

158 FERC ¶ 61,011  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Arlington Storage Company, LLC

Docket No. CP13-83-003

ORDER DENYING REHEARING

(Issued January 6, 2017)

**I. Introduction**

1. In a May 16, 2016 order,<sup>1</sup> the Commission granted Arlington Storage Company, LLC (Arlington Storage) a two-year extension of time to complete construction and place an expansion of its Seneca Lake Storage Project into service. Gas Free Seneca requests rehearing of the May 2016 Order. In its request for rehearing, Gas Free Seneca alleges that the Commission failed to consider critical safety concerns and new safety information. Gas Free Seneca also argues the Commission erroneously found good cause to grant the two-year extension of time. For the reasons below, we deny rehearing.

**II. Background**

2. On May 15, 2014, the Commission authorized expansion of Arlington Storage's previously-approved Seneca Lake Storage Project in Schuyler County, New York (Gallery 2 Expansion Project).<sup>2</sup> The expansion project involved converting two interconnected salt caverns previously used for liquefied petroleum gas storage to use for natural gas storage. The May 2014 Certificate Order required Arlington Storage to

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<sup>1</sup> *Arlington Storage Co., LLC*, 155 FERC ¶ 61,165 (2016) (May 2016 Order).

<sup>2</sup> *Arlington Storage Co., LLC*, 147 FERC ¶ 61,120 (2014) (May 2014 Certificate Order). The Commission initially authorized Arlington Storage to acquire the Seneca Lake Project on August 26, 2010. *Arlington Storage Co., LLC*, 132 FERC ¶ 61,171 (2010).

complete construction of the Gallery 2 Expansion Project and make it available for service within two years, i.e., by May 15, 2016.<sup>3</sup>

3. No party sought rehearing of the May 2014 Certificate Order. On October 31, 2014, however, Gas Free Seneca filed an untimely request for rehearing of Commission staff's subsequent September 30, 2014 notice to proceed with the expansion construction. On November 24, 2014, the Commission issued a notice rejecting Gas Free Seneca's request for rehearing as untimely and also explaining that, in any event, it amounted to an impermissible collateral attack on the May 2014 Certificate Order.<sup>4</sup> Gas Free Seneca sought rehearing of the November 2014 Notice, and on May 20, 2015, the Commission affirmed the determination that Gas Free Seneca's challenge to the notice to proceed was untimely.<sup>5</sup> In the May 2015 Rehearing Order, the Commission also engaged in a comprehensive discussion of the substantive safety-related issues raised by Gas Free Seneca, including, but not limited to, issues such as how Arlington Storage will "maintain the integrity of the salt caverns being used for gas storage and mitigate community risks related to such use of salt caverns;" "address groundwater and surface water risks;" and obtain a necessary permit from the New York Department of Environmental Conservation (New York DEC).<sup>6</sup>

4. On January 28, 2016, Arlington Storage requested a two-year extension of time to complete the Gallery 2 Expansion Project. Arlington Storage explained that it had not begun construction on the expansion project because the New York DEC had not acted on its application for an underground storage permit.<sup>7</sup>

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<sup>3</sup> *Id.*, ordering para. (E).

<sup>4</sup> *Arlington Storage Co., LLC*, 149 FERC ¶ 61,158 (2014) (November 2014 Notice).

<sup>5</sup> *Arlington Storage Co., LLC*, 151 FERC ¶ 61,160 (2015) (May 2015 Rehearing Order).

<sup>6</sup> *Id.* P 14.

<sup>7</sup> Arlington Storage January 28, 2016 Request for Extension of Time to Construct Jurisdictional Facilities.

### III. Analysis

#### A. The Commission carefully considered environmental and safety concerns throughout these proceedings.

5. Gas Free Seneca asserts salt caverns are known to present safety hazards that the Commission failed to address.<sup>8</sup> Gas Free Seneca also lists a number of potential safety hazards affecting storage field integrity that it contends the Commission ignored.<sup>9</sup> We disagree.

6. As previously explained, the May 2014 Certificate Order imposed numerous conditions to maintain storage cavern integrity, including conditions that require Arlington Storage to:

comply with maximum volumetric requirements and maximum and minimum operating pressures; conduct a mechanical integrity test to verify the lack of communication between caverns; periodically check the integrity of casing strings; conduct periodic sonar surveys of the caverns to monitor their dimensions, shape, and pillar thickness between openings; establish a subsidence monitoring network; have an emergency shutdown system in place; conduct leak detection tests and monitor surface areas in and around the storage facilities' boundaries to ensure that no gas is migrating out of the caverns; and file semi-annual reports with the Commission.<sup>10</sup>

7. Gas Free Seneca asserts that there is a very high rate of serious and extremely serious events at underground salt cavern storage facilities and thus the Commission should have performed a quantitative risk analysis based on historical safety performance. Gas Free Seneca attempts to bolster its assertions by citing the same

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<sup>8</sup> Gas Free Seneca Rehearing Request at 4-5.

