

120 FERC ¶ 61,253
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Tres Palacios Gas Storage, LLC

Docket Nos. CP07-90-000
CP07-91-000
CP07-92-000

ORDER ISSUING CERTIFICATES

(Issued September 20, 2007)

1. On February 23, 2007, and supplemented on June 1, 2007, Tres Palacios Gas Storage, LLC (Tres Palacios) filed an application for a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (NGA) to construct and operate a salt dome natural gas storage facility in Matagorda County, Texas, and an associated header system to interconnect the proposed storage facility with various interstate and intrastate pipelines. Tres Palacios also requests a blanket certificate under subpart G of Part 284 of the Commission's regulations to provide open-access storage services and a blanket certificate under subpart F of Part 157 that will permit Tres Palacios to perform routine activities in connection with the construction, maintenance and operation of the storage facilities. In addition, Tres Palacios requests authority to charge market-based rates for its storage services. As discussed below, the Commission finds that Tres Palacios' construction and operation are required by the public convenience and necessity, and issues Tres Palacios its requested certificate authorizations, subject to conditions. In addition, the Commission grants Tres Palacios' request for market-based rate authority and waivers of certain filing and other requirements.

I. Background

2. Tres Palacios is a newly-created limited liability company organized under the laws of the State of Delaware. Tres Palacios is a wholly-owned subsidiary of NGS Energy Fund, LP. (NGS), a Delaware limited partnership whose general partner is Westport Energy Advisors LLC. NGS is the ultimate parent company of Windy Hill Gas Storage, LLC, and Leaf River Energy Center LLC.

Docket No. CP07-90-000, *et al.*

- 2 -

II. The Proposal

A. Facilities

1. Storage Caverns

3. Tres Palacios proposes to construct a natural gas salt cavern storage facility, which will be located in Matagorda and Wharton Counties, Texas. The facility will consist of three existing Markham Salt Dome caverns which will be converted from industrial brine production to natural gas storage. The facility will be capable of storing approximately 53.99 Bcf of natural gas, of which 36.04 Bcf will be working gas and 17.95 Bcf will be cushion gas. The completed facility will be designed to allow cycling up to seven times per year, with a peak injection rate of 1,000 MMcf per day and a maximum withdrawal capability of 2,500 MMcf per day. The caverns are proposed to become operational in 2008.

2. Header System and Compression

4. The Tres Palacios project will be located close to several interstate and intrastate pipelines in the Gulf Coast region of Texas. Tres Palacios proposes to construct a 30.98-mile-long, 24-inch diameter North pipeline and a 10.74-mile-long 24-inch diameter South pipeline to connect twelve interstate and intrastate pipelines. These pipelines include Valero Natural Gas Pipeline Company (Valero), Tennessee Gas Pipeline Company (Tennessee), Transcontinental Gas Pipe Line Corporation (Transco), Natural Gas Pipeline Company of America (NGPL), Gulf South Pipeline Company, LP. (Gulf South), Crosstex Gulf Coast Transmission Ltd. (Crosstex), Kinder Morgan Tejas Pipeline, L.P. (Tejas), Florida Gas Transmission Company, LLC (Florida Gas), Channel Pipeline Company (Channel), Texas Eastern Transmission, L.P. (Texas Eastern), Kinder Morgan Texas Pipeline, L.P. (KM Texas), and Central Texas Gathering System (CTGS).

5. Tres Palacios also proposes to construct a gas handling facility approximately 2,000 feet from the caverns which will include compressors, gas dehydration facilities, and other ancillary support equipment. Ten gas-fired compression units, each capable of generating 4,800 horsepower, will be installed. This compression will be used to inject gas into storage and, as needed, to withdraw gas from storage for redelivery to the pipelines.

B. Rates and Services

6. Tres Palacios requests a blanket certificate under subpart G of Part 284 in order to provide firm and interruptible storage services on an open-access basis. Tres Palacios also requests approval of its pro forma tariff at Exhibit P to its application. Tres Palacios proposes to provide the firm storage service under Rate Schedule FSS and the

Docket No. CP07-90-000, *et al.*

- 3 -

interruptible storage service under Rate Schedule ISS. The rate schedules are intended to allow Tres Palacios' customers to customize their respective injection rates, withdrawal rates, and total inventory capacity based upon their needs. Tres Palacios also proposes to provide firm park and loan services, interruptible hourly balancing service, interruptible park and loan, and interruptible wheeling service.

7. Tres Palacios also requests authority to charge market-based rates for all storage services offered under Rate Schedules FSS and ISS. Tres Palacios supports its request with a market power analysis at Exhibit I to its application that concludes that Tres Palacios will lack market power with respect to the services that it proposes to provide.

C. Need for the Project

8. Tres Palacios states that, in addition to the well-documented significant need and market demand for natural gas in the United States,¹ there is also an increasing need for the type of high-deliverability gas storage that its salt caverns will provide. Tres Palacios asserts that its high-performance storage capacity will augment the Gulf Coast gas delivery system's capability to accommodate changing natural gas supply and delivery flows, as well as the uneven pattern of gas deliveries from LNG receiving and regasification terminals.

9. Tres Palacios held a non-binding open season to gauge interest in the project, and received serious expressions of interest for two-thirds of the proposed working gas capacity.

D. Requests for Waivers

10. Because it proposes to charge market-based rates, Tres Palacios requests waiver of certain of the Commission's filing, accounting, and reporting requirements applicable to cost-based rate proposals. The Commission previously has found the relevant provisions to be inapplicable to storage providers that are granted market-based rate authority.

11. Tres Palacios also requests waiver of several additional Commission regulations and policies. Since Tres Palacios is proposing to provide only natural gas storage service, and no stand-alone transportation services, Tres Palacios requests waivers of the section 284.7(d) requirement pertaining to segmentation and the section 157.14(a)(10) requirement to provide a showing of accessible gas supplies. Tres Palacios also requests

¹ *Annual Energy Outlook 2007 – With Projections to 2030*, Energy Information Administration (Dec. 2006).

Docket No. CP07-90-000, *et al.*

- 4 -

a waiver of the electronic data interchange (EDI) standards established by the North American Energy Standards Board (NAESB). In addition, Tres Palacios states that it is an independent storage provider that is exempt from the Commission's affiliate Standards of Conduct and, therefore, has not included specific provisions for compliance with those Standards of Conduct.

12. Finally, Tres Palacios seeks a waiver of the Commission's "shipper must have title" policy to enable it to obtain off-system capacity that may be necessary to provide the storage services to its customers. In support of its request, Tres Palacios proposes tariff language stating that Tres Palacios will provide transportation service using such off-system capacity only pursuant to its open-access tariff.

III. Notice, Interventions, and Comments

13. Public notice of Tres Palacios' application was published in the *Federal Register* on March 14, 2007 (72 Fed. Reg. 11,858). Motions to intervene were due on or before March 29, 2007. Tennessee and BP America filed timely, unopposed motions to intervene.² No protests were filed. Colleen and Elroy Matzke, affected landowners, filed a timely motion to intervene and included comments concerning compensation for loss of property value caused by the pipeline crossing their property.

IV. Discussion

14. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction, acquisition, and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. The Certificate Policy Statement

15. The Certificate Policy Statement provides guidance as to how the Commission will evaluate proposals for certificating new construction.³ The Certificate Policy

² Timely unopposed motions to intervene and timely notices of intervention are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2007).

³ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

Docket No. CP07-90-000, *et al.*

- 5 -

Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, and the avoidance of the unnecessary exercise of eminent domain or other disruptions of the environment.

16. Under this policy, the threshold requirement for pipelines proposing a new project is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

17. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Since Tres Palacios is a new pipeline company and has no existing customers, there is no potential for subsidization by existing customers. Likewise, there are no existing shippers that could be adversely affected. Moreover, under its market-based rate proposal, Tres Palacios assumes the economic risks associated with the costs of the project's facilities to the extent that any capacity is unsubscribed. Thus, the Commission finds that Tres Palacios has satisfied the threshold requirement of the Certificate Policy Statement.

18. Tres Palacios' storage project should not have any adverse impact on existing pipelines or their customers. Rather, it should enhance competition in the region by providing additional storage service at market-based rates in a narrowly defined market area that has experienced steady growth in gas use. Additionally, no storage company in Tres Palacios' market area has protested Tres Palacios' application.

Docket No. CP07-90-000, *et al.*

- 6 -

19. There should be minimal adverse impact on landowners and communities associated with the creation of these storage caverns. Tres Palacios is the owner of record of the land the project's Gas Storage Site⁴ will occupy, eliminating the need for Tres Palacios to exercise eminent domain rights in regards to the storage caverns or gas handling facility. Tres Palacios states it is in the process of acquiring the necessary rights-of-way for its header system. The land uses predominating in the area are industrial, agricultural and open land, and the site of the Gas Storage Site has been long devoted to commercial brine production and oil and gas operations. Therefore, Tres Palacios does not have to obtain additional rights-of-way or exercise eminent domain to construct this project, except as discussed immediately below.

20. Only one landowner has objected to the project. The Matzkes' property abuts U.S. Highway 59, and they claim that Tres Palacios' crossing of the highway would result in diminished value of their frontage property. The Matzkes' complained that Tres Palacios had not entered into negotiations to secure easement rights before filing the application. However, Tres Palacios subsequently assured the Commission that it has contacted the Matzkes regarding the pipeline crossing of their property and that compensation negotiations are under way.

21. The Commission encourages project sponsors to acquire as much of the right-of-way as possible by negotiation with the landowners and considers the extent to which the applicant has attempted to limit the need to obtain rights-of-way by eminent domain in weighing the benefits against any adverse effects of the proposed project. Although the Commission encourages pipeline companies to enter into fair negotiations with landowners regarding the use of their property, it does not intervene in such negotiations when the parties cannot reach an agreement. If that occurs, the pipeline company may bring an eminent domain action in the appropriate state or federal courts which will determine fair compensation.⁵

⁴ The Gas Storage Site, which includes the storage caverns and gas handling facilities, is located approximately 15 miles southeast of El Campo, in Matagorda County, Texas.

⁵ The Policy Statement recognized that, under section 7(h) of the Natural Gas Act (NGA), a pipeline with a Commission-issued certificate has the right to exercise eminent domain to acquire the land necessary to construct and operate its proposed new pipeline when it cannot reach a voluntary agreement with the landowner. *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128, at 61,398 (2000).

Docket No. CP07-90-000, *et al.*

- 7 -

22. The Commission has considered all the valid factors in balancing the adverse effects of this project against the public benefits and has determined to authorize the project. The Matzkes have presented no fact or argument that convinces us to alter that decision.

23. In addition, while Tres Palacios had no precedent agreements or executed contracts at the time it filed its application, Tres Palacios states that its open season resulted in non-binding bids for two-thirds of the proposed working gas capacity. Tres Palacios further states that further expressions of interests continued to come in after the open season closed. These expressions of interests show that Tres Palacios' facility has been designed to help meet unserved market demand for additional storage capacity.

24. The Commission concludes that the Tres Palacios facility will enhance the development of an efficient interstate pipeline transportation system by providing customers access to additional high-deliverability storage capacity. Based on the benefits the Tres Palacios project will provide to the market and the lack of any identified adverse effect on existing customers, other pipelines, landowners, or communities, we find, consistent with the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity requires approval of Tres Palacios' storage project.

B. Market-Based Rates

25. Under the Alternative Rate Policy Statement,⁶ the Commission's framework for evaluating requests for market-based rates has two principal purposes: (1) to determine whether the applicant can withhold or restrict services and, as a result, increase price by a significant amount for a significant period of time, and (2) to determine whether the applicant can discriminate unduly in price or terms and conditions. To find that an applicant cannot withhold or restrict services, significantly increase prices over an extended period, or unduly discriminate, the Commission must find either that there is a lack of market power⁷ because customers have good alternatives,⁸ or that the applicant or

⁶*Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076, *reh'g denied*, 75 FERC ¶ 61,024 (1996), *petitions for review denied sub nom., Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998). *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220 (2006), Order No. 678-A *order on clarification and reh'g*, 117 FERC ¶ 61,190 (2006).

⁷ Market power is defined as the ability to profitably maintain prices above competitive levels for a significant period of time. 74 FERC ¶ 61,076 at 61,230.

Docket No. CP07-90-000, *et al.*

- 8 -

the Commission can mitigate the market power with specified conditions. The Commission's analysis of whether an applicant has the ability to exercise market power includes three major steps: (1) definition of the relevant markets; (2) measurement of a firm's market share and market concentration; and (3) evaluation of other relevant factors.

26. Tres Palacios' market power analysis for the storage market defines the relevant product and geographic markets, measures market share and concentration, and evaluates the ease of entry into the relevant market. Tres Palacios identifies the relevant product market as interruptible and firm natural gas storage, hub, and wheeling services. Tres Palacios identifies the relevant geographic market as east Texas, Louisiana, Mississippi and Alabama (the Gulf States Market). The geographic market used in Tres Palacios' analysis consists of 25 other existing and competing storage facilities located in the Gulf States Market.

27. Tres Palacios utilizes two measures of natural gas storage capacity in its analysis of market concentration: working gas capacity and peak day deliverability. Tres Palacios' market power analysis shows a Herfindahl Hirschman Index (HHI)⁹ of market concentration for working gas capacity of 1,395, with Tres Palacios' market share being 5.0 percent, and an HHI for peak day deliverability of 866, with Tres Palacios' market share being 12 percent. These HHIs are significantly below the 1,800 level cited in the *Ratemaking Policy Statement*, under which circumstance no further market power analysis is required. In addition, Tres Palacios' market power analysis demonstrates that these relatively small market shares will not enable Tres Palacios to exert market power in the relevant market area.

28. We note that Tres Palacios' supplement provides for the addition of two new interconnects and includes an updated market power analysis. However, Tres Palacios' updated market power analysis confirms that the new interconnects do not affect the

⁸A 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 the alternative for an applicant's service. *Id.* at 61,231.

⁹ An HHI is calculated by summing the squares of each storage seller's market share. The Alternative Rate Policy Statement specifies that the HHI is to be used as an indicator of the level of scrutiny to be given to the applicant. An HHI above 1,800 results in the applicant being given closer scrutiny because the HHI indicates that the market is more concentrated and the applicant may have significant market power. Alternative Rate Policy Statement at 61,235.

Docket No. CP07-90-000, *et al.*

- 9 -

conclusion that Tres Palacios will lack market power in the provision of interstate storage, hub and related wheeling-services. Specifically, as a result of the two additional interconnects, Tres Palacios' market shares for wheeling delivery and receipt capacities are 20 percent and 23 percent, respectively. The HHI values for wheeling at alternate hubs and market centers is 1,331 for delivery capacity and 1,527 for receipt capacity, both well below the 1,800 threshold. In contrast, the initially filed market power analysis showed Tres Palacios' market shares for wheeling delivery and receipt capacities were 19 percent and 23 percent, respectively. The HHI values for wheeling at alternate hubs and market centers are 1,315 for delivery capacity and 1,506 for receipt capacity, again below the 1,800 threshold.¹⁰

29. Tres Palacios' market power analysis also contends that Tres Palacios does not possess market power because the relevant market is easy to enter. With regard to potential competition, Tres Palacios identifies 18 storage projects in the relevant market that are currently in various stages of development or expansion. Tres Palacios further notes that the Commission has found in numerous cases that there are no significant barriers to entry in the natural gas storage market in the Gulf Coast production region.¹¹ In further support, Tres Palacios submits that several other natural gas storage projects that will compete directly with Tres Palacios also incorporate pipeline header systems that are comparable in length to its header system.¹²

¹⁰ Tres Palacios performed a separate analysis employing the "bingo card" review, which the Commission has accepted in other cases, to evaluate the potential that Tres Palacios could exercise market power over the provision of interruptible wheeling services. See Exhibit I, Exhibit Nos. (KAR-11) and (KAR-12).

¹¹ See, e.g., *Port Barre Investments, L.L.C. d/b/a Bobcat Gas Storage*, 116 FERC ¶ 61,052, at P 25 (noting that there are "over 20 new storage projects or expansions of existing storage facilities in the Gulf Coast region," and that "[i]n light of this information, [the Commission] concludes that barriers to entry to the storage markets in the relevant market area are low"); *Katy Storage and Transportation, L.P.*, 106 FERC ¶ 61,145, at P 19 (the proposed increase in storage capacity in the production area is due in part to the ease of entry into the market and a high level of competition in the market); *Unocal Keystone Gas Storage, LLC*, 106 FERC ¶ 61,033, at P 16 (2004) (*Unocal Keystone*) (the proposed increase in storage capacity in the production area is due in part to the ease of entry into the market and a high level of competition in the market).

¹² See Application at pages 48 through 50 and footnote 64 citing to, among others, *Pine Prairie Energy Center, LLC*, 109 FERC ¶ 61,215 (2004), *amended*, 116 FERC ¶ 61,316 (2006) (*Pine Prairie*) (authorization a storage project including a dual 24" bi-directional pipeline header system arranged in three branches totaling more than 54 miles

(continued)

Docket No. CP07-90-000, *et al.*

- 10 -

30. In prior orders, we have approved requests to charge market-based rates for storage services based on a finding that a proposed project would not be able to exercise market power due to its small size, its anticipated small share of the market, and the existence of numerous competitors.¹³ We have also distinguished between production area storage facilities and market area storage.¹⁴ In general, market power in a production area is less of a concern due to the numerous alternative storage facilities operating in competition with one another.

31. We find that Tres Palacios' proposed market definition properly identifies good alternatives to Tres Palacios. We also find that, within this relevant market, Tres Palacios' prospective market shares are low and that the market's concentration is below the threshold for closer scrutiny. Finally, we agree that barriers to entry are likely to be low in the relevant market. Thus, we conclude that Tres Palacios will lack significant market power. Further, Tres Palacios' proposal for market-based rates is unopposed. For these reasons, we will approve Tres Palacios' request to charge market-based rates for all firm and interruptible storage, hub and wheeling services.

32. In addition to other reporting requirements imposed herein, Tres Palacios must notify the Commission if future changes in circumstance significantly affect its present market power status. Thus, our approval of market-based rates is subject to reexamination in the event that: (a) Tres Palacios seeks to add storage capacity beyond the capacity authorized in this proceeding; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to Tres Palacios; or (d) Tres Palacios, or an affiliate,

in length, interconnecting with 8 pipelines, and authorizing market-based rates for wheeling services); *SG Resources Mississippi, LLC*, 101 FERC ¶ 61,029 (2002), *amended*, 118 FERC ¶ 61,048 (2007) (authorizing a storage project including a 29-mile long, dual branch header system (consisting of one 3.13 miles long 24-inch diameter pipeline and 26.1 miles of dual 24-inch diameter bidirectional natural gas pipelines) interconnecting with three pipelines and authorizing market-based rates for wheeling services); and, *Bluewater Gas Storage, LLC*, 117 FERC 161,122 (2006) at P 30-31 (*Bluewater*) (authorizing wheeling services among six pipelines at market-based rates using a 35 mile header).

