006) (2006 Order) (authorization to provide interruptible wheeling services at market-based rates)).

[4] *Id.* (citing 2006 Order, 116 FERC ¶ 61,277 at P 35). In addition, CNYOG states that it is authorized to provide firm wheeling and firm and interruptible transportation services at cost-based rates on its North/South Laterals and MARC I Pipeline (citing *Central New York Oil And Gas Co., LLC*, 134 FERC ¶ 61,035 (2011), *Central New York Oil And Gas Co., LLC*, 137 FERC ¶ 61,121 (2011) (MARC I Order), *reh'g & clarification*, 138 FERC ¶ 61,104 (2012)).

[5] *Id.* (citing 18 C.F.R. § 284.12(b)(2)(iii) (2015)).

[6] *Id.* (citing *Rager Mountain Storage Co. LLC*, 152 FERC ¶ 61,098 (2015) (*Rager Mountain*).

II. Notice and Intervention

4. Public notice of the filing was issued on September 15, 2015. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[7] Pursuant to Rule 214,[8] 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.

III. Discussion

5. CNYOG is requesting authority to add a new interruptible PAL 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 market based rates for storage is the presence that the pipeline has in the relevant marketplace. The Commission will not permit a pipeline to charge market-based rates for a service if the pipeline has market power over that service in the relevant marketplace.

6. Pursuant to *the Alternative Rate Policy Statement*,[9] the Commission has developed a framework for evaluating requests for market-based rates. This framework has two principal purposes: (a) 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 (b) 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

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[7] 18 C.F.R. § 154.210 (2015).

[8] 18 C.F.R. § 385.214 (2015).

[9] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, order granting clarification, 74 FERC ¶ 61,194, *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).

Commission must find either that there is a lack of market power[10] because customers have good alternatives,[11] or that the applicant or the Commission can mitigate the market power with specified conditions.

7. Consistent with the methodology provided by the *Alternative Rate Policy Statement*, the Commission's analysis of whether CNYOG has the ability to exercise market power includes three major steps. First, the Commission will review whether CNYOG 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 CNYOG identify the relevant geographic market. Second**,** the Commission will assess CNYOG's market share and market concentration. Lastly, the Commission will evaluate other relevant factors such as ease of entering the market.

A. <u>Relevant Market</u>

8. Parking and lending services are storage related services.[12] Thus, CNYOG's previously filed market power study showing a lack of market power with respect to storage could also support permitting CNYOG to charge market-based rates for the proposed PAL service.[13] Nevertheless, in support of the instant request for authorization to charge market based rates for its proposed PAL service, CNYOG submitted an updated comprehensive market power study with the instant filing. CNYOG states that this study uses the same geographic market – New York and Pennsylvania – as the one the Commission accepted in the 2001 Order in which CNYOG was authorized to charge market-based rates for storage services.[14]

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[10] 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.

[11] 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.

[12] *See Leaf River Energy Center, LLC,* 125 FERC ¶ 61,131, at P 42 (2008).

[13] Petition for Declaratory Order at 6 (citing 2001 Order, 94 FERC ¶ 61,194 at 61,705-07; 2006 Order, 116 FERC ¶ 61,277 at P 35).

[14] Petition for Declaratory Order at 7 (citing 2001 Order, 94 FERC ¶ 61,194 at 61,705-07; CNYOG Study at 15-17).

9. CNYOG identifies the relevant geographic market for its proposed service as Pennsylvania and New York, which CNYOG argues 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 market area for the proposed interruptible PAL service is Pennsylvania and New York, which is the same geographic area utilized and adopted by the Commission in CNYOG's prior application for market-based storage rate authority.[15]

B. Market Share and Market Concentration

10. CNYOG states that its study defines the relevant product market as including natural gas storage services but, as permitted by Order No. 678, considers Pennsylvania local production as an alternative to storage services.[16] According to CNYOG, its study shows that CNYOG's market shares are only 1.80 percent for storage working gas capacity and 3.53 percent for peak day deliverability in the relevant market.[17] CNYOG argues that such small market shares are indicative of a lack of market power. CNYOG further argues that the market for storage services in New York and Pennsylvania remains unconcentrated, as demonstrated by its Herfindahl-Hirschman Index (HHI) for working gas storage capacity of 627 and deliverability HHI of 845,[18] each of which it argues are well below the Commission's 1,800 HHI threshold. Moreover, CNYOG contends that its study demonstrates that other factors, such as ease of entry and availability of replacement capacity, are also indicative of competitive market conditions.[19] CNYOG submits that an evaluation of these indicators demonstrates that it could not exercise market power as to storage services. Therefore, CNYOG concludes that its study shows, consistent with Commission precedent, that CNYOG should be authorized to charge market-based rates for interruptible park and loan services.

