110 FERC ¶61,324
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Saltville Gas Storage Company L.L.C. Docket No. RP05-157-001

ORDER ON NEGOTIATED RATE AGREEMENT COMPLIANCE FILING

(Issued March 24, 2005)

1. On February 22, 2005, Saltville Gas Storage Company L.L.C. (Saltville) filed negotiated rate service agreements and a discussion of each deviating term from its Form of Service Agreement. The agreements were filed in compliance with the Commission's June 14, 2004[1] and December 22, 2004 Orders[2] in Docket No. CP04-13-000, *et al*. and its February 18, 2005 Order in the captioned docket.[3] Saltville requests that the Commission grant any waivers necessary to permit the six firm service agreements to be effective January 1, 2005. Saltville further requests that the Commission grant any waivers necessary to permit the four interruptible service agreements to be effective November 22, 2004.

2. For good cause shown, the Commission grants the waivers requested by Saltville and accepts the proposed firm service agreements to be effective January 1, 2005, subject to conditions and accepts the proposed interruptible service agreements to be effective November 22, 2004, subject to conditions, as discussed below. This order is in the public interest because it provides rate certainty to Saltville's customers.

Background

3. Saltville is a limited liability company that placed a natural gas salt cavern storage facility into service in August of 2003. On September 11, 2003, 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

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[1] *Saltville Gas Storage Co.*, L.L.C., 107 FERC ¶ 61,267 (2004).

[2] *Saltville Gas Storage Co.*, L.L.C., 109 FERC ¶ 61,353 (2004).

[3] *Saltville Gas Storage Co.*, L.L.C., 110 FERC ¶ 61,174 (2005).

20050324-3024 Issued by FERC OSEC 03/24/2005 in Docket#: RP05-157-001

Natural Gas Act (NGA).[4] On June 14, 2004, the Commission granted NGA certificate authority for Saltville's facility, granted Saltville's request for negotiated rate authority, and directed Saltville to file its service agreements.[5]

4. On November 22, 2004, the Commission accepted Saltville's compliance filing, including *pro forma* service agreements, to be effective on November 22, 2004, subject to conditions. Subsequently, Saltville requested that the Commission permit it until January 21, 2005 to submit its negotiated rate and non-conforming service agreements associated with the service it provided prior to the November 22, 2004 effective date of its rates and tariff. Saltville argued that it needed additional time to negotiate with its customers to minimize deviations from the Form of Service Agreements contained in its tariff. On December 22, 2004, the Commission granted the request and permitted Saltville until January 21, 2005, to file its negotiated rate and non-conforming service agreements entered into prior to November 22, 2004.[6]

5. On January 21, 2005, Saltville filed certain negotiated rate agreements consistent with the Commission's directives and requested waivers to permit the agreements to be effective January 1, 2005. Saltville also requested waivers to permit it to delay its filing of six remaining firm service agreements. On February 18, 2005, the Commission accepted the service agreements. The Commission stated that given the unique circumstances of this proceeding, it would permit the service agreements to be effective January 1, 2005, subject to conditions. The Commission also permitted Saltville until February 21, 2005 to file its remaining service agreements.[7]

6. The instant firm service agreements are the firm agreements that Saltville was granted additional time to file by the February 18, 2005 Order. Saltville also determined on its own motion to file four interruptible contracts that it states contain negotiated rates as well as non-conforming terms. Saltville states that because the form of these interruptible agreements follows the form of its *pro forma* service agreements closely it filed the original agreements.

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[4] *Saltville Gas Storage Co.*, L.L.C., 104 FERC ¶ 61,273 (2003).

[5] *Saltville Gas Storage Co.*, L.L.C., 107 FERC ¶ 61,267 (2004).

[6] *Saltville Gas Storage Co.*, L.L.C., 109 FERC ¶ 61,353 (2004).

[7] *Saltville Gas Storage Co.*, L.L.C., 110 FERC ¶ 61,174 (2005).

20050324-3024 Issued by FERC OSEC 03/24/2005 in Docket#: RP05-157-001

Public Notice and Interventions

7. Public notice of the instant filing was issued on March 2, 2005. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[8] No interventions or protests were filed.

Details of the Instant Filing

8. Saltville filed six firm storage service agreements. They consist of two agreements each with Carolina Power & Light Company (CP&L) and Elk River Public Utility District (Elk River) and one agreement each with NUI Energy Brokers, Inc. (NUIEB), and Washington Gas Light Company (WGL). In addition, Saltville also filed interruptible storage service agreements with Constellation Energy Commodities Group, Inc. (Constellation), Duke Energy Marketing America, L.L.C. (DEMA), and Eagle Energy Partners I, L.P. (Eagle) and an interruptible loan service agreement with Constellation. The service agreements contain negotiated rate provisions as well as provisions that do not conform to the Form of Service Agreements in Saltville's FERC Gas Tariff.