¹³ *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).

¹⁴ *Steuben Gas Storage Co.*, 72 FERC ¶ 61,102 (1995), *order on compliance filing, issuing certificates, and denying reh'g*, 74 FERC ¶ 61,024 (1996).

Docket No. CP07-90-000, *et al.*

- 11 -

acquires an interest in, or is acquired by, an interstate pipeline connected to Tres Palacios. Since these circumstances could affect its market power status, Tres Palacios shall notify the Commission within 10 days of acquiring knowledge of any such changes. The notification shall include a detailed description of the new facilities and their relationship to Tres Palacios.¹⁵ The Commission also reserves the right to require such an analysis at any intervening time.¹⁶

C. Waivers of Filing, Reporting, and Accounting Requirements

33. In light of its request for authority to charge market-based rates and the fact that Tres Palacios has no pre-existing facilities, Tres Palacios requests that the Commission waive the requirement of section 157.6(b)(8) of the Commission's regulations to file cost-based data, as well as the filing requirements of section 157.14(a)(13), (14), (16), and (17) to submit Exhibits K (Cost of Facilities), Exhibit L (Financing), Exhibit N (Revenues, Expenses, and Income), and Exhibit O (Depreciation and Depletion), since these exhibits also support cost-based rate authority. For the same reasons, Tres Palacios requests waiver of the accounting and annual reporting requirements under Part 201 and section 260.2 of the Commission's regulations. Similarly, Tres Palacios requests waiver of the requirement for reservation charges and the straight fixed-variable rate design set forth in sections 284.7(e) and 284.10 also as being inapplicable to market-based rate design. Finally, Tres Palacios requests waiver of the filing requirement of section 157.14(a)(10) to submit total gas supply data (Exhibit H), as being inapplicable to natural gas storage operations.

34. The cost-related information required by these regulations is not relevant in light of our approval of market-based rates for Tres Palacios' storage services. Thus, consistent with our findings in previous orders,¹⁷ we will grant Tres Palacios' request for waivers of the regulations requiring the filing of cost-based information, reservation charges, and the use of a straight fixed variable rate design. We will also grant a waiver of section 157.14(a)(10) requiring an applicant to submit gas supply data, which does not pertain to natural gas storage service. There is also no ongoing regulatory need to have

¹⁵ See *Copiah County Storage Co.*, 99 FERC ¶ 61,316 (2002); *Egan Hub*, 99 FERC ¶ 61,269 (2002).

¹⁶ See *Liberty Gas Storage LLC*, 113 FERC ¶ 61,247, at P 51 (2005) and *Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141, at P 40 (2005).

¹⁷ See *Bobcat Gas Storage*, 116 FERC ¶ 61,052 (2006) and *Unocal Windy Hill Gas Storage, LLC*, 115 FERC ¶ 61,218 (2006).

Docket No. CP07-90-000, *et al.*

- 12 -

cost-based financial statements prepared in accordance with the Commission's Uniform System of Account (USofA). Accordingly, the Commission will grant Tres Palacios' request to waive accounting requirements, as prescribed in Part 201, Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act. In addition, the Commission will grant Tres Palacios' request to waive reporting requirements, as prescribed in section 260.2, FERC Form No. 2-A, Annual Report for Nonmajor Natural Gas Companies (Form 2-A), and section 260.300, FERC Form No. 3-Q, Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies, but notes that such waivers do not extend to the FERC's annual charge assessment (ACA). Therefore, Tres Palacios is required to file page 520 and 520-A of Form 2-A, with official certification, reporting the gas volume information which is the basis for imposing an ACA.¹⁸ In addition, the Commission also requires Tres Palacios to maintain records to separately identify the original cost and related depreciation on its storage gas facilities should the Commission require Tres Palacios to produce these reports in the future.

D. Tariff Issues

35. Tres Palacios proposes to offer firm and interruptible storage, hub and wheeling services on an open-access basis under the terms and conditions set forth in the pro forma tariff attached as Exhibit P to the application. As discussed below, we find that Tres Palacios' proposed tariff generally complies with Part 284 of the regulations, with a few noted exceptions.

E. New Storage and Hub Services

1. Rate Schedules NNSS, FP, FL, and IW

36. In Rate Schedule NNSS, Tres Palacios proposes to provide firm "no-notice" storage service. Tres Palacios states that this service will permit customers to adjust their injections into, and withdrawals from, Tres Palacios' storage as their requirements dictate, without having to give Tres Palacios advance notice of such changes.

37. In Rate Schedules FP and FL, Tres Palacios proposes to offer firm parking and loan services under which Tres Palacios and a customer would agree to park or loan a fixed quantity of gas for a fixed time period.¹⁹ Tres Palacios states that the proposed Rate

¹⁸ See *Bluewater Gas Storage, LLC*, 117 FERC ¶ 61,122 at P 49 (2006).

¹⁹ Tres Palacios proposes to offer interruptible parking and loan services under Rate Schedules IP and IL, under which a customer could temporarily deposit gas at Tres
(continued)

Docket No. CP07-90-000, *et al.*

- 13 -

Schedule FP service would cover three time periods: (1) an injection period, during which the customer would inject the agreed-upon quantity; (2) a storage period, during which the customer would retain its gas in Tres Palacios' storage; and (3) a withdrawal period, during which the customer would withdraw parked gas from storage.²⁰ Tres Palacios explains that it and the customer would negotiate the duration of each of the three time periods in advance, which would be specified in the service agreement, and that customers would have the right to withdraw gas only during the withdrawal period and to inject gas only during the injection period. Tres Palacios asserts that each Rate Schedule FP or FL customer's capacity, injection, and withdrawal rights would be firm in the sense that they would not be subordinate to other classes of service, although there would be times during the term of a customer's service agreement that the customer would not have the right to inject and/or withdraw gas from storage. Further, Tres Palacios states that it only will provide firm park and loan service to the extent that it has otherwise unsubscribed capacity and gas in storage not dedicated to another service.²¹

38. Finally, in Rate Schedule IW, Tres Palacios proposes to offer interruptible wheeling service. This service would permit a customer to transfer gas using Tres Palacios' header pipeline system between or among the interstate and intrastate pipelines that will interconnect with Tres Palacios.

39. The Commission will approve Tres Palacios' proposed services, which will provide additional storage service options for prospective customers in the Gulf States market. The proposed rate schedules are consistent with those provided by other storage service providers, such as Windy Hill, with the exception of the overrun service and right of first refusal provisions, which are discussed below.

Palacios' storage facility or borrow gas from Tres Palacios to meet the customer's balancing or other needs.

²⁰ Rate Schedule FL service would involve a withdrawal period and then an injection period.

²¹ Tres Palacios points out that, in this respect, its firm park and loan proposal is unlike the proposal the Commission rejected in *Questar Pipeline Co.*, 99 FERC ¶ 61,129 (2002), where a pipeline proposed to offer firm parking service using capacity not being used from time to time by firm storage customers. Tres Palacios states that its proposal is also unlike the rejected proposal in *National Fuel Gas Supply Corp.*, 78 FERC ¶ 61,036 (1997), where the applicant sought to offer firm advance loan service using gas in storage dedicated to no-notice service.

2. Rate Schedule IHBS

40. In Rate Schedule IHBS, Tres Palacios proposes to provide interruptible hourly balancing service that would allow a customer served by one of the pipelines that interconnects with Tres Palacios to make its daily nominations on an hourly basis. Tres Palacios states that this service is intended to meet the needs of end-use customers who might find value in hourly service flexibility, as well as natural gas-fired electric generating facilities that purchase hourly and balance services, particularly in response to the growth of wind generation with its unpredictable dispatch. Tres Palacios notes that Rate Schedule IHBS is consistent with the Commission's policy that pipeline shippers be afforded the opportunity to obtain imbalance management services from off-system service providers.²²

41. With regard to availability of service under Rate Schedule IHBS, however, we note that Tres Palacios' proposed tariff language includes a provision that presents cause for concern:

Availability of service under this Rate Schedule shall be subject to a determination by Tres Palacios that its performance of the service requested hereunder shall not cause a reduction in Tres Palacios' current or future ability to provide Firm Storage Services under currently effective or potential Storage Service Agreements.²³

42. This provision, section 1(e) of Rate Schedule IHBS (and the similar section 1(d) of Rate Schedule ISS), further limits availability of interruptible service to the extent it may reduce Tres Palacios' current or future ability to provide firm storage service. The provision is unclear as to whether it would allow Tres Palacios to hold capacity for future potential firm storage contracts or whether it simply allows Tres Palacios to deny a request to execute an interruptible storage service agreement if Tres Palacios has received a request for firm service but has not yet executed a contract.

43. Tres Palacios may sell unsold firm capacity as firm service in preference to interruptible service, but Tres Palacios may not hold capacity for undefined future firm contracts. Tres Palacios' tariff provides adequate protections against interruptible service impeding the contracting of firm service by requiring an interruptible customer to remove

²² See 18 C.F.R. § 284.12(b)(2)(iii) (2006).

²³ See Exhibit P, Rate Schedule IHBS, section 1(e); Original Sheet No. 41.

Docket No. CP07-90-000, *et al.*

- 15 -

its gas from storage if that capacity is subsequently needed for firm service.²⁴ The Commission will thus require Tres Palacios to file an explanation within 15 days of the date of this order to clarify the intent of section 1(e) of Rate Schedule IHBS and section 1(d) of Rate Schedule ISS, in accordance with this discussion.

F. Modifications to Rate Schedules

1. Segmentation

44. Section 284.7(d) of the Commission's regulations provides that an interstate pipeline must permit a shipper to make use of the firm capacity for which the shipper has contracted by segmenting that capacity into separate parts for the shipper's own use, or for the purpose of releasing that capacity to replacement shippers to the extent that segmentation is operationally feasible. Tres Palacios requests a waiver of the Order No. 637 segmentation requirement in section 284.7(d), contending that, because its system consists of a single integrated storage facility that operates in one compact geographic location, there is nothing to segment. Tres Palacios requests that the Commission find that segmentation is operationally infeasible on its system.

45. In *Clear Creek Gas Storage Company*,²⁵ we found that the requirements of section 284.7(d) do not apply to pipelines engaged solely in natural gas storage and which do not provide stand-alone transportation services. Tres Palacios meets the requirements in *Clear Creek*. Thus, we hold that the requirements of section 284.7(d) do not apply to Tres Palacios. Other tariff provisions related to segmentation, such as the allocation of primary point rights in segmented release and within-the-path scheduling, also do not apply to Tres Palacios.

2. Acquisition of Off-System Capacity and Waiver of Shipper Must Have Title Policy

46. Tres Palacios requests a generic waiver of the "shipper must have title" policy for any off-system capacity it may need to acquire in order to provide storage services, to enable it to use that capacity to transport natural gas owned by other parties. Section 30 of Tres Palacios' pro forma tariff provides:

²⁴ See Exhibit P, Rate Schedule IHBS, section 2.4.

²⁵ 96 FERC ¶ 61,071 (2001) (*Clear Creek*).

Docket No. CP07-90-000, *et al.*

- 16 -

Tres Palacios may, from time to time, acquire transportation and/or storage capacity on a third-party pipeline system. Tres Palacios will only provide transportation and storage services for others using such capacity pursuant to its open access FERC Gas Tariff subject to its rates approved by the Federal Energy Regulatory Commission, and the “shipper must hold title” policy is waived to permit such use.²⁶

47. This language implements the Commission's policy with respect to pipelines' acquisition of off-system capacity. In *Texas Eastern Transmission Corporation (TETCO)*,²⁷ the Commission found that pipelines no longer need to obtain prior approval to acquire capacity on another pipeline, provided the acquiring pipeline has filed tariff language specifying that it will only transport for others using off-system capacity pursuant to its existing tariff and rates. Tres Palacios' proposed tariff language is consistent with the requirements set forth in *TETCO* and authorizations granted other storage companies authorized to charge market-based rates.²⁸

48. Therefore, we accept Tres Palacios' proposed tariff language and grant waiver of the shipper must have title policy, with the following clarifications. Because Tres Palacios has proposed only to offer firm storage and interruptible hub services, and has proposed no rates or tariff provisions relating to any other transportation services other than storage, hub and wheeling, Tres Palacios may only use capacity obtained on other pipelines pursuant to the *TETCO* waiver in order to move gas into and out of storage. That is, Tres Palacios may not use its header facilities and capacity on other pipelines to transport gas which will not physically or contractually enter its storage facility unless and until it has received Commission authorization to provide such transportation services. Furthermore, Tres Palacios' authorized use of the *TETCO* waiver to provide storage service shall be limited to the geographic area covered by its market study.

49. To ensure that Tres Palacios uses acquired off-system capacity in a manner consistent with its market-based rate authority and tariff provisions, and to satisfy our responsibility to monitor and prevent the exercise of market power, we direct Tres

²⁶ Pro Forma Sheet No. 154.

²⁷ 93 FERC ¶ 61,273 (2000), *reh'g denied*, 94 FERC ¶ 61,139 (2001).

²⁸ *See, e.g., SG Resources Mississippi, L.L.C.*, 101 FERC ¶ 61,029, at P 30-33 (2002).

Docket No. CP07-90-000, *et al.*

- 17 -

Palacios, once it becomes operational, to make an annual informational filing regarding its provision of service using off-system capacity, as detailed below.²⁹

50. Within 30 days after its first full year of operation, and every year thereafter, Tres Palacios is directed to file, for each acquisition of off-system capacity:

- a. the name of the off-system provider;
- b. the type, level, term and rate of service contracted for by Tres Palacios;
- c. a description of the geographic location – boundaries, receipt and delivery points, and segments comprising the capacity;
- d. the operational purpose(s) for which the capacity is utilized;
- e. a description of how the capacity is associated with specific transactions involving customers of Tres Palacios; and
- f. an identification of total volumes, by Tres Palacios' rate schedule and customer, that Tres Palacios has nominated on each off-system provider during the reporting period.

3. Implementation of NAESB Standards

51. The Commission has adopted in Part 284 of its regulations various standards for conducting business practices and electronic communication with interstate pipelines as promulgated by the North American Energy Standards Board (NAESB).³⁰ These standards govern nominations, allocations, balancing measurement, invoicing, capacity release, and mechanisms for electronic communication between pipelines and those with whom they do business. Tres Palacios states that its pro forma tariff is consistent with

²⁹ See, e.g., *Starks Gas Storage L.L.C.*, 111 FERC ¶ 61,105, at P 54-57 (2005).

³⁰ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, 57 Fed. Reg. 13267 (April 16, 1992), FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 30,939, at pp. 30,425-427 (April 8, 1992), *order on reh'g*, Order No. 636-A., 57 Fed. Reg. 36128 (August 12, 1992), FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 30,950 (August 3, 1992), *Order on reh'g*, Order No. 636-B., 57 Fed. Reg. 57911 (December 8, 1992), 61 FERC ¶ 61,272 (1992), *notice of denial of reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and vacated and remanded in part, United Dist. Companies v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997). NAESB was formerly called the Gas Industry Standards Board (GISB).

Docket No. CP07-90-000, *et al.*

- 18 -

Order Nos. 636 and 637, and with Version 1.7 of the NAESB Standards,³¹ the latest version of the standards adopted by the Commission at the time Tres Palacios filed its certificate application.³²

52. However, Tres Palacios requests a partial waiver of section 284.12(a)(1)(iv) of the Commission's regulations which require interstate pipelines to comply with the electronic data interchange (EDI) standards established by NAESB. Tres Palacios requests a limited waiver in the form of an extension of time to comply with the NAESB standards related to EDI/EDM and FF/EDM requirements so as to allow Tres Palacios to postpone implementation until 90 days following receipt by Tres Palacios of a request to send information via EDI/EDM.³³ Consistent with Commission precedent, we will grant Tres Palacios' request for an exemption of the EDI standards, but will require Tres Palacios to implement those standards within 90 days following the receipt of such a request.³⁴

4. Injection Ratchets

53. Tres Palacios proposes in Rate Schedule FSS to include ratchets, where applicable, only on injections into storage; withdrawals from storage would not be subject to ratchets. Tres Palacios also proposes to offer a customer the option of receiving either ratcheted or unratcheted firm storage service. The Commission has previously allowed storage service providers to offer this option.³⁵ Tres Palacios,

³¹ In Section 23 of the General Terms and Conditions of its pro forma tariff sheets, Tres Palacios adopts Version 1.7 of the NAESB standards. *See Pro Forma Sheet No. 150.*

³² *See Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-S, *FERC Stats. & Regs.* ¶ 31,179 (2005).

³³ Tres Palacios states that the Commission has granted waivers of the EDI/EDM and FF/EDM standards to interstate pipelines and storage service providers that have not received requests to send information via EDI/EDM and FF/EDM and do not expect any such requests, citing: *Unocal Windy Hill Gas Storage, LLC*, 115 FERC ¶ 61,218, at P 48 (2006); *MoBay Storage Hub, Inc.*, 117 FERC ¶ 61,298, at P 46 (2006); *Saltville Gas Storage Co.*, 109 FERC ¶ 61,200, at P 36-37 (2004).

³⁴ *See Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141 (2005), *Saltville Gas Storage Co. LLC*, 109 FERC ¶ 61,200 (2004); *Missouri Interstate Gas, LLC*, 102 FERC ¶ 61,172 (2003).

³⁵ *See Windy Hill Gas Storage, LLC*, 119 FERC ¶ 61,291, at P 43-44 (2007) (*Windy Hill*).

Docket No. CP07-90-000, *et al.*

- 19 -

however, indicates that it cannot at this time state the injection ratchet percentages that will apply to its ratcheted services, but will provide the injection ratchet values shortly before its in-service date in its actual tariff sheet filing and includes this commitment in its Rate Schedule FSS tariff provisions.³⁶

54. Consistent with our acceptance of ratchets for other storage service providers, the Commission will accept Tres Palacios' proposed use of ratchets, subject to Tres Palacios including the injection ratchet values in its actual tariff sheet filing, as proposed.

5. Right of First Refusal (ROFR)

55. For service under Rate Schedule FSS, Tres Palacios' proposed tariff includes no provision allowing for negotiation in a Rate Schedule FSS service agreement of whether to include a contractual ROFR for renewal of the customer's service agreement. The Commission does not require a storage service provider to include a provision that permits negotiation of a contractual ROFR and has accepted storage service provider tariffs that do not include such a provision.³⁷ We, therefore, accept Tres Palacios' proposal to provide service under Rate Schedule FSS without the option of negotiating a contractual ROFR.

6. Overrun Service

56. Tres Palacios' pro forma tariff regarding Rate Schedule FSS does not provide for overrun service. As discussed earlier, Tres Palacios will offer hourly flexibility on an operationally available basis so that shippers have flexibility within their contract levels. In addition, Tres Palacios indicates that operational balancing agreements will resolve any difference between receipts and deliveries to or from Tres Palacios' storage facility. A shipper's contract entitles it to service up to the maximum contracted quantities. The Commission does not require storage providers to offer overrun service in excess of contracted volumes.³⁸

³⁶ Exhibit P, Rate Schedule FSS, section 9.

