

132 FERC ¶ 61,101
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Golden Triangle Storage, Inc.

Docket No. CP07-414-001

ORDER AMENDING CERTIFICATE
AND APROVING, IN PART, AND DENYING, IN PART,
CHANGES TO PRO FORMA TARIFF

(Issued August 4, 2010)

1. On April 30, 2010, Golden Triangle Storage, Inc. (Golden Triangle) filed an application to amend the certificate authority granted in the December 31, 2007 order issued in *Golden Triangle Storage, Inc.*, 121 FERC ¶ 61,313 (2007) (2007 Order). The 2007 Order authorized Golden Triangle to construct and operate a natural gas storage facility near Beaumont, Texas, and granted Golden Triangle a blanket certificate pursuant to Part 284, Subpart G of the Commission's regulations to provide open-access firm and interruptible storage services. Golden Triangle, which has not yet commenced service, seeks to amend its certificate authority to revise its pro forma tariff. The Commission will approve the proposed tariff revisions, in part, with appropriate conditions, as discussed below.

Background and Proposal

2. The 2007 Order authorized Golden Triangle to construct and operate two high-deliverability natural gas storage caverns, a compressor station, and two pipelines to connect the caverns to nearby interstate pipelines. The 2007 Order also authorized Golden Triangle to provide firm and interruptible storage services under market-based rates. Golden Triangle anticipates that it will be ready to commence service on the first phase of its facilities (the pipelines and one storage cavern) on an interim basis on or about September 1, 2010,¹ and will be ready for full scale operation on or about

¹ Golden Triangle states that it will file a separate certificate amendment application requesting authority to provide service on an interim basis from these facilities.

December 1, 2010. The 2007 Order found that Golden Triangle's pro forma tariff generally complied with Part 284 of the Commission's regulations. Nevertheless, the 2007 Order directed Golden Triangle to make various revisions to its pro forma tariff and to comply with the most current version of the National American Energy Standards Board (NAESB) standards. Ordering Paragraph (H) of the order provided that the revised tariff sheets should be filed at least 30 days, but no more than 60 days, prior to the facility's in-service date.

3. Golden Triangle states that the pro forma tariff is nearly three years out of date, and, as a result, requires a significant number of changes. Thus, Golden Triangle adds several new provisions to the pro forma tariff approved in the 2007 Order to accommodate the changes in the market over the last three years. In addition, Golden Triangle revises its pro forma tariff to comply with the 2007 Order, updates the tariff to conform with the Commission's revised capacity release requirements, and makes minor edits and corrections to the tariff's text. Golden Triangle contends that approval of the revised pro forma tariff will provide certainty about the services it will offer prospective customers and will facilitate efforts to market unsubscribed capacity.

Notice and Intervention

4. Golden Triangle's application for certificate amendment was noticed by publication in the *Federal Register* on May 24, 2010 (75 Fed. Reg. 28,798), with protests or interventions due by May 24, 2010. No motions to intervene, protests, or adverse comments were filed.

Discussion

Tariff Revisions

5. Golden Triangle's amendment application revises its pro forma tariff to include several new provisions designed to accommodate changes in the market over the last three years. Golden Triangle also revises its pro forma tariff to comply with the 2007 Order and the capacity release requirements set forth in Order No. 712,² as well as incorporating several minor edits and clarifications. The Commission finds, with certain exceptions, that Golden Triangle's proposed revisions generally conform to the Commission's policies and are approved, subject to the discussion below.

² *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 123 FERC ¶ 61,286, *order on reh'g*, Order No. 712-A, 125 FERC ¶ 61,216, (2008); *order on reh'g and clarification*, Order No. 712-B, 127 FERC ¶ 671,051 (2009).

Rate Schedules IP, IL and IHBS – Interruptible Parking, Loan and Hourly Balancing Charges

6. Golden Triangle proposes to revise section 3(a) of its Interruptible Loan Service Rate Schedule, the Interruptible Loan Charge, to charge for each dekatherm (Dth) of a customer's Maximum Loan Quantity. Golden Triangle's original tariff provision assessed charges instead on each Dth of a customer's loan balance at the end of each day. Golden Triangle also proposes to revise section 3(b) of its Interruptible Hourly Balancing Service Rate Schedule, Storage Charge, to charge for each Dth of a customer's Interruptible Maximum Storage Quantity. Golden Triangle's original tariff provision assessed charges based on the quantity of gas in a customer's storage inventory at the end of each day. In addition, section 3(a) of Golden Triangle's Interruptible Park Rate Schedule, the Interruptible Parking Charge, charges for each Dth of a customer's Maximum Park Quantity.