9. Saltville included redline/strikeout versions of the service agreements comparing each executed service agreement to the Form of Service Agreement contained 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 Form of Service Agreement.

Discussion

10. The Commission accepts Saltville's agreements and, with exceptions as discussed below, finds that any deviations from the Form of Service Agreement presented by these agreements are permissible.

Minimum Quality Standard

11. Article II, section 2.2 of the Constellation ILS and ISS agreements, the DEMA ISS agreement, and the Eagle ISS agreement contains a requirement that the gas meet certain tariff minimum quality specifications. However, the Form of Service Agreement requires that the gas must meet certain tariff minimum quality specifications "as amended from time to time". The quoted language was deleted from these agreements and, therefore, customers taking service under these agreements would not be required to meet any changed specifications, as other customers would. This represents a material deviation that poses a substantial risk of undue discrimination. Accordingly, Saltville must either revise the Constellation, DEMA and Eagle agreements to include the Form of

[8] 18 C.F.R. § 154.210 (2004).

Service Agreement requirement to comply with amendments to the tariff minimum quality specifications or modify its tariff to remove the requirement from its Form of Service Agreement so that the provision is available to all shippers.

ISS Service -- Maximum Loan Quantity

12. Exhibit A, section II of both the Constellation and Eagle ISS Service Agreements contain a reference to a Maximum Loan Quantity. This appears to be an error because these are interruptible storage agreements rather than interruptible loan agreements. Saltville should either explain this discrepancy or file corrected agreements within 30 days of the date this order issues to correct the foregoing reference.

Restriction of MDWQ or MDIQ

13. Article I, section 1.2 of both Elk River agreements provides that Saltville may not restrict Elk River's Maximum Daily Withdrawal Quantity (MDWQ) or Maximum Daily Injection Quantity (MDIQ) to a fraction per hour. Saltville argues that this provision reflects the agreement made between Saltville and Elk River prior to the effectiveness of Saltville's FERC Gas Tariff. Article 8.1 of the General Terms and Conditions of Saltville's tariff provides that Saltville will not be required to receive gas for injection, or withdraw and deliver gas on an hourly basis at rates of flow in excess of 1/24 of a customer's MDIQ or MDWQ unless otherwise specified in the service agreement. While the tariff permits injections and withdrawals other than 1/24 of the MDIQ or MDWQ per hour, there is no provision in the Form of Service Agreement for this option. Saltville is therefore directed to either eliminate this provision from the Elk River service agreements or revise its Form of Service Agreements to provide for this option by placing blank spaces for the hourly flow rates.

14. Article I, section 1.3 of both Elk River agreements provides that Saltville will not reduce Elk River's MDWQ as storage inventory is reduced. Saltville argues that this provision reflects the agreement made between Saltville and Elk River prior to the effectiveness of Saltville's FERC Gas Tariff. Article 2.1(b) of Saltville's FSS Rate Schedule states that Saltville will withdraw and deliver up to the customer's MDWQ provided that the customer has a quantity of gas equal to or greater than the MDWQ in storage. The provisions in Elk River's service agreements could be interpreted to mean that Elk River is not subject to the requirement to have at least its MDWQ amount of gas in storage in order to withdraw its MDWQ. The Commission finds that this provision presents a significant risk of undue discrimination. Saltville is therefore directed to either eliminate this provision from its agreements or revise its Form of Service Agreements to offer this option to all of its customers.

Hourly Loan Quantity

15. Exhibit A, section II of the Constellation ILS service agreement proposes the maximum hourly loan quantity to be 1,500 MMBtu/hour, which is 10 percent of the 15,000 MMBtu/day maximum daily return and maximum daily loan quantities. Exhibit A, section II of the Constellation ISS service agreement proposes the maximum hourly loan quantity to be 1,000 MMBtu/hour, which is 10 percent of the 10,000 MMBtu/day maximum daily return quantity and 5 percent of the 20,000 MMBtu/day maximum daily loan quantity. As stated above, section 8.1 of Saltville's tariff provides that hourly injections and withdrawals will not exceed 1/24 (4.16 percent) of the maximum daily injections and withdrawals unless specified in the service agreement. The Form of Service Agreements do not contemplate a modified hourly injection and withdrawal rate. Therefore, other customers are denied the right to modify their hourly injections and withdrawals, which may present an undue risk of discrimination. Saltville is therefore directed to either eliminate this provision from the agreements or revise its Form of Service Agreements to offer a modification of its hourly injections and withdrawals to all of its customers.

