

125 FERC ¶ 61,114
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 29, 2008

In Reply Refer To:
PetroLogistics Natural Gas Storage, LLC
Docket Nos. RP09-15-000
CP07-427-000

PetroLogistics Natural Gas Storage, LLC
c/o Bracewell & Giuliani LLP
711 Louisiana Street, Suite 2300
Houston, TX 77002-2770

Attention: Randall S. Rich, Attorney for
PetroLogistics Natural Gas Storage, LLC

Reference: Certificate Compliance Filing

Ladies and Gentlemen:

1. On October 2, 2008, PetroLogistics Natural Gas Storage, LLC (PetroLogistics) filed tariff sheets to constitute its FERC Gas Tariff, Original Volume No. 1 (*see* Appendix) to comply with the Commission's March 3, 2008 order.¹ The Certificate Order granted PetroLogistics certificate authority to construct and operate a salt cavern natural gas storage facility and associated pipeline and compression facilities and to provide open-access storage and hub services at market-based rates. The Certificate Order required PetroLogistics to file revised tariff sheets to comply with the requirements of the order prior to commencement of service.²

¹ *PetroLogistics Natural Gas Storage, LLC*, 122 FERC ¶ 61,193 (2008) (Certificate Order).

² *Id.*, at PP 28, 40; Ordering Paragraph I (“PetroLogistics shall file, not less than 30 days nor more than 60 days, prior to its proposed effective date, actual tariff sheets consistent with its pro forma tariff in accordance with the NGA and Part 154 of the Commission’s regulations.”).

2. In addition to the tariff sheets directed to be filed by the Certificate Order, PetroLogistics also submitted changes to several tariff sheets to make its tariff sheets consistent with Order No. 712 which the Commission issued June 19, 2008, subsequent to the Certificate Order.³ Order No. 712 revised the Commission's policy and requirements applicable to capacity release transactions and required interstate pipelines to remove any of its tariff provisions inconsistent with Order No. 712.⁴ PetroLogistics proposes a November 1, 2008, effective date for its proposed tariff sheets. As discussed below, the Commission rejects the proffered tariff sheets because such sheets were not filed during the time period required by the Certificate Order.

3. Public notice of the instant filing was issued on October 9, 2008 with interventions and protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. §154.210 (2008)). Pursuant to Rule 214 of the Commission's Rules and Practices of Procedure (18 C.F.R. §385.214 (2008)), all timely motions to intervene and any motions to intervene out-of-time filed before the issuance of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties.

4. On October 14, 2008, BG Energy Merchants, LLC (BGEM) filed a motion to intervene and protest in the instant proceeding. BGEM states that it is the sole anchor shipper in the storage facility. It contends that the instant tariff filing is premature because PetroLogistics has not yet begun the process of removing brine from the storage cavern and will not be ready to commence providing the certificated storage service until about February 1, 2009. Therefore, BGEM argues that the tariff filing is more than 60 days prior to the in-service date of the facility. BGEM states that the requested effective date of the tariff is an attempt to prejudice the question of whether the facility is in service and able to provide service at certificated levels. BGEM argues that such action would permit PetroLogistics to collect reservation fees for services that PetroLogistics will not be able to provide as of November 1, 2008.

5. Specifically, BGEM argues that PetroLogistics has informed BGEM that PetroLogistics will not be ready to commence de-brining operations until November 1, 2008, and that the de-brining operations will require at least 90 days. Thus, BGEM asserts that PetroLogistics will not be ready to commence storage service until about February 1, 2009, after the beginning of the injection season for the winter of 2007-2008. BGEM argues that PetroLogistics and BGEM have agreed that, if PetroLogistics is

³ Original Sheet Nos.121, 122, 123 and 124.

⁴ PetroLogistics Transmittal letter at 2, *citing Promotion of a More Efficient Capacity Release Market*, Order No. 712, 123 FERC ¶ 61,286 (2008).

unable to perform storage service for BGEM at the contracted levels by at least November 30, 2008, then BGEM is not required to take service under its Rate Schedule FSS firm storage service agreement with PetroLogistics until next April.