³⁷ See *Windy Hill* at P 46.

³⁸ See *Windy Hill* at P 50.

7. Gas Retention Penalties

57. Tres Palacios proposes to retain a customer's gas improperly left in storage in two circumstances: (1) when gas is not withdrawn from storage by a firm storage or parking customer prior to the expiration of the customer's service agreement; and (2) when gas is not withdrawn from storage by an interruptible storage or parking customer following notice by Tres Palacios that it is going to interrupt the customer's service and directing the customer to remove its gas. In the first situation, Tres Palacios proposes to credit the firm shipper with 80 percent of the net revenue that the pipeline receives from an auction sale of the shipper's gas (a 20 percent penalty).³⁹ In the latter situation, Tres Palacios proposes to retain the gas without crediting to the shipper any of the revenue that Tres Palacios receives from the sale of the gas (a 100 percent penalty).⁴⁰ Tres Palacios states that such gas retention penalties are appropriate and consistent with Order No. 637.

58. In addition, Tres Palacios further proposes, in its GT&C,⁴¹ to credit to all of its customers whose gas was not purchased or retained, the net proceeds⁴² from the sale of the retained gas (i.e., the 20 percent penalty associated with firm service and the 100 percent associated with interruptible service) pursuant to the revenue crediting provisions of Order No. 637. The Commission has accepted similar gas retention proposals by other storage providers, stating that the retention of gas left in storage at the end of the withdrawal period is an operationally-justified deterrent to shipper behavior that could threaten the system or degrade service to firm shippers.⁴³ If capacity exists, we would expect that a customer would be able to contract for interruptible service if needed. However, if capacity does not exist, Tres Palacios would be unable to provide such service. As for the level of the penalty, Tres Palacios has proposed to credit 80 percent of the auction value of the gas back to the firm or interruptible customer and credit the net proceeds from the auction to its other customers. Tres Palacios thus proposes a less

³⁹ Exhibit P, Rate Schedule FSS, section 8.1 and Rate Schedule FP, section 8.1.

⁴⁰ Exhibit P, Rate Schedule ISS, section 2.2 and Rate Schedule ISP, section 2.

⁴¹ Exhibit P, GT&C, section 32. Tres Palacios cites *Ozark Gas Transmission, L.L.C.*, 96 FERC ¶ 61,160, at 61,702-03 (2001), as precedent for such revenue crediting.

⁴² "Net proceeds" is defined in GT&C section 32 as "the total proceeds received from the auction less any costs Tres Palacios incurred as a result of conducting the auction or the purchase or retention of Customer's gas." Original Sheet No. 158.

⁴³ See *Windy Hill*, 119 FERC ¶ 61,291 at P 51-56.

Docket No. CP07-90-000, *et al.*

- 21 -

severe penalty than other storage providers, who do not credit any portion of the value of the retained gas to the customer.

59. Finally, if an interruptible storage customer does not remove its gas when Tres Palacios determines that such interruptible storage capacity is needed to provide firm storage service, Tres Palacios proposes to retain the gas with no credit back to the customer. This provision is also consistent with the tariffs of other storage service providers.⁴⁴ For these reasons, we find that Tres Palacios' gas retention and penalty proposals are consistent with Commission precedent and are accepted.

8. Warehouseman's Lien

60. Tres Palacios has added a Warehouseman's Lien provision to each of the Rate Schedules FSS, FP, ISS, IHBS, and IP pro forma service agreements in its tariff. This provision permits Tres Palacios to establish a lien or interest on all gas received from the shipper in order to satisfy charges for storage or transportation. Tres Palacios states that these provisions are substantially identical to those recently approved in *MoBay Storage Hub, LLC*.⁴⁵ The Commission will accept these provisions, consistent with our prior order.

G. Changes to General Terms and Conditions

1. Creditworthiness

61. Tres Palacios states that it has added new creditworthiness provisions in its tariff that comply with the Commission's 2005 policy statement on creditworthiness⁴⁶ Tres Palacios proposes to distinguish not only between "creditworthy" and "non-creditworthy" customers, as do most tariffs, but also among those customers found "creditworthy," with respect to the amount of credit Tres Palacios will extend to those creditworthy customers. For creditworthy customers, Tres Palacios proposes to determine the amount of credit it

⁴⁴ See *Windy Hill* at P 54-56; *Pine Prairie* at P 46; and, *Blue Lake Gas Storage Co.*, 96 FERC ¶ 61,164 at 61,728-29 (2001) (*Blue Lake*).

⁴⁵ 117 FERC ¶ 61,298, at P 54 (2006).

⁴⁶ *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, 70 Fed. Reg. 37,717 (June 30, 2005), FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,191 (2005) (Creditworthiness Policy Statement).

Docket No. CP07-90-000, *et al.*

- 22 -

will extend based on each customer's credit rating, and to extend higher levels of credit to customers with higher credit ratings.⁴⁷

62. Tres Palacios explains that normally, a customer that is deemed "creditworthy" is not required to post any security and will be extended credit equal to the value of its service charges and, if applicable, the value of loaned gas, while a "non-creditworthy" customer must post security for three months' worth of service charges and, if applicable, the value of any gas loaned to the customer. Tres Palacios states that this typical approach does not protect against the potential for a storage provider's credit exposure to increase dramatically with increases in the value of loaned gas. Tres Palacios asserts that the value of service charges can be determined with relative certainty, as it is not generally subject to market volatility and is typically only a fraction of the gas commodity value. In contrast, Tres Palacios states the value of loaned gas varies dramatically over time in response to market forces and can be many times greater than the value of service charges. Tres Palacios asserts that it is concerned that it not become overextended by reason of changes in its exposure to creditworthy customers taking loan service in times of extreme gas price volatility.

63. Tres Palacios proposes to determine an "Unsecured Collateral Limit" applicable to each level of Standard & Poor's and Moody's credit ratings, which will be set out in its tariff. Tres Palacios states that higher limits would apply to higher credit ratings and that a customer's Unsecured Collateral Limit would change with changes in the customer's credit rating. Tres Palacios will also determine the "Credit Exposure" for each customer (typically equal to three months worth of service charges plus the value of any loaned gas), which it will recalculate daily to reflect changes in the market value of loaned gas. Tres Palacios proposes that a customer will be required to post security equal to the positive difference, if any, between the Credit Exposure attributable to a customer and the customer's Unsecured Collateral Limit. Tres Palacios anticipates that the proposed credit thresholds will generally affect customers contracting for loan services under Rate Schedules FL and IL, since the Unsecured Collateral Limit for the lowest investment grade credit rating typically will be greater than three months worth of service charges for most of Tres Palacios' customers.

⁴⁷ Exhibit P, GT&C, section 31. Tres Palacios asserts that such a proposal is consistent with credit practices universally employed in the natural gas commodity market, and that it is appropriate to rely upon natural gas trading credit practices in establishing mechanisms for calculating credit support pertaining to loaned gas. Application at 23-24.

64. The Commission finds that Tres Palacios' creditworthiness provisions are consistent with the Commission's Creditworthiness Policy Statement in that they are objective and transparent.⁴⁸ Tres Palacios' creditworthiness provisions are also consistent with other creditworthiness provisions approved by the Commission for storage pipeline providers, such as Windy Hill.⁴⁹ The refinement to those provisions that Tres Palacios proposes in this case would determine the amount of credit extended to creditworthy customers based on each customer's credit rating. This refinement will provide Tres Palacios with additional flexibility to address the potential for Tres Palacios' credit exposure for loaned gas to increase dramatically due to the volatile gas commodity market. Therefore, consistent with the Creditworthiness Policy Statement and previous Commission orders, the Commission will accept the proposed creditworthiness tariff provisions.

2. Insurance Coverage for Risk of Loss of Gas in Storage

65. Section 12.2 of the GT&C of Tres Palacios' pro forma tariff, governing risk of loss, provides, in relevant part, that "the risk of loss of any quantity of Gas wheeled through, injected into, parked or stored in and withdrawn from the Tres Palacios storage facilities shall remain with the customer, and Tres Palacios shall not be liable to Customer for any loss of Gas, except as may be the consequence of the intentional or negligent acts or omissions of Tres Palacios."⁵⁰ In response to concerns expressed by its prospective customers regarding this allocation of the risk of loss of gas held in storage, Tres Palacios has added in its tariff, as an accommodation to customers under Rate Schedules FSS, ISS, FP, IP, and IHBS, section 16 to its GT&C, providing that Tres Palacios will obtain insurance for the value of customers' gas held in storage.

66. Section 16 provides that Tres Palacios will be responsible for obtaining, for the benefit of its customers, insurance coverage against casualty events that result in the loss of gas held in Tres Palacios' storage facility, provided that such insurance coverage is available to Tres Palacios on commercially reasonable terms. Section 16 also provides

⁴⁸ Creditworthiness Policy Statement at P 10.

⁴⁹ See *Windy Hill*, 119 FERC ¶ 61,291 at P 58-61. See also *Egan Hub Storage, LLC*, 114 FERC ¶ 61,154 (2006); *Entrega Gas Pipeline, LLC*, 114 FERC ¶ 61,326, at P 5, 26 (2006).

⁵⁰ Exhibit P, GT&C, section 12.2. Section 12.2 of Tres Palacios' originally filed tariff provided that Tres Palacios would not be liable to customers for any loss of gas, except due to the "intentional or grossly negligent acts or omissions" of Tres Palacios.

Docket No. CP07-90-000, *et al.*

- 24 -

that Tres Palacios' undertaking to obtain such insurance coverage will not be deemed to shift the risk of loss of customer's gas in storage to Tres Palacios.

67. The Commission's policy, as articulated in *Colorado Interstate Gas Co.*,⁵¹ is that the pipeline and shipper are deemed to be responsible for the gas while it is in their respective control and possession; it is reasonable to assume that the parties can more readily insure against loss while the gas is in their possession. The Commission requires that a pipeline be responsible for gas lost while in its possession, even if the loss is due to force majeure; a pipeline's responsibility for gas while in its possession requires that the pipeline indemnify the owner of the gas if the gas is lost.⁵²

68. Storage service providers, like Tres Palacios, provide storage services under market-based rate authority. In these circumstances, a customer can factor Tres Palacios' lack of liability, coupled with its proposal to offer insurance, into their rate negotiations. In this context, the Commission finds that Tres Palacios' proposal is reasonable, consistent with other market-based rate storage service provider tariffs.⁵³ We further find reasonable Tres Palacios' proposal to offer insurance when it is available on commercially-reasonable terms. Storage providers are not required to provide insurance for their customers and many storage providers' tariffs state that their customers are responsible for providing their own insurance.⁵⁴ Tres Palacios' proposal is an additional service to its customers and can be a factor in rate negotiations along with the lack of liability for storage gas losses. The Commission will accept Tres Palacios' proposal.

3. Use of Index Pricing

69. Tres Palacios proposes to use index pricing for calculating the penalties to be assessed when a customer violates an action alert or operational flow order (OFO).⁵⁵

⁵¹ See *Colorado Interstate Gas Co.*, 42 FERC ¶ 61,380, at 62,126 (1988). See also *Wyoming Interstate Co., Ltd.*, 57 FERC ¶ 61,328, at 62,049 (1991).

⁵² See *Overthrust Pipeline Co.*, 58 FERC ¶ 61,104, at 61,365 (1992).

⁵³ See *Bluewater Gas Storage, LLC*, FERC Gas Tariff, Original Volume No. 1, section 12.2, GT&C, Original Sheet No. 141; *Egan Hub Storage, LLC*, FERC Gas Tariff, First Revised Volume No. 1, section 12.2, GT&C, First Revised Sheet No. 142.

⁵⁴ See *Windy Hill*, 119 FERC ¶ 61,291 at P 68.

⁵⁵ Exhibit P, GT&C, section 5.5(i).

Docket No. CP07-90-000, *et al.*

- 25 -

Specifically, Tres Palacios proposes to use the “Tennessee Zone Zero” daily index as published in *Gas Daily* for calculating action alert and OFO penalties. This price index satisfies the criteria that the Commission has established for inclusion of price indices in jurisdictional tariffs.⁵⁶ The Commission will accept Tres Palacios’ proposal.

4. Exemption from Transmission Provider Standards of Conduct

70. As stated, Tres Palacios requests that the Commission explicitly confirm that Tres Palacios meets the requirements for the independent storage provider exemption set forth section 358.3(a)(3) of the Commission’s regulations and, therefore, is exempt from the transmission provider Standards of Conduct promulgated in Order No. 2004. Under section 358.3(a)(3), transmission provider status and the obligations of the Standards of Conduct do not attach to a “natural gas storage provider authorized to charge market-based rates that is not interconnected with the jurisdictional facilities of any affiliated interstate natural gas pipeline, has no exclusive franchise area, no captive ratepayers and no market power.”⁵⁷ The Commission clarifies that Tres Palacios is exempt from the transmission provider Standards of Conduct since it has no interconnections with any affiliated pipelines, no captive ratepayers, no exclusive franchise area, and no market power.

5. Open Seasons

71. The pro forma tariff allows Tres Palacios to decide whether to sell expansion capacity via competitive bidding in an open season, or by a first-come, first-served posting.⁵⁸ Section 3.1(a) of Tres Palacios’ GT&C states:

Upon the availability of new storage capacity resulting from an expansion of Tres Palacios’ facilities, Tres Palacios shall sell such capacity to prospective Customers either via the open season procedures described in sections 3.1(b)-(f) below or via the first-come, first-served procedures described in section 3.1(g) below, with the selection of the procedures

⁵⁶ See *Price Discovery in Natural Gas and Elec. Mkts.*, 109 FERC ¶ 61,184, at ordering paragraph (D) (2004).

⁵⁷ 18 C.F.R. § 358.3(a)(3) (2006).

⁵⁸ Exhibit P, GT&C, section 3.1(a).

being at Tres Palacios' sole option. This section 3.1 shall apply to sales of capacity under Rate Schedules FSS, NNSS, FP and FL.⁵⁹

While it is general Commission policy to require interstate gas pipelines to conduct open seasons for expansion capacity, the Commission has accepted tariff provisions for independent storage providers that allow the storage provider to determine whether to hold an open season or to sell firm expansion capacity on a first-come, first-served basis to a customer offering an acceptable rate.⁶⁰ Tres Palacios' proposed tariff is consistent with Commission precedent regarding the marketing and award of capacity by an independent storage company authorized to charge market-based rates.

72. The Commission will accept Tres Palacios' proposal to sell firm capacity resulting from an expansion of its facilities either by an open season or on a first-come, first-served basis. The Commission has accepted similar proposals for independent storage providers.⁶¹ In those cases, the Commission found that the storage service providers' proposals to sell new storage capacity resulting from an expansion through either an open season or on a first-come, first-served basis are designed to reflect the storage providers' market-based environment and to respond to specific market realities.⁶² Consistent with those orders, the Commission will accept Tres Palacios' similar proposal. We note, however, that this provision would not apply to the initial capacity created by the facilities certificated in this proceeding.⁶³

6. Scheduling Priorities

73. Tres Palacios' provisions regarding scheduling priorities⁶⁴ indicate that physical receipts on a given day above a customer's MDRQ (maximum daily receipt quantity) for

⁵⁹ Original Sheet No. 105.

⁶⁰ See *Windy Hill*, 119 FERC ¶ 61,291 at P 73 (2007); and *Egan Hub Storage, LLC*, 116 FERC ¶ 61,174, at P 11, 14 (2006) (*Egan Hub*).

⁶¹ *Id.*

⁶² See *Egan Hub*, 116 FERC ¶ 61,174 at P 14.

⁶³ Tres Palacios concluded a successful Open Season on December 1, 2006 for initial capacity created by the facilities.

⁶⁴ See Exhibit P, GT&C, section 5.1; Original Sheet No. 129.

Docket No. CP07-90-000, *et al.*

- 27 -

a specific receipt point, but below the customer's MDIQ (maximum daily injection quantity) or MDWQ (maximum daily withdrawal quantity), would be treated as firm within the customer's MDIQ or MDWQ, but would be treated as having been received in part at a secondary receipt point. In contrast, receipts in excess of a customer's MDIQ or MDWQ could only be accommodated as interruptible overrun service. Tres Palacios' proposed firm service priorities are consistent with applicable Commission policies. Tres Palacios' language was adapted from language found in Pine Prairie's pro forma tariff, and its provisions comply with the Commission's directives to Pine Prairie to comply with Order No. 636-B's requirement that, once primary and secondary points have been scheduled, curtailment should treat such points on a pro rata basis.⁶⁵

74. The Commission finds that that service in excess of MDRQ, but less than or equal to MDIQ or MDWQ is not overrun service but is treated as service at a secondary point. We confirm that, after service is scheduled, primary and secondary point service has the same scheduling priority. Tres Palacios' scheduling priorities are consistent with the Commission's policy and precedent and are accepted here.

7. Scheduling of Interruptible Service

75. Tres Palacios proposes to schedule interruptible services on a pro rata basis versus an economic basis (i.e., based on the rate that each shipper is paying). Its pro forma tariff includes the following provision regarding scheduling priority for interruptible services:

The order of priority relating to service under Rate Schedules ISS, IHBS, IP, IW, and IL shall be allocated to each Customer on a pro rata basis.⁶⁶

The Commission has expressed its preference for economic scheduling, noting that it promotes allocative efficiency.⁶⁷ However, it has not required all pipelines and storage service providers to use economic scheduling. The Commission has allowed other independent storage providers to use the pro rata curtailment mechanism proposed by

⁶⁵ *Pine Prairie Energy Center, LLC*, 109 FERC ¶ 61,215, at P 45 (2004) (*Pine Prairie*).

⁶⁶ See Exhibit P, GT&C, section 5.2; Original Sheet No. 129.

⁶⁷ *Enogex*, 103 FERC ¶ 61,161, at P 19 (2003), *reh'g denied*, 106 FERC ¶ 61,093 (2004).

Docket No. CP07-90-000, *et al.*

- 28 -

Tres Palacios.⁶⁸ Therefore, consistent with prior orders, and because there are no objections or adverse comments, we will accept Tres Palacios' proposal for pro rata curtailment of interruptible service.

8. Hourly Flexibility

76. Tres Palacios' tariff requires shippers to deliver gas into Tres Palacios and to take delivery from Tres Palacios on a uniform hourly basis.⁶⁹ However, the tariff provides reasonable hourly flexibility by permitting customers flow rates above 1/24 of MDRQ or MDDQ when Tres Palacios determines that operational circumstances allow.⁷⁰ The Commission has found in other cases that it is not unreasonable to require shippers to maintain uniform hourly flows.⁷¹ To mandate more hourly flexibility than Tres Palacios proposes could compromise reliable service to other shippers and affect line pack fuel costs. The Commission has encouraged pipelines to provide such flexibility when operational circumstances allow.⁷² Accordingly, we will accept Tres Palacios' proposed Nominations and Scheduling provision.

