

171 FERC ¶ 61,113
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

Southwest Gas Storage Company Docket No. RP20-233-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued May 12, 2020)

1. On November 15, 2019, pursuant to Rule 207 and section 284.502(b)(1)¹ of the Commission's regulations, Southwest Gas Storage Company (Southwest) filed a petition for declaratory order requesting authorization to charge market-based rates for its natural gas storage service provided from its Howell and Waverly Storage Fields. Southwest also requests waivers of certain regulations that apply primarily to cost-based rates. In support of its request, Southwest submitted a market power study, supporting testimony, and data showing a lack of market power in the requested region. As discussed below, we grant the application for market-based rate authority for the storage service and the requested waivers.

I. Background

2. Southwest provides firm and interruptible storage services through four interstate natural gas storage facilities: (i) the Howell Storage Field in Livingston and Washtenaw Counties, Michigan; (ii) the Waverly Storage Field in Morgan and Sangamon Counties, Illinois; (iii) the North Hopeton Storage Field in Woods County, Oklahoma; and (iv) the Borchers North Storage Field in Meade County, Kansas. Southwest requests market-based rate authority for the Howell and Waverly Storage Fields, known for rate purposes as the East Area facilities, located within the Great Lakes Market area.²

3. All of Southwest's facilities are directly connected to its affiliate, Panhandle Eastern Pipe Line Company, LP (Panhandle), an interstate natural gas pipeline.³ Southwest states that Panhandle is currently the only customer of Southwest, contracting

¹ 18 C.F.R. § 284.502(b)(1) (2019).

² Petition at 6.

³ *Id.* at 7.

for a total of 57.1 Bcf of storage capacity by a negotiated rate agreement that fixed the rates at Southwest's then maximum tariff rates for services offered by Southwest through the winter of 2020-2021.⁴ Therefore, Southwest states it is contractually bound not to raise the rates for storage service provided to Panhandle.⁵

4. Southwest states that Panhandle interconnects with several storage providers other than Southwest.⁶ Southwest provides service from its East Area facilities into the rate zone on the Panhandle system defined as the Market Zone.⁷ Panhandle has historically and currently contracts for other storage services in the same Market Zone as the East Area facilities, such as affiliates Lee 8 Storage Partnership and Bammel Gas Storage Facility, and the unaffiliated Washington 10 Storage Corporation.

5. Southwest notes that it is seeking market-based rate authority in the same region as ANR Storage Company (ANR Storage), which recently received market-based rate authority.⁸ Southwest states that, compared to ANR Storage's market share in the same geographic market as requested in this application, Southwest's market share is 1.29% for daily deliverability and 1.04% for working gas, while ANR Storage's market share is 15.16% for daily deliverability and 16.12% for working gas.⁹

6. On February 19, 2019, the Commission initiated an investigation under section 5 of the Natural Gas Act (NGA) to determine whether the rates currently charged by Southwest are just and reasonable.¹⁰ On September 30, 2019, the Commission issued an order consolidating Southwest's negotiated rate agreement with Panhandle's NGA section 4 rate proceeding.¹¹ On October 29, 2019, the Commission issued an order approving an Offer of Settlement filed by Southwest¹² that resolved all issues in

⁴ *Id.* at 38-39.

⁵ *Id.* at 25.

⁶ *Id.* at 15.

⁷ Testimony of John D. Reid at 8.

⁸ *ANR Storage Co.*, 168 FERC ¶ 61,195 (2019) (*ANR Storage Order*).

⁹ Petition at 9.

¹⁰ *Id.* at 8.

¹¹ *Panhandle Eastern Pipe Line Company, LP*, 168 FERC ¶ 61,208, at P 41 (2019).

¹² *Southwest Gas Storage Co.*, 169 FERC ¶ 61,078 (2019).

Southwest's section 5 proceeding with the exception of Southwest's negotiated rate agreement with Panhandle. Southwest states that its Offer of Settlement provided settlement rates for services under Rate Schedule FSS and ISS, whereby the rates for the West Area remain the same and the rates for the East Area decreased.¹³

II. Notice and Interventions

7. Public notice of the filing was issued on November 19, 2019. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹⁴ Pursuant to Rule 214,¹⁵ all timely filed motions to intervene and any unopposed motion to intervene filed out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. A joint protest was filed by Ameren Illinois Company and Ameren Missouri (collectively, Ameren).