<sup>9</sup> *Id.*

<sup>10</sup> May 2015 Rehearing Order, 151 FERC ¶ 61,160 at P 18. Additionally, the Environmental Assessment for the expansion project looked at the history of the particular location and concluded that future monitoring and additional staff mitigation measures would ensure that the proposed project would be constructed and operated safely. *See* September 13, 2013 Environmental Assessment at 41.

report (Mackenzie Report) it cited in its untimely October 31, 2014 rehearing request of the notice to proceed with construction.<sup>11</sup> While Gas Free Seneca acknowledges that the Mackenzie Report is a generalized study of salt cavern storage,<sup>12</sup> it nonetheless asserts that the study provides new information that requires reexamination of previous safety determinations.<sup>13</sup>

8. The Mackenzie Report relies on generalized data on pipeline and storage related accidents from the Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) website, the Energy Information Administration (EIA) website, and other publically accessible websites. The report sets forth a risk assessment matrix that categorizes pipeline and storage project risk by plotting the likelihood of an event associated with the project on the x-axis (ranging from very low to very high likelihood) and the magnitude of the event on the y-axis (ranging from not significant to extremely serious magnitude). The projects are then categorized as having "acceptable risk," meaning measures can be considered based on other considerations; "assessment range" risk, meaning measures must be considered; or "unacceptable risk," meaning measures must be taken to reduce the risk. Using general statistics on all natural gas pipelines and salt cavern storage facilities in the United States to estimate the likelihood and magnitude of an event associated with the Gallery 2 Expansion Project, the Mackenzie Report concludes Arlington Storage's project has an unacceptable risk of extremely serious consequences.

9. The Mackenzie Report does not provide any new information that changes or invalidates the Commission's conclusions regarding the safety of the Arlington Storage Project. The likelihood and magnitude classifications have no particular application to Arlington Storage's project.<sup>14</sup> Moreover, the likelihood and magnitude classifications

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<sup>11</sup> Gas Free Seneca October 31, 2014 Rehearing Request, Exhibit A, Basis for Vacating Notice to Proceed at 4 n.8. (citing *Independent High-Level Quantitative Risk Analysis Schuylers County Compressed Natural Gas Storage*, D. Rob Mackenzie, M.D., August 25, 2014 (Mackenzie Report), for the proposition that a "recent independent quantitative risk analysis that addressed those omissions found that the aggregate likelihood of a disaster of serious or extremely serious consequences within the county in the next twenty-five years associated with this project is more than 40 percent").

<sup>12</sup> Rehearing Request at 6-7.

<sup>13</sup> *Id.* at 8.

<sup>14</sup> As discussed above, the EA thoroughly considered environmental and safety issues throughout these proceedings. Moreover, the EA's analysis did not address storage fields generally, but specifically considered the geological environment

(continued ...)

are arbitrary; no explanation or analysis is given for why a particular type of project has a “medium” rather than a “low” likelihood of an event, and no explanation or analysis is given for a “serious” rather than a “moderate” magnitude. Finally, the underlying data used in the Mackenzie Report from PHMSA and EIA websites is not new data and has been available throughout these proceedings. There is no reason why the underlying data, and any analysis relying upon that data, could not have been submitted prior to issuance of the May 2014 Certificate Order.

10. Gas Free Seneca asserts that the proximity to Seneca Lake is a unique concern that has not been addressed.<sup>15</sup> Gas Free Seneca argues the Mackenzie Report quantitative risk analysis identifies “characteristics specific to Arlington’s project which in the historical record have been associated with a higher risk level than that of the typical salt cavern, such as the presence of bedded salt formations and irregular cavern shapes.”<sup>16</sup> Gas Free Seneca states that the quantitative risk analysis shows the risk of the project “may be somewhat higher than the calculated level.”<sup>17</sup> However, the May 2015 Rehearing Order specifically addressed the project’s proximity to Seneca Lake, in particular the assertion that the pressurization of the storage cavern could affect Seneca Lake’s persistently elevated chloride concentration.<sup>18</sup> The May 2015 Rehearing Order explained that Arlington Storage’s operation of the cavern would avoid fractures that had caused previous issues. Further, the May 2015 Order explained that those “fractures have healed as the result of the crystallization of halite in the fractures and the recrystallized halite is

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surrounding the storage field. EA at 9-11; May 15 Certificate Order, 147 FERC ¶ 61,120 at PP 23-32 (Engineering Issues) and PP 77-94 (Geologic Hazards). See also May 2015 Rehearing Order, 151 FERC ¶ 61,160 at P 20 (“Specifically, the May 15 Certificate Order addressed Gas Free Seneca’s arguments regarding potential seismic activity in the area, the proximity to Lake Seneca, the particular characteristics of salt and shale bedding planes of the formation in which Arlington’s salt caverns lie, the caverns’ irregular shapes and lack and stability in the size of the caverns.”).