9. Fuel Charge

77. Tres Palacios proposes to impose a fuel reimbursement surcharge on all services, except no-notice service.⁷³ We confirm that, as a storage provider authorized to charge market-based rates, Tres Palacios is not required to offer cost support for its rates and is thus not obligated to justify its imposition of a fuel charge, service by service.

⁶⁸ *Bluewater Gas Storage, LLC*, FERC Gas Tariff, Original Volume No. 1, GT&C, section 5.3(a) (Original Sheet No. 124); *Pine Prairie*, 109 FERC ¶ 61,215 at P 42 (approving proposed tariff, including GT&C section 5.3 which provides for pro rata curtailment of interruptible service); *Port Barre Invs., L.L.C. d/b/a Bobcat Gas Storage*, 116 FERC ¶ 61,052 (2006) (approving, in part, pro forma Original Sheet No. 77).

⁶⁹ Exhibit P, GT&C, section 8.3; Original Sheet No. 138.

⁷⁰ *Id.*

⁷¹ See *Texas Eastern Transmission, LP*, 102 FERC ¶ 61,198 at P 54 (2003) (uniform hourly flows may be required to protect system integrity).

⁷² *Windy Hill*, 119 FERC ¶ 61,291 at P 83.

⁷³ Exhibit P, GT&C, section 19.1; Sheet No. 147.

Docket No. CP07-90-000, *et al.*

- 29 -

Furthermore, Tres Palacios' proposal to reserve flexibility to set fuel rates is fully consistent with its market-based rate authority and with the approach to fuel retention the Commission has authorized for other independent storage service providers.⁷⁴ Accordingly, we will accept Tres Palacios' proposed Fuel Reimbursement provision.

10. Liability for Loss or Damage Due to Interruption of Service

78. Tres Palacios' proposed tariff provides that "TRES PALACIOS shall not be liable for any loss or damage to any person or property caused, in whole or in part, by any interruption of service, except to the extent caused solely by TRES PALACIOS' gross negligence or willful misconduct."⁷⁵ We find that Tres Palacios' proposed gross negligence standard is at odds with Commission policy, and that the simple negligence standard gives pipelines a powerful enough incentive to operate their systems in a reasonable and prudent manner.⁷⁶ Therefore, Tres Palacios is directed to eliminate the gross negligence standard in its pro forma tariff and replace it with a simple negligence standard.

H. Engineering Analysis

79. The caverns at Tres Palacios' Gas Storage Site are located on the Markham Salt Dome, a salt extrusion into Miocene-age rock. The Markham dome is approximately 10,000 feet in diameter and over 5,000 feet in length. It is approximately 2,000 feet below the surface and has no surface topographic expression. The dome is surrounded by oil and gas wells which clearly mark its boundaries and currently has 20 caverns located within it. The caverns are located in the middle of the dome, and there is at least 350 feet between any cavern and its closest neighboring cavern. The three project caverns were solution-mined to produce brine for commercial and industrial use by Texas Brine Corporation (Texas Brine) and are currently used for natural gas liquids storage and brine production. Dewatering of the caverns will be through the non-jurisdictional facilities of Texas Brine.

⁷⁴ See Egan Hub Gas Storage, LLC, FERC Gas Tariff, Original Volume No. 1, FSS Rate Statement (Original Sheet No. 10).

⁷⁵ Exhibit P, GT&C, section 5.4; Original Sheet No. 130.

⁷⁶ See *Guardian Pipeline, LLC*, 101 FERC ¶ 61,107, at P 18 (2002); *Cameron LNG*, 115 FERC ¶ 61,229, at P 37 (2006); *Port Arthur LNG*, 115 FERC ¶ 61,344, at P 37 (2006); and *Transcontinental Gas Pipeline Corp.* 96 FERC ¶ 61,352, at 62,324 (2001).

Docket No. CP07-90-000, *et al.*

- 30 -

80. The project cavern locations are well within the design criteria and confinement of the salt dome and the caverns are located at sufficient depth and within proper distances from both other caverns and salt boundaries to avoid pressure influences between caverns when they are operated at full storage capacity/pressure. The caverns were spaced, constructed, and permitted under the Texas Railroad Commission (TRRC) regulations for domal salt storage facilities. The new and existing wells are designed properly, and the various tests and logs to be run on these caverns and wells are required by the TRRC and consistent with the Interstate Oil and Gas Compact Commission (IOGCC)⁷⁷ guidelines for salt dome storage. Finally, the maximum and minimum cavern pressure gradients throughout the storage cycle (0.85 psi/ft and 0.2 psi/ft) have been chosen to preserve the structural integrity of the caverns, and are within the limits recommended by the TRRC. The total working gas capacity of the facility will be approximately 36.04 Bcf and cushion gas 17.95 Bcf, for a total inventory of 53.99 Bcf at 14.73 psia and 60 degrees Fahrenheit. The facility will have a peak withdrawal rate of 2,500 MMcf/d, a maximum injection rate of 1,000 MMcf/d, and be capable of cycling up to seven times per year.

81. Based on our review, we conclude that the proposed salt cavern storage facility, if constructed as described, is technically sound and well defined. Tres Palacios, however, must comply with the engineering conditions attached in Appendix A to this order.

I. Environmental Analysis

82. On March 28, 2007, we issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Tres Palacios Gas Storage Project and Request for Comments on Environmental Issues (NOI). We received responses to the NOI from the U.S. Fish and Wildlife Service (FWS).

83. An environmental assessment (EA) was prepared for Tres Palacios' proposal. The EA addresses geology, soils, water resources, fisheries, wetlands, vegetation and wildlife, threatened and endangered species, cultural resources, land use and recreation, air quality and noise, reliability, safety, and alternatives. Our staff addressed all substantive comments in the EA.

⁷⁷ The IOGCC is a multi-state government agency which promotes and encourages conservation and efficient recovery of domestic oil and natural gas resources while protecting health, safety, and the environment. The organization is comprised of twenty-nine oil and natural gas producing states and six associate member states. In November 1994, the IOGCC published the "I.O.G.C.C. Member State Regulation of Natural Gas Storage" which summarizes the various state and federal statutes and regulations relating to the storage of natural gas underground.

Docket No. CP07-90-000, *et al.*

- 31 -

84. Based upon the analysis in the EA, we conclude that if the project is constructed in accordance with Tres Palacios' application and supplements, including Tres Palacios' responses to data requests, and if Tres Palacios complies with all environmental conditions detailed in Appendix B of this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

85. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁷⁸

86. Tres Palacios shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Tres Palacios. Tres Palacios shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

J. Blanket Certificates

87. Tres Palacios requests issuance of a Part 284, subpart G, blanket certificate in order to provide open-access storage services. Under a Part 284 blanket certificate, Tres Palacios will not be required to obtain individual authorizations to provide storage services to particular customers. Tres Palacios filed a pro forma Part 284 tariff to provide open-access storage services. Since a Part 284 blanket certificate is required for Tres Palacios to offer these services, we will grant Tres Palacios a Part 284 blanket certificate, subject to the conditions imposed herein.

88. We will also grant Tres Palacios a Part 157, subpart F blanket certificate. The subpart F blanket certificate gives a natural gas company section 7 authority to automatically, or after prior notice, perform certain eligible activities related to the construction, acquisition, replacement and operation of pipeline facilities. However, Tres Palacios' Part 157, subpart F blanket certificate will be conditioned so that Tres Palacios

⁷⁸ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

Docket No. CP07-90-000, *et al.*

- 32 -

cannot rely on the provisions of section 157.214 of the Commission's regulations to increase storage capacity. This restriction on Tres Palacios' Part 157 blanket certificate is based on the fact that its storage cavern is a salt cavern in the initial stages of development for which future expansion will require reevaluation by the Commission of historical data and new engineering and geological data.⁷⁹

K. Conclusion

89. For the reasons set forth herein we find, subject to the conditions below, that the public convenience and necessity requires issuance of a certificate under section 7 of the NGA for Tres Palacios' proposed facilities. Thus we grant the requested authorizations to Tres Palacios.

90. At a hearing held on September 20, 2007, the Commission on its own motion, received and made a part of the record in these proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Tres Palacios in Docket No. CP07-90-000 authorizing it to construct and operate the described storage project, as described and conditioned herein, and as more fully described in the application.

(B) Tres Palacios' request for a Part 284, subpart G blanket certificate in Docket No. CP07-91-000 is granted. Tres Palacios' request for a Part 157, subpart F blanket certificate in Docket No. CP07-92-000 is granted, subject to the condition that Tres Palacios may not rely on the provisions of section 157.214 of the Commission's regulations to increase storage capacity.

(C) The certificate issued in Ordering Paragraph (A) is conditioned upon Tres Palacios' compliance with all applicable Commission regulations under the Natural Gas Act, particularly the terms and conditions in Parts 154 and 284 and paragraphs (a), (c), (e) and (f) of section 157.20, except that the requirements of section 157.20(c)(3) are waived.

⁷⁹ *Mississippi Hub, LLC*, 118 FERC ¶ 61,099 (2007).

Docket No. CP07-90-000, *et al.*

- 33 -

(D) Pursuant to section 157.20(b) of the Commission's regulations, the facilities authorized in Ordering Paragraph (A) must be constructed and placed in service within one year of the date of the final order in this proceeding.

(E) Tres Palacios' request to charge market-based storage rates for firm and interruptible storage service is approved, as discussed and subject to the conditions in this order.

(F) Tres Palacios shall notify the Commission within 10 days of acquiring knowledge of: (a) Tres Palacios' adding storage capacity beyond the capacity authorized in this order; (b) an affiliate's increasing storage capacity; (c) an affiliate's linking storage facilities to Tres Palacios; (d) Tres Palacios' or an affiliate's acquisition of an interest in, or being acquired by, an interstate pipeline connected to Tres Palacios. The notification shall include a detailed description of the new facilities and their relationship to Tres Palacios. Tres Palacios is also directed to file an updated market power analysis within five years of the date of this order and every five years thereafter. The Commission reserves the right to require such an analysis at any intervening time.

(G) The Commission confirms that Tres Palacios may negotiate right of first refusal provisions with its customers as part of the market-based rates negotiation process.

(H) Tres Palacios is granted waivers of the applicable portions of Parts 201 and 260 of the Commission's regulations; however, the waiver does not extend to the FERC's assessment of annual charges and Tres Palacios is required to maintain records to separately identify the original cost and related depreciation on its storage gas facilities and to file page 520 and 520-A of Form 2-A for calculation of ACA.

(I) Waiver is granted of the Commission's regulations that have been deemed inapplicable to storage providers with market-based rates, as discussed in this order.

(J) Waiver is granted of the Commission's "shipper must have title" policy, subject to the conditions discussed in the body of this order.

(K) Within 30 days after its first full year of operation, and every year thereafter, Tres Palacios is directed to file an annual informational filing on its provision of service using off-system capacity, as detailed in this order.

(L) Waiver is granted of section 284.12(a)(1)(iv) of the Commission's regulations to exempt Tres Palacios from compliance with the electronic data interchange (EDI) standards established by NAESB, subject to the conditions discussed herein.

Docket No. CP07-90-000, *et al.*

- 34 -

(M) Tres Palacios must submit actual tariff sheets that comply with the requirements contained in the body of this order within 60 days of the issuance of this order.

(N) Tres Palacios must comply with the engineering conditions stated in Appendix A of this order.

(O) Tres Palacios must comply with the environmental conditions stated in Appendix B of this order.

(P) Tres Palacios shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Tres Palacios. Tres Palacios shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

APPENDIX A
Tres Palacios Gas Storage LLC
Engineering Conditions

This authorization includes the following condition(s):

1. Tres Palacios shall establish and maintain a subsidence monitoring network over the proposed cavern storage area.
2. Tres Palacios shall assemble, test and maintain an emergency shutdown system.
3. Tres Palacios shall periodically log each cavern's wells to check the status of the casing string.
4. Tres Palacios shall conduct sonar surveys of the caverns every five years to: (a) monitor their dimensions and shape, including the cavern roof, (b) estimate pillar thickness between caverns throughout the storage operations, and (c) file the results with the Commission.
5. Tres Palacios shall conduct an annual inventory verification study on each cavern.
6. Tres Palacios shall determine and report to the Secretary of the Commission the final gas storage capacity of each cavern (including data and work papers to support the actual operating capacity determination).
7. The following conditions shall apply to the storage caverns:
 - a. The total maximum gas storage inventory stored in the caverns shall not exceed 54 Bcf at 14.73 psia and 60°F (each individual cavern shall not exceed those values indicated in the table below) without prior Commission authorization.
 - b. The maximum gas storage shut-in stabilized pressure in each cavern shall not exceed 0.85 psi per foot of cavern depth and the minimum pressure in each cavern shall be limited to 0.20 psi per foot of the cavern depth.
 - c.

Cavern	Total Gas Inventory, Bcf	Maximum pressure, psia, BHP	Minimum pressure, psia, BHP
1	13.84	3002	714
2	19.26	3122	918
3	20.89	4464	982

Docket No. CP07-90-000, *et al.*

- 36 -

8. Before commencing gas storage operations in any of the caverns, Tres Palacios shall file with the Secretary of the Commission:
 - a. the results of the mechanical integrity test (MIT) for each cavern before conversion of that cavern to natural gas storage;
 - b. The results of any new sonar surveys of each cavern, including plan view and cross-sections;
 - c. copies of the latest interference, tracer surveys, or other testing or analysis, to verify the lack of communication between the caverns;
 - d. the volume of rubble at the base of each cavern, including the methodology for determining such volume; and
 - e. geological cross sections (when additional data is obtained) through the total project area showing all geologic units.

9. Tres Palacios shall file semiannual reports for each cavern (to coincide with the termination of the injection or withdrawal cycles) containing the following information (volumes shall be stated at 14.73 psia and 60°F):
 - a. the daily volume of natural gas injected and withdrawn;
 - b. the inventory of natural gas and shut-in wellhead pressure for each cavern at the end of reporting period;
 - c. the maximum daily injection and withdrawal rates experienced for the entire storage field during the reporting period;
 - d. the average working pressure on such maximum days taken at a central measuring point where the total volume injected or withdrawn is measured;
 - e. the results of any tests performed to determine the actual size, configuration, or dimensions of the storage caverns;
 - f. a discussion of current operating problems and conclusions;
 - g. other data or reports which may aid the Commission in the evaluation of the storage project; and

Docket No. CP07-90-000, *et al.*

- 37 -

- h. the results of leak detection tests performed during storage operations to determine the integrity of each cavern/wellbore, casing and wellhead.
- 10. Tres Palacios shall file semiannual reports in accordance with section 157.214 (c) of the Commission's regulations until the maximum inventory reaches or closely approximates the maximum capacity authorized and for a period of one year following.

APPENDIX B
Tres Palacios Gas Storage LLC
Environmental Conditions

As recommended in the EA, this authorization includes the following condition(s):

1. Tres Palacios shall follow the construction procedures and mitigation measures described in its application and as identified in the EA, unless modified by this Order. Tres Palacios must:
 - a. Request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. Justify each modification relative to site-specific conditions;
 - c. Explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. Receive approval in writing from the Director of the OEP before using that modification.
2. The Director of the OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. The modification of conditions of this Order; and
 - b. The design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from the project construction and operation.
3. **Prior to any construction**, Tres Palacios shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel would be informed of the EI's authority and have been or would be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Tres Palacios shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for the facility approved by this Order. All requests for modifications of

environmental conditions of this Order or site-specific clearances must be written and must reference, locations designated on these alignment maps/sheets.

Applicant's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Tres Palacios' right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Tres Palacios shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas must be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of the OEP **before construction in or near that area.**

This requirement does not apply to minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. Implementation of cultural resource mitigation measures;
 - b. Implementation of endangered, threatened, or special concern species mitigation measures;
 - c. Recommendations by state regulatory authorities; and
 - d. Agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of this certificate and before construction begins,** Tres Palacios shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Tres

Docket No. CP07-90-000, *et al.*

- 40 -

Palacios would implement the mitigation measures required by this Order. Tres Palacios must file revisions to the plan as schedules change. The plan shall identify:

- a. How Tres Palacios would incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings with the intention that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - b. The number of environmental inspectors (EIs) assigned per spread, and how the company would ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. Company personnel, including EIs and contractors, who would receive copies of the appropriate material;
 - d. What training and instructions Tres Palacios would give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - e. The company personnel (if known) and specific portion of Tres Palacios' organization having responsibility for compliance;
 - f. The procedures (including use of contract penalties) Tres Palacios would follow if noncompliance occurs; and
 - g. Or each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the mitigation training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
7. Tres Palacios shall file updated status reports prepared by the head EI with the Secretary on a **biweekly** basis **until all construction and restoration activities are complete**. On request, these status reports would also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

Docket No. CP07-90-000, *et al.*

- 41 -

- a. The current construction status of the project spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. A listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies;
 - c. Corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. The effectiveness of all corrective actions implemented;
 - e. A description of any landowner/resident complaints that may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - f. Copies of any correspondence received by Tres Palacios from other federal, state, or local permitting agencies concerning instances of noncompliance, and Tres Palacios' response.
8. Tres Palacios must receive written authorization from the Director of OEP **before commencing service** for each phase of the project. Such authorization would only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
9. **Within 30 days of placing the certificated facilities in service**, Tres Palacios shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. That the facilities have been constructed in compliance with all applicable conditions, and that continuing activities would be consistent with all applicable conditions; or
 - b. Identifying which of the certificate conditions Tres Palacios has complied with or would comply with. This statement shall also identify any areas affected by the projects where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
10. **Prior to construction of pipeline facilities**, Tres Palacios shall file with the Secretary the location by milepost of all private wells within 150 feet of pipeline

Docket No. CP07-90-000, *et al.*

- 42 -

construction and/or blasting activities. Tres Palacios shall offer to conduct, with the well owner's permission, pre- and post-construction monitoring of well yield and water quality for these wells.

11. **Prior to construction**, Tres Palacios shall file its Stormwater Pollution Prevention Plan and Spill Prevention, Control, and Countermeasure Plan with the Secretary, for review and written approval by the Director of OEP.
12. **Prior to construction of the pipeline facilities**, Tres Palacios shall file revised alignment sheets that include workspaces for the proposed horizontal directional drilling (HDD) sites and clearly indicate the limits of clearing activities. Tres Palacios shall avoid vegetation removal above HDD paths to the maximum extent practicable. No vegetation shall be removed without prior written approval by the Director of OEP.
13. **Prior to pipeline construction**, Tres Palacios shall file a revised HDD contingency plan that provides a description of how an inadvertent release of drilling mud would be contained and cleaned up.
14. Tres Palacios shall incorporate shielding and stray light reduction techniques into its aboveground facility designs and file a description of those techniques that were implemented, **prior to commencing service**.
15. Tres Palacios shall continue to consult with the Texas Parks and Wildlife Department (TPWD) regarding the proposed action. Tres Palacios shall not begin construction **until** the staff receives comments from the TPWD regarding potential effects to state-listed species and the Director of OEP notifies Tres Palacios in writing that construction or use of mitigation may begin.
16. Tres Palacios shall defer implementation of any treatment plans/measures (including archeological data recovery), construction of facilities, and use of staging, storage, and temporary work areas, and new or to be improved access roads **until**:
 - a. Tres Palacios files with the Secretary cultural resource survey and evaluation reports, any necessary treatment plans, and the Texas State Historic Preservation Office comments; and
 - b. The Director of OEP reviews and approves all cultural resources survey reports and plans and notifies Tres Palacios in writing that treatment plans/measures may be implemented or construction may proceed.

