

155 FERC ¶ 61,165  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Arlington Storage Company, LLC

Docket No. CP13-83-000

ORDER GRANTING EXTENSION OF TIME

(Issued May 16, 2016)

1. On May 15, 2014, the Commission issued an order authorizing Arlington Storage Company, LLC (Arlington) to expand its Seneca Lake Storage Project, located in Schuyler County, New York.<sup>1</sup> The Certificate Order required that the authorized facilities be constructed and made available for service before May 15, 2016.<sup>2</sup> On January 28, 2016, Arlington filed a request for a two-year extension of time to complete construction and place the authorized facilities into service. As discussed below, we grant the requested extension of time.

**I. Background**

2. Arlington, a wholly-owned subsidiary of Crestwood Equity Partners LP, is a natural gas company organized and existing under the laws of Delaware and is a developer of underground natural gas storage facilities in New York.

3. On August 26, 2010, the Commission issued an order authorizing Arlington to acquire a depleted natural gas production field in Schuyler County, New York, and develop it for operation as the Seneca Lake Storage Project.<sup>3</sup> The storage facility has interconnections with the interstate pipeline systems operated by Dominion

---

<sup>1</sup> *Arlington Storage Company, LLC*, 147 FERC ¶ 61,120 (2014) (Certificate Order).

<sup>2</sup> *Id.* at Ordering Paragraph (E).

<sup>3</sup> *Arlington Storage Company, LLC*, 132 FERC ¶ 61,171 (2010).

Transmission, Inc. and Millennium Pipeline Company, LLC. The Seneca Lake Project has a storage capacity of 2.34 billion cubic feet (Bcf), which includes 1.45 Bcf of working gas, and maximum daily injection and withdrawal capabilities of 72,500 and 145,000 dekatherms (Dth) per day, respectively.

4. The May 15, 2014 Certificate Order authorized Arlington to expand the Seneca Lake Storage Project by converting two interconnected salt caverns previously used for liquefied petroleum gas storage to use for natural gas storage (Gallery 2 Expansion Project or project). The project will increase working gas capacity at the storage facility by approximately 0.55 Bcf, from 1.45 Bcf to 2.00 Bcf, and total gas storage capacity by approximately 0.75 Bcf, from 2.34 Bcf to 3.09 Bcf.<sup>4</sup> The Certificate Order required that the Gallery 2 Expansion Project facilities be constructed and made available for service within two years, i.e., by May 15, 2016.<sup>5</sup>

5. On January 28, 2016, Arlington filed a request for a two-year extension of time to complete the Gallery 2 Expansion Project. Arlington states that it has not proceeded with construction of the authorized facilities because its application for an underground storage permit has not yet been acted on by the New York State Department of Environmental Conservation (New York DEC).

## II. Comments

6. In response to Arlington's January 28, 2016 request for an extension of time, the Commission received over 250 comments opposing the extension. The majority of these comments focus on environmental and safety issues related to project construction and operation, and the effect of such issues on landowners, communities, tourism, and the economy in the Seneca Lake region. In particular, commenters express concern that underground storage of natural gas, especially in salt caverns, is inherently dangerous;

---

<sup>4</sup> Arlington did not seek authorization to increase its certificated maximum daily injection and withdrawal capabilities, which are 72,500 dekatherms (Dth) per day and 145,000 Dth per day, respectively. *Id.* P 4-5.

<sup>5</sup> Certificate Order, 147 FERC ¶ 61,120 at Ordering Paragraph (E). Ordering paragraph (E) established the two-year deadline in accordance with section 157.20(b) of the Commission's regulations, which states that "any authorized construction, extension, or acquisition shall be completed and in actual operation by applicant and any authorized operation, service, or sale shall be actually undertaken and regularly performed by applicant within (period of time to be specified by Commission in each order) from the issue date of the Commission's order issuing the certificate." 18 C.F.R. § 157.20(b) (2015).

that the project could adversely impact Seneca Lake, which serves as a source of drinking water for local residents, a destination for tourism and recreation, and a source of revenue for the state; and that methane emissions from natural gas storage contribute to climate change.

