UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

EPGT Texas Pipeline, LP Docket No. PR03-6-000

ORDER APPROVING RATE FILING SUBJECT TO CONDITION

(Issued May 15, 2003)

1. On December 20, 2002, EPGT Texas Pipeline, LP (EPGT) filed a petition seeking approval of market-based rates for firm and interruptible storage services under Section 311 of the Natural Gas Policy Act of 1978 (NGPA). The storage services are provided through EPGT's Wilson Storage Facility, leased from RFC Caverns. For the reasons discussed below, the Commission will authorize EPGT to charge market-based rates for its firm and interruptible Section 311 storage services, on the condition that EPGT notify the Commission if its current market power status changes in the future.

2. This order will benefit the public by providing EPGT's current and potential customers with additional market-based rate storage services.

Background

3. EPGT offers storage services through the Wilson Storage Facility (Wilson), a salt dome facility located near Houston in southeastern Texas and connected to EPGT's intrastate pipeline system. Wilson has a working gas capacity of 6.4 Bcf and deliverability of 800,000 Mcf/day. EPGT leases Wilson on a long term lease from the owner, RFC Caverns.

4. EPGT is wholly owned by El Paso Energy Partners, LP, which is 28% owned by El Paso Corporation, which is also the general partner. EPGT's intrastate pipeline includes over 7,000 miles of mainline and gathering pipe located in the state of Texas. It covers most of the state and interconnects with 11 interstate pipelines, 20 intrastate pipelines and all the major hubs except the Katy Hub. Five of the interstate pipelines interconnect with EPGT within 72 miles of Wilson, on a part of the system characterized as a "header."[1]

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[1] Texas Eastern Transmission Corporation, Tennessee Gas Pipeline Company, Transcontinental Gas Pipeline Company, Natural Gas Pipeline Company of America and
(continued...)

5. The last storage rate case, in Docket No. PR00-8, established cost-based rates for firm and interruptible services in a settlement approved by the Commission on June 28, 2000.[2] The settlement included a provision by which EPGT agreed to file a petition for storage rates by December 20, 2002. EPGT files separately for transportation services under Section 311 of the NGPA. Its most recent transportation rate case was decided by Commission order issued on June 11, 2002 in Docket No. PR00-9-000,[3] for which rehearing is pending.

Description of the Filing

6. EPGT requests authority to charge market-based rates for storage services which will use almost the entire working gas storage capacity of the EPGT Storage Facility.[4] EPGT maintains that its market-based rates will be fair and equitable because it does not have the necessary market power to charge rates in excess of amounts which interstate pipelines could charge for similar services.

7. EPGT proposes to offer both firm and interruptible storage services. The latter include Interruptible Storage Service (ISS), Interruptible Advancing Service (IAS), Interruptible Deferred Delivery Service (IDS), Interruptible Wheeling Service (IWS) and Title Transferring Service (TTS). For all services, the Statement of Operating Conditions attached to the filing states that EPGT may collect up to 0.9% of receipt quantities for fuel.

Market Power Analysis

8. EPGT provides a market power analysis to support its contention that it lacks market power. EPGT defines the product and geographic market; measures market shares and market concentration; and examines other mitigating factors such as ease of entry into the market. EPGT defines the product as natural gas storage services. EPGT states that its

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[1](...continued)
CMS Trunkline Gas Company.

[2]At that time, the system was owned by PG&E Corporation and was called PG&E Gas Transmission, Texas LP. The system was acquired by El Paso on December 22, 2000.

[3]99 FERC ¶ 61,295 (2001).

[4]EPGT states that it will retain 0.2 Bcf of the total working gas capacity of 6.4 Bcf for operational purposes.

customers include industrials, electric generators, local gas distributors and large end-users who will use the facilities for cyclical, seasonal and/or short-term storage.