11. CNYOG states that, in response to a petition by Rager Mountain Storage Company LLC (Rager Mountain), the Commission has only recently considered whether an interstate natural gas storage provider located in Pennsylvania and authorized to

[15] 2001 Order, 94 FERC ¶ 61,194, at 61,705-07.

[16] *See* CNYOG Study, at 8 and 12-15.

[17] *Id.* at 17-20.

[18] *Id.* at 22.

[19] *Id*. at 24-30.

charge market-based rates for storage services should be authorized to provide interruptible park and loan services at market-based rates.[20] CNYOG contends that the Commission considered a market power study similar to the CNYOG study in granting Rager Mountain's requested authorization to charge market-based rates for interruptible park and loan services. CNYOG asserts that the Rager Mountain market power study considered exactly the same geographic market area as the CNYOG study – New York and Pennsylvania.[21] CNYOG also asserts that the Rager Mountain study considered the same storage facility alternatives as the CNYOG study. CNYOG points out that the Rager Mountain market power study differed from the CNYOG study in that it did not consider local production (or any other non-storage alternatives) as alternatives to natural gas storage services. CNYOG contends that its study is more comprehensive, because it provides a more complete analysis of competitive market conditions, while the Rager Mountain market power study is more conservative in this regard.

12. The Commission accepts the conclusion of CNYOG's market power study and finds that CNYOG will not be able to exercise market power as to interruptible park and loan services. We agree with CNYOG that when its study is modified to eliminate local production as an alternative to storage services this results in market shares of 7.09 percent for working gas and 6.61 percent for maximum daily deliverability, both of which are well below levels the Commission has accepted in other cases in granting market-based rate authorizations.[22] The corresponding market concentration HHI values are 2,091 for working gas and 2,248 for maximum daily deliverability,[23] which are very similar to the values the Commission accepted in *Rager Mountain*. Thus, even with the more conservative approach to market concentration employed by Rager Mountain, the market share and HHI measures CNYOG has derived confirm that CNYOG would not be able to exercise market power with regard to storage services or derivative interruptible park and loan services. The Commission notes that the HHI values are above the 1,800 threshold, but as we found in *Rager Mountain*:

> [T]he 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

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[20] Petition for Declaratory Order at 7 (citing *Rager Mountain*, 152 FERC ¶ 61,098 (2015)).

[21] *Id.* at P 10.

[22] CNYOG Study at 20.

[23] *Id.* at Attachment 3.

> 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.[24]

13. Further, as we found in *Rager Mountain*, [25] when the Commission considers other factors that might mitigate market power in the relevant market, we find no significant barriers to entry into the natural gas storage market in the New York and Pennsylvania regional market. Accordingly, consistent with our decision authorizing Rager Mountain to charge market-based rates for interruptible park and loan services, the Commission grants CNYOG's request for authorization to charge market-based rates for interruptible park and loan services.

C. Other Relevant Factors Mitigating Potential Market Power

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.[26] Further, since

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[24] *Rager Mountain*, 152 FERC ¶ 61,098.

[25] *Id*. at PP 13-14.

[26] *See Avoca Natural Gas Storage (Avoca)*, 68 FERC ¶ 61,045 (1994); *Steuben Gas Storage Co.*, 72 FERC ¶ 61,102 (1995), *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); *Tennessee Gas Pipeline Company*, 117 FERC ¶ 62,261 (2006); *Wyckoff Gas Storage Co. LLC,*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).

1994, the HHI index in the New York and Pennsylvania market area has decreased from 4,900[27] to 2,251,[28] demonstrating ease of entry into the market place.[29]

15. Nevertheless, the Commission will require CNYOG 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) CNYOG seeks to add storage capacity beyond the capacity authorized in this proceeding; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to CNYOG; or (d) CNYOG, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to CNYOG. Since these circumstances could affect its market power status, CNYOG is directed to 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 CNYOG.[30] The Commission also reserves the right to require an updated market power analysis at any time.[31]

D. <u>Tariff Provisions</u>

16. CNYOG proposes *pro forma* tariff records incorporating the new interruptible park and loan services, which are attached to the Petition in Exhibit B. Exhibit B includes both clean and blackline versions of the *pro forma* tariff records. Upon issuance of the declaratory order, CNYOG proposes to submit a filing pursuant to section 4 of the NGA to place the *pro forma* tariff records into effect prior to the date on which CNYOG begins to provide interruptible park and loan services.