6. However, BGEM states that in an effort to start collecting reservation fees, PetroLogistics asserted in discussions with BGEM that “services commence with the commencement of de-brining operations, that these will commence on November 1, 2008, and that BGEM should therefore begin paying for a service that it will not actually be able to use until after February 1, 2009.”⁵

7. BGEM asserts that it has informed PetroLogistics that it will not pay for service it is not yet receiving, and that it is exercising its right to defer service until after this winter. BGEM argues that the fact that it agreed to subsidize PetroLogistics’ facility by contributing base gas does not change the fact that displacement of brine with base gas is part of the process of constructing a salt dome storage facility, not part of Rate Schedule FSS Service.⁶

8. On October 20, 2008, PetroLogistics filed an answer to BGEM’s protest which the Commission will accept because it permits us to more fully understand the issues. PetroLogistics states that it expects to complete its construction activities on schedule and to commence service to BGEM and other potential customers on November 1, 2008. PetroLogistics states that the premise of BGEM’s protest is that, until BGEM delivers all of its base gas and PetroLogistics injects that base gas into the storage cavern, PetroLogistics cannot commence firm storage service under Rate Schedule FSS. Thus, BEGM asserts that PetroLogistics’ tariff filing is premature. PetroLogistics responds that BGEM’s argument is contrary to the tariff which states that the provision of base gas by the shipper is part of the jurisdictional service to be rendered by PetroLogistics. Further,

⁵ BGEM Protest at 5.

⁶ BGEM argues that Rate schedule FSS Service requires PetroLogistics to “inject quantities received by PetroLogistics . . . up to the Maximum Daily Injection Quantity” (350,000 Mcf in BGEM’s case), “store quantities . . . up to the MSQ,” and “deliver thermally equivalent quantities . . . up to the Maximum Daily Withdrawal quantity” (300,000 Mcf/d in BGEM’s case). BGEM Protest at 5, *citing* Rate Schedule FSS at § 2.1, PetroLogistics FERC Tariff, Original Volume No. 1. Moreover, BGEM asserts that the Commission has found that the injection of base gas is not a service; it is part of the process of constructing a storage facility. BGEM Protest at 5, *citing Caledonia Energy Partners, L.L.C.*, 111 FERC ¶ 61,095 (2005); *Colorado Interstate Gas Co.*, 123 FERC ¶ 61,099 (2008); *Dominion Transmission Inc.*, 111 FERC ¶ 61,414, at P 24 (2005); *Hardy Storage Co, LLC*, 118 FERC ¶ 61,200, at P 14 (2007); *Gulf South Pipeline Co., LP*, 113 FERC ¶ 62,048 (2005); *Trunkline Gas Co.*, Opinion No. 441, 90 FERC ¶ 61,017 (2000).

PetroLogistics argues that BGEM's interpretation of the tariff would permit BGEM to determine unilaterally when the facility can go into service by controlling the timing of deliveries of base gas to PetroLogistics.

9. Specifically, PetroLogistics argues that its tariff provides that the shipper shall be responsible for providing a quantity of base gas as set forth in Exhibit A of Shipper's FSS Service Agreement and that this is an integrated requirement of the storage service. PetroLogistic argues that because the requirement for customers to provide base gas is clearly contained in both the pro forma FSS Rate Schedule and FSS Service Agreement, PetroLogistics' facilities must be placed into service prior to the receipt of any base gas from PetroLogistics' Rate Schedule FSS customer, because PetroLogistics' jurisdictional injections of its customers' base gas must be governed by an approved tariff.

10. PetroLogistics also claims that BGEM's argument that the injection of base gas is not a jurisdictional service, but rather a part of the process of constructing the storage facility, is without merit because in the cited cases it relies on, the storage provider had contractually agreed to provide the base gas associated with the storage caverns' working gas but in the instant case the customer must provide the base gas. Lastly, PetroLogistics argues that it is within its rights under the Certificate Order and the Commission's regulations to file a compliance tariff to be effective November 1, 2008, because it expects to commence service on that date and requires an effective tariff to do so.