9. EPGT states that it could offer storage services to customers located anywhere in the country. However, in defining the extent of the geographic market area, it takes a more conservative approach, based on the premise that if a more narrowly defined geographic area was unconcentrated, that a larger area would also be unconcentrated. EPGT defines the geographic market as the production area states traversed by three of the five interstate pipelines interconnected with the EPGT "header" system (the 72-mile section of the pipeline system that attaches to the Wilson Storage Facility). The three interstate pipelines are Texas Eastern Transmission Corporation, Tennessee Gas Pipeline Company and Transcontinental Gas Pipeline Company. The four production area states which they traverse are Texas, Louisiana, Mississippi and Alabama. The defined market area includes 57 storage facilities owned by 23 corporate owners, with a total working gas capacity of 764,997 MMcf and deliverability of 24,227 MMcf.

10. EPGT groups storage facilities by corporate owner, on the theory that the owner could coordinate the pricing and production activities of its affiliates. EPGT states that its market share is less than 1% of the total working gas capacity of the market and around 3% of the deliverability. The El Paso companies as a whole own 15.2% and 15.7% respectively. EPGT characterizes its market share as a minor portion of the total market.

11. EPGT measures market concentration using the Herfindahl-Hirschman Index (HHI). The HHI is calculated by summing the squares of the market shares of each market participant. According to the Department of Justice guidelines, used by the Commission in many cases, an HHI of less than 1800 is considered to be relatively unconcentrated. The HHI for EPGT's market area was calculated to be 1,265 for Working Gas and 988 for Deliverability.

12. Next EPGT turns to other factors which, EPGT alleges, would make it unlikely that EPGT could exercise market power. EPGT first considers the ease of entry into the production area storage market. In this regard, EPGT cites the numerous storage projects that have been approved in recent years. In an attachment to its market power analysis, EPGT lists 32 storage projects that are planned for EPGT's market area.

13. EPGT asserts that it will be a "new entrant" in the business of providing gas storage services at market-based rates to the interstate markets. Further, EPGT is small relative to other storage providers, and many of those providers offer service at regulated rates. EPGT also asserts that capacity release offered by interstate shippers will be a further check on the exercise of market power. If prices get too high, customers of storage facilities that offer capacity release will be able to re-market their capacity, which would undercut any prices that were excessive.

14. EPGT also discusses alternatives to underground storage. These include LNG and propane-air facilities, seasonal and swing gas supply contracts and balancing and no-notice services. For example, pipeline line pack is often the basis for park and loan service, which, EPGT states, is a good alternative to EPGT's interruptible storage services.

15. Taking all these factors together, EPGT concludes that it would be impossible for it to exercise market power. More specifically, it could not raise its prices above a competitive level for any length of time, nor discriminate unduly in terms of price or terms or conditions of service.

16. EPGT further asserts that affiliate issues are not a concern, for two reasons: first, since EPGT lacks market power, it could not recover any costs shifted to it from an affiliate. Second, EPGT could not shift costs to an affiliate that offers service at cost-based regulated rates, because that affiliate would only be allowed to charge a just and reasonable rate.

Public Notice, Intervention and Comments

17. EPGT's filing was noticed on January 10, 2003, with comments due on or before January 27, 2003.[5] On January 24, 2003, Falcon Gas Storage Company and Hill-Lake Gas Storage, LP (jointly Falcon) filed an intervention, protest and request for consolidation with the proceeding in Docket No. PR00-9.

18. Falcon states that it owns storage facilities in north Texas that offer high-deliverability, multi-cycle service and are capable of offering load following and hourly-balancing services to the gas fired electric generators located in north Texas. Falcon states that, because it offers balancing service on a firm basis, its service is superior to pipeline park and loan services. Falcon claims that EPGT has structured its Transportation SOC to exclude competition for storage and imbalance management services by third-party service providers. Therefore, Falcon claims that there are no good substitutes for EPGT's storage and imbalance management services, and EPGT should not be allowed to charge market-based rates for storage services.

19. Falcon cites Sithe/Independence Power Partners (Sithe), LP, 101 FERC ¶ 61,210 (2002) as supporting its contention that EPGT should not be allowed market-based rates for storage until the pipeline is fully opened to access from third-party storage providers.