<sup>15</sup> Rehearing Request at 7.

<sup>16</sup> *Id.*

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

<sup>18</sup> May 2015 Rehearing Order, 151 FERC ¶ 61,160 at P 23.

more resistant than the original salt to fracturing.”<sup>19</sup> Finally, the EA carefully considered the proximity of the storage project to Seneca Lake.<sup>20</sup> Thus, the Commission has particularly looked at the characteristics of the Gallery 2 Expansion Project.

11. Finally, no party challenged the May 2014 Certificate Order. Gas Free Seneca’s safety arguments therefore constitute a collateral attack on the Commission’s environmental analysis preceding the May 2014 Certificate Order, which thoroughly addressed safety concerns.

**B. The Commission had good cause to grant the two-year extension of time.**

12. The purpose of conditioning certificate authority with a deadline for completion of construction is to “diminish[] the potential that the public interest might be compromised by significant changes occurring between issuance of the certificate and commencement of the project.”<sup>21</sup> Gas Free Seneca, however, does not assert conditions have changed. Rather, Gas Free Seneca asserts that new information is available and that the legal landscape has changed. As explained above, the information relied upon by Gas Free Seneca is not new at all.

13. Gas Free Seneca also cites efforts by other agencies and branches of government to address various storage-related issues. Gas Free Seneca argues that legal developments, such as PHMSA proceedings to revise safety regulations, a White House interagency task force initiative, and proposed federal legislation represent dramatic factual changes that merit reevaluation of the project.<sup>22</sup> However, these are legal developments, not factual ones, and do not merit reevaluating the determinations in the May 2014 Certificate Order. Moreover, we can presume that application of modified regulations to address emerging issues or issues where science has advanced understanding will result in fewer environmental impacts.

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<sup>19</sup> *Id.*

<sup>20</sup> EA at 15-18.

<sup>21</sup> *Altamont Gas Transmission Co.*, 75 FERC ¶ 61,348, at 62,103 (1996).

<sup>22</sup> Rehearing Request at 9-11.

14. Commission regulations do not establish a particular time period to complete construction of a natural gas facility.<sup>23</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>24</sup> The May 2014 Certificate Order found that Arlington Storage's proposal was in the public interest and would not have a significant effect upon the environment.<sup>25</sup> Gas Free Seneca does not present any information that calls that finding into question.

15. Gas Free Seneca nevertheless claims that the lack of an underground storage permit from the New York DEC does not justify an extension of time because Arlington Storage could have taken other steps to move the New York DEC permit application forward.<sup>26</sup> Gas Free Seneca does not identify what steps Arlington Storage could or should have taken. According to Arlington Storage, it applied for the New York DEC underground storage permit in July 2010 and renewed its application in August 2011. Arlington Storage has limited ability to influence the state permit proceeding and cannot proceed with construction of the project under New York law until it receives the underground storage permit. Arlington Storage explained that the extra two years would give it additional time to pursue the New York DEC permit, or to take legal action. Given Commission policy of encouraging certificate holders to cooperate with state and local agencies,<sup>27</sup> we are reluctant to fault Arlington Storage for not taking legal action against the New York DEC in order to secure a permit sooner. This case would be different if the record showed that Arlington Storage had been dilatory before the New York DEC. For example, if Arlington Storage failed to submit necessary information to process the permit, we might take a different approach. Finally, the two-year extension granted in the May 2016 Order gives Arlington Storage the same two years it was

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<sup>23</sup> 18 C.F.R. § 157.20(b) (2016) (requiring, among other things, that authorized construction be completed and made available for service within the period of time to be specified by the Commission in each order).

<sup>24</sup> May 2016 Order, 155 FERC ¶ 61,165 at P 8.

<sup>25</sup> May 2014 Certificate Order, 147 FERC ¶ 61,120 at PP 20, 109.

<sup>26</sup> Rehearing Request at 2.

<sup>27</sup> *Tennessee Gas Pipeline Co., L.L.C.*, 156 FERC ¶ 61,157, at P 176 (2016).

granted in the May 2014 Certificate Order. Based on the record before us, we find that the May 2016 Order did not err by finding good cause to grant the two-year extension.

The Commission orders:

Gas Free Seneca's rehearing request is denied as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.