134 FERC ¶ 61,036
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. CP07-414-002

ORDER GRANTING REQUEST FOR REHEARING

(Issued January 20, 2011)

1. On September 3, 2010, Golden Triangle Storage, Inc. (Golden Triangle) filed a timely request for rehearing of the order issued in *Golden Triangle Storage, Inc.*, 132 FERC ¶ 61,101 (2010) (2010 Order). That order authorized Golden Triangle to revise its *pro forma* tariff approved in *Golden Triangle Storage, Inc.*, 121 FERC ¶ 61,313 (2007) (2007 Order). For the reasons discussed below, we will grant the request for rehearing.

The 2007 Order

2. The 2007 Order authorized Golden Triangle to: (1) construct and operate two high-deliverability natural gas storage caverns, a compressor station, and two pipelines to connect the caverns to nearby interstate pipelines; and (2) provide firm and interruptible storage services under market-based rates. The 2007 Order found that Golden Triangle's *pro forma* tariff generally complied with Part 284 of the Commission's regulations. Nevertheless, the 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 standards. Ordering Paragraph (H) 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.[1]

[1] The first phase of Golden Triangle's facilities went into service on September 1, 2010 and all the facilities went into service on December 1, 2010.

<u>The 2010 Order</u>

3. In its application to amend the 2007 Order, Golden Triangle stated that the *pro forma* tariff was nearly three years out of date and, as a result, required a significant number of changes. Thus, Golden Triangle proposed to: (1) add several new provisions to update the *pro forma* tariff approved in the 2007 Order; (2) revise its *pro forma* tariff to comply with the 2007 Order; (3) revise the tariff to conform with the Commission's new capacity release requirements; and (4) make minor edits and corrections to the tariff's text. Golden Triangle stated that approval of the revised *pro forma* tariff would provide certainty about the services it would offer prospective customers and would facilitate efforts to market unsubscribed capacity. In the 2010 Order, the Commission found, with certain exceptions, that Golden Triangle's proposed revisions generally conformed to the Commission's policies and approved them, subject to certain conditions.

<u>Request for Rehearing</u>

Rate Design Requirements for Interruptible Parking, Loan, and Balancing Services

4. The rate for Golden Triangle's interruptible storage service is based on the amount of gas actually stored, not the contract quantity. Golden Triangle, however, proposed to charge rates for interruptible parking, loan, and hourly balancing services based on a customer's maximum contract quantity. The 2010 Order rejected that proposal, stating that it was contrary to section 284.10(c)(1) of the Commission's regulations, which requires that rates for interruptible services be based on the units of service actually used.

5. Golden Triangle asserts that the Commission's finding is inconsistent with its determinations that pipelines and storage operators with authorization to charge market-based rates are not subject to the rate design strictures of section 284.10(c)(1). Golden Triangle states that the Commission has held that market-based rate authority (1) gives a storage provider the authority to offer services at whatever rates it can negotiate with its customers[2] and (2) specifically includes the authority to utilize a rate design different from that required for recourse rates.[3] Golden Triangle notes that the Commission waived

[2] Golden Triangle cites *Windy Hill Gas Storage, LLC*, 119 FERC ¶ 61,291 (2007) and *Chestnut Ridge Storage, LLC*, 128 FERC ¶ 61,210 (2009).

[3] Golden Triangle cites *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, at 61,225-26, *order granting clarification*, 74 FERC ¶ 61,194, *order denying reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996); *petition denied and dismissed, Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998).

section 284.10 in the 2007 Order since it was approving market-based rate authority[4] and that, when the Commission has done so in the past, it has approved tariffs with charges for interruptible parking and loan services similar to the provisions in Golden Triangle's proposal.[5]

6. In the 2007 Order, the Commission determined that Golden Triangle lacked market power for its storage and hub services and approved market-based rates for those services. Given the prior determination that Golden Triangle lacks market power and resulting waiver of section 284.10 in the 2007 Order, we find that Golden Triangle need not adhere to the rate design requirement that rates for interruptible services be based on the units of service actually used for its interruptible parking, loan, and balancing services. When a pipeline lacks market power and is therefore permitted to sell at market-based rates, it may enter into whatever contracts it can negotiate with customers -- it is not required to enter into contracts with specific rate terms. If the pipeline desires to put certain rate-related conditions in its tariff, it may do so even if those conditions deviate from our ordinary rate requirements. Our finding of a lack of market power means that potential customers of Golden Triangle have a variety of options for contracting for these services and are free to look elsewhere for service if they find such rate terms unacceptable. Therefore, we will waive section 284.9(c)[6] and allow Golden Triangle to charge rates for interruptible loan, parking, and balancing services based on maximum contract quantities, rather than on units actually used.