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[5] 66 Fed. Reg. 65,688 (December 20, 2001).

Falcon requests consolidation of this proceeding with the issues it raised in Docket No. PR00-9-000.

20. On February 10, 2003, EPGT filed an answer to Falcon's protest and request for consolidation. EPGT opposes the consolidation requested by Falcon, stating that there is no basis for consolidation. EPGT states that, in any event, Falcon's protest is without merit, and furthermore, that Falcon's claims relate primarily to transportation service and not to storage service. EPGT explains that any customer using the Wilson Storage Facility is subject to the same transportation terms and conditions that would pertain if it were using Falcon's service. Therefore, Wilson has no advantage on account of its connection to EPGT's pipeline.

21. Furthermore, EPGT claims that Falcon's contention that EPGT should not charge market-based rates is unsupported. EPGT states that it has shown that there are many alternatives in its market area, and Falcon's storage facilities are among the alternatives. EPGT points out as well that Falcon's Hill Lake project is itself authorized to charge market-based rates under Section 311 of the NGPA.

Discussion

22. In the Commission's 1996 alternative rate policy, the Commission states that it will evaluate a proposal to charge market-based rates, as a departure from cost-based rates, by considering: (1) whether the applicant can withhold or restrict services and, as a result, increase its price by a significant amount (in the range of 10 percent or more) for a significant period of time, and (2) whether the applicant can discriminate unduly in price or terms and conditions.[6] In order to find that an applicant cannot withhold or restrict services, significantly increase price over an extended period, or unduly discriminate, the Commission must find either that there is a lack of market power because customers have good alternatives[7] or that the applicant or the Commission can mitigate the market power with conditions. The criteria established for evaluating proposals for market-based rates for natural gas companies include three major steps: (1) define the relevant markets, (2)

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[6] Alternatives to Traditional Cost of Service Ratemaking for Natural Gas Pipelines, Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 74 FERC ¶ 61,076 at 61,230 (1996) (Policy Statement).

[7] A good alternative is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative for the applicant's service. In addition, to constrain the applicant's exercise of market power, the alternative must be available in sufficient quantity to make [its] price increase unprofitable. See Koch Gateway Pipeline Co., 66 FERC ¶ 61,385 at 62,299 (1994).

measure a firm's market share and market concentration, and (3) evaluate other relevant factors.[8]

23. The Commission has approved numerous market-based rates for storage services where the applicant has demonstrated that it lacked significant market power, or the applicant has adopted conditions that sufficiently mitigated market power.[9] Upon review of EPGT's filing and Commission precedent, we conclude that EPGT is currently unable to exert market power.

24. EPGT defines its product as natural gas storage. EPGT uses a relatively restrictive definition of the geographic market, inasmuch as it excludes production area storage facilities in states like Oklahoma and Kansas. One of the pipelines that is attached to the EPGT header - Natural Gas Pipeline Company of America - is also attached to storage facilities in those states. Were it to include those storage facilities, the concentration and market share would be lower. EPGT has narrowly defined the geographic area of its storage market, yet its market power analysis still shows that it has a low market shares and that it would unlikely be able to exercise market power when acting alone.[10] Additionally, the HHI's are well below the 1800 level, below which the Commission has said it would apply ". . . less scrutiny of the applicant's potential to exercise significant market power because it would indicate that the market is less concentrated."[11]

25. In addition to considering the HHI and market share figures, there are other factors to consider in determining whether the applicant can exercise market power. EPGT's contention that entry into the storage market is not constrained is supported by the plethora

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[8] Policy Statement at 61,231.