7. Section 284.10(c)(1) of the Commission's regulations requires a rate for interruptible service to be based on actual units of gas transported or, in this case, actual quantities of gas parked, loaned, or used for balancing.³ However, under Golden Triangle's proposal, the interruptible loan charge, the storage charge and the interruptible parking charge are based on the maximum loan quantities in the agreement, rather than on the quantity of gas actually parked, loaned or in storage, as the Commission's regulations require. Therefore, we will reject Golden Triangle's proposed changes to its Interruptible Loan and Hourly Balancing charges and require that it revise its Interruptible Parking charge. Accordingly, when Golden Triangle files its final tariff prior to commencing service, Rate Schedule IL, Rate Schedule IP, and Rate Schedule IHBS must provide that the daily Interruptible Loan Charge, Interruptible Parking Charge and Storage Charge will be based on the actual quantities of gas parked, loaned or stored.

Rate Schedule ISS – Interruptible Storage Service

8. Golden Triangle proposes to eliminate Rate Schedule ISS, Interruptible Storage Service, because such service essentially duplicates Golden Triangle's interruptible

³ Section 284.10(c)(1), Volumetric Rates, states in relevant part:

[A]ny rate filed for service subject to this section [Interruptible transportation service] must be a one-part rate that recovers the costs allocated to the service to the extent that the projected units of that service are actually purchased and may not include a demand charge, a minimum bill or minimum take provision or any other provision that has the effect of guaranteeing revenue

parking service under Rate Schedule IP. Golden Triangle contends that the interruptible parking service provides the same right to inject, store, and withdraw gas as its interruptible storage service and that while many of its prospective customers have expressed interest in the interruptible parking service, no customer appears to be interested in the interruptible storage service. Golden Triangle states that it recognizes that the Commission's open-access regulations require operators to offer both firm and interruptible storage services, but that it believes its proposal is consistent with this requirement since it will retain Rate Schedule IP in its tariff and that service, for all practical purposes, is the same as interruptible storage service.

9. Section 284.9 of the Commission's regulations requires that an interstate pipeline that provides firm transportation service under Subparts B or G of Part 284 of the Commission's regulations must also offer transportation service on an interruptible basis. Although Rate Schedule IP appears to have most of the attributes of Rate Schedule ISS, it is not clear that Golden Triangle's interruptible parking service is an adequate substitute for interruptible storage service, particularly with the regards to the timing provisions governing the withdrawal of parked volumes. For example, Rate Schedule IP requires that the customers Park Balance equal zero at the end of the Park Term, while Rate Schedule ISS contains no specific provisions for when storage volumes must be removed, to the extent interruptible storage service is available. Thus, the Commission will require Golden Triangle to continue to provide a specific interruptible storage service. Golden Triangle's proposal to eliminate Rate Schedule ISS is denied.

Section 3.1 – Procedures for Sale of Capacity

10. Golden Triangle proposes to revise section 3.1 of its General Terms and Conditions (GT&C) to provide that, from time to time, Golden Triangle may negotiate with customers for prearranged storage service for a future period or for interim service (see revised section 3.1(h)). Golden Triangle asserts that it will post information regarding available storage capacity on its internet web site before it provides such information to any potential customer.

11. The Commission has permitted pipelines to enter into prearranged deals for service to start at a specific date in the future and to reserve capacity for an upcoming pipeline expansion project.⁴ However, in approving these provisions, the Commission has required pipelines to develop detailed procedures to follow to ensure that capacity is awarded on a non-discriminatory basis. Thus, the Commission will approve Golden Triangle's proposal to include provisions for the negotiation of prearranged storage service, but will require that Golden Triangle's tariff clarify that it will separately identify

⁴ See, e.g., *MoGas Pipeline LLC*, 126 FERC ¶ 61,064 (2009) (MoGas); *Transcontinental Gas Pipe Line Corporation*, 118 FERC ¶ 61,234 (2007).

on its internet web site all capacity that is expected to become available within the next 180 days and clearly state that it will not enter into any prearranged deals for capacity that has not previously been posted on its internet web site.⁵ This will ensure that all parties have access to the same information with regard to potential prearranged capacity and will allow shippers to monitor Golden Triangle's capacity to make sure that preferential treatment is not provided to a customer that wishes to enter a prearranged deal.

Section 5.5(i)(1) and (2) – Action Alert/Operational Flow Order Penalties

12. Golden Triangle proposes to revise GT&C section 5.5(i)(1) so that the penalty for failure to comply with the requirements of an Action Alert will be at a penalty rate equal to 110 percent of the highest Platt's "Gas Daily" posting for the higher of the day on which the noncompliance occurred, the first day after the noncompliance occurred, or the second day after the noncompliance occurred. Similarly, Golden Triangle proposes to revise GT&C section 5.5(i)(2) so that the penalty for failure to comply with the requirements of an Operational Flow Order (OFO) will be at a penalty rate of three times of the highest Platt's "Gas Daily" posting for the higher of the day on which the noncompliance occurred, the first day after the noncompliance occurred, or the second day after the noncompliance occurred.