8. Ameren protests the application on the grounds that Southwest is a wholly owned subsidiary of Panhandle and Panhandle is the only storage customer of Southwest. Ameren claims that Southwest's petition is intended to circumvent the Commission's restrictions on affiliate self-dealing by replacing its overpriced negotiated rate agreement with market-based rates that exceed Southwest's actual cost of service, due to its parent-subsidiary relationship.¹⁶ Additionally, Ameren argues that Southwest's comparison to ANR Storage is misleading because Southwest does not have unaffiliated storage customers, while by contrast twelve unaffiliated shippers hold ANR Storage's remaining gas capacity.¹⁷ Ameren requests that Southwest's petition be denied or, in the alternative, that the Commission condition Southwest's authority to sell services at market-based rates on the requirement that all of Southwest's sales to Panhandle be at the lower of market-based rates or the cost-based recourse rates set forth in the recent Southwest settlement.

9. On January 3, 2020, Southwest filed an answer to Ameren's protest. Pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,¹⁸ answers to

¹³ Petition at 8.

¹⁴ 18 C.F.R. § 154.210 (2019).

¹⁵ 18 C.F.R. § 385.214 (2019).

¹⁶ Protest at 5-6.

¹⁷ *Id.* at 6-7.

¹⁸ 18 C.F.R. § 385.213(a)(2) (2019).

protests are prohibited unless otherwise ordered by the decisional authority. We accept the instant answer because it provides information that assists us in our decision-making process. Southwest claims that there is an abundance of storage capacity and alternative providers available to Panhandle and that Panhandle holds storage agreements with several other storage providers.¹⁹ Southwest argues that at least two storage providers outside of the relevant geographic market have been granted market-based rate authority despite having contracts for service with affiliates²⁰ and argues that nothing in the Alternative Rate Policy Statement or Order Nos. 678 and 678-A support denial of its petition on the grounds claimed by Ameren.²¹ Southwest states that Ameren does not support its claims that Panhandle could overpay for storage services, and that such claims do not impact Southwest's market power study demonstrating a lack of market power.²²

III. Discussion of Market Power Analysis

10. The Commission evaluates requests to charge market-based rates for storage under the analytical framework of its Alternative Rate Policy Statement. The Commission's main concern in granting a pipeline the use of market-based rates for storage and transportation is the presence the pipeline has in the relevant marketplace. If the pipeline has market power over a service in the relevant marketplace, then the Commission will not permit it to charge market-based rates for that service.²³ The Commission will approve market-based rates for storage providers where the applicant has demonstrated it

¹⁹ Answer at 4.

²⁰ Answer at n. 30.

²¹ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (Alternative Rate Policy Statement), order granting clarification, 74 FERC ¶ 61,194, order on reh'g and clarification, 75 FERC ¶ 61,024, reh'g denied, 75 FERC ¶ 61,066, reh'g dismissed, 75 FERC ¶ 61,291 (1996), petition denied sub nom. *Burlington Res. Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998); criteria modified, *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, 115 FERC ¶ 61,343, order on clarification and reh'g, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

²² Answer at 8-9.

²³ *Golden Triangle Storage, Inc.*, 152 FERC ¶ 61,158, at P 9 (2015) (*Golden Triangle*).

lacks market power²⁴ or has adopted conditions that significantly mitigate market power.²⁵ The Commission has approved requests to charge market-based rates for storage services based on a finding that the proposed projects would not be able to exercise market power due to small size, anticipated share of the market, and numerous competitors.²⁶

11. Consistent with the methodology provided by the Alternative Rate Policy Statement, the Commission's analysis of whether filers have the ability to exercise market power includes three major steps.²⁷ First, the Commission will review whether filers have specifically and fully defined the relevant markets to determine which specific products or services are identified, and the suppliers of the products and services that provide good alternatives to the applicant's ability to exercise market power.²⁸ Additionally, as part of this first step, the Commission will identify the relevant geographic market. Second, the Commission will assess filers' market share and market concentration. The Commission uses market share and the Herfindahl-Hirschman Index (HHI) as screens in assessing whether a pipeline has the ability to exercise market power in defined product and geographic markets. The Alternative Rate Policy Statement recognizes that having a large market share in a concentrated market does not constitute market power if ease of entry and other competitive factors can prevent the applicant from exercising significant market power.²⁹ Third and lastly, the Commission will evaluate other relevant factors such as ease of entering the market.

²⁴ Market power is defined as the ability to profitably maintain prices above competitive levels for a significant period of time. Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,230.

²⁵ Order No. 678, 115 FERC ¶ 61,343, *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190.

²⁶ *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002); *Egan Hub Partners, L.P.*, 95 FERC ¶ 61,395 (2001); *Moss Bluff Hub Partners, L.P.*, 80 FERC ¶ 61,181 (1997); *Egan Hub Partners, L.P.*, 77 FERC ¶ 61,016 (1996).