[9] See e.g., Transok, L.L.C., (Transok II), 93 FERC ¶ 61,031 (2000); ONEOK Gas Storage, L.L.C., (ONEOK), 90 FERC ¶ 61,283 (2000); LBU Joint Venture (LBU), 88 FERC ¶ 61,035 (1999); Honeoye Storage Corporation, 91 FERC ¶ 62,165 (2000); ONEOK Gas Storage, L.L.C., 90 FERC ¶ 61,283 (2000); Central Oklahoma Oil and Gas Corporation, (COOG), 80 FERC ¶ 61,250 (1997), Manchester Pipeline Corporation, (Manchester), 76 FERC ¶ 61,007 (1996); Equitable Storage Company, (Equitable), 75 FERC ¶ 61,081 (1996); Enron Storage Company, (Enron), 73 FERC ¶ 61,206 (1995); Steuben Gas Storage Company, 72 FERC ¶ 61,102 (1995); Avoca Natural Gas Storage, 68 FERC ¶ 61,045 (1994); Transok, Inc., (Transok I), 64 FERC ¶ 61,095 (1993); and Petal Gas Storage Company, (Petal), 64 FERC ¶ 61,190 (1993).

[10] See Policy Statement at 61,234.

[11] See Policy Statement at 61,235.

of storage proposals approved by the Commission in recent years (e.g., Transok II, ONEOK, Equitable, Transok I, and Manchester). As the Commission pointed out in LBU, much of the proposed increase in storage capacity is in the production area, which indicates ease of entry and a high level of competition in the storage market. The Commission has previously recognized that the number of depleted gas fields in the production area also contributes to the ease of market entry.[12]

26. We note that the Commission has approved market-based storage service rates predominately in cases involving production area storage services.[13] In approving market-based rates for production area services, the Commission has based its findings on the fact that the markets were not concentrated, the market shares of the applicants were small, there were sufficient storage alternatives available for storage service and the ease of entry was evident by the large number of storage providers in the production area. EPGT has adequately shown that it does not have market power because the HHIs, indicating market concentration, are well below the 1800 level; its market shares are relatively small; there are numerous alternatives available for storage services; and ease of entry is evident by the large number of storage providers in the production areas.

27. We deny Falcon's protest. The issue here is whether EPGT has market power in the provision of storage services. EPGT points out that any customer using the Wilson Storage Facility is subject to the same transportation terms and conditions on the EPGT Pipeline that it would be if it used a competitor such as Falcon. The Commission agrees with EPGT's argument. The Commission finds no evidence of discrimination in favor of the Wilson Storage Facility. Since Falcon's quarrel is with EPGT's Transportation terms and conditions, its arguments would seem to be more appropriately placed in Docket No. PR00-9, or in a separate complaint proceeding.

28. The Commission has determined that it will examine EPGT'S storage services separately from its transportation services.[14] In this proceeding, Falcon has not demonstrated why EPGT's transportation terms and conditions result in market power for the Wilson Storage Facility.

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[12] Manchester at 61,022.

[13] See e.g., Transok II; ONEOK; COOG; Moss Bluff Hub Partners, 80 FERC ¶ 61,181 (1997); Manchester; Equitable; Enron; Quachita River Gas Storage L.L.C., 68 FERC ¶ 61,402 (1994); Transok I; and Petal.

[14] 91 FERC ¶ 61,304 (2000).

29. Regarding Falcon's request for consolidation, the Commission believes that consolidation is unnecessary. First, the Docket No. PR00-9 proceeding is at an advanced stage, awaiting rehearing. Introducing new issues at this late stage would be counterproductive. Second, we are finding here that Falcon has failed to demonstrate that EPGT has market power in the relevant storage market. Therefore, the Commission will deny the request for consolidation.

30. In light of the discussion above, we will approve EPGT's application. The Commission is also mindful that EPGT's parent company, El Paso Corporation, could acquire other storage facilities. Such acquisitions could change the result the Commission reaches herein. Our approval of market-based rates for EPGT is subject to re-examination if a significant change occurs to EPGT's (or El Paso's) market power status. Examples of such a change would include mergers that would impact the concentration of the geographic market.[15]

The Commission orders:

(A) EPGT's request to charge market-based rates on a non-discriminatory basis for its Section 311 storage services is approved, subject to the conditions and discussion above. EPGT must notify the Commission if future circumstances, including acquisitions, affect its present market power status.

(B) Falcon's request for consolidation is denied.

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[15] See e.g., Petal; Enron; and Equitable.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.