

143 FERC ¶ 61,044  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

Northern Natural Gas Company

Docket No. CP10-449-001

ORDER DENYING REHEARING

(Issued April 18, 2013)

1. On March 30, 2011, the Commission issued an order denying Northern Natural Gas Company's (Northern) request for authorization to charge market-based rates pursuant to the provisions of section 4(f) of the Natural Gas Act (NGA)<sup>1</sup> for firm storage services to be rendered from Northern's proposed Redfield Expansion 2011 project at its Redfield Storage facility in Iowa.<sup>2</sup> The March 30 Order rejected the request, finding that Northern's proposal did not create "new storage capacity" and that Northern had failed to demonstrate that the requested market-based rates are "in the public interest and necessary" to encourage the construction of needed storage capacity. On April 8, 2011, Northern filed a request for rehearing of the March 30 Order asserting that the Commission erroneously denied its request for authority to charge market-based rates. As discussed below, this order denies rehearing.

**Background**

2. The March 30 Order granted Northern a certificate of public convenience and necessity to construct minor facilities and to add base gas at its existing Redfield Storage facility, but denied Northern's request for authority to provide any resulting incremental firm storage services at market-based rates because Northern, an established company with market-power, had failed to demonstrate that its project qualified for market-based rates. Specifically, the March 30 Order found that Northern's proposal

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<sup>1</sup> 15 U.S.C. § 717(c)(f)(1) (2006).

<sup>2</sup> *Northern Natural Gas Company*, 134 FERC ¶ 61,247 (2011) (March 30 Order).

did not satisfy the requirements of section 4(f) and implementing regulations<sup>3</sup> that market-based rates be shown to be in the public interest and necessary to encourage the construction of new storage capacity.

3. The March 30 Order concluded that Northern's self-serving assertion that it would not build the facilities without market-based rates was not sufficient to satisfy the statutory requirement that such rates must be necessary to encourage the construction of the facilities. The March 30 Order concluded that the project was relatively low-risk, finding that it relied on existing capacity previously added under Northern's blanket certificate authority in Docket No. CP10-37-000, that the base gas risk associated with the project was minimal, that there was no need for outside financing, and that the physical facilities which needed to be constructed for the project were minimal. The March 30 Order noted that neither Northern's open season, nor its filing included cost-based information or a derivation of the market-based rate; thus, the Commission could not determine whether there was any potential for there being long-term customers willing to pay cost-based rates sufficient to support the project.

4. On rehearing, Northern asserts that the Commission erred in determining that Northern had not satisfied the statutory criteria for being granted market-based rates under section 4(f) of the NGA. Specifically, Northern contends that the Commission failed to appropriately consider the risks associated with the purchase of base gas for the proposed project and that the Commission arbitrarily ignored its own precedent in faulting Northern for failing to include a cost-based option in its open-season. Further, Northern contends that the Commission's action in denying Northern authority to charge market-based rates for the proposed storage project was inconsistent with Congressional intent that it encourages the development of needed storage.

### **Discussion**

5. Section 4(f) of the NGA provides in pertinent part that

(1) In exercising its authority under the Act . . . , the Commission may authorize a natural gas company . . . to provide storage and storage-related services at market-based rates for new storage capacity related to a specific facility placed in service after the date of enactment of the Energy Policy Act of 2005, notwithstanding the fact that the company is unable to

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<sup>3</sup> 18 C.F.R. § 284.505 (2010). These regulations were issued in *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220, *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

demonstrate that the company lacks market power, if the Commission determines that –

(A) market-based rates are in the public interest and necessary to encourage the construction of storage capacity in the area needing storage services; and

(B) customers are adequately protected.<sup>4</sup>

6. As the March 30 Order describes, section 4(f) provides that the Commission “*may* authorize” an interstate pipeline to charge market-based rates for storage services notwithstanding the fact that the company has market power. However, “[i]t is significant that the Commission’s grant of market-based storage rates pursuant to this provision is discretionary.”<sup>5</sup> An interstate pipeline is not entitled to charge market-based rates for its storage services even if all of the statutory criteria are met.<sup>6</sup> Therefore, we reject Northern’s contention that the Commission’s action in denying Northern authority to charge market-based rates for any additional increment of firm storage service proposed in this proceeding to be provided from its existing Redfield Storage facility is contrary to the intent of Congress. Moreover, as discussed in the March 30 Order and below, Northern’s proposal in this docket fails to satisfy the statutory criteria.