7. Many of the comments also state that Arlington has failed to demonstrate good cause for the Commission to grant an extension, alleging that Arlington has taken no meaningful steps toward construction and has failed to exercise diligence in obtaining an underground storage permit from the New York DEC. Commenters further assert that the market conditions underlying the Commission's assessment of need for the project have changed since the Certificate Order was issued in May 2014. In this regard, commenters assert that production from the Marcellus shale, declining natural gas prices, and the increasing cost of obtaining insurance for storage facilities have reduced the need for Arlington's expansion capacity and the likelihood that Arlington will go forward with the project. Several commenters point to the absence of price spikes to support their argument that the May 2014 Certificate Order's assessment of need for the project is no longer valid. Many commenters believe that Arlington is waiting for more favorable market conditions before it commences construction. They cite both Arlington's lack of progress and intention to hold another open season.

### **III. Discussion**

#### **A. Request for Extension of Time**

8. The Commission's certificate orders include completion deadlines because the information supporting its public convenience and necessity determinations goes stale with the passage of time.<sup>6</sup> The completion date specified in a certificate order provides what the Commission believes – based on its assessment of circumstances relevant to the specific project – to be a reasonable period of time for the project sponsor to conclude any necessary marketing efforts, complete construction, and make the project available

---

<sup>6</sup> See, e.g., *Iroquois Gas Transmission System, L.P.*, 104 FERC ¶ 61,307, at P 14 (2003):

Construction deadlines ... are routinely imposed on certificate application to ensure that the facts, analysis, and rationale regarding a particular proposal do not grow stale. If an application fails to construct the authorized facilities by the construction deadline, the certificate will lapse. However, to retain the flexibility to respond to the factual circumstances of each case, construction deadlines may be extended for good cause.

for service.<sup>7</sup> If a certificate holder files for an extension of time within a timeframe during which the environmental and other public interest findings underlying the Commission's authorization can be expected to remain valid, the Commission generally will grant an extension of time if the movant demonstrates "good cause."<sup>8</sup> As the Commission has explained, "good cause" can be shown by a project sponsor demonstrating that it made good faith efforts to meet its deadline but encountered unforeseeable circumstances, such as difficulties in obtaining deliveries of needed materials or the discovery of cultural remains on an approved right-of-way.<sup>9</sup> Here, Arlington states that it has not proceeded with construction because the New York DEC has not yet acted on Arlington's application for an underground storage permit. In this regard, Arlington states that the New York DEC cannot issue the permit until it has received a report from the State Geologist and that that position has been vacant since mid-2013.<sup>10</sup>

9. Many of the commenters, however, argue that Arlington has not made any efforts to go forward with its expansion project and assert the reason for the alleged inaction is because it is waiting to see if market demand for the expansion capacity develops. These commenters assert that Arlington has failed to make preparations for the commencement of construction or actively pursue an underground storage permit from the New York DEC. The commenters cite *Wyoming-California Pipeline Company (WyCal)*<sup>11</sup> and *Chestnut Ridge Storage LLC (Chestnut Ridge)*<sup>12</sup> as instances where the Commission

---

<sup>7</sup> *Chestnut Ridge Storage LLC*, 139 FERC ¶ 61,149, at P 11 (2012).

<sup>8</sup> Rule 385.2010(a) of the Commission's Rules of Practice and Procedure provides that the Commission may extend construction and other deadlines for good cause. 18 C.F.R. § 385.2010(a) (2016).

<sup>9</sup> *See, e.g., Chestnut Ridge Storage LLC (Chestnut)*, 139 FERC ¶ 61,149, at P 11 (2012) (deny request for extension of time).

<sup>10</sup> Arlington's February 16, 2016 Response to Comments at 3.

