

174 FERC ¶ 61,060
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James P. Danly, Chairman;
Neil Chatterjee, Richard Glick and
Allison Clements.

Tres Palacios LLC

Docket No. IN21-3-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued January 19, 2021)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement), and Tres Palacios LLC (Tres Palacios). This order is in the public interest because it resolves on fair and equitable terms Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2020), into whether Tres Palacios violated any Commission rules, including section 7(e) of the Natural Gas Act (NGA), related to its failure to timely conduct sonar surveys as required by the Commission's 2007 Order Issuing Certificates.¹

2. Tres Palacios agrees to pay a civil penalty of \$700,000 to the United States Treasury, and to be subject to compliance monitoring as provided in the Agreement. Tres Palacios stipulates to the facts set forth in Section II of the Agreement, but neither admits nor denies the violations.

I. Facts

3. Tres Palacios operates a Commission-certificated natural gas storage facility, consisting of three underground salt dome caverns located in Matagorda County, Texas. In 2007, Tres Palacios sought and obtained from the Commission a Certificate of Public Convenience and Necessity² under section 7(c) of the NGA in order to construct and operate the storage facility.

¹ *Tres Palacios Gas Storage LLC*, 120 FERC ¶ 61,253 (2007) (Certificate Order).

² 15 U.S.C. § 717f(c)(1)(A) (2018).

4. Engineering Condition 4 of the Commission's 2007 Certificate Order required that "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."³

5. Prior to achieving operational status as a natural gas storage facility, Tres Palacios conducted sonar surveys of its caverns in 2008, 2009 and 2010. However, no sonar surveys were performed between: (1) June 23, 2008 and October 6, 2017 for Cavern 1; (2) December 14, 2008 and October 14, 2017 for Cavern 2; and (3) June 6, 2010 and April 8, 2016 for Cavern 3. The deadlines under the Certificate Order for Tres Palacios to complete these sonar surveys were June 23, 2013 (Cavern 1), December 14, 2013 (Cavern 2), and June 6, 2015 (Cavern 3).

6. Required sonar surveys were not undertaken within the time frame required by Engineering Condition 4 and Tres Palacios failed to seek an extension of time to comply.

7. In March 2016, an intervenor with knowledge of the facility's operations moved for an order directing Tres Palacios to comply with certain engineering conditions in the Certificate Order, including Engineering Condition 4.⁴ On April 7, 2016, Tres Palacios answered requesting a "waiver of the obligations set forth in Engineering Condition 4 to permit Tres Palacios to perform [an] alternative monitoring program" but had not requested an extension prior to this request.⁵

8. In that filing, Tres Palacios acknowledged its noncompliance with the Certificate Order, stating, "Due to the presence of hanging tubing inside of the final cemented casing string in the caverns, Tres Palacios cannot currently perform the test required by Engineering Condition 4."⁶ Tres Palacios further explained that a costly and risky snubbing operation (i.e. removing the casing strings while under pressure and remaining in gas storage operation) was required prior to performing sonar surveys.⁷

³ See Certificate Order, Appx. A. at ¶ 4.

⁴ Underground Services Markham, LLC, Motion for Order Directing Compliance, Docket Nos. CP14-27-000, CP10-499-000, and CP07-90-000 (filed Mar. 23, 2016).

⁵ *Tres Palacios Gas Storage LLC*, Answer of Tres Palacios Gas Storage LLC, Docket Nos. CP14-27-000, CP10-499-000, and CP07-90-000, at 6 (filed Apr. 7, 2016).

⁶ *Id.*

⁷ *Id.*

9. Enforcement opened a non-public investigation upon referral from the Commission on September 21, 2017.⁸ In the Referral Order, the Commission held that Tres Palacios' "purported justifications do not excuse their continued noncompliance."⁹ The Commission stated that sonar surveys were required at least every five years under the 2007 Certificate Order, yet as of 2017, had not been completed for Caverns 1 and 2 and were not timely completed for Cavern 3.

10. Tres Palacios eventually conducted the required sonar surveys of: (1) Cavern 3 on April 8, 2016; (2) Cavern 1 on October 6, 2017; and (3) Cavern 2 on October 14, 2017.