#### **A. Requirement of New Storage Capacity**

7. The first requirement for market-based rate authority under section 4(f) is that there be “new” storage capacity. The March 30 Order concluded that Northern’s proposal fails to meet this essential component because it does not create any working gas storage capacity above Northern’s currently-certificated working gas level.<sup>7</sup>

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<sup>4</sup> 15 U.S.C. § 717(c)(f)(1) (2006).

<sup>5</sup> March 30 Order, 134 FERC ¶ 61,247 at P 19.

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

<sup>7</sup> March 30 Order, 134 FERC ¶ 61,247 at P 24. The Commission found in another Northern proceeding that the storage capacity for which market-based rates under section 4(f) are being sought must be new. *See Northern Natural Gas Co.*, 133 FERC ¶ 61,210 (2010), *reh’g denied*, 135 FERC ¶ 61,085 (2011), *aff’d Northern Natural Gas Co. v. FERC*, 700 F.3d 11 (D.C. Cir. 2012). (“It seems obviously reasonable as a general matter that a special benefit aimed at encouraging an investment can perform that function only with respect to investments not yet made when the favorable treatment is

(continued...)

Northern does not dispute that conclusion, but argues that its investment in the additional amount of base gas necessary to make the existing capacity available for firm (as opposed to interruptible) service is sufficient to meet the statutory requirement. In affirming the Commission's interpretation that the requirements for market-based rates under NGA section 4(f) cannot be satisfied with respect to capacity that has already been constructed, the court in *Northern Natural Gas Co. v. FERC* did observe that “. . . it is possible that new (previously unforeseeable) circumstances will arise requiring heavy additional investment . . . [that in some cases] might qualify as the sort of investment that market rates would be ‘necessary to encourage.’”<sup>8</sup> That, however, is not the case here. Northern clearly recognized that there would be a need for additional investment in base gas at the time it utilized its blanket certificate authority to add the capacity at issue, stating that the capacity would be offered for interruptible storage service “until such time as the base gas requirement is determined and finalized.”<sup>9</sup> Nevertheless, Northern chose to proceed and construct the capacity under its blanket certificate authority (which requires the assessment of a rolled-in, cost-based rate), rather than file a case-specific application indicating that it believed that market-based rates were necessary for the project to ultimately go forward.<sup>10</sup> Moreover, as found in the March 30 Order and discussed below, the Commission does not believe that market-based rates are in the public interest or necessary to encourage the level of investment involved in this proposal.

**B. Requirements that Market-Based Rates be in the Public Interest and Necessary to Encourage Construction**

8. Regarding the requirement that market-based rates be found to be necessary to encourage construction of the storage capacity, Northern asserts that the Commission improperly gave no weight to Northern's business judgment that it needed to receive authority to charge market-based rates in order to proceed with the project. The

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promised. How can a benefit be an incentive to specific conduct if the conduct has already occurred?” 700 F.3d 11 at 14.)

<sup>8</sup> 700 F.3d 11 at 15.

<sup>9</sup> Prior Notice Request in Docket No. CP10-37-000, at n.14.

<sup>10</sup> See *Northern Natural Gas Company*, 120 FERC ¶ 61,031 (2007), where Northern filed an application for authority to increase the certificated capacity of the Redfield Storage facility by 2.0 Bcf and to utilize the incremental capacity to provide interruptible service pending approval of subsequent application, wherein it was seeking authority to provide service on a firm basis at market-based rates pursuant to the provisions of NGA section 4(f).

