

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Saltville Gas Storage Company L.L.C. Docket No. RP05-157-000

ORDER ON COMPLIANCE

(Issued February 18, 2005)

1. On January 21, 2005, Saltville Gas Storage Company L.L.C. (Saltville) filed non-conforming negotiated rate service agreements, copies of the service agreements redlined to show differences from the *pro forma* service agreement contained in its FERC Gas Tariff, and a discussion of each deviating term in compliance with the Commission's June 14, 2004¹ and December 22, 2004 Orders² in Docket No. CP04-13-000, *et al.* Saltville requests that the Commission grant any waivers necessary to permit the tendered service agreements to be effective January 1, 2005. Saltville further requests that the Commission grant any waivers necessary to permit it to file six remaining service agreements, which it is currently negotiating, no later than February 21, 2005. Finally, to the extent necessary, Saltville requests approval of the contract rates it charged to its customers between November 22, 2004 and December 31, 2004.

2. The Commission accepts the filed service agreements to be effective January 1, 2005, subject to conditions and, for good cause shown, grants the waivers and authorizations requested by Saltville. This order is in the public interest because it promotes shipper flexibility without undue discrimination.

I. Background

3. Saltville is a limited liability company organized in August 2001 under the laws of the Commonwealth of Virginia to develop a natural gas salt cavern storage facility near Saltville, Virginia, which it constructed and placed into service in August of 2003. In an

¹ *Saltville Gas Storage Co., LLC*, 107 FERC ¶ 61,267 (2004).

² *Saltville Gas Storage Co., LLC*, 109 FERC ¶ 61,353 (2004).

order issued on September 11, 2003,³ the Commission reversed an earlier order that had granted Saltville a limited jurisdictional certificate as a Hinshaw pipeline, and found that Saltville was a natural gas company subject to the Natural Gas Act (NGA). Accordingly, as directed by the Commission, on November 10, 2003, Saltville filed an application in Docket Nos. CP04-13-000, CP04-14-000 and CP04-15-000 to apply, pursuant to section 7(c) of the NGA, for a blanket transportation certificate pursuant to Part 284, Subpart G of the Commission's regulations and a blanket construction certificate pursuant to Part 157, Subpart F of the Commission's regulations.

4. On June 14, 2004, the Commission issued an order in Docket No. CP04-13-000, *et al.*, granting the requested certificate authority.⁴ The June 14, 2004 Order also approved Saltville's request for negotiated rate authority, directed the rate design by which Saltville was to design its recourse rates and ordered Saltville to file its non-conforming service agreements. On July 14, 2004, Saltville requested rehearing of, among other things, the rate design ordered in the June 14, 2004 Order.

5. On August 2, 2004, Saltville tendered a filing to comply with the June 14, 2004 Order proposing a modified method of rate design for its initial rates. On November 22, 2004, the Commission granted rehearing and accepted the compliance tariff sheets, including *pro forma* service agreements, and the recourse rate tariff sheets, to be effective, subject to conditions, on November 22, 2004.⁵

6. Subsequently, on December 8, 2004, Saltville filed a motion requesting clarification of its service agreement filing requirement. Saltville requested that the Commission permit it a period of 60 days from the November 22, 2004 effective date of its rates and tariff (until January 21, 2005) to submit its negotiated rate and non-conforming service agreements associated with the service it provided prior to the effective date of its rates and tariff accepted by the Commission in its November 22, 2004 Order. Saltville observed that the Commission did not specify a time for Saltville to file any pre-existing service agreements. Saltville explained that it needed 60 days to afford sufficient time to work with its customers to minimize, to the extent possible, any deviations from the now-accepted *pro forma* service agreements contained in its tariff. Saltville noted that its existing contracts were entered into pursuant to pre-existing state commission and limited-FERC jurisdiction authorizations as a Hinshaw pipeline and

³ *Saltville Gas Storage Co., LLC*, 104 FERC ¶ 61,273 (2003).

⁴ *Saltville Gas Storage Co., LLC*, 107 FERC ¶ 61,267 (2004).

⁵ *Saltville Gas Storage Co., LLC* 109 FERC ¶ 61,200 (2004).

would need to be restated to conform to its new FERC tariff's form of service agreement. Saltville further explained that, given the Commission's rate and tariff rulings, it anticipated that most, if not all, of its contracts would be deemed negotiated rate agreements and would contain terms that deviated from the form of service agreements.

7. In an order issued on December 22, 2004, the Commission granted the request.⁶ The Commission stated that, when a pipeline plans to provide service pursuant to a negotiate rate agreement on a newly constructed pipeline, the Commission generally requires the pipeline to file either the negotiated rate contracts or numbered tariff sheets reflecting certain details of the contracts not less than 30 or more than 60 days prior to the commencement of service on the new facilities. The Commission found that the instant case did not lend itself to the general procedure because, among other things, Saltville had commenced service at its storage facilities prior to the approval of the new initial rates by the November 22, 2004 Order. The Commission stated:

[T]here are unique circumstances in this proceeding with respect to jurisdiction over Saltville. It had begun constructing its facilities pursuant to certificates issued by the Virginia State Corporation Commission, prior to receiving a limited jurisdiction certificate from this Commission as a Hinshaw pipeline, and before ultimately being required to file an application as a jurisdictional Part 284 pipeline after the Commission determined that Saltville no longer qualified as a Hinshaw pipeline. Since Saltville commenced service on its storage facilities prior to the November 22 [2004] Order's approval of its new initial rates, the generally applicable certificate condition with respect to filing negotiated rate contracts prior to commencing service is moot.⁷

8. Further, the Commission stated:

Given these unusual circumstances, we will grant Saltville's motion. Saltville and its customers could not initiate discussions with respect to their preexisting contracts without knowing what Saltville's new initial rate and tariff would require. Therefore, we find reasonable Saltville's request that it be given 60 days from the November 22, 2004 effective date of the new rates and tariff to file its negotiated rate and non-conforming contracts. This will allow Saltville sufficient time to come to an agreement with its customers with

⁶ *Saltville Gas Storage Co., LLC*, 109 FERC ¶ 61,353 (2004).