²⁷ *Golden Triangle*, 152 FERC ¶ 61,158 at P 11.

²⁸ “The relevant product market consists of the applicant’s service and other services that are good alternatives to the applicant’s services.” *Id.* n.8.

²⁹ *Id.* n.10. (quoting Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,234).

A. Relevant Product and Geographic Markets

12. Southwest identifies the relevant product market to include: (1) Southwest's facilities in Michigan and Illinois and its affiliate Lee 8 Storage Partnership in Michigan; and (2) other storage facilities that are physically connected to a pipeline that interconnects with Panhandle and/or with close proximity to Southwest's facilities in Illinois and Michigan.³⁰ Using this approach, Southwest defines the relevant geographic market area to be the Great Lakes Market, including Michigan, Illinois, Indiana, Ohio, and Ontario. Southwest states its analysis is conservative because it did not include storage facilities in other nearby states that are interconnected with the geographic market, such as Pennsylvania, New York, West Virginia, and Iowa.

13. We agree that relevant geographic market for Southwest's service is the Great Lakes Market as Southwest defines it. We also agree that the relevant product market includes the interstate and intrastate underground natural gas storage services listed in Southwest's market power study.

B. Market Share and Market Concentration

14. Southwest states that its market power study demonstrates that the Great Lakes Market is competitive, with a 758 HHI for working gas capacity and 999 HHI for peak day deliverability.³¹ Southwest's market power study also demonstrates that, at present, Southwest and its affiliates have a combined market share of 1.29% when measuring daily deliverability, and 1.04% when measuring working gas capacity.³² Southwest concludes that, given these market shares and market concentrations, Southwest and its affiliates cannot exercise market power either alone or in concert with other storage providers.

15. We find that Southwest has satisfactorily shown that, within the relevant market, its prospective market share is low and that the market's concentration is below the threshold we would require before we would need to undertake further scrutiny. As set forth above, in order to ascertain whether additional scrutiny is needed, we examine concentration in the relevant market using HHI. The Alternative Rate Policy Statement states that a HHI of less than 1,800 indicates that sellers cannot exert market power because customers have sufficiently diverse alternatives in the relevant market.³³ If the

³⁰ Petition at 14; Market Power Study at 10.

³¹ Ex. SWG-003, Market Power Study, at 14, *cited in* Petition at 32.

³² Ex. SWG-003, Market Power Study, at 20, *cited in* Petition at 26.

³³ Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,235.

HHI is above 1,800 we will give the applicant more scrutiny in order to make a determination about a seller's ability to exercise market power because the market is more concentrated. Here, the HHI for the proposal presented by Southwest is 758 HHI for working gas capacity and 999 HHI for peak day deliverability. Furthermore, Southwest's market shares of 1.29% when measuring daily deliverability, and 1.04% when measuring working gas capacity support a finding that it lacks market power.

C. Additional Factors

16. In its protest, Ameren argues that Southwest is a wholly owned subsidiary of Panhandle and Panhandle is the only storage customer of Southwest, and that therefore the petition should be denied or the Commission should require that Southwest charge Panhandle the lesser of its market-based rates or its cost-based recourse rates. Contrary to Ameren's protest, we will not treat Southwest's market-based rate application any differently based on the fact that Southwest's only customer at present is an affiliate with cost-based rates. The Alternative Rate Policy Statement framework already incorporates the effects of the market power of affiliates. Southwest, as required by this framework, has provided market power data, summarized above, on itself, Panhandle, and other affiliates. We find, based on this record, that the cumulative market power of these affiliates does not demonstrate significant market power in the relevant storage market.

17. Ameren's protest raises the concern that Southwest will use its market-based rates to charge Panhandle an unjustly high rate, allowing Panhandle in turn to charge its shippers an unjustly high rate. Ameren's assertion appears to be wholly speculative. In any event, approving market-based rates for Southwest does not constitute approval of Panhandle's pass through of such rates to its own customers. Panhandle's recovery of costs through its storage contract with Southwest is not the subject of this proceeding. The Commission will examine the pass through of such costs to Panhandle's customers in the appropriate Panhandle rate proceeding using its policies to determine whether the costs are appropriate for pass through to Panhandle customers.³⁴

18. Ameren also argues that Southwest currently has no non-affiliated customers, but we find no reason to distinguish our market power analysis for Southwest from a storage provider that does have non-affiliated customers. One of the main reasons pipelines apply for market-based rate authority is to expand their ability to charge different rates to