<sup>11</sup> *WyCal*, 70 FERC ¶ 61,041 (1995),

<sup>12</sup> *Chestnut Ridge*, 137 FERC ¶ 62,106 (2011), *reh'g denied*, 139 FERC ¶ 61,149 (2012).

either rescinded the certificate authority or denied a request for an extension of time when certificate holders had failed to construct the authorized projects in a timely manner.<sup>13</sup>

10. The circumstances here are unlike those in *WyCal* and *Chestnut Ridge*. For example, while similar to the situation here in that there were no precedent agreements for project service,<sup>14</sup> when Chestnut Ridge filed for an extension of its authorized two-year construction period, it still had not obtained the necessary property rights from landowners for its storage project. As the Commission explained in denying the requested extension:

[A]n issued certificate for a storage facility can constrain landowners within the certificated boundaries from pursuing activities that could prove incompatible with the project's construction or operation. Therefore, an extension of time which results in limitations in the use of a landowner's property might not be warranted unless the company can demonstrate credible prospects for its project's completion.

11. In this case, however, Arlington has all the necessary property rights for its project. Further, as discussed in Certificate Order, the Commission has found that construction activities and potential environmental impacts will be minimized by Arlington's conversion, to use for natural gas storage, of interconnecting caverns that already exist.<sup>15</sup>

12. With respect to *WyCal*, when the Commission rescinded *WyCal*'s certificate authorization to construct more than 1,000 miles of pipeline in several states, *WyCal* had neither commenced construction nor had it sought an extension of time.<sup>16</sup> While *WyCal*'s certificate authorizations had been granted under the Commission's then-effective optional certificate regulations, which assumed need for a project based on an applicant's willingness to assume the economic risks, the Commission emphasized that it "did conduct an extensive evaluation of the potential environmental impacts of the

---

<sup>13</sup> See comments filed separately in Docket No. CP13-83-000 by Earthjustice and Finger Lakes Wine Business Coalition on January 29, 2016.

<sup>14</sup> The Commission has found that good cause for an extension of time is not demonstrated solely by a company's expression of a preference, or even need, to put its project on indefinite hold until more favorable market conditions materialize.

<sup>15</sup> Certificate Order, 147 FERC ¶ 61,120 at P 18.

<sup>16</sup> *WyCal*, 70 FERC ¶ 61,041 at 61,130.

projects,”<sup>17</sup> and explained that its conclusions “at the time the certificates were issued that any adverse impacts could be adequately mitigated . . . were based upon the circumstances which existed over five years ago.”<sup>18</sup> As discussed below, the comments opposing Arlington’s requested extension raise environmental issues that were addressed in the certificate proceeding, and do not make any convincing arguments that the environmental findings in the EA are or will be stale before the extended May 15, 2018 deadline requested by Arlington.

13. While Commission policy only requires that a certificate holder have all necessary *federal* permits before it commences construction, we do not find Arlington’s decision, under the circumstances here, to attempt to accommodate the processes of the New York DEC with respect to its issuance of an underground storage permit, to be unreasonable. The commenters have provided no support for their allegations that Arlington has been less than diligent in their efforts before the New York agency. The Commission encourages project sponsors to cooperate with state and local agencies,<sup>19</sup> and providing more time for state and local agencies to act can be an appropriate basis for granting an extension of time.<sup>20</sup>

14. The commenters do contend that market conditions have changed to an extent that there is no longer any need or demand for Arlington’s expansion capacity. As the commenters note, at the time of the Certificate Order, Arlington had not yet entered into any precedent agreements for service using the proposed expansion capacity, representing only that it had received strong expressions of interest for the proposed storage capacity.<sup>21</sup> However, as the Commission discussed in Arlington’s first certificate proceeding, the Certificate Policy Statement eliminated the previous requirement that an

---

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> However, consistent with Commission policy, Environmental Condition No. 9 in the Appendix to the Certificate Order only required Arlington to document its receipt of all necessary federal permits and authorizations before requesting permission to commence construction.

<sup>20</sup> *See, e.g.*, March 25, 2015 letter order issued by Branch Chief 1, OEP’s Division of Pipeline Certificates in Docket No. CP09-19-000 *et al.* to grant request by Bobcat Gas Storage for two-year extension of time because it had not yet obtained permit for dewatering from the Louisiana Department of Natural Resources.