Docket No. CP07-90-000, *et al.*

- 43 -

All material filed with the Commission containing **location, character, and ownership information** about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering:
“CONTAINS PRIVILEGED INFORMATION--DO NOT RELEASE”.

17. Tres Palacios shall conduct a noise survey and file the survey results with the Secretary **no later than 60 days** after placing the Gas Handling Facility in service. If the noise attributable to the operation of the gas handling facility at full load exceeds 55 dBA Ldn at any nearby NSA, Tres Palacios shall install additional noise controls to meet the level **within 1 year** of the in-service date. Tres Palacios shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

120 FERC * 61,253
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc
Spitzer,
Philip D. Moeller, and
Jon Wellinghoff.

Tres Palacios Gas Storage, LLC Docket Nos. CP07-90-000
CP07-91-000
CP07-92-000

ORDER ISSUING CERTIFICATES

(Issued September 20, 2007)

1. On February 23, 2007, and supplemented on June 1, 2007, Tres Palacios Gas Storage, LLC (Tres Palacios) filed an application for a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (NGA) to construct and operate a salt dome natural gas storage facility in Matagorda County, Texas, and an associated header system to interconnect the proposed storage facility with various interstate and intrastate pipelines. Tres Palacios also requests a blanket certificate under subpart G of Part 284 of the Commission's regulations to provide open-access storage services and a blanket certificate under subpart F of Part 157 that will permit Tres Palacios to perform routine activities in connection with the construction, maintenance and operation of the storage facilities. In addition, Tres Palacios requests authority to charge market-based rates for its storage services. As discussed below, the Commission finds that Tres Palacios' construction and operation are required by the public convenience and necessity, and issues Tres Palacios its requested certificate authorizations, subject to conditions. In addition, the Commission grants Tres Palacios' request for market-based rate authority and waivers of certain filing and other requirements.

I. Background

2. Tres Palacios is a newly-created limited liability company organized under the laws of the State of Delaware. Tres Palacios is a wholly-owned subsidiary of NGS Energy Fund, LP, a Delaware limited partnership whose general partner is Westport Energy Advisors LLC. NGS is the ultimate parent company of Windy Hill Gas Storage, LLC, and Leaf River Energy Center LLC.

II. The Proposal

A. Facilities

1. Storage Caverns

3. Tres Palacios proposes to construct a natural gas salt cavern storage facility, which will be located in Matagorda and Wharton Counties, Texas. The facility will consist of three existing Markham Salt Dome caverns which will be converted from industrial brine production to natural gas storage. The facility will be capable of storing approximately 53.99 Bcf of natural gas, of which 36.04 Bcf will be working gas and 17.95 Bcf will be cushion gas. The completed facility will be designed to allow cycling up to seven times per year, with a peak injection rate of 1,000 MMcf per day and a maximum withdrawal capability of 2,500 MMcf per day. The caverns are proposed to become operational in 2008.

2. Header System and Compression

4. The Tres Palacios project will be located close to several interstate and intrastate pipelines in the Gulf Coast region of Texas. Tres Palacios proposes to construct a 30.98-mile-long, 24-inch diameter North pipeline and a 10.74-mile-long 24-inch diameter South pipeline to connect twelve interstate and intrastate pipelines. These pipelines include Valero Natural Gas

Pipeline Company (Valero), Tennessee Gas Pipeline Company (Tennessee), Transcontinental Gas Pipe Line Corporation (Transco), Natural Gas Pipeline Company of America (NGPL), Gulf South Pipeline Company, LP. (Gulf South), Crosstex Gulf Coast Transmission Ltd. (Crosstex), Kinder Morgan Tejas Pipeline, L.P. (Tejas), Florida Gas Transmission Company, LLC (Florida Gas), Channel Pipeline Company (Channel), Texas Eastern Transmission, L.P. (Texas Eastern), Kinder Morgan Texas Pipeline, L.P. (KM Texas), and Central Texas Gathering System (CTGS).

5. Tres Palacios also proposes to construct a gas handling facility approximately 2,000 feet from the caverns which will include compressors, gas dehydration facilities, and other ancillary support equipment. Ten gas-fired compression units, each capable of generating 4,800 horsepower, will be installed. This compression will be used to inject gas into storage and, as needed, to withdraw gas from storage for redelivery to the pipelines.

B. Rates and Services

6. Tres Palacios requests a blanket certificate under subpart G of Part 284 in order to provide firm and interruptible storage services on an open-access basis. Tres Palacios also requests approval of its pro forma tariff at Exhibit P to its application. Tres Palacios proposes to provide the firm storage service under Rate Schedule FSS and the interruptible storage service under Rate Schedule ISS. The rate schedules are intended to allow Tres Palacios' customers to customize their respective injection rates, withdrawal rates, and total inventory capacity based upon their needs. Tres Palacios also proposes to provide firm park and loan services, interruptible hourly balancing service, interruptible park and loan, and interruptible wheeling service.

7. Tres Palacios also requests authority to charge market-based rates for all storage services offered under Rate Schedules FSS and ISS. Tres Palacios supports its request with a market power analysis at Exhibit I to its application that concludes that Tres Palacios will lack market power with respect to the services that it proposes to provide.

C. Need for the Project

8. Tres Palacios states that, in addition to the well-documented significant need and market demand for natural gas in the United States, [1] there is also an increasing need for the type of high-deliverability gas storage that its salt caverns will provide. Tres Palacios asserts that its high-performance storage capacity will augment the Gulf Coast gas delivery system's capability to accommodate changing natural gas supply and delivery flows, as well as the uneven pattern of gas deliveries from LNG receiving and regasification terminals.

9. Tres Palacios held a non-binding open season to gauge interest in the project, and received serious expressions of interest for two-thirds of the proposed working gas capacity.

D. Requests for Waivers

10. Because it proposes to charge market-based rates, Tres Palacios requests waiver of certain of the Commission's filing, accounting, and reporting requirements applicable to cost-based rate proposals. The Commission previously has found the relevant provisions to be inapplicable to storage providers that are granted market-based rate authority.

11. Tres Palacios also requests waiver of several additional Commission regulations and policies. Since Tres Palacios is proposing to provide only natural gas storage service, and no stand-alone transportation services, Tres Palacios requests waivers of the section 284.7(d) requirement pertaining to segmentation and the section 157.14(a)(10) requirement to provide a showing of accessible gas supplies. Tres Palacios also requests a waiver of the electronic data interchange (EDI) standards established by the North American Energy Standards Board (NAESB). In addition, Tres Palacios states that it is an independent storage provider that is exempt from the Commission's affiliate Standards of Conduct and, therefore, has not included specific provisions for compliance with those Standards of Conduct.

12. Finally, Tres Palacios seeks a waiver of the Commission's "shipper must have title" policy to enable it to obtain off-system capacity that may be necessary to provide the storage services to its customers. In support of its request, Tres Palacios proposes tariff language stating that Tres Palacios will provide transportation service using such off-system capacity only pursuant to its open-access tariff.

III. Notice, Interventions, and Comments

13. Public notice of Tres Palacios' application was published in the Federal Register on March 14, 2007 (72 Fed. Reg. 11,858). Motions to intervene were due on or before March 29, 2007. Tennessee and BP America filed timely, unopposed motions to intervene.[2] No protests were filed. Colleen and Elroy Matzke, affected landowners, filed a timely motion to intervene and included comments concerning compensation for loss of property value caused by the pipeline crossing their property.

IV. Discussion

14. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction, acquisition, and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. The Certificate Policy Statement

15. The Certificate Policy Statement provides guidance as to how the Commission will evaluate proposals for certificating new construction.[3] The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, and the avoidance of the unnecessary exercise of eminent domain or other disruptions of the environment.

16. Under this policy, the threshold requirement for pipelines proposing a new project is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

17. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Since Tres Palacios is a new pipeline company and has no existing customers, there is no potential for subsidization by existing customers. Likewise, there are no existing shippers that could be adversely affected. Moreover, under its market-based rate proposal, Tres Palacios assumes the economic risks associated with the costs of the project's facilities to the extent that any capacity is unsubscribed. Thus, the Commission finds that Tres Palacios has satisfied the threshold requirement of the Certificate Policy Statement.

18. Tres Palacios' storage project should not have any adverse impact on existing pipelines or their customers. Rather, it should enhance competition in the region by providing additional storage service at market-based rates in a narrowly defined market area that has experienced steady growth in gas use. Additionally, no storage company in Tres Palacios' market area

has protested Tres Palacios' application.

19. There should be minimal adverse impact on landowners and communities associated with the creation of these storage caverns. Tres Palacios is the owner of record of the land the project's Gas Storage Site[4] will occupy, eliminating the need for Tres Palacios to exercise eminent domain rights in regards to the storage caverns or gas handling facility. Tres Palacios states it is in the process of acquiring the necessary rights-of-way for its header system. The land uses predominating in the area are industrial, agricultural and open land, and the site of the Gas Storage Site has been long devoted to commercial brine production and oil and gas operations. Therefore, Tres Palacios does not have to obtain additional rights-of-way or exercise eminent domain to construct this project, except as discussed immediately below.

20. Only one landowner has objected to the project. The Matzkes' property abuts U.S. Highway 59, and they claim that Tres Palacios' crossing of the highway would result in diminished value of their frontage property. The Matzkes' complained that Tres Palacios had not entered into negotiations to secure easement rights before filing the application. However, Tres Palacios subsequently assured the Commission that it has contacted the Matzkes regarding the pipeline crossing of their property and that compensation negotiations are under way.

21. The Commission encourages project sponsors to acquire as much of the right-of-way as possible by negotiation with the landowners and considers the extent to which the applicant has attempted to limit the need to obtain rights-of-way by eminent domain in weighing the benefits against any adverse effects of the proposed project. Although the Commission encourages pipeline companies to enter into fair negotiations with landowners regarding the use of their property, it does not intervene in such negotiations when the parties cannot reach an agreement. If that occurs, the pipeline company may bring an eminent domain action in the appropriate state or federal courts which will determine fair compensation.[5]

22. The Commission has considered all the valid factors in balancing the adverse effects of this project against the public benefits and has determined to authorize the project. The Matzkes have presented no fact or argument that convinces us to alter that decision.

23. In addition, while Tres Palacios had no precedent agreements or executed contracts at the time it filed its application, Tres Palacios states that its open season resulted in non-binding bids for two-thirds of the proposed working gas capacity. Tres Palacios further states that further expressions of interests continued to come in after the open season closed. These expressions of interests show that Tres Palacios' facility has been designed to help meet unserved market demand for additional storage capacity.

24. The Commission concludes that the Tres Palacios facility will enhance the development of an efficient interstate pipeline transportation system by providing customers access to additional high-deliverability storage capacity. Based on the benefits the Tres Palacios project will provide to the market and the lack of any identified adverse effect on existing customers, other pipelines, landowners, or communities, we find, consistent with the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity requires approval of Tres Palacios' storage project.

B. Market-Based Rates

25. Under the Alternative Rate Policy Statement,[6] the Commission's framework for evaluating requests for market-based rates has two principal purposes: (1) to determine whether the applicant can withhold or restrict services and, as a result, increase price by a significant amount for a significant period of time, and (2) to determine whether the applicant can discriminate unduly in price or terms and conditions. To find that an applicant cannot withhold or restrict services,

significantly increase prices over an extended period, or unduly discriminate, the Commission must find either that there is a lack of market power[7] because customers have good alternatives,[8] or that the applicant or the Commission can mitigate the market power with specified conditions. The Commission's analysis of whether an applicant has the ability to exercise market power includes three major steps: (1) definition of the relevant markets; (2) measurement of a firm's market share and market concentration; and (3) evaluation of other relevant factors.

26. Tres Palacios' market power analysis for the storage market defines the relevant product and geographic markets, measures market share and concentration, and evaluates the ease of entry into the relevant market. Tres Palacios identifies the relevant product market as interruptible and firm natural gas storage, hub, and wheeling services. Tres Palacios identifies the relevant geographic market as east Texas, Louisiana, Mississippi and Alabama (the Gulf States Market). The geographic market used in Tres Palacios' analysis consists of 25 other existing and competing storage facilities located in the Gulf States Market.

27. Tres Palacios utilizes two measures of natural gas storage capacity in its analysis of market concentration: working gas capacity and peak day deliverability. Tres Palacios' market power analysis shows a Herfindahl Hirschman Index (HHI) [9] of market concentration for working gas capacity of 1,395, with Tres Palacios' market share being 5.0 percent, and an HHI for peak day deliverability of 866, with Tres Palacios' market share being 12 percent. These HHIs are significantly below the 1,800 level cited in the Ratemaking Policy Statement, under which circumstance no further market power analysis is required. In addition, Tres Palacios' market power analysis demonstrates that these relatively small market shares will not enable Tres Palacios to exert market power in the relevant market area.

28. We note that Tres Palacios' supplement provides for the addition of two new interconnects and includes an updated market power analysis. However, Tres Palacios' updated market power analysis confirms that the new interconnects do not affect the conclusion that Tres Palacios will lack market power in the provision of interstate storage, hub and related wheeling-services. Specifically, as a result of the two additional interconnects, Tres Palacios' market shares for wheeling delivery and receipt capacities are 20 percent and 23 percent, respectively. The HHI values for wheeling at alternate hubs and market centers is 1,331 for delivery capacity and 1,527 for receipt capacity, both well below the 1,800 threshold. In contrast, the initially filed market power analysis showed Tres Palacios' market shares for wheeling delivery and receipt capacities were 19 percent and 23 percent, respectively. The HHI values for wheeling at alternate hubs and market centers are 1,315 for delivery capacity and 1,506 for receipt capacity, again below the 1,800 threshold.[10]

29. Tres Palacios' market power analysis also contends that Tres Palacios does not possess market power because the relevant market is easy to enter. With regard to potential competition, Tres Palacios identifies 18 storage projects in the relevant market that are currently in various stages of development or expansion. Tres Palacios further notes that the Commission has found in numerous cases that there are no significant barriers to entry in the natural gas storage market in the Gulf Coast production region.[11] In further support, Tres Palacios submits that several other natural gas storage projects that will compete directly with Tres Palacios also incorporate pipeline header systems that are comparable in length to its header system.[12]

30. In prior orders, we have approved requests to charge market-based rates for storage services based on a finding that a proposed project would not be able to exercise market power due to its small size, its anticipated small share of the market, and the existence of numerous competitors.[13] We have also distinguished between production area storage facilities and market area storage.[14] In general, market power in a production area is less of a concern due to the numerous alternative storage facilities operating in competition with one another.

31. We find that Tres Palacios' proposed market definition properly identifies good alternatives to Tres Palacios. We also find that, within this relevant market, Tres Palacios'

prospective market shares are low and that the market's concentration is below the threshold for closer scrutiny. Finally, we agree that barriers to entry are likely to be low in the relevant market. Thus, we conclude that Tres Palacios will lack significant market power. Further, Tres Palacios' proposal for market-based rates is unopposed. For these reasons, we will approve Tres Palacios' request to charge market-based rates for all firm and interruptible storage, hub and wheeling services.

32. In addition to other reporting requirements imposed herein, Tres Palacios must notify the Commission if future changes in circumstance significantly affect its present market power status. Thus, our approval of market-based rates is subject to reexamination in the event that: (a) Tres Palacios seeks to add storage capacity beyond the capacity authorized in this proceeding; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to Tres Palacios; or (d) Tres Palacios, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to Tres Palacios. Since these circumstances could affect its market power status, Tres Palacios shall notify the Commission within 10 days of acquiring knowledge of any such changes. The notification shall include a detailed description of the new facilities and their relationship to Tres Palacios.[15] The Commission also reserves the right to require such an analysis at any intervening time.[16]

C. Waivers of Filing, Reporting, and Accounting Requirements

33. In light of its request for authority to charge market-based rates and the fact that Tres Palacios has no pre-existing facilities, Tres Palacios requests that the Commission waive the requirement of section 157.6(b)(8) of the Commission's regulations to file cost-based data, as well as the filing requirements of section 157.14(a)(13), (14), (16), and (17) to submit Exhibits K (Cost of Facilities), Exhibit L (Financing), Exhibit N (Revenues, Expenses, and Income), and Exhibit O (Depreciation and Depletion), since these exhibits also support cost-based rate authority. For the same reasons, Tres Palacios requests waiver of the accounting and annual reporting requirements under Part 201 and section 260.2 of the Commission's regulations. Similarly, Tres Palacios requests waiver of the requirement for reservation charges and the straight fixed-variable rate design set forth in sections 284.7(e) and 284.10 also as being inapplicable to market-based rate design. Finally, Tres Palacios requests waiver of the filing requirement of section 157.14(a)(10) to submit total gas supply data (Exhibit H), as being inapplicable to natural gas storage operations.

34. The cost-related information required by these regulations is not relevant in light of our approval of market-based rates for Tres Palacios' storage services. Thus, consistent with our findings in previous orders,[17] we will grant Tres Palacios' request for waivers of the regulations requiring the filing of cost-based information, reservation charges, and the use of a straight fixed variable rate design. We will also grant a waiver of section 157.14(a)(10) requiring an applicant to submit gas supply data, which does not pertain to natural gas storage service. There is also no ongoing regulatory need to have cost-based financial statements prepared in accordance with the Commission's Uniform System of Account (USofA). Accordingly, the Commission will grant Tres Palacios' request to waive accounting requirements, as prescribed in Part 201, Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act. In addition, the Commission will grant Tres Palacios' request to waive reporting requirements, as prescribed in section 260.2, FERC Form No. 2-A, Annual Report for Nonmajor Natural Gas Companies (Form 2-A), and section 260.300, FERC Form No. 3-Q, Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies, but notes that such waivers do not extend to the FERC's annual charge assessment (ACA). Therefore, Tres Palacios is required to file page 520 and 520-A of Form 2-A, with official certification, reporting the gas volume information which is the basis for imposing an ACA. [18] In addition, the Commission also requires Tres Palacios to maintain records to separately identify the original cost and related depreciation on its storage gas facilities should the Commission require Tres Palacios to produce these reports in the future.