Commission did consider Northern's position regarding the necessity for market-based rates, but declined to defer to it. Northern argues, in essence, that a company satisfies its burden of demonstrating that market-based rates are *necessary* to encourage the construction of storage capacity by filing its application requesting authority to charge such rates – if the company did not judge the rates to be necessary, it would not have asked for them. Northern maintains that it went beyond that, demonstrating that the proposed project included “substantial risk” related to “the obligation to purchase an unknown amount of base gas at an unknown price,”<sup>11</sup> but essentially asserts that the Commission cannot reasonably challenge Northern's judgment of what constitutes an acceptable business risk. In other words, a company's decision that it won't proceed without market-based rates is conclusive as to the statutory requirement that such rates are necessary.

9. We disagree. Section 4(f) does not establish a presumption that market-based rates are appropriate for all instances where additional storage capacity is needed. Further, in adopting regulations implementing section 4(f), the Commission specifically declined to establish a presumption that new storage capacity will not be built in the absence of market-based rate authorization.<sup>12</sup> While it is Commission policy to give significant weight to certain determinations by natural gas companies regarding the need for additional infrastructure,<sup>13</sup> we cannot base a decision that it is in the public interest to allow an entity with market power to nevertheless charge market-based rates on the

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<sup>11</sup> Request for Rehearing at 3.

<sup>12</sup> *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,200, *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006), Order No. 678, FERC Stats. & Regs. ¶ 31,200 at P 130.

<sup>13</sup> For example, Northern was authorized to construct the incremental capacity for which it is now seeking market-based rates under our blanket certificate program, which allows the construction of eligible facilities without case-specific Commission authorization. Similarly, the March 30 Order authorized Northern to construct its proposed facilities and render firm storage service at cost-based rates because the Commission found, pursuant to the Certificate Policy Statement, that a business decision by Northern to proceed with the project without subsidies from existing customers would be sufficient (upon satisfaction of the other criteria) to support a finding that the project was required by the public convenience and necessity.

company's own determination that such an incentive is indeed *necessary* (as opposed to highly desirable).<sup>14</sup>

10. Northern argues that the Commission's decision that market-based rates are not necessary to encourage the construction of its proposed project was arbitrary and capricious in light of the Commission's previous grant of section 4(f) market-based rate authority for service from Northern's 2008 FDD Expansion of the Redfield Storage facility.<sup>15</sup> Specifically, Northern argues that because the Commission accepted "the difficulty in determining the volume and price of base gas" as an element of risk sufficient to justify market-based rates for the 2008 FDD Expansion, it is compelled to reach the same conclusion with respect to the Redfield Expansion 2011 project. Northern characterizes the distinction the Commission draws between the *level* of risk associated with each project as "meritless," suggesting, perhaps, that the Commission is required to approve market-based rates for all but totally risk-free storage projects.<sup>16</sup> Again, we disagree.

11. We do not dispute that the requirement to acquire base gas is a risk element associated with Northern's proposal. However, even though the exact amount of base gas needed to provide the proposed level of firm storage would not be known until the end of the 2013-2014 storage season, Northern's own consultant stated that the storage field operated in a relatively predictable fashion and estimated that new firm working gas would behave similarly to the historical behavior of earlier expansions. Northern has

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<sup>14</sup> Northern states in its request for rehearing that by denying its request for market-based rate authority the Commission has in essence denied CenterPoint Energy Resources Corp. (CenterPoint), the prospective customer of Northern's Redfield Expansion 2011 project, the ability to contract for needed storage service. To the contrary, the March 30 Order issued Northern a certificate of convenience and necessity to construct its project and to provide service at cost-based rates. Northern's business decision not to proceed with the project under those conditions is not unlike a company's decision not to pursue any given expansion. As noted in the March 30 Order, Northern and CenterPoint could achieve essentially the same outcome utilizing Northern's authority to charge negotiated rates. In addition, while CenterPoint indicated a preference for Northern's proposal, it also indicated it had other alternatives available. (See April 29, 2011 Comments of CenterPoint Energy Resources Corp. in Response to Request for Rehearing at 2.)