Reservation Charge Credits for Non-Force Majeure Events

7. The 2010 Order required Golden Triangle to provide reservation charge credits when it curtails service in non-force majeure situations. Golden Triangle contends that, under market-based rate authorization, pipeline and storage operators may negotiate with their customers whether to provide reservation charge credits in either force majeure or non-force majeure situations. Golden Triangle asserts that certain customers may place no value on receiving reservation charge credits in non-force majeure situations and may wish to negotiate a lower rate for service that does not incorporate such credits.

8. We have required pipelines with cost-based rates to provide reservation charge credits when service is curtailed due to non-force majeure events.[7] We have, however,

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[4] Golden Triangle cites, among other cases, *East Cheyenne Gas Storage, LLC* 132 FERC ¶ 61,097 (2010) and *Atmos Pipeline and Storage, LLC,* 127 FERC ¶ 61,260 (2009).

[5] Golden Triangle cites *MoBay Storage Hub LLC,* 126 FERC ¶ 61,241 (2009).

[6] Section 284.9(c) of the Commission's regulations provides that a reservation fee may not be imposed for interruptible service.

[7] *See Petal Gas Storage,* 126 FERC ¶ 61,199 (2009).

allowed pipelines with market-based rate authority to negotiate alternate forms of rate relief, such as reservation charge credits, in negotiated rate agreements because such provisions are essentially a rate matter.[8] Since the 2007 Order approved market-based rate authority, we will not require Golden Triangle to provide reservation charge credits in non-force majeure situations.

Action Alert/Operation Flow Order Penalties

9. Golden Triangle proposed that the penalty for failure to comply with the requirements of an Action Alert would be a rate equal to 110 percent of the highest Platt's "*Gas Daily*" posting for the higher of: (1) the day on which the violation occurred; (2) the first day after the violation; or (3) the second day after the violation. Golden Triangle proposed an operational flow order (OFO) penalty, with the penalty rate being three times the highest Platt's "*Gas Daily*" posting for the higher of (1) the day on which the violation occurred; (2) the first day after the violation; or (3) the second day after the violation. The 2010 Order rejected these proposals, holding that Golden Triangle did not justify basing the penalties on an index price that occurs one or two days after the violation and noting that such index price may no longer be reflective of events that occurred when the violation took place.

10. In its rehearing request, Golden Triangle states that *Gas Daily's* pricing for a particular day, on which Golden Triangle's proposed penalty provisions rely, lags a day behind – i.e., the prices *Gas Daily* publishes each morning reflect the previous day's market survey for next day delivery. Therefore, Golden Triangle contends, the gas pricing for the "day of" an Action Alert or OFO penalty would not reflect, under most rapidly changing circumstances, the actual impact of a major event, particularly one of short duration.

11. Golden Triangle contends that: (1) it designed its Action Alert and OFO penalties to create uncertainty and, as a result, to reduce the incentive for arbitrage; (2) price arbitrage becomes easier to accomplish when the basis for the penalty price is known or reasonably foreseeable; (3) Order No. 637 recognized that it is appropriate for pipelines to implement mechanisms to prevent price arbitrage;[9] and (4) its Action Alert and OFO penalties will make it more difficult for shippers to predict the index price that establishes the penalty and will reduce the economic incentive to violate an Action Alert or OFO.

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[8] *See*, *e.g. Southern LNG, Inc.*, 130 FERC ¶ 61,146 (2010); *Empire State Pipeline, Inc*., 116 FERC ¶ 61,074 (2006); *Katy Gas Storage and Transportation, L.P.,* 106 FERC ¶ 61,145 (2004).

[9] *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,099, at 31,314 (2000).

12. The underlying rationale for setting a penalty is deterrence. Due to the way natural gas prices are established, Golden Triangle has shown that using a penalty price set on the day of an Action Alert or OFO may provide economic incentives for shippers to violate the penalty provisions. Golden Triangle's proposed tariff provision, which would apply equally to all shippers, is reasonably designed to prevent arbitrage. Thus, we will accept Golden Triangle's penalty proposal.

The Commission orders:

(A) Golden Triangle is granted waiver of section 284.9(c) of the Commission's regulations for its interruptible services.

(B) Golden Triangle's request for rehearing is granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.