<sup>21</sup> Certificate Order, 147 FERC ¶ 61,120 at P 19.

applicant present precedent agreements to demonstrate the need for a project and established a new policy under which an applicant can rely on a variety of relevant factors to demonstrate need, including, but not limited to, precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market.<sup>22</sup> The Certificate Order's finding of need was not based on an assumption or requirement that Arlington would have contracts for the expansion capacity before it was allowed to commence construction (or even start operation). Rather, the Certificate Order took into account the location of Arlington's storage facilities in a competitive market area in which competitive alternatives exist, Arlington's assumption of all financial risk by agreeing to market-based rates,<sup>23</sup> Arlington's prior investment to secure all of the necessary property rights,<sup>24</sup> and the relatively minimal construction activities that would be necessary to convert the two existing, interconnected caverns for gas storage.<sup>25</sup> Based on these and other findings, the Commission concluded that, notwithstanding Arlington's lack of precedent agreements, "Arlington has demonstrated sufficient need for the project, given it will have no identifiable adverse impacts on existing customers, other pipelines, landowners, or communities."<sup>26</sup> Arlington states that it still believes there is sufficient customer interest to justify its expansion project, and it plans to hold another open season in the first half of 2016. As the commenters argue, notwithstanding our extension of time, it is likely Arlington will only commence construction if it determines that there is sufficient demand for the expansion capacity to justify the project's expense.

## **B. Environmental and Safety Concerns**

15. The commenters express concern that Arlington's Gallery 2 Expansion Project will result in adverse environmental impacts or pose safety risks. These comments relate

---

<sup>22</sup> *Arlington Storage Co., LLC*, 128 FERC ¶ 61,261, at P 8 (2009), citing Certificate Policy Statement, 88 FERC at 61,747. The Certificate Policy Statement also indicated that when a company already has the necessary property rights for a project and therefore will not need to rely on requested certificate authority to invoke eminent domain, the project generally "would not need any additional indicators of need ... ." Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,749.

<sup>23</sup> *Id.* P 17-18.

<sup>24</sup> *Id.* P 18.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* P 20.

to: (1) dangers associated with underground storage of natural gas in salt caverns; (2) potential impacts to Seneca Lake and the surrounding environment, including groundwater resources; (3) climate change; and (4) project-related effects on public health, safety, tourism, and the economy. Many of the comments state that if Arlington wishes to proceed with the project, the certificate order should be rescinded and Arlington should be required to restart the application process from the beginning.

16. While we address below certain information that the commenters assert has become available since the Certificate Order was issued, the commenters' arguments constitute a collateral attack on the Certificate Order by challenging the Commission's findings regarding the potential environmental impacts and safety risks of Arlington's expansion project that were addressed in the environmental assessment (EA) for Arlington's expansion project,<sup>27</sup> the May 15, 2014 Certificate Order,<sup>28</sup> and the

---

<sup>27</sup> Staff's EA for Arlington's expansion project was issued on September 13, 2013, in Docket No. CP13-83-000. The EA addressed issues raised by commenters, including air quality and noise impacts (section B.7.0); increased vehicle traffic (sections B.2.0 and B.6.3); the effects of the project on migratory birds (section B.4.1); potential spills from debrining the caverns and potential impact on groundwater and surface water (Seneca Lake) quality (section B.3.5); public health and safety including the safety of salt caverns for natural gas storage (sections B.1.3 and B.8.0); impact on the natural scenery and the impact on the local economy (section B.5.0); cumulative environmental impacts from existing underground natural gas and liquefied petroleum gas in the region (section B.9.0); and the need for a comprehensive alternative analysis, including renewable energy sources (section C).