⁷ *Id.* at P 4 (2004).

respect to any revisions to their contracts necessitated by the newly approved initial rates and terms and conditions of service in Saltville's new tariff. For these reasons, we will require Saltville to file no later than January 21, 2005, its negotiated rate and non-conforming service agreements associated with the service agreements that it entered into prior to November 22, 2004.⁸

9. On January 21, 2004, Saltville tendered the instant filing consistent with the Commission's directives.

II. Public Notice and Interventions

10. Public notice of the instant filing was issued on January 27, 2005. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁹ No interventions or protests were filed.

III. Details of the Instant Filing

11. Saltville filed firm storage service agreements with Virginia Gas Distribution Company (VGDC), Sequent Energy Management, L.P. (Sequent), Oak Ridge Utility District (Oak Ridge), NJR Energy Services (NJR) and Public Service Company of North Carolina pursuant to its Rate Schedule FSS. The service agreements contain negotiated rate provisions as well as provisions that do not conform to the *pro forma* service agreement in Saltville's FERC Gas Tariff.

12. In addition to these firm storage agreements, Saltville included redline/strikeout versions of the service agreements comparing each executed service agreement to the Rate Schedule *pro forma* service agreement in Saltville's FERC Gas Tariff. Saltville also included in its filing a discussion and explanation of each term in the executed service agreements which deviates from the *pro forma* service agreement.

13. The Commission has reviewed the non-conforming aspects of the agreements that Saltville has filed and found that the deviations contained therein are permissible in that the non-conforming aspects of the filed agreements do not substantially affect the rights of other customers and reflect the unique circumstance of the instant transaction without presenting a substantial risk of undue discrimination. The Commission will, however, require several modifications. First, the service agreements for VGDC, Sequent, Oak Ridge and NJR do not contain an Exhibit A. Exhibit A of the *pro forma* service

⁸ *Id.* at P 5 (2004).

⁹ 18 C.F.R. § 154.210 (2004).

agreement contains the primary points of receipt and delivery and the service level quantities. Saltville is directed to file copies of the service agreements for these customers containing Exhibit A within 30 days of the date this order issues. Second, it appears that the NJR service agreement filed by Saltville is undated. Saltville is directed to file a dated copy of this agreement within 30 days of the date this order issues.

IV. Transition Period and Effective Date

14. Saltville states that its certificate of public convenience and necessity and initial rates became effective on November 22, 2004, but that it continued to provide service under its pre-existing service agreements from November 22, 2004 through December 31, 2004. Saltville further states that it believes this transition action is consistent with the Commission's November 22, 2004 and December 22, 2004 Orders. Saltville states that:

Although the effective rates charged to customers in this interim period [from November 22, 2004 to December 31, 2004,] are the same as the rates expressed in the revised contracts submitted herein, the rates in the Service Agreements have been restated to reflect space reservation charges, injection reservation charges, and withdrawal reservation charges. To the extent that the Commission deems such authorization necessary, Saltville requests approval of the rates charged to its customers during this transitional period from November 22, 2004 to December 31, 2004.¹⁰

15. In addition, Saltville requests that the Commission grant waiver of the notice requirement contained in 18 C.F.R. §154.207 (2004) of the Commission's regulations in order to permit the tendered service agreements to become effective as of January 1, 2005.

16. As noted above, the Commission has previously recognized the unique nature of this proceeding. Although the November 22, 2004 Order established November 22, 2004 as the effective date of the initial rates and tariff provisions authorized by its order, the December 22, 2004 Order permitted Saltville 60 days from the November 22, 2004 Order to negotiate its revised service agreements because Saltville and its customers could not initiate discussion with respect to any revisions to their preexisting contracts without knowing what Saltville's initial tariff and rates would require. According to Saltville, during this period, Saltville continued to charge its preexisting rates pursuant to the terms of its preexisting service agreements.

¹⁰ Docket No. RP05-157, January 21, 2005 Transmittal Letter at p.7.

17. In light of the unique circumstances of this proceeding, and the fact that no party has protested the continued application of the preexisting rates and service agreements beyond the effective date of the initial rate and tariff during the period from November 22, 2004 to December 31, 2004, the Commission will grant waiver of its November 22, 2004 and December 22, 2004 Orders and Commission regulations to the extent necessary to permit the continued use of the preexisting rates and service agreements during this period. Further, for the same reasons, the Commission will waive its notice requirements and the prior orders in this proceeding to the extent necessary to permit the instant service agreements to become effective as of January 1, 2005, as requested by Saltville.

V. Remaining Service Agreements

18. Saltville states that it is continuing to discuss six remaining agreements with its customers and expects to execute the new agreements in the near future. Saltville requests that the Commission grant it an additional 30 days, until February 21, 2005, to file its remaining service agreements. Based upon Saltville's representations that it continues to pursue the completion of the remaining agreements and expects to conclude its discussions in the near future, the Commission grants Saltville's request to extend the time to file the remaining service agreements until February 21, 2005.

The Commission orders:

(A) The service agreements tendered in the instant filing are accepted effective January 1, 2005, subject to the conditions discussed in the body of this order and the Ordering Paragraphs below.

(B) Within 30 days of the date of this order, Saltville must file revised agreements reflecting the changes discussed above.

(C) Waiver of the Commission's orders and regulations is granted to the extent discussed above, and the date Saltville must file its remaining service agreements is extended to February 21, 2005.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.