³⁴ See *Portland Natural Gas Transmission System*, Opinion No. 524, 142 FERC ¶ 61,197 (2013) (*Portland*), aff'd, Opinion No. 524-A, 150 FERC ¶ 61,107 (2015) (upholding "no profits to affiliates" rule). See also *Northeast Utils Serv. Co.*, 66 FERC ¶ 61,332, at 62,089 (1994); *Ind. & Mich. Mun. Distrib. Ass'n v. Ind. Mich. Power Co.*, 62 FERC ¶ 61,189, at 62,238 (1993) (the ordinary presumption of prudence does not apply to affiliate transactions).

different customers (assuming no undue discrimination), so the presence of a diverse customer base does not, in our analysis, impact whether the pipeline currently has market power.³⁵

19. We find that Southwest's analysis demonstrates that its proposed storage facilities will be in a highly competitive area where numerous storage service alternatives exist for potential customers. We also find that Southwest's analysis properly identifies good alternatives.³⁶ Accordingly, upon examination of the material and studies presented by Southwest, we find that Southwest lacks significant market power in the relevant geographical area for the proposed market-based firm storage service.

D. Change in Circumstances

20. Nevertheless, Southwest must notify the Commission if future changes in circumstances significantly affect its present market power status, as required by the Commission's regulations.³⁷ Any event which would affect Southwest's ability to withhold or restrict services or increase its ability to discriminate unduly in price or terms of service must be reported to the Commission within 10 days of acquiring knowledge of any such changes. Failure to timely file a change in circumstance report or failure to comply with the reporting requirements would constitute a violation of the Commission's regulations. We also reserve the right to require an updated market power analysis at any time.³⁸

IV. Requests for Waiver

21. Southwest requests waiver of certain filing, accounting, and reporting requirements which the Commission has previously found inapplicable to storage providers that are granted market-based rate authority: (1) sections 260.1 and 260.2 of the Commission's regulations (filing of annual reports relating to the cost-of-service rate

³⁵ The Commission reviews every market-based rate application on a case-by-case basis, however, as Southwest points out in its answer, the Commission has approved numerous market-based rate applications in the Great Lakes natural gas storage market in which the applicant had a contract with an affiliated pipeline. Answer at 6.

³⁶ A good alternative is an alternative that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute it for an applicant's proposed service. Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,231.

³⁷ 18 C.F.R. § 284.504(b) (2019).

³⁸ *Arlington Gas Storage Co. LLC*, 147 FERC ¶ 61,120 (2014).

structure in Form Nos. 2 and 2A); (2) section 284.7(e) (reservation charge); and (3) section 284.10 (straight fixed-variable rate design methodology).

22. We find the cost-related information required by these aforementioned regulations is not relevant in light of our approval of market-based rates for Southwest's storage services. Thus, consistent with our findings in previous orders,³⁹ we grant Southwest's request for waivers. We clarify that these waivers do not cover the information necessary for the Commission's assessment of annual charges.⁴⁰ Southwest is required to file page 520 of Form No. 2-A, reporting the gas volume information which is the basis for imposing an Annual Charge Adjustment. Furthermore, these waivers are subject to revision in the event that the Commission finds cause to re-examine Southwest's market power or market-based rates. In addition, we require Southwest to maintain records to separately identify the original cost and related depreciation on its facilities, and to maintain accounts and financial information of its facilities consistent with generally accepted accounting principles should the Commission require Southwest to produce those reports in the future.

The Commission orders:

- (A) We grant Southwest's application for market-based rate authority, effective as of the date of this order.
- (B) The requested waivers are granted as discussed above.
- (C) If Southwest elects to provide service at market-based rates, it must make a compliance filing via eTariff revising its tariff accordingly.
- (D) If Southwest elects to provide service at market-based rates, it must notify the Commission, as required by section 284.504(b) of the Commission's regulations, if future changes in circumstances affect its market power status. Southwest must notify the Commission within 10 days of acquiring knowledge of any such changes. The

³⁹ See, e.g., *PetroLogistics Natural Gas Storage, LLC*, 139 FERC ¶ 61,225, at P 31 (2012); *Golden Triangle Storage, Inc.*, 121 FERC ¶ 61,313, at 36 (2007); *Port Barre Investments, L.L.C.*, 116 FERC ¶ 61,052, at PP 32-34 (2006); *Liberty Gas Storage, LLC*, 113 FERC ¶ 61,247, at PP 54-55 (2005).

⁴⁰ See *Wyckoff Gas Storage Co., LLC*, 105 FERC ¶ 61,027, at P 65 (2003).

notification must include a detailed description of the new facilities and their relationship to Southwest.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.