D. Tariff Issues

35. Tres Palacios proposes to offer firm and interruptible storage, hub and wheeling services on an open-access basis under the terms and conditions set forth in the pro forma tariff attached as Exhibit P to the application. As discussed below, we find that Tres Palacios' proposed tariff generally complies with Part 284 of the regulations, with a few noted exceptions.

E. New Storage and Hub Services

1. Rate Schedules NNSS, FP, FL, and IW

36. In Rate Schedule NNSS, Tres Palacios proposes to provide firm "no-notice" storage service. Tres Palacios states that this service will permit customers to adjust their injections into, and withdrawals from, Tres Palacios' storage as their requirements dictate, without having to give Tres Palacios advance notice of such changes.

37. In Rate Schedules FP and FL, Tres Palacios proposes to offer firm parking and loan services under which Tres Palacios and a customer would agree to park or loan a fixed quantity of gas for a fixed time period.[19] Tres Palacios states that the proposed Rate Schedule FP service would cover three time periods: (1) an injection period, during which the customer would inject the agreed-upon quantity; (2) a storage period, during which the customer would retain its gas in Tres Palacios' storage; and (3) a withdrawal period, during which the customer would withdraw parked gas from storage.[20] Tres Palacios explains that it and the customer would negotiate the duration of each of the three time periods in advance, which would be specified in the service agreement, and that customers would have the right to withdraw gas only during the withdrawal period and to inject gas only during the injection period. Tres Palacios asserts that each Rate Schedule FP or FL customer's capacity, injection, and withdrawal rights would be firm in the sense that they would not be subordinate to other classes of service, although there would be times during the term of a customer's service agreement that the customer would not have the right to inject and/or withdraw gas from storage. Further, Tres Palacios states that it only will provide firm park and loan service to the extent that it has otherwise unsubscribed capacity and gas in storage not dedicated to another service.[21]

38. Finally, in Rate Schedule IW, Tres Palacios proposes to offer interruptible wheeling service. This service would permit a customer to transfer gas using Tres Palacios' header pipeline system between or among the interstate and intrastate pipelines that will interconnect with Tres Palacios.

39. The Commission will approve Tres Palacios' proposed services, which will provide additional storage service options for prospective customers in the Gulf States market. The proposed rate schedules are consistent with those provided by other storage service providers, such as Windy Hill, with the exception of the overrun service and right of first refusal provisions, which are discussed below.

2. Rate Schedule IHBS

40. In Rate Schedule IHBS, Tres Palacios proposes to provide interruptible hourly balancing service that would allow a customer served by one of the pipelines that interconnects with Tres Palacios to make its daily nominations on an hourly basis. Tres Palacios states that this service is intended to meet the needs of end-use customers who might find value in hourly service flexibility, as well as natural gas-fired electric generating facilities that purchase hourly and balance services, particularly in response to the growth of wind generation with its unpredictable dispatch. Tres Palacios notes that Rate Schedule IHBS is consistent with the Commission's policy that pipeline shippers be afforded the opportunity to obtain imbalance management services from off-system service providers.[22]

41. With regard to availability of service under Rate Schedule IHBS, however, we note that Tres Palacios' proposed tariff language includes a provision that presents cause for concern:

Availability of service under this Rate Schedule shall be subject to a determination by Tres Palacios that its

performance of the service requested hereunder shall not cause a reduction in Tres Palacios' current or future ability to provide Firm Storage Services under currently effective or potential Storage Service Agreements. [23]

42. This provision, section 1(e) of Rate Schedule IHBS (and the similar section 1(d) of Rate Schedule ISS), further limits availability of interruptible service to the extent it may reduce Tres Palacios' current or future ability to provide firm storage service. The provision is unclear as to whether it would allow Tres Palacios to hold capacity for future potential firm storage contracts or whether it simply allows Tres Palacios to deny a request to execute an interruptible storage service agreement if Tres Palacios has received a request for firm service but has not yet executed a contract.

43. Tres Palacios may sell unsold firm capacity as firm service in preference to interruptible service, but Tres Palacios may not hold capacity for undefined future firm contracts. Tres Palacios' tariff provides adequate protections against interruptible service impeding the contracting of firm service by requiring an interruptible customer to remove its gas from storage if that capacity is subsequently needed for firm service. [24] The Commission will thus require Tres Palacios to file an explanation within 15 days of the date of this order to clarify the intent of section 1(e) of Rate Schedule IHBS and section 1(d) of Rate Schedule ISS, in accordance with this discussion.

F. Modifications to Rate Schedules

1. Segmentation

44. Section 284.7(d) of the Commission's regulations provides that an interstate pipeline must permit a shipper to make use of the firm capacity for which the shipper has contracted by segmenting that capacity into separate parts for the shipper's own use, or for the purpose of releasing that capacity to replacement shippers to the extent that segmentation is operationally feasible. Tres Palacios requests a waiver of the Order No. 637 segmentation requirement in section 284.7(d), contending that, because its system consists of a single integrated storage facility that operates in one compact geographic location, there is nothing to segment. Tres Palacios requests that the Commission find that segmentation is operationally infeasible on its system.

45. In Clear Creek Gas Storage Company, [25] we found that the requirements of section 284.7(d) do not apply to pipelines engaged solely in natural gas storage and which do not provide stand-alone transportation services. Tres Palacios meets the requirements in Clear Creek. Thus, we hold that the requirements of section 284.7(d) do not apply to Tres Palacios. Other tariff provisions related to segmentation, such as the allocation of primary point rights in segmented release and within-the-path scheduling, also do not apply to Tres Palacios.

2. Acquisition of Off-System Capacity and Waiver of Shipper Must Have Title Policy

46. Tres Palacios requests a generic waiver of the "shipper must have title" policy for any off-system capacity it may need to acquire in order to provide storage services, to enable it to use that capacity to transport natural gas owned by other parties. Section 30 of Tres Palacios' pro forma tariff provides:

Tres Palacios may, from time to time, acquire transportation and/or storage capacity on a third-party pipeline system. Tres Palacios will only provide transportation and storage services for others using such capacity pursuant to its open access FERC Gas Tariff subject to its rates approved by the Federal Energy Regulatory Commission, and the "shipper must hold title" policy is waived to permit such use. [26]

47. This language implements the Commission's policy with respect to pipelines' acquisition of off-system capacity. In Texas Eastern Transmission Corporation (TETCO), [27] the

Commission found that pipelines no longer need to obtain prior approval to acquire capacity on another pipeline, provided the acquiring pipeline has filed tariff language specifying that it will only transport for others using off-system capacity pursuant to its existing tariff and rates. Tres Palacios' proposed tariff language is consistent with the requirements set forth in TETCO and authorizations granted other storage companies authorized to charge market-based rates. [28]

48. Therefore, we accept Tres Palacios' proposed tariff language and grant waiver of the shipper must have title policy, with the following clarifications. Because Tres Palacios has proposed only to offer firm storage and interruptible hub services, and has proposed no rates or tariff provisions relating to any other transportation services other than storage, hub and wheeling, Tres Palacios may only use capacity obtained on other pipelines pursuant to the TETCO waiver in order to move gas into and out of storage. That is, Tres Palacios may not use its header facilities and capacity on other pipelines to transport gas which will not physically or contractually enter its storage facility unless and until it has received Commission authorization to provide such transportation services. Furthermore, Tres Palacios' authorized use of the TETCO waiver to provide storage service shall be limited to the geographic area covered by its market study.

49. To ensure that Tres Palacios uses acquired off-system capacity in a manner consistent with its market-based rate authority and tariff provisions, and to satisfy our responsibility to monitor and prevent the exercise of market power, we direct Tres

Palacios, once it becomes operational, to make an annual informational filing regarding its provision of service using off-system capacity, as detailed below. [29]

50. Within 30 days after its first full year of operation, and every year thereafter, Tres Palacios is directed to file, for each acquisition of off-system capacity:

- a. the name of the off-system provider;
- b. the type, level, term and rate of service contracted for by Tres Palacios;
- c. a description of the geographic location - boundaries, receipt and delivery points, and segments comprising the capacity;
- d. the operational purpose(s) for which the capacity is utilized;
- e. a description of how the capacity is associated with specific transactions involving customers of Tres Palacios; and
- f. an identification of total volumes, by Tres Palacios' rate schedule and customer, that Tres Palacios has nominated on each off-system provider during the reporting period.

3. Implementation of NAESB Standards

51. The Commission has adopted in Part 284 of its regulations various standards for conducting business practices and electronic communication with interstate pipelines as promulgated by the North American Energy Standards Board (NAESB). [30] These standards govern nominations, allocations, balancing measurement, invoicing, capacity release, and mechanisms for electronic communication between pipelines and those with whom they do business. Tres Palacios states that its pro forma tariff is consistent with

Order Nos. 636 and 637, and with Version 1.7 of the NAESB Standards, [31] the latest version of the standards adopted by the Commission at the time Tres Palacios filed its certificate application. [32]

52. However, Tres Palacios requests a partial waiver of section 284.12(a)(1)(iv) of the Commission's regulations which require interstate pipelines to comply with the electronic data interchange (EDI) standards established by NAESB. Tres Palacios requests a limited waiver in the form of an extension of time to comply with the NAESB standards related to EDI/EDM and FF/EDM requirements so as to allow Tres Palacios to postpone

implementation until 90 days following receipt by Tres Palacios of a request to send information via EDI/EDM.[33] Consistent with Commission precedent, we will grant Tres Palacios' request for an exemption of the EDI standards, but will require Tres Palacios to implement those standards within 90 days following the receipt of such a request.[34]

4. Injection Ratchets

53. Tres Palacios proposes in Rate Schedule FSS to include ratchets, where applicable, only on injections into storage; withdrawals from storage would not be subject to ratchets. Tres Palacios also proposes to offer a customer the option of receiving either ratcheted or unratcheted firm storage service. The Commission has previously allowed storage service providers to offer this option.[35] Tres Palacios, however, indicates that it cannot at this time state the injection ratchet percentages that will apply to its ratcheted services, but will provide the injection ratchet values shortly before its in-service date in its actual tariff sheet filing and includes this commitment in its Rate Schedule FSS tariff provisions.[36]

54. Consistent with our acceptance of ratchets for other storage service providers, the Commission will accept Tres Palacios' proposed use of ratchets, subject to Tres Palacios including the injection ratchet values in its actual tariff sheet filing, as proposed.

5. Right of First Refusal (ROFR)

55. For service under Rate Schedule FSS, Tres Palacios' proposed tariff includes no provision allowing for negotiation in a Rate Schedule FSS service agreement of whether to include a contractual ROFR for renewal of the customer's service agreement. The Commission does not require a storage service provider to include a provision that permits negotiation of a contractual ROFR and has accepted storage service provider tariffs that do not include such a provision.[37] We, therefore, accept Tres Palacios' proposal to provide service under Rate Schedule FSS without the option of negotiating a contractual ROFR.

6. Overrun Service

56. Tres Palacios' pro forma tariff regarding Rate Schedule FSS does not provide for overrun service. As discussed earlier, Tres Palacios will offer hourly flexibility on an operationally available basis so that shippers have flexibility within their contract levels. In addition, Tres Palacios indicates that operational balancing agreements will resolve any difference between receipts and deliveries to or from Tres Palacios' storage facility. A shipper's contract entitles it to service up to the maximum contracted quantities. The Commission does not require storage providers to offer overrun service in excess of contracted volumes.[38]

7. Gas Retention Penalties

57. Tres Palacios proposes to retain a customer's gas improperly left in storage in two circumstances: (1) when gas is not withdrawn from storage by a firm storage or parking customer prior to the expiration of the customer's service agreement; and (2) when gas is not withdrawn from storage by an interruptible storage or parking customer following notice by Tres Palacios that it is going to interrupt the customer's service and directing the customer to remove its gas. In the first situation, Tres Palacios proposes to credit the firm shipper with 80 percent of the net revenue that the pipeline receives from an auction sale of the shipper's gas (a 20 percent penalty).[39] In the latter situation, Tres Palacios proposes to retain the gas without crediting to the shipper any of the revenue that Tres Palacios receives from the sale of the gas (a 100 percent penalty).[40] Tres Palacios states that such gas retention penalties are appropriate and consistent with Order No. 637.

58. In addition, Tres Palacios further proposes, in its GT&C,[41] to credit to all of its customers whose gas was not

purchased or retained, the net proceeds[42] from the sale of the retained gas (i.e., the 20 percent penalty associated with firm service and the 100 percent associated with interruptible service) pursuant to the revenue crediting provisions of Order No. 637. The Commission has accepted similar gas retention proposals by other storage providers, stating that the retention of gas left in storage at the end of the withdrawal period is an operationally-justified deterrent to shipper behavior that could threaten the system or degrade service to firm shippers.[43] If capacity exists, we would expect that a customer would be able to contract for interruptible service if needed. However, if capacity does not exist, Tres Palacios would be unable to provide such service. As for the level of the penalty, Tres Palacios has proposed to credit 80 percent of the auction value of the gas back to the firm or interruptible customer and credit the net proceeds from the auction to its other customers. Tres Palacios thus proposes a less severe penalty than other storage providers, who do not credit any portion of the value of the retained gas to the customer.

59. Finally, if an interruptible storage customer does not remove its gas when Tres Palacios determines that such interruptible storage capacity is needed to provide firm storage service, Tres Palacios proposes to retain the gas with no credit back to the customer. This provision is also consistent with the tariffs of other storage service providers.[44] For these reasons, we find that Tres Palacios' gas retention and penalty proposals are consistent with Commission precedent and are accepted.

8. Warehouseman's Lien

60. Tres Palacios has added a Warehouseman's Lien provision to each of the Rate Schedules FSS, FP, ISS, IHBS, and IP pro forma service agreements in its tariff. This provision permits Tres Palacios to establish a lien or interest on all gas received from the shipper in order to satisfy charges for storage or transportation. Tres Palacios states that these provisions are substantially identical to those recently approved in MoBay Storage Hub, LLC.[45] The Commission will accept these provisions, consistent with our prior order.

G. Changes to General Terms and Conditions

1. Creditworthiness

61. Tres Palacios states that it has added new creditworthiness provisions in its tariff that comply with the Commission's 2005 policy statement on creditworthiness[46] Tres Palacios proposes to distinguish not only between "creditworthy" and "non-creditworthy" customers, as do most tariffs, but also among those customers found "creditworthy," with respect to the amount of credit Tres Palacios will extend to those creditworthy customers. For creditworthy customers, Tres Palacios proposes to determine the amount of credit it will extend based on each customer's credit rating, and to extend higher levels of credit to customers with higher credit ratings.[47]

62. Tres Palacios explains that normally, a customer that is deemed "creditworthy" is not required to post any security and will be extended credit equal to the value of its service charges and, if applicable, the value of loaned gas, while a "non-creditworthy" customer must post security for three months' worth of service charges and, if applicable, the value of any gas loaned to the customer. Tres Palacios states that this typical approach does not protect against the potential for a storage provider's credit exposure to increase dramatically with increases in the value of loaned gas. Tres Palacios asserts that the value of service charges can be determined with relative certainty, as it is not generally subject to market volatility and is typically only a fraction of the gas commodity value. In contrast, Tres Palacios states the value of loaned gas varies dramatically over time in response to market forces and can be many times greater than the value of service charges. Tres Palacios asserts that it is concerned that it not become overextended by reason of changes in its exposure to creditworthy customers taking loan service in times of extreme gas price volatility.

63. Tres Palacios proposes to determine an "Unsecured Collateral

Limit" applicable to each level of Standard & Poor's and Moody's credit ratings, which will be set out in its tariff. Tres Palacios states that higher limits would apply to higher credit ratings and that a customer's Unsecured Collateral Limit would change with changes in the customer's credit rating. Tres Palacios will also determine the "Credit Exposure" for each customer (typically equal to three months worth of service charges plus the value of any loaned gas), which it will recalculate daily to reflect changes in the market value of loaned gas. Tres Palacios proposes that a customer will be required to post security equal to the positive difference, if any, between the Credit Exposure attributable to a customer and the customer's Unsecured Collateral Limit. Tres Palacios anticipates that the proposed credit thresholds will generally affect customers contracting for loan services under Rate Schedules FL and IL, since the Unsecured Collateral Limit for the lowest investment grade credit rating typically will be greater than three months worth of service charges for most of Tres Palacios' customers.

64. The Commission finds that Tres Palacios' creditworthiness provisions are consistent with the Commission's Creditworthiness Policy Statement in that they are objective and transparent.[48] Tres Palacios' creditworthiness provisions are also consistent with other creditworthiness provisions approved by the Commission for storage pipeline providers, such as Windy Hill.[49] The refinement to those provisions that Tres Palacios proposes in this case would determine the amount of credit extended to creditworthy customers based on each customer's credit rating. This refinement will provide Tres Palacios with additional flexibility to address the potential for Tres Palacios' credit exposure for loaned gas to increase dramatically due to the volatile gas commodity market. Therefore, consistent with the Creditworthiness Policy Statement and previous Commission orders, the Commission will accept the proposed creditworthiness tariff provisions.

2. Insurance Coverage for Risk of Loss of Gas in Storage

65. Section 12.2 of the GT&C of Tres Palacios' pro forma tariff, governing risk of loss, provides, in relevant part, that "the risk of loss of any quantity of Gas wheeled through, injected into, parked or stored in and withdrawn from the Tres Palacios storage facilities shall remain with the customer, and Tres Palacios shall not be liable to Customer for any loss of Gas, except as may be the consequence of the intentional or negligent acts or omissions of Tres Palacios." [50] In response to concerns expressed by its prospective customers regarding this allocation of the risk of loss of gas held in storage, Tres Palacios has added in its tariff, as an accommodation to customers under Rate Schedules FSS, ISS, FP, IP, and IHBS, section 16 to its GT&C, providing that Tres Palacios will obtain insurance for the value of customers' gas held in storage.

66. Section 16 provides that Tres Palacios will be responsible for obtaining, for the benefit of its customers, insurance coverage against casualty events that result in the loss of gas held in Tres Palacios' storage facility, provided that such insurance coverage is available to Tres Palacios on commercially reasonable terms. Section 16 also provides that Tres Palacios' undertaking to obtain such insurance coverage will not be deemed to shift the risk of loss of customer's gas in storage to Tres Palacios.

67. The Commission's policy, as articulated in Colorado Interstate Gas Co., [51] is that the pipeline and shipper are deemed to be responsible for the gas while it is in their respective control and possession; it is reasonable to assume that the parties can more readily insure against loss while the gas is in their possession. The Commission requires that a pipeline be responsible for gas lost while in its possession, even if the loss is due to force majeure; a pipeline's responsibility for gas while in its possession requires that the pipeline indemnify the owner of the gas if the gas is lost. [52]

68. Storage service providers, like Tres Palacios, provide storage services under market-based rate authority. In these circumstances, a customer can factor Tres Palacios' lack of liability, coupled with its proposal to offer insurance, into

their rate negotiations. In this context, the Commission finds that Tres Palacios' proposal is reasonable, consistent with other market-based rate storage service provider tariffs.[53] We further find reasonable Tres Palacios' proposal to offer insurance when it is available on commercially-reasonable terms. Storage providers are not required to provide insurance for their customers and many storage providers' tariffs state that their customers are responsible for providing their own insurance.[54] Tres Palacios' proposal is an additional service to its customers and can be a factor in rate negotiations along with the lack of liability for storage gas losses. The Commission will accept Tres Palacios' proposal.