<sup>15</sup> See *Northern Natural Gas Company*, 117 FERC ¶ 61,191 (2006) (Declaratory Order), *reh'g denied*, 119 FERC ¶ 61,072 (2007) (Rehearing Order).

<sup>16</sup> Request for Rehearing at 6.

been gathering engineering and other information which can inform the base-gas requirements of this project since implementation of the interim expansion under its blanket certificate. Thus, Northern is not working on a completely blank slate in estimating its base gas needs. Also, although Northern used gas prices ranging from \$5.51 to \$10.34 per Dth in quantifying its risk, the March 30 Order noted that forecasts for natural gas supplies were increasing and gas prices were stabilizing significantly below \$10 per Dth.<sup>17</sup> As noted in the March 30 Order, Northern does not intend to seek any external financing, even for base gas.<sup>18</sup>

12. Northern asserts that the Commission's acknowledgment in the March 30 Order that "aquifer storage facilities can be more difficult, or riskier, to develop than depleted reservoir or salt cavern facilities"<sup>19</sup> undercuts its determination that Northern has failed to demonstrate that the risk associated with this project is sufficient to compel a finding that market-based rates are in the public interest. However, the fact that aquifer storage is relatively more difficult to develop does not mean that market-based rates are always in the public interest and necessary to encourage its development. The Redfield Storage facility is not a greenfield aquifer project, where there might be significant gas bubble and water saturation uncertainty. Rather, it is a facility that has been in operation for over fifty years, has been recently evaluated, and the application indicates is currently operating in a relatively predictable fashion. Thus, we affirm the finding in the March 30 Order that the risk associated with the Redfield Expansion 2011 project, while not non-existent, is not so high as to alone persuade the Commission that market-based rates are necessary to encourage its construction.

13. Regarding Northern's argument that our action here is inconsistent with the approval of market-based rates for Northern's 2008 FDD Expansion, as explained in the March 30 Order, there were more elements of risk inherent in the 2008 FDD Expansion.<sup>20</sup> The 2008 FDD Expansion was a significantly larger project, involving an increase of 8 Bcf in the certificated level of working gas, with a related significant increase in gas treatment costs, and the construction of at least five new injection/withdrawal wells and 8,360 horsepower of new compression. Northern correctly points out that NGA section 4(f) does not limit the Commission's discretion to authorize market-based rates to projects of a particular size, but ignores the correlations

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<sup>17</sup> March 30 Order, 134 FERC ¶ 61,247 at PP 27-28.

<sup>18</sup> *Id.* PP 26-29.

<sup>19</sup> *Id.* P 29.

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

between a project's size and its costs, and between the level of cost and the degree of financial risk. While there certainly may be risks related to a small, relatively inexpensive project, the Commission believes that it is less likely that those risks will be of such magnitude as to alone justify as being in the public interest a grant of market-based rates to a company with market-power.<sup>21</sup>

14. The 2008 FDD Expansion also involved additional engineering uncertainties related to the initial connection of the Galena reservoir to the rest of the Redfield Storage field. In its request for rehearing, Northern attempts to downplay this risk factor, stating that "it is not logical" for the Commission to have relied on that factor as a critical consideration in its approval of market-based rates for the 2008 FDD Expansion. While this particular argument is perhaps more relevant to the question of whether the Commission accurately gauged the risk related to the 2008 expansion than to whether its decision in this proceeding is appropriate, the Commission has nevertheless adequately explained how the factual differences between the 2008 FDD Expansion and the Redfield Expansion 2011 reasonably lead to different results on the market-based rate issue.