13. While Action Alert and OFO penalties are clearly needed in order to assist Golden Triangle in operating its system, Golden Triangle has provided no justification for basing a penalty assessed for violating either one of these provisions on an index price that occurs one or two days after the noncompliance has occurred. Depending on the course of events, it is possible that the index price two days after the penalty violation occurred is no longer reflective of events that occurred when the violation took place, but are reflective of events or market conditions wholly unrelated to the violation. Therefore, we will reject Golden Triangle's proposed changes to its Action Alert and OFO penalties. When Golden Triangle files its actual tariff before commencing service, its GT&C must provide that shippers that violate the requirements of an Action Alert or an OFO incur a penalty based on the index price for the day the violation occurred, as proposed in its original filing.

Section 17.1(c) – Reservation Charge Credits

14. Section 17.1(c) of Golden Triangle's GT&C states the formula through which Golden Triangle will credit reservation charges in the event Golden Triangle declares force majeure. In addition to providing reservation charge credits when Golden Triangle declares force majeure, Golden Triangle is also required to provide reservation charge

⁵ *MoGas*, 126 FERC ¶ 61,064 (2009).

credits when a pipeline curtails service in non-force majeure situations.⁶ Therefore, Golden Triangle is directed to revise its GT&C to include a provision for providing reservation charge credits in non-force majeure situations when service is curtailed.

Section 36 – Forward Contracts

15. Section 36 of Golden Triangle’s GT&C states that each transaction entered into subject to Golden Triangle’s tariff which has a maturity date more than two days after the date the transaction is entered into will constitute a “forward contract” pursuant to section 101(25) of Title 11 of the United States Code⁷ (Bankruptcy Code); the parties to such transactions are each “forward contract merchants” within the meaning of section 101(26) of the Bankruptcy Code; and the payments made to each party with respect to such transactions constitute “settlement payments” within the meaning of section 101(51A) of the Bankruptcy Code.

16. On June 21, 2010, Golden Triangle provided additional information on its Forward Contracts tariff provision in response to a Commission data request issued June 10, 2010. In its data response, Golden Triangle contends that service agreements providing for parking and lending transactions are eligible for “forward contract” status under the Bankruptcy Code and that Golden Triangle’s tariff provision provides notice that the eligible contracts will be considered “forward contracts” under the Bankruptcy Code. However, Golden Triangle notes that the tariff provision does not substantively change the positions of the parties in any bankruptcy proceeding initiated by a customer of Golden Triangle because the bankruptcy court will ultimately determine whether certain agreements satisfy the criteria for “forward contract” status. Golden Triangle states in its data response that it will revise section 36 to limit its operation solely to service agreements for parking and loan service. The Commission directs Golden Triangle make the proposed change to its tariff.

Waiver Request

17. Golden Triangle requests a limited waiver authorizing it to postpone implementation of the NAESB Electronic Data Interchange/Electronic Delivery Mechanism (EDI/EDM) and Flat File/Electronic Delivery Mechanism (FF/EDM) standards until 90 days after it receives a request to send information via EDI/EDM. Golden Triangle contends that its circumstances are similar to those of other storage operators that have been granted such waivers on grounds that they have not received

⁶ See, e.g., *Petal Gas Storage, L.L.C.*, 126 FERC ¶ 61,199 (2009).

⁷ 11 U.S.C. §§ 101 (2006), et seq. as amended.

requests to send information via EDI/EDM and FF/EDM and do not expect to receive such requests.

18. The Commission has previously granted pipelines a conditional extension of time to implement the EDI/EDM and FF/EDM standards up to 90 days from the date any person first requests use of a NAESB data set that the pipeline does not currently support.⁸ Consistent with these rulings, the Commission will grant Golden Triangle a conditional extension of the EDI/EDM and FF/EDM requirements for up to 90 days from the date any person first requests use of a NAESB data set that Golden Triangle does not currently support.

19. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) Golden Triangle's application for amendment of its certificate authority granted by the 2007 Order and proposed revisions to its pro forma tariff are granted, in part, and denied, in part, as discussed herein.

(B) Golden Triangle shall submit actual tariff sheets that comply with the requirements contained in the body of this order no less than 30 days, or more than 60 days, prior to the commencement of service.

(C) In all other respects, the 2007 Order shall remain in full force and effect.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁸ See, e.g., *MarkWest Pioneer, L.L.C.*, 125 FERC ¶ 61, 165 (2008); *Tres Palacios Gas Storage, LLC*, 120 FERC ¶ 61,253 (2007).