Discussion

11. The Commission rejects PetroLogistic's filing. First, the Commission finds that the filing was submitted more than 60 days before the commencement of PetroLogistic's certificated storage service, contrary to the requirements of the certificate order and section 154.207 of the Commission's regulations.⁷ The Commission finds PetroLogistics' argument that it will be providing service as of November 1, 2008 because it will be capable of injecting base gas supplied by its shippers into its facility by that date is without merit. Notwithstanding that its tariff provides that PetroLogistics' shippers will supply base gas for this facility, the injection of base gas does not constitute service under Rate Schedule FSS Firm Storage. The fact that the tariff provides that the shipper shall provide the base gas does not make the act of injecting base gas to ready the storage field a jurisdictional service, as argued by PetroLogistics. As stated by BGEM, the injection of base gas is a component of constructing a storage field. Regardless of whether the injection of base gas is a jurisdictional activity, the Commission finds that such an act does not also constitute the jurisdictional storage service authorized by the March 3, 2008 certificate order. That service entails the injection of working gas for

⁷ 18 C.F.R. § 154.207 (2008).

storage and subsequent withdrawal. Base gas simply helps provide the necessary pressure to enable the pipeline to withdraw injected working gas, as requested by the customer.

12. Second, the Certificate Order required that Petrologistics must conduct several engineering tests before commencing gas storage operations.⁸ Petrologistics does not claim in its filing that these conditions which must be met prior to the commencement of service have been fulfilled and the Commission can not find that such conditions have been met.

13. Accordingly, because the Commission rejects the definition of service as posited by PetroLogistics, it, concludes that these tariff sheets have been filed more than 60 days prior to the in-service date of the instant facility. Moreover, Petrologistics has not met the preconditions to providing service as set forth by the Certificate Order. Accordingly, the Commission rejects the proposed tariff sheets without prejudice to PetroLogistics refile such tariff sheets no more than 60 days or less than 30 days of the date it expects to be able to commence the storage service (i.e. able to inject customer working gas), as contemplated by the Certificate Order.

14. In Appendix B of the Certificate Order which addressed environmental conditions of the certificate authorization the Commission stated:

PetroLogistics must receive written authorization from the Director of OEP before commencing service from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way is proceeding satisfactorily.

15. On October 15, 2008, Petrologistics filed a letter in Docket No. CP07-427-000 stating:

Pursuant to Environmental Condition No. 9 of Appendix B to the Certificate Order, PetroLogistics hereby requests authorization from the Director of the Commission's Office of Energy Projects to commence

⁸ Appendix A No. 3 to the Certificate Order states that before commencing storage operations PetroLogistics shall:

- (a) Conduct a Mechanical Integrity Test for the cavern before initiation to natural gas storage, and file the results with the Commission;
- (b) File with the Commission, copies of the latest interference tracer surveys, or other testing or analysis on its cavern;
- (c) Establish and maintain a subsidence monitoring network over the proposed cavern storage area; and,
- (d) Assemble, test and maintain an emergency shutdown system.

service effective November 1, 2008. PetroLogistics' right-of-way rehabilitation and restoration efforts are proceeding satisfactorily, as more fully described by PetroLogistics in the weekly construction reports filed in the referenced docket.

16. Given the Commission's action here in rejecting the tariff sheets for storage service, notwithstanding any determination on the environmental conditions, PetroLogistics will not be permitted to commence service on November 1, 2008 as it requests.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All Parties

Appendix

**PetroLogistics Natural Gas Storage, LLC
FERC Gas Tariff, Original Volume No. 1**

Tariff Sheets to be Rejected

Original Sheet Nos. 1 through 36

Sheet Nos. 36-99 (Reserved for future use)

Original Sheet Nos. 100 through 143

Sheet Nos. 144-199 (Reserved for future use)

Original Sheet Nos. 200 through 221