17. The Commission finds the changes reflected in the *pro forma* tariff records acceptable and directs CNYOG to file actual tariff records not less than 30 days before

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[27] *Avoca*, 68 FERC ¶ 61,045 at 61,151.

[28] *UGI Storage Co.*, 133 FERC ¶ 61,073 at P 81.

[29] *See Rager Mountain Storage Company LLC*, 136 FERC ¶ 61,151, at P 44 (2011).

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

[31] *See Floridian Natural Gas Storage Co., LLC*, 124 FERC ¶ 61,214, at P 33 (2008).

the interruptible PAL service at market-based rates is to commence. As a reminder, CNYOG must comply with the Commission's electronic filing requirements set forth in Order No. 714[32] and Part 154 of the Commission's regulations.[33]

E. <u>Waiver of Cost-Based Regulations</u>

18. CNYOG states, in granting CNYOG authorization to charge market-based rates for storage services, the Commission granted certain waivers of various Commission regulations which are generally intended to ensure the availability of information necessary to determine cost-based rates.[34] Recognizing that this information is not needed for jurisdictional entities that do not charge cost-based rates, CNYOG states that the Commission routinely grants such waivers to independent storage companies authorized to charge market-based rates.[35] Therefore, CNYOG respectfully requests that the Commission continue the waivers originally granted to CNYOG under the 2001 Order, as modified by the MARC I Order.

19. In light of the Commission's approval of market-based rates for CNYOG's storage services, the cost related information required by the Commission regulations to determine cost-based rates is not relevant. Thus, consistent with findings in previous orders,[36] the Commission will grant CNYOG's request to continue the waivers granted in

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[32] *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

[33] 18 C.F.R. § 154.4 (2015).

[34] Petition for Declaratory Order at 11 (citing 2001 Order, 94 FERC ¶ 61,194, at 61,707). CNYOG states that those waivers were later modified when the Commission authorized CNYOG to build the MARC I Pipeline. *MARC I Order*, 137 FERC ¶ 61,121 at P 29 (finding the waiver not applicable to cost-based rate services provided by the MARC I Project, or the firm and interruptible wheeling services and requiring CNYOG to comply with the reporting requirement of Part 201 and section 260.2 of the Commission's regulations and submit its annual report (Form Nos. 2 and 2A) applicable to its cost-based rates)).

[35] *Id.* (citing *Rager Mountain*, 152 FERC ¶ 61,098 at PP 18-19; *D'Lo Gas Storage, LLC*, 140 FERC ¶ 61,182, at PP 41-42 (2012); *Leaf River Energy Center, LLC*, 125 FERC ¶ 61,131 at PP 49-52 (2008); *Golden Triangle Storage, Inc.*, 121 FERC ¶ 61,313, at PP 35-36 (2007)).

[36] *Id.* (citing *Orbit Gas Storage, Inc.*, 126 FERC ¶ 61,095 (2009); *Port Barre*, 116 FERC ¶ 61,052 at PP 33-34; *Liberty Gas Storage LLC*, 113 FERC ¶ 61,247, at PP 54-55 (2005)).

the 2001 Order, as modified by the MARC I Order. The Commission also grants waiver of section 157.14(a)(10), requiring an applicant to submit gas supply data, which does not pertain to natural gas storage service. Consistent with our findings in previous orders, there is no ongoing regulatory need to have cost-based financial statements prepared in accordance with the Commission's Uniform System of Accounts. Accordingly, the Commission waives the 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 waive the 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). The Commission notes that such waivers do not extend to the annual charge assessment (ACA).[37] Therefore, CNYOG 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.[38]

The Commission orders:

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

(B) The language proposed in the *pro forma* tariff records is accepted subject to CNYOG 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) CNYOG must notify the Commission within 10 days of acquiring knowledge of: (a) CNYOG 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 CNYOG; or (d) CNYOG or an affiliate's acquisition of an interest in, or being acquired by, an interstate pipeline connected to CNYOG. The notification shall include a detailed description of the new facilities and their relationship to CNYOG.

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[37] *See BGS Kimball Gas Storage, LLC*, 117 FERC ¶ 61,122, at P 49 (2006).

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

(D) Waiver of the Commission's cost-based regulations as discussed above is granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.