3. Use of Index Pricing

69. Tres Palacios proposes to use index pricing for calculating the penalties to be assessed when a customer violates an action alert or operational flow order (OFO).[55] Specifically, Tres Palacios proposes to use the "Tennessee Zone Zero" daily index as published in Gas Daily for calculating action alert and OFO penalties. This price index satisfies the criteria that the Commission has established for inclusion of price indices in jurisdictional tariffs.[56] The Commission will accept Tres Palacios' proposal.

1. Exemption from Transmission Provider Standards of Conduct

1. As stated, Tres Palacios requests that the Commission explicitly confirm that Tres Palacios meets the requirements for the independent storage provider exemption set forth section 358.3(a)(3) of the Commission's regulations and, therefore, is exempt from the transmission provider Standards of Conduct promulgated in Order No. 2004. Under section 358.3(a)(3), transmission provider status and the obligations of the Standards of Conduct do not attach to a "natural gas storage provider authorized to charge market-based rates that is not interconnected with the jurisdictional facilities of any affiliated interstate natural gas pipeline, has no exclusive franchise area, no captive ratepayers and no market power." [57] The Commission clarifies that Tres Palacios is exempt from the transmission provider Standards of Conduct since it has no interconnections with any affiliated pipelines, no captive ratepayers, no exclusive franchise area, and no market power.

5. Open Seasons

2. The pro forma tariff allows Tres Palacios to decide whether to sell expansion capacity via competitive bidding in an open season, or by a first-come, first-served posting.[58] Section 3.1(a) of Tres Palacios' GT&C states:

Upon the availability of new storage capacity resulting from an expansion of Tres Palacios' facilities, Tres Palacios shall sell such capacity to prospective Customers either via the open season procedures described in sections 3.1(b)-(f) below or via the first-come, first-served procedures described in section 3.1(g) below, with the selection of the procedures

being at Tres Palacios' sole option. This section 3.1 shall apply to sales of capacity under Rate Schedules FSS, NNSS, FP and FL.[59]

While it is general Commission policy to require interstate gas pipelines to conduct open seasons for expansion capacity, the Commission has accepted tariff provisions for independent storage providers that allow the storage provider to determine whether to hold an open season or to sell firm expansion capacity on a first-come, first-served basis to a customer offering an acceptable rate.[60] Tres Palacios' proposed tariff is consistent with Commission precedent regarding the marketing and award of capacity by an independent storage company authorized to charge market-based rates.

3. The Commission will accept Tres Palacios' proposal to sell firm capacity resulting from an expansion of its facilities either by an open season or on a first-come, first-served basis. The Commission has accepted similar proposals for independent storage providers.[61] In those cases, the Commission found that

the storage service providers' proposals to sell new storage capacity resulting from an expansion through either an open season or on a first-come, first-served basis are designed to reflect the storage providers' market-based environment and to respond to specific market realities.[62] Consistent with those orders, the Commission will accept Tres Palacios' similar proposal. We note, however, that this provision would not apply to the initial capacity created by the facilities certificated in this proceeding.[63]

6. Scheduling Priorities

4. Tres Palacios' provisions regarding scheduling priorities[64] indicate that physical receipts on a given day above a customer's MDRQ (maximum daily receipt quantity) for a specific receipt point, but below the customer's MDIQ (maximum daily injection quantity) or MDWQ (maximum daily withdrawal quantity), would be treated as firm within the customer's MDIQ or MDWQ, but would be treated as having been received in part at a secondary receipt point. In contrast, receipts in excess of a customer's MDIQ or MDWQ could only be accommodated as interruptible overrun service. Tres Palacios' proposed firm service priorities are consistent with applicable Commission policies. Tres Palacios' language was adapted from language found in Pine Prairie's pro forma tariff, and its provisions comply with the Commission's directives to Pine Prairie to comply with Order No. 636-B's requirement that, once primary and secondary points have been scheduled, curtailment should treat such points on a pro rata basis.[65]

5. The Commission finds that that service in excess of MDRQ, but less than or equal to MDIQ or MDWQ is not overrun service but is treated as service at a secondary point. We confirm that, after service is scheduled, primary and secondary point service has the same scheduling priority. Tres Palacios' scheduling priorities are consistent with the Commission's policy and precedent and are accepted here.

7. Scheduling of Interruptible Service

6. Tres Palacios proposes to schedule interruptible services on a pro rata basis versus an economic basis (i.e., based on the rate that each shipper is paying). Its pro forma tariff includes the following provision regarding scheduling priority for interruptible services:

The order of priority relating to service under Rate Schedules ISS, IHBS, IP, IW, and IL shall be allocated to each Customer on a pro rata basis.[66]

The Commission has expressed its preference for economic scheduling, noting that it promotes allocative efficiency.[67] However, it has not required all pipelines and storage service providers to use economic scheduling. The Commission has allowed other independent storage providers to use the pro rata curtailment mechanism proposed by

Tres Palacios.[68] Therefore, consistent with prior orders, and because there are no objections or adverse comments, we will accept Tres Palacios' proposal for pro rata curtailment of interruptible service.

8. Hourly Flexibility

7. Tres Palacios' tariff requires shippers to deliver gas into Tres Palacios and to take delivery from Tres Palacios on a uniform hourly basis.[69] However, the tariff provides reasonable hourly flexibility by permitting customers flow rates above 1/24 of MDRQ or MDDQ when Tres Palacios determines that operational circumstances allow.[70] The Commission has found in other cases that it is not unreasonable to require shippers to maintain uniform hourly flows.[71] To mandate more hourly flexibility than Tres Palacios proposes could compromise reliable service to other shippers and affect line pack fuel costs. The Commission has encouraged pipelines to provide such flexibility when operational circumstances allow.[72] Accordingly, we will accept Tres Palacios' proposed Nominations and Scheduling provision.

9. Fuel Charge

8. Tres Palacios proposes to impose a fuel reimbursement surcharge on all services, except no-notice service.[73] We confirm that, as a storage provider authorized to charge market-based rates, Tres Palacios is not required to offer cost support for its rates and is thus not obligated to justify its imposition of a fuel charge, service by service. Furthermore, Tres Palacios' proposal to reserve flexibility to set fuel rates is fully consistent with its market-based rate authority and with the approach to fuel retention the Commission has authorized for other independent storage service providers.[74] Accordingly, we will accept Tres Palacios' proposed Fuel Reimbursement provision.

10. Liability for Loss or Damage Due to Interruption of Service

9. Tres Palacios' proposed tariff provides that "TRES PALACIOS shall not be liable for any loss or damage to any person or property caused, in whole or in part, by any interruption of service, except to the extent caused solely by TRES PALACIOS' gross negligence or willful misconduct." [75] We find that Tres Palacios' proposed gross negligence standard is at odds with Commission policy, and that the simple negligence standard gives pipelines a powerful enough incentive to operate their systems in a reasonable and prudent manner.[76] Therefore, Tres Palacios is directed to eliminate the gross negligence standard in its pro forma tariff and replace it with a simple negligence standard.

H. Engineering Analysis

10. The caverns at Tres Palacios' Gas Storage Site are located on the Markham Salt Dome, a salt extrusion into Miocene-age rock. The Markham dome is approximately 10,000 feet in diameter and over 5,000 feet in length. It is approximately 2,000 feet below the surface and has no surface topographic expression. The dome is surrounded by oil and gas wells which clearly mark its boundaries and currently has 20 caverns located within it. The caverns are located in the middle of the dome, and there is at least 350 feet between any cavern and its closest neighboring cavern. The three project caverns were solution-mined to produce brine for commercial and industrial use by Texas Brine Corporation (Texas Brine) and are currently used for natural gas liquids storage and brine production. Dewatering of the caverns will be through the non-jurisdictional facilities of Texas Brine.

11. The project cavern locations are well within the design criteria and confinement of the salt dome and the caverns are located at sufficient depth and within proper distances from both other caverns and salt boundaries to avoid pressure influences between caverns when they are operated at full storage capacity/pressure. The caverns were spaced, constructed, and permitted under the Texas Railroad Commission (TRRC) regulations for domal salt storage facilities. The new and existing wells are designed properly, and the various tests and logs to be run on these caverns and wells are required by the TRRC and consistent with the Interstate Oil and Gas Compact Commission (IOGCC) [77] guidelines for salt dome storage. Finally, the maximum and minimum cavern pressure gradients throughout the storage cycle (0.85 psi/ft and 0.2 psi/ft) have been chosen to preserve the structural integrity of the caverns, and are within the limits recommended by the TRRC. The total working gas capacity of the facility will be approximately 36.04 Bcf and cushion gas 17.95 Bcf, for a total inventory of 53.99 Bcf at 14.73 psia and 60 degrees Fahrenheit. The facility will have a peak withdrawal rate of 2,500 MMcf/d, a maximum injection rate of 1,000 MMcf/d, and be capable of cycling up to seven times per year.

12. Based on our review, we conclude that the proposed salt cavern storage facility, if constructed as described, is technically sound and well defined. Tres Palacios, however, must comply with the engineering conditions attached in Appendix A to this order.

I. Environmental Analysis

13. On March 28, 2007, we issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Tres Palacios Gas Storage Project and Request for Comments on Environmental Issues (NOI). We received responses to the NOI from the U.S. Fish and Wildlife Service (FWS).

14. An environmental assessment (EA) was prepared for Tres

Palacios' proposal. The EA addresses geology, soils, water resources, fisheries, wetlands, vegetation and wildlife, threatened and endangered species, cultural resources, land use and recreation, air quality and noise, reliability, safety, and alternatives. Our staff addressed all substantive comments in the EA.

15. Based upon the analysis in the EA, we conclude that if the project is constructed in accordance with Tres Palacios' application and supplements, including Tres Palacios' responses to data requests, and if Tres Palacios complies with all environmental conditions detailed in Appendix B of this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

16. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission. [78]

17. Tres Palacios shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Tres Palacios. Tres Palacios shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

J. Blanket Certificates

18. Tres Palacios requests issuance of a Part 284, subpart G, blanket certificate in order to provide open-access storage services. Under a Part 284 blanket certificate, Tres Palacios will not be required to obtain individual authorizations to provide storage services to particular customers. Tres Palacios filed a pro forma Part 284 tariff to provide open-access storage services. Since a Part 284 blanket certificate is required for Tres Palacios to offer these services, we will grant Tres Palacios a Part 284 blanket certificate, subject to the conditions imposed herein.

19. We will also grant Tres Palacios a Part 157, subpart F blanket certificate. The subpart F blanket certificate gives a natural gas company section 7 authority to automatically, or after prior notice, perform certain eligible activities related to the construction, acquisition, replacement and operation of pipeline facilities. However, Tres Palacios' Part 157, subpart F blanket certificate will be conditioned so that Tres Palacios cannot rely on the provisions of section 157.214 of the Commission's regulations to increase storage capacity. This restriction on Tres Palacios' Part 157 blanket certificate is based on the fact that its storage cavern is a salt cavern in the initial stages of development for which future expansion will require reevaluation by the Commission of historical data and new engineering and geological data. [79]

K. Conclusion

20. For the reasons set forth herein we find, subject to the conditions below, that the public convenience and necessity requires issuance of a certificate under section 7 of the NGA for Tres Palacios' proposed facilities. Thus we grant the requested authorizations to Tres Palacios.

21. At a hearing held on September 20, 2007, the Commission on its own motion, received and made a part of the record in these proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Tres Palacios in Docket No. CP07-90-000 authorizing it to construct and operate the described storage project, as described and conditioned herein, and as more fully described in the application.

(B) Tres Palacios' request for a Part 284, subpart G blanket certificate in Docket No. CP07-91-000 is granted. Tres Palacios' request for a Part 157, subpart F blanket certificate in Docket No. CP07-92-000 is granted, subject to the condition that Tres Palacios may not rely on the provisions of section 157.214 of the Commission's regulations to increase storage capacity.

(C) The certificate issued in Ordering Paragraph (A) is conditioned upon Tres Palacios' compliance with all applicable Commission regulations under the Natural Gas Act, particularly the terms and conditions in Parts 154 and 284 and paragraphs (a), (c), (e) and (f) of section 157.20, except that the requirements of section 157.20(c)(3) are waived.

(D) Pursuant to section 157.20(b) of the Commission's regulations, the facilities authorized in Ordering Paragraph (A) must be constructed and placed in service within one year of the date of the final order in this proceeding.

(E) Tres Palacios' request to charge market-based storage rates for firm and interruptible storage service is approved, as discussed and subjected to the conditions in this order.

(F) Tres Palacios shall notify the Commission within 10 days of acquiring knowledge of: (a) Tres Palacios' adding storage capacity beyond the capacity authorized in this order; (b) an affiliate's increasing storage capacity; (c) an affiliate's linking storage facilities to Tres Palacios; (d) Tres Palacios' or an affiliate's acquisition of an interest in, or being acquired by, an interstate pipeline connected to Tres Palacios. The notification shall include a detailed description of the new facilities and their relationship to Tres Palacios. Tres Palacios is also directed to file an updated market power analysis within five years of the date of this order and every five years thereafter. The Commission reserves the right to require such an analysis at any intervening time.

(G) The Commission confirms that Tres Palacios may negotiate right of first refusal provisions with its customers as part of the market-based rates negotiation process.

(H) Tres Palacios is granted waivers of the applicable portions of Parts 201 and 260 of the Commission's regulations; however, the waiver does not extend to the FERC's assessment of annual charges and Tres Palacios is required to maintain records to separately identify the original cost and related depreciation on its storage gas facilities and to file page 520 and 520-A of Form 2-A for calculation of ACA.

(I) Waiver is granted of the Commission's regulations that have been deemed inapplicable to storage providers with market-based rates, as discussed in this order.

(J) Waiver is granted of the Commission's "shipper must have title" policy, subject to the conditions discussed in the body of this order.

(K) Within 30 days after its first full year of operation, and every year thereafter, Tres Palacios is directed to file an annual informational filing on its provision of service using off-system capacity, as detailed in this order.

(L) Waiver is granted of section 284.12(a)(1)(iv) of the Commission's regulations to exempt Tres Palacios from compliance with the electronic data interchange (EDI) standards established by NAESB, subject to the conditions discussed herein.

(M) Tres Palacios must submit actual tariff sheets that comply with the requirements contained in the body of this order within 60 days of the issuance of this order.

(N) Tres Palacios must comply with the engineering conditions stated in Appendix A of this order.

(O) Tres Palacios must comply with the environmental conditions stated in Appendix B of this order.

(P) Tres Palacios shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Tres Palacios. Tres Palacios shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.
By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

APPENDIX A
Tres Palacios Gas Storage LLC
Engineering Conditions

This authorization includes the following condition(s):

1. Tres Palacios shall establish and maintain a subsidence monitoring network over the proposed cavern storage area.
2. Tres Palacios shall assemble, test and maintain an emergency shutdown system.
3. Tres Palacios shall periodically log each cavern's wells to check the status of the casing string.
4. Tres Palacios shall conduct sonar surveys of the caverns every five years to:
 - (a) monitor their dimensions and shape, including the cavern roof, (b) estimate pillar thickness between caverns throughout the storage operations, and (c) file the results with the Commission.
5. Tres Palacios shall conduct an annual inventory verification study on each cavern.
6. Tres Palacios shall determine and report to the Secretary of the Commission the final gas storage capacity of each cavern (including data and work papers to support the actual operating capacity determination).
7. The following conditions shall apply to the storage caverns:
 - a. The total maximum gas storage inventory stored in the caverns shall not exceed 54 Bcf at 14.73 psia and 60oF (each individual cavern shall not exceed those values indicated in the table below) without prior Commission authorization.
 - a. The maximum gas storage shut-in stabilized pressure in each cavern shall not exceed 0.85 psi per foot of cavern depth and the minimum pressure in each cavern shall be limited to 0.20 psi per foot of the cavern depth.
 - b.

Cavern	Total Gas Inventory, Bcf	Maximum pressure, psia, BHP	Minimum pressure, psia, BHP
1	13.84	3002	714
2	19.26	3122	918
3	20.89	4464	982

8. Before commencing gas storage operations in any of the caverns, Tres Palacios shall file with the Secretary of the Commission:

- a. the results of the mechanical integrity test (MIT) for each cavern before
conversion of that cavern to natural gas storage;
 - b. The results of any new sonar surveys of each cavern, including plan view
and cross-sections;
 - c. copies of the latest interference, tracer surveys, or other testing or
analysis, to verify the lack of communication between the caverns;
 - d. the volume of rubble at the base of each cavern, including the
methodology for determining such volume; and
 - e. geological cross sections (when additional data is obtained) through
the total project area showing all geologic units.
9. Tres Palacios shall file semiannual reports for each cavern (to coincide with the
termination of the injection or withdrawal cycles) containing the following
information (volumes shall be stated at 14.73 psia and 60oF):
- a. the daily volume of natural gas injected and withdrawn;
 - b. the inventory of natural gas and shut-in wellhead pressure for
each cavern at the end of reporting period;
 - c. the maximum daily injection and withdrawal rates experienced
for the entire storage field during the reporting period;
 - d. the average working pressure on such maximum days taken at
a central measuring point where the total volume injected or
withdrawn is measured;
 - e. the results of any tests performed to determine the actual size,
configuration, or dimensions of the storage caverns;
 - f. a discussion of current operating problems and conclusions;
 - g. other data or reports which may aid the Commission in the evaluation
of the storage project; and
 - h. the results of leak detection tests performed during storage operations
to determine the integrity of each cavern/wellbore, casing and wellhead.
10. Tres Palacios shall file semiannual reports in accordance with section 157.214 (c) of the Commission's regulations until the maximum inventory reaches or closely approximates the maximum capacity authorized and for a period of one year following.

APPENDIX B

Tres Palacios Gas Storage LLC
Environmental Conditions

As recommended in the EA, this authorization includes the following condition(s):

1. Tres Palacios shall follow the construction procedures and mitigation measures described in its application and as identified in the EA, unless modified by this Order. Tres Palacios must:
 - a. Request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. Justify each modification relative to site-specific conditions;
 - c. Explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. Receive approval in writing from the Director of the OEP before using that modification.
2. The Director of the OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. The modification of conditions of this Order; and
 - b. The design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from the project construction and operation.
3. Prior to any construction, Tres Palacios shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel would be informed of the EI's authority and have been or would be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. As soon as they are available, and before the start of construction, Tres Palacios shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for the facility approved by this Order. All requests for modifications of

environmental conditions of this Order or site-specific clearances must be written and must reference, locations designated on these alignment maps/sheets.