<sup>28</sup> The Certificate Order addressed engineering issues raised by Gas Free Seneca regarding the age of the caverns to be converted for gas storage, the age of wells that penetrate the caverns, the Jacoby-Dellwig Fault and connection between Gallery 1 and Gallery 2, a previous cavern roof collapse in Cavern Well No. 30, the integrity of Gallery 2, and salt pillar thickness. 147 FERC ¶ 61,120 at PP 24-32. The Certificate Order also addressed comments on the EA related to: air quality, including climate change, and potential impacts on nearby vegetative communities and vineyards; cumulative impacts on air quality, noise, public health, tourism due to increased truck and rail traffic, and safety related to the combined operation of the Gallery 2 Project and the proposed Finger Lakes Project; geologic hazards associated with the proposed development of Gallery 2; water resource impacts associated with brine water disposal and stormwater; vegetation and wildlife impacts associated with invasive species and migratory birds; and alternatives, including the no-action alternative and other storage alternatives in the region. *Id.* PP 49-107. Prior to issuance of the Certificate Order on May 15, 2014, the Commission issued an order on October 8, 2013, directing Arlington

(continued...)

Commission's May 20, 2015 order that addressed Gas Free Seneca's request for rehearing of staff's notice that Arlington was cleared to commence construction.<sup>29</sup>

17. The information that the Tompkins County Environmental Management Council (Tompkins) and several individuals state or suggest was not available during the certificate proceeding relates to risks to the environment and public safety if gas were to leak from Arlington's storage facilities. Many commenters cite gas leaks from other underground gas storage facilities to support their argument that Arlington's gas storage operations present unacceptable risks to public safety and the environment. One individual cites an August 2014 quantitative risk analysis of compressed natural gas storage in Schuyler County, New York,<sup>30</sup> and a September 2013 earthquake that were not addressed in the EA or Certificate Order and contend they should be considered now in deciding whether to grant or deny Arlington's extension request. Many commenters that do not assert that there is any new information to be considered nevertheless urge the Commission to reopen the record for additional public comment.

---

to enter into a non-disclosure agreement with Gas Free Seneca and provide it with copies of geological and geophysical information that Arlington filed as privileged Critical Energy Infrastructure Information (CEII). The May 15, 2014 order also provided that Gas Free Seneca could file additional comments within 21 days after receipt of the privileged information. *Arlington Storage Company, LLC*, 145 FERC ¶ 61,025 (2013).

<sup>29</sup> No parties filed for rehearing of the Certificate Order authorizing Arlington's expansion project. However, Gas Free Seneca later filed requests for rehearing of staff's September 30, 2014 notice that Arlington was cleared to commence construction and the November 24, 2014 notice by the Office of the Secretary that rejected Gas Free Seneca's rehearing request as untimely. In an order denying rehearing issued on May 20, 2015, the Commission nevertheless addressed the substantive concerns raised by Gas Free Seneca, including issues related to cavern integrity and mitigation of risks to public safety; groundwater and surface water risks; construction procedures, mitigation measures, and incorporation of requirements into contracts and drawings; environmental compliance training, and required permits. *Arlington Storage Company, LLC*, 151 FERC ¶ 61,160 (2015). *Id.* PP 14-39.

<sup>30</sup> January 31, 2016 comments by Natalie J. Emlen, citing *Independent High-Level Quantitative Risk Analysis Schuyler County Compressed Natural Gas Storage*, D. Rob Mackenzie, M.D., August 25, 2014, <http://gasfreeseneca.com/wp-content/uploads/2014/09/Schuyler-County-Natural-Gas-Storage-QRA-082814.pdf>.