Extension of Primary Term

16. Section 4.3 of the WGL firm service agreement provides that WGL may extend the primary term of the agreement for four years upon written notification to Saltville. There is no provision in Saltville's FSS Rate Schedule Form of Service Agreement for a four year extension of the primary term. Section 4.1 of the FSS Rate Schedule Form of Service Agreement provides for extensions of one year after the primary term unless either party gives written notice to the other party prior to the end of the primary term. Saltville is therefore directed to either eliminate this provision from its WGL service agreement or revise its Form of Service Agreements to place blank spaces for the length of the extended term.

Terms of Loan Agreement

17. Article II, section 2.4 of the ILS service agreement provides that Constellation must return loan quantities no sooner than five days and no later than twenty days. Article 2 of the ILS Rate Schedule provides that the customer will return the borrowed quantities of gas at the agreed upon times specified in the service agreement. While the tariff allows the parties to specify a time frame for return of the gas, there is no provision in the Form of Service Agreement for this option. Saltville is therefore directed to either eliminate this provision from the Constellation service agreements or revise its Form of Service Agreements to provide for this option by placing blank spaces for the minimum and maximum return dates.

18. Article II, section 2.3 of the Constellation ILS service agreement provides that Constellation must maintain an ISS balance of at least 30,000 dekatherms (which is the maximum loan quantity) prior to requesting service under the agreement. No minimum ISS balance is required under the ILS Form of Service Agreement. The above modification is a material deviation from the Form of Service Agreement which may present an undue risk of discrimination. Saltville is therefore directed to either eliminate this provision from its Constellation ILS agreement or revise its Form of Service Agreement to make this provision applicable to all of its customers.

Miscellaneous Provisions

19. Saltville points out that in section II.2 of Exhibit A, to its WGL firm service agreement, it inadvertently omitted the month of April from the months for which service will be provided. Saltville proposes to submit a corrected service agreement as part of a further compliance filing in the instant docket. Saltville is directed to file a corrected service agreement within 30 days of the date this order is issued.

20. Secondly, in section 5.1 of the Constellation ILS Service Agreement, a reference to the ILS Rate Schedule was removed and replaced by an incorrect reference to the ISS Rate Schedule. Saltville should file a corrected agreement within 30 days of the date this order issues.

Effective Date of Firm Service Agreements

21. Saltville requests that the Commission grant waiver of section 154.207 of its regulations and of any other policies and regulations necessary to permit the six firm service agreements filed in the instant docket to become effective on January 1, 2005. Saltville states that this is the same effective date the Commission approved for the firm service agreements filed in Docket No. RP05-157-000. The agreements tendered in the instant docket are, like the firm agreements which were the subject of the February 18 Order, renegotiated versions of agreements which existed prior to the November 22, 2004 effective date of Saltville's rates. Therefore, for the same reasons delineated in the February 18, 2004 Order, the Commission will grant waiver to permit the instant firm service agreements to become effective as of January 1, 2005.

Effective Date of Interruptible Service Agreements

22. Saltville states that, while all of the interruptible service agreements included in the instant filing were executed prior to November 22, 2004, its FERC Gas Tariff did not become effective until that date.[9] Therefore, Saltville requests that the Commission grant

[9] These are the interruptible storage service agreements with Constellation, DEMA and Eagle, all pursuant to the ISS Rate Schedule and the interruptible loan service agreement with Constellation pursuant to the ILS Rate Schedule.

20050324-3024 Issued by FERC OSEC 03/24/2005 in Docket#: RP05-157-001

waiver of its regulations to permit these four interruptible service agreements to become effective on November 22, 2004, concurrently with the effectiveness of its FERC Gas Tariff. It is not clear why Saltville deferred filing the subject interruptible service agreements since these agreements were executed prior to November 22, 2004 and could have been filed to be in effect upon the issuance of its NGA certificate authorization, which was effective as of that date. However, consistent with the November 22, 2004 Order in this proceeding, and based upon the fact that no party has protested Saltville's filing, the Commission will waive its notice requirements to the extent necessary to permit the instant interruptible service agreements to become effective as of November 22, 2004, as requested.

The Commission orders:

(A) The firm 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) The interruptible service agreements tendered in the instant filing are accepted effective November 22, 2004, subject to the conditions discussed in the body of this order and the Ordering Paragraphs below.

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

(D) Waiver of the Commission's regulation is granted to the extent discussed above.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.