Applicant's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Tres Palacios' right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Tres Palacios shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas must be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of the OEP before construction in or near that area.

This requirement does not apply to minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. Implementation of cultural resource mitigation measures;
 - b. Implementation of endangered, threatened, or special concern species mitigation measures;
 - c. Recommendations by state regulatory authorities; and
 - d. Agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. Within 60 days of the acceptance of this certificate and before construction begins, Tres Palacios shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Tres

Palacios would implement the mitigation measures required by this Order. Tres Palacios must file revisions to the plan as schedules change. The plan shall identify:

- a. How Tres Palacios would incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings with the intention that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - b. The number of environmental inspectors (EIs) assigned per spread, and how the company would ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. Company personnel, including EIs and contractors, who would receive copies of the appropriate material;
 - d. What training and instructions Tres Palacios would give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - e. The company personnel (if known) and specific portion of Tres Palacios' organization having responsibility for compliance;
 - f. The procedures (including use of contract penalties) Tres Palacios would follow if noncompliance occurs; and
 - g. Or each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the mitigation training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
7. Tres Palacios shall file updated status reports prepared by the head EI with the Secretary on a biweekly basis until all construction and restoration activities are complete. On request, these status reports would also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. The current construction status of the project spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;

- b. A listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies;
 - c. Corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. The effectiveness of all corrective actions implemented;
 - e. A description of any landowner/resident complaints that may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - f. Copies of any correspondence received by Tres Palacios from other federal, state, or local permitting agencies concerning instances of noncompliance, and Tres Palacios' response.
8. Tres Palacios must receive written authorization from the Director of OEP before commencing service for each phase of the project. Such authorization would only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
 9. Within 30 days of placing the certificated facilities in service, Tres Palacios shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. That the facilities have been constructed in compliance with all applicable conditions, and that continuing activities would be consistent with all applicable conditions; or
 - b. Identifying which of the certificate conditions Tres Palacios has complied with or would comply with. This statement shall also identify any areas affected by the projects where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
 10. Prior to construction of pipeline facilities, Tres Palacios shall file with the Secretary the location by milepost of all private wells within 150 feet of pipeline construction and/or blasting activities. Tres Palacios shall offer to conduct, with the well owner's permission, pre- and post-construction monitoring of well yield and water quality for these wells.
 11. Prior to construction, Tres Palacios shall file its Stormwater Pollution Prevention Plan and Spill Prevention, Control, and Countermeasure Plan with the Secretary, for review and written approval by the Director of OEP.
 12. Prior to construction of the pipeline facilities, Tres Palacios shall file revised alignment sheets that include workspaces for the proposed horizontal directional drilling (HDD) sites and clearly indicate the limits of clearing activities. Tres Palacios shall avoid vegetation removal above HDD paths to the maximum extent practicable. No vegetation shall be removed without prior written approval by the Director of OEP.
 13. Prior to pipeline construction, Tres Palacios shall file a revised HDD contingency plan that provides a description of how an inadvertent release of drilling mud would be contained and cleaned up.
 14. Tres Palacios shall incorporate shielding and stray light reduction techniques into its aboveground facility designs and file a description of those techniques that were implemented, prior to commencing service.
 15. Tres Palacios shall continue to consult with the Texas Parks and Wildlife Department (TPWD) regarding the proposed action. Tres Palacios

shall not begin construction until the staff receives comments from the TPWD regarding potential effects to state-listed species and the Director of OEP notifies Tres Palacios in writing that construction or use of mitigation may begin.

16. Tres Palacios shall defer implementation of any treatment plans/measures (including archeological data recovery), construction of facilities, and use of staging, storage, and temporary work areas, and new or to be improved access roads until:
 - a. Tres Palacios files with the Secretary cultural resource survey and evaluation reports, any necessary treatment plans, and the Texas State Historic Preservation Office comments; and
 - b. The Director of OEP reviews and approves all cultural resources survey reports and plans and notifies Tres Palacios in writing that treatment plans/measures may be implemented or construction may proceed.

All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: "CONTAINS PRIVILEGED INFORMATION--DO NOT RELEASE".

17. Tres Palacios shall conduct a noise survey and file the survey results with the Secretary no later than 60 days after placing the Gas Handling Facility in service. If the noise attributable to the operation of the gas handling facility at full load exceeds 55 dBA Ldn at any nearby NSA, Tres Palacios shall install additional noise controls to meet the level within 1 year of the in-service date. Tres Palacios shall confirm compliance with this requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls.

Footnotes

[1] Annual Energy Outlook 2007 - With Projections to 2030, Energy Information Administration (Dec. 2006).

[2] Timely unopposed motions to intervene and timely notices of intervention are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. * 385.214 (2007).

[3] Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC * 61,227 (1999), order on clarification, 90 FERC * 61,128 (2000), further clarified, 92 FERC * 61,094 (2000) (Certificate Policy Statement).

[4] The Gas Storage Site, which includes the storage caverns and gas handling facilities, is located approximately 15 miles southeast of El Campo, in Matagorda County, Texas.

[5] The Policy Statement recognized that, under section 7(h) of the Natural Gas Act (NGA), a pipeline with a Commission-issued certificate has the right to exercise eminent domain to acquire the land necessary to construct and operate its proposed new pipeline when it cannot reach a voluntary agreement with the landowner. Order Clarifying Statement of Policy, 90 FERC * 61,128, at 61,398 (2000).

[6] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, 74 FERC * 61,076, reh'g denied, 75 FERC * 61,024 (1996), petitions for review denied sub nom., Burlington Resources Oil & Gas Co. v. FERC, 172 F.3d 918 (D.C. Cir. 1998).

Rate Regulation of Certain Natural Gas Storage Facilities, Order No. 678, FERC Stats. & Regs. * 31,220 (2006), Order No. 678-A order on clarification and reh'g, 117 FERC * 61,190 (2006).

[7] Market power is defined as the ability to profitably maintain prices above competitive levels for a significant period of time. 74 FERC * 61,076 at 61,230.

[8] 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 the alternative for an applicant's service. Id. at 61,231.

[9] An HHI is calculated by summing the squares of each storage seller's market share. The Alternative Rate Policy Statement specifies that the HHI is to be used as an indicator of the level of scrutiny to be given to the applicant. An HHI above 1,800 results in the applicant being given closer scrutiny because the HHI indicates that the market is more concentrated and the applicant may have significant market power. Alternative Rate Policy Statement at 61,235.

[10] Tres Palacios performed a separate analysis employing the "bingo card" review, which the Commission has accepted in other cases, to evaluate the potential that Tres Palacios could exercise market power over the provision of interruptible wheeling services. See Exhibit I, Exhibit Nos. (KAR-11) and (KAR-12).

[11] See, e.g., Port Barre Investments, L.L.C. d/b/a Bobcat Gas Storage, 116 FERC * 61,052, at P 25 (noting that there are "over 20 new storage projects or expansions of existing storage facilities in the Gulf Coast region," and that "[i]n light of this information, [the Commission] concludes that barriers to entry to the storage markets in the relevant market area are low"); Katy Storage and Transportation, L.P., 106 FERC * 61,145, at P 19 (the proposed increase in storage capacity in the production area is due in part to the ease of entry into the market and a high level of competition in the market); Unocal Keystone Gas Storage, LLC, 106 FERC * 61,033, at P 16 (2004) (Unocal Keystone) (the proposed increase in storage capacity in the production area is due in part to the ease of entry into the market and a high level of competition in the market).

[12] See Application at pages 48 through 50 and footnote 64 citing to, among others, Pine Prairie Energy Center, LLC, 109 FERC * 61,215 (2004), amended, 116 FERC * 61,316 (2006) (Pine Prairie) (authorization a storage project including a dual 24" bi-directional pipeline header system arranged in three branches totaling more than 54 miles in length, interconnecting with 8 pipelines, and authorizing market-based rates for wheeling services); SG Resources Mississippi, LLC, 101 FERC * 61,029 (2002), amended, 118 FERC * 61,048 (2007) (authorizing a storage project including a 29-mile long, dual branch header system (consisting of one 3.13 miles long 24-inch diameter pipeline and 26.1 miles of dual 24-inch diameter bidirectional natural gas pipelines) interconnecting with three pipelines and authorizing market-based rates for wheeling services); and, Bluewater Gas Storage, LLC, 117 FERC 161,122 (2006) at P 30-31 (Bluewater) (authorizing wheeling services among six pipelines at market-based rates using a 35 mile header).

[13] 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).

[14] Steuben Gas Storage Co., 72 FERC * 61,102 (1995), order on compliance filing, issuing certificates, and denying reh'g, 74 FERC * 61,024 (1996).

[15] See Copiah County Storage Co., 99 FERC * 61,316 (2002); Egan

Hub, 99 FERC * 61,269 (2002).

[16] See Liberty Gas Storage LLC, 113 FERC * 61,247, at P 51 (2005) and Rendezvous Gas Services, L.L.C., 112 FERC * 61,141, at P 40 (2005).

[17] See Bobcat Gas Storage, 116 FERC * 61,052 (2006) and Unocal Windy Hill Gas Storage, LLC, 115 FERC * 61,218 (2006).

[18] See Bluewater Gas Storage, LLC, 117 FERC * 61,122 at P 49 (2006).

[19] Tres Palacios proposes to offer interruptible parking and loan services under Rate Schedules IP and IL, under which a customer could temporarily deposit gas at Tres Palacios' storage facility or borrow gas from Tres Palacios to meet the customer's balancing or other needs.

[20] Rate Schedule FL service would involve a withdrawal period and then an injection period.

[21] Tres Palacios points out that, in this respect, its firm park and loan proposal is unlike the proposal the Commission rejected in Questar Pipeline Co., 99 FERC * 61,129 (2002), where a pipeline proposed to offer firm parking service using capacity not being used from time to time by firm storage customers. Tres Palacios states that its proposal is also unlike the rejected proposal in National Fuel Gas Supply Corp., 78 FERC * 61,036 (1997), where the applicant sought to offer firm advance loan service using gas in storage dedicated to no-notice service.

[22] See 18 C.F.R. * 284.12(b)(2)(iii) (2006).

[23] See Exhibit P, Rate Schedule IHBS, section 1(e); Original Sheet No. 41.

[24] See Exhibit P, Rate Schedule IHBS, section 2.4.

[25] 96 FERC * 61,071 (2001) (Clear Creek).

[26] Pro Forma Sheet No. 154.

[27] 93 FERC * 61,273 (2000), reh'g denied, 94 FERC * 61,139 (2001).

[28] See, e.g., SG Resources Mississippi, L.L.C., 101 FERC * 61,029, at P 30-33 (2002).

[29] See, e.g., Starks Gas Storage L.L.C., 111 FERC * 61,105, at P 54-57 (2005).

[30] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 Fed. Reg. 13267 (April 16, 1992), FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 * 30,939, at pp. 30,425-427 (April 8, 1992), order on reh'g, Order No. 636-A., 57 Fed. Reg. 36128 (August 12, 1992), FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 * 30,950 (August 3, 1992), Order on reh'g, Order No. 636-B, 57 Fed. Reg. 57911 (December 8, 1992), 61 FERC * 61,272 (1992), notice of denial of reh'g, 62 FERC * 61,007 (1993), aff'd in part and vacated and remanded in part, United Dist. Companies v. FERC, 88 F.3d 1105 (D.C. Cir. 1996), order on remand, Order No. 636-C, 78 FERC * 61,186 (1997). NAESB was formerly called the Gas Industry Standards Board (GISB).

[31] In Section 23 of the General Terms and Conditions of its pro forma tariff sheets, Tres Palacios adopts Version 1.7 of the NAESB standards. See Pro Forma Sheet No. 150.

[32] See Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587-S, FERC Stats. & Regs. * 31,179 (2005).

[33] Tres Palacios states that the Commission has granted waivers of the EDI/EDM and FF/EDM standards to interstate pipelines and storage service providers that have not received requests to send information via EDI/EDM and FF/EDM and do not expect any such requests, citing: Unocal Windy Hill Gas Storage, LLC, 115 FERC * 61,218, at P 48 (2006); MoBay Storage Hub, Inc., 117 FERC * 61,298, at P 46 (2006); Saltville Gas Storage Co., 109 FERC * 61,200, at P 36-37 (2004).

[34] See Rendezvous Gas Services, L.L.C., 112 FERC * 61,141 (2005), Saltville Gas Storage Co. LLC, 109 FERC * 61,200 (2004); Missouri Interstate Gas, LLC, 102 FERC * 61,172 (2003).

[35] See Windy Hill Gas Storage, LLC, 119 FERC * 61,291, at P 43-44 (2007) (Windy Hill).

[36] Exhibit P, Rate Schedule FSS, section 9.

[37] See Windy Hill at P 46.

[38] See Windy Hill at P 50.

[39] Exhibit P, Rate Schedule FSS, section 8.1 and Rate Schedule FP, section 8.1.

[40] Exhibit P, Rate Schedule ISS, section 2.2 and Rate Schedule ISP, section 2.

[41] Exhibit P, GT&C, section 32. Tres Palacios cites Ozark Gas Transmission, L.L.C., 96 FERC * 61,160, at 61,702-03 (2001), as precedent for such revenue crediting.

[42] "Net proceeds" is defined in GT&C section 32 as "the total proceeds received from the auction less any costs Tres Palacios incurred as a result of conducting the auction or the purchase or retention of Customer's gas." Original Sheet No. 158.

[43] See Windy Hill, 119 FERC * 61,291 at P 51-56.

[44] See Windy Hill at P 54-56; Pine Prairie at P 46; and, Blue Lake Gas Storage Co., 96 FERC * 61,164 at 61,728-29 (2001) (Blue Lake).

[45] 117 FERC * 61,298, at P 54 (2006).

[46] Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding, 70 Fed. Reg. 37,717 (June 30, 2005), FERC Stats. & Regs., Regulations Preambles 2001-2005 * 31,191 (2005) (Creditworthiness Policy Statement).

[47] Exhibit P, GT&C, section 31. Tres Palacios asserts that such a proposal is consistent with credit practices universally employed in the natural gas commodity market, and that it is appropriate to rely upon natural gas trading credit practices in

establishing mechanisms for calculating credit support pertaining to loaned gas. Application at 23-24.

[48] Creditworthiness Policy Statement at P 10.

[49] See Windy Hill, 119 FERC * 61,291 at P 58-61. See also Egan Hub Storage, LLC, 114 FERC * 61,154 (2006); Entrega Gas Pipeline, LLC, 114 FERC * 61,326, at P 5, 26 (2006).

[50] Exhibit P, GT&C, section 12.2. Section 12.2 of Tres Palacios' originally filed tariff provided that Tres Palacios would not be liable to customers for any loss of gas, except due to the "intentional or grossly negligent acts or omissions" of Tres Palacios.

[51] See Colorado Interstate Gas Co., 42 FERC * 61,380, at 62,126 (1988). See also Wyoming Interstate Co., Ltd., 57 FERC * 61,328, at 62,049 (1991).

[52] See Overthrust Pipeline Co., 58 FERC * 61,104, at 61,365 (1992).

[53] See Bluewater Gas Storage, LLC, FERC Gas Tariff, Original Volume No. 1, section 12.2, GT&C, Original Sheet No. 141; Egan Hub Storage, LLC, FERC Gas Tariff, First Revised Volume No. 1, section 12.2, GT&C, First Revised Sheet No. 142.

[54] See Windy Hill, 119 FERC * 61,291 at P 68.

[55] Exhibit P, GT&C, section 5.5(i).

[56] See Price Discovery in Natural Gas and Elec. Mkts., 109 FERC * 61,184, at ordering paragraph (D) (2004).

[57] 18 C.F.R. * 358.3(a) (3) (2006).

[58] Exhibit P, GT&C, section 3.1(a).

[59] Original Sheet No. 105.

[60] See Windy Hill, 119 FERC * 61,291 at P 73 (2007); and Egan Hub Storage, LLC, 116 FERC * 61,174, at P 11, 14 (2006) (Egan Hub).

[61] Id.

[62] See Egan Hub, 116 FERC * 61,174 at P 14.

[63] Tres Palacios concluded a successful Open Season on December 1, 2006 for initial capacity created by the facilities.

[64] See Exhibit P, GT&C, section 5.1; Original Sheet No. 129.

[65] Pine Prairie Energy Center, LLC, 109 FERC * 61,215, at P 45 (2004) (Pine Prairie).

[66] See Exhibit P, GT&C, section 5.2; Original Sheet No. 129.

[67] Enogex, 103 FERC * 61,161, at P 19 (2003), reh'g denied, 106 FERC * 61,093 (2004).

[68] Bluewater Gas Storage, LLC, FERC Gas Tariff, Original Volume No. 1, GT&C, section 5.3(a) (Original Sheet No. 124); Pine Prairie, 109 FERC * 61,215 at P 42 (approving proposed tariff, including GT&C section 5.3 which provides for pro rata curtailment of interruptible service); Port Barre Invs., L.L.C. d/b/a Bobcat Gas Storage, 116 FERC * 61,052 (2006) (approving, in part, pro forma Original Sheet No. 77).

[69] Exhibit P, GT&C, section 8.3; Original Sheet No. 138.

[70] Id.

[71] See Texas Eastern Transmission, LP, 102 FERC * 61,198 at P 54 (2003) (uniform hourly flows may be required to protect system integrity).

[72] Windy Hill, 119 FERC * 61,291 at P 83.

[73] Exhibit P, GT&C, section 19.1; Sheet No. 147.

[74] See Egan Hub Gas Storage, LLC, FERC Gas Tariff, Original Volume No. 1, FSS Rate Statement (Original Sheet No. 10).

[75] Exhibit P, GT&C, section 5.4; Original Sheet No. 130.

[76] See Guardian Pipeline, LLC, 101 FERC * 61,107, at P 18 (2002); Cameron LNG, 115 FERC * 61,229, at P 37 (2006); Port Arthur LNG, 115 FERC * 61,344, at P 37 (2006); and Transcontinental Gas Pipeline Corp. 96 FERC * 61,352, at 62,324 (2001).

[77] The IOGCC is a multi-state government agency which promotes and encourages conservation and efficient recovery of domestic oil and natural gas resources while protecting health, safety, and the environment. The organization is comprised of twenty-nine oil and natural gas producing states and six associate member states. In November 1994, the IOGCC published the "I.O.G.C.C. Member State Regulation of Natural Gas Storage" which summarizes the various state and federal statutes and regulations relating to the storage of natural gas underground.

[78] See, e.g., Schneidewind v. ANR Pipeline Co., 485 U.S. 293 (1988); National Fuel Gas Supply v. Public Service Commission, 894 F.2d 571 (2d Cir. 1990); and Iroquois Gas Transmission System, L.P., et al., 52 FERC * 61,091 (1990) and 59 FERC * 61,094 (1992).

[79] Mississippi Hub, LLC, 118 FERC * 61,099 (2007).

Document Content (s)

18507626.DOC.....	1
17983766.TXT.....	44