18. We recognize that environmental impacts are subject to change, and that the validity of our conclusions and environmental conditions cannot be sustained indefinitely. However, we do not believe that reconsidering our prior findings that the Gallery 2 Expansion Project is required by the public convenience and necessity in conjunction with this request for an extension of time is warranted by any changes in condition of fact or of law. The EA for Arlington's expansion project and the Certificate Order concluded that Arlington's project is technically sound and feasible, and that there will be no significant impact on environmental resources due to geologic hazards or from the geologic framework present in the Gallery 2 Project area.<sup>31</sup> In reaching this conclusion, the Certificate Order explains that cavern integrity for storage purposes is evaluated on an individual basis, taking into account, among other things, all geological information. Commission staff's evaluation of cavern integrity included analysis thoroughly addressing each of the risk factors associated with caverns depending on the characteristics cited by Tompkins, including the type,<sup>32</sup> age,<sup>33</sup> depth,<sup>34</sup> and bedded, folded, and faulted-nature<sup>35</sup> of the two salt caverns that Arlington will use for its Gallery 2 Expansion Project. Based on the findings in the EA and Certificate Order, there is no physical reason to conclude that the bedded salt caverns of Gallery 2 do not have a comprehensive integrity.<sup>36</sup>

19. Furthermore, the Certificate Order included engineering conditions, including requirements that Arlington conduct periodic assessments of all the cavern wells to ensure that cement/casing bonds have not been compromised (Engineering Conditions 4 and 5); monitor both galleries and the surface in and immediately surrounding the project for any gas loss (Engineering Condition 7); conduct a new sonar survey of Gallery 2, through all three cavern wells, to obtain the current size of the gallery, the size and shape of the rubble pile, and the shape of the roof around each well (Engineering Condition 3); and conduct annual inventory verification tests and, every 5 years, sonar surveys or other tests as approved by the Commission to monitor the caverns' size, shape, and roof to

---

<sup>31</sup> Certificate Order, 147 FERC ¶ 61,120 at PP 21 and 94.

<sup>32</sup> Certificate Order, 147 FERC ¶ 61,120 at P 30; EA at section B.1.0.

<sup>33</sup> Certificate Order, 147 FERC ¶ 61,120 at P 25.

<sup>34</sup> EA at section B.3.5.

<sup>35</sup> Certificate Order, 147 FERC 61,120 at PP 26-32, 85-89; EA at section B.1.3.

<sup>36</sup> Certificate Order, 147 FERC ¶ 61,120 at P 30.

ensure that the integrity of the caverns has not been compromised (Engineering Condition 5).<sup>37</sup>

20. While the cited August 2014 quantitative risk analysis of compressed natural gas storage operations in Schuyler County purports to find that Arlington's Gallery 2 Expansion Project carries an unacceptable risk of extremely serious consequences,<sup>38</sup> it is actually a generalized risk assessment of pipeline transportation and salt cavern storage of compressed natural gas and provides no new information specific to the safety of Arlington's project and facilities. The report acknowledges that the author "does not have the expertise to evaluate concerns, reassurances, rulings, or requirements" examined by the New York State Geologist with regard to underground storage.<sup>39</sup> The report does not alter or call into question the extensive findings in the September 2013 EA and Certificate Order, nor justify reconsideration of the findings in the underlying proceeding. Finally, the 2.0 earthquake in September 2013, near Lodi, New York, is not inconsistent with our analysis of geologic hazards, which examined seismic activity in the project area.<sup>40</sup>

21. Because we find that Arlington has demonstrated good cause, and based on the foregoing discussion, we will grant Arlington's requested two-year extension, until May 15, 2018.

---

<sup>37</sup> *Id.* PP 23-26.

<sup>38</sup> *Independent High-Level Quantitative Risk Analysis Schuyler County Compressed Natural Gas Storage*, at 9 (August 25, 2014).

<sup>39</sup> *Id.* at 6.

<sup>40</sup> Certificate Order, 147 FERC ¶ 61,120, at PP 77-94; EA at section B.1.3. The EA concluded that the project area has a low potential for seismicity, and noted that there have been five minor seismic events recorded in the area ranging from magnitude 2.4 to 2.9. The EA also found a two percent probability of experiencing a peak ground acceleration (PGA) of approximately three percent in 50 years; PGAs of between two and three percent are considered as having little to no potential for damage.

The Commission orders:

(A) Arlington is granted an extension of time until May 15, 2018, to construct and place the Gallery 2 Expansion Project facilities in service.

(B) All other conditions of the May 15, 2014 Certificate Order remain in effect.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.