**C. Open Season with Cost-Based Reserve Price**

15. The March 30 Order found that, since Northern did not include a cost-based recourse rate (reserve price) in its open season or provide information in its application that would enable the Commission to determine whether its market-based reserve price approximated its actual costs, it was impossible for the Commission to conclude that there were not potential long-term customers willing to pay cost-based rates sufficient to support the project.<sup>22</sup> Accordingly, the March 30 Order found that Northern had failed to show that market-based rates are necessary to encourage the proposed construction. Northern asserts that in reaching this conclusion, the March 30 Order disregarded the Commission's rehearing order in the 2008 FDD Expansion proceeding in which the Commission specifically stated that the Commission's regulations did not require a

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<sup>21</sup> "In determining whether market-based rates for a particular project are in the public interest, the Commission will consider, among other things, the risk of the project, and *the investment required to fund it*. . . [T]he Commission would expect that for market-based rates to be in the public interest . . . [such] rates would be necessary for the project sponsor to secure financing . . . [I]t is unlikely that market-based rate authorization would be necessary, or in the public interest, to encourage relatively risk-free expansions of storage." Order No. 678, FERC Stats. & Regs. ¶ 31,200 at P 126 (emphasis added).

<sup>22</sup> March 30 Order, 134 FERC ¶ 61,247 at P 31.

pipeline to offer a cost-based reserve price in an open season before pursuing market-based rates.<sup>23</sup>

16. Northern's request for declaratory order regarding market-based rates for its 2008 FDD Expansion was the Commission's first opportunity to apply the expanded authority granted by section 4(f). Northern filed its request on July 17, 2006, prior even to the effective date of the regulations implementing the provision. The Commission stated in Order No. 678 that it believed that a pipeline's presenting evidence that it had offered its proposed capacity at cost-based rates through an open season and was unable to obtain sufficient long-term commitments at those cost-based rates "is the best way of demonstrating that cost-based rates will not be sufficient" to encourage construction.<sup>24</sup> However, as the Commission acknowledged in the 2008 FDD Expansion rehearing order, the Commission's regulations do not require a pipeline to conduct such an open season before requesting market-based rates under section 4(f).

17. In considering its first request for market-based rates under section 4(f), the Commission accepted Northern's statement that it would not proceed with the project without market-based rates, even though Northern had filed little information about actual costs. However, subsequent to that first request under section 4(f), several other pipelines seeking such authority have demonstrated that they used cost-based rates to establish their reserve prices.<sup>25</sup> As anticipated by the Commission in Order No. 678, such information provided a solid basis in those subsequent proceedings for the Commission's determinations that market-based rates were indeed *necessary* to encourage construction of the proposed storage capacity.

18. In the 2008 FDD Expansion proceeding, though Northern chose not to hold a cost-based open season, the Commission nevertheless found Northern's assessment of the level of risk associated with that project to be credible and sufficient to warrant market-based rates, taking into account factors including the size of that project, the potential need for gas treatment and additional wells, and what the Commission understood to be significant engineering uncertainties, as well as the nature of the then-existing natural gas commodity market. With respect to its Redfield Expansion 2011 project, however, as explained in the March 30 Order and above, we find that Northern has failed to make a

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<sup>23</sup> See *Northern Natural Gas Company*, 119 FERC ¶ 61,072 (2007), at PP 14-16.

<sup>24</sup> Order No. 678, FERC Stats. & Regs. ¶ 31,200 at P 129.

<sup>25</sup> See *Southern Star Central Gas Pipeline, Inc.*, 131 FERC ¶ 61,154 (2010); *Columbia Gas Transmission Corp.*, 126 FERC ¶ 61,237 (2009); and *Texas Gas Transmission, LLC*, 122 FERC ¶ 61,190 (2008).

persuasive alternative showing on the basis of risk alone that market-based rates are necessary and in the public interest.

The Commission orders:

Northern's request for rehearing is denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.