11. Tres Palacios cooperated with Enforcement during the investigation.

II. Violations

12. Enforcement has concluded that Tres Palacios was required to conduct sonar surveys of its certificated natural gas storage caverns every five years pursuant to Engineering Condition 4 of the Certificate Order.

13. Enforcement has concluded that Tres Palacios failed to timely conduct sonar surveys in violation of the Certificate Order and section 7(e) of the NGA which empowers the Commission, to "attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require."

III. Stipulation and Consent Agreement

14. Enforcement and Tres Palacios have resolved the investigation by means of the attached Agreement.

15. Tres Palacios stipulates to the facts set forth in Section II of the Agreement, but neither admits nor denies the violations set forth in Section III of the Agreement.

16. Tres Palacios agrees to pay a civil penalty of \$700,000 to the United States Treasury.

17. Tres Palacios agrees to submit two annual compliance monitoring reports, in accordance with the terms of the Agreement, with the requirement of a third annual report at Enforcement's option.

⁸ *Tres Palacios Gas Storage LLC*, 160 FERC ¶ 61,107, at P 56 (2017) (Referral Order).

⁹ *Id.* (citation and footnote omitted).

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IV. Determination of Appropriate Sanctions and Remedies

18. In recommending the appropriate remedy, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines,¹⁰ including the fact that Tres Palacios cooperated with Enforcement during the Investigation.

19. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned and is in the public interest, as it reflects the nature and seriousness of the conduct and recognizes the specific considerations stated above and in the Agreement.

20. The Commission directs Tres Palacios to make the civil penalty payment as required by the Agreement within ten days of the Effective Date of the Agreement.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission. Commissioner Christie is not participating.

(SEAL)

Kimberly D. Bose,
Secretary.

¹⁰ *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Tres Palacios LLC

Docket No. IN21-3-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Tres Palacios LLC (Tres Palacios) enter into this Stipulation and Consent Agreement (Agreement) to resolve a nonpublic, preliminary investigation (the Investigation) conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2020). The Investigation addressed whether Tres Palacios violated any Commission statutes, rules, regulations, or orders, including section 7(e) of the Natural Gas Act (NGA), related to its failure to timely conduct sonar surveys, as required by the Commission's 2007 Order Issuing Certificates (Certificate Order),¹ for operation of three salt dome natural gas storage caverns in Texas.

2. Tres Palacios stipulates to the facts in Section II, but neither admits nor denies the alleged violations in Section III. Tres Palacios agrees to: (a) pay a civil penalty of \$700,000 to the United States Treasury; and (b) be subject to compliance monitoring as provided more fully below.

II. STIPULATIONS

3. Enforcement and Tres Palacios hereby stipulate and agree to the following facts.

4. Tres Palacios operates a Commission-certificated natural gas storage facility, consisting of three underground salt dome caverns located in Matagorda County, Texas. In 2007, Tres Palacios sought and obtained from the Commission a Certificate of Public Convenience and Necessity² under section 7(c) of the NGA in order to construct and operate the storage facility.

¹ *Tres Palacios Gas Storage LLC*, 120 FERC ¶ 61,253 (2007).

² 15 U.S.C. § 717f(c)(1)(A) (2018).

5. Engineering Condition 4 of the Commission's 2007 Certificate Order required that "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."³

6. Tres Palacios owned and operated the storage caverns at issue from the time of its application to the Commission for a certificate order in 2007 to present. During that time period, the upstream ownership of Tres Palacios changed several times.⁴

7. Prior to achieving operational status as a natural gas storage facility, Tres Palacios conducted sonar surveys of its caverns in 2008, 2009 and 2010. However, it performed no sonar surveys between: (1) June 23, 2008 and October 6, 2017 for Cavern 1; (2) December 14, 2008 and October 14, 2017 for Cavern 2; and (3) June 6, 2010 and April 8, 2016 for Cavern 3. The deadlines under the Certificate Order for Tres Palacios to complete these sonar surveys were June 23, 2013 (Cavern 1), December 14, 2013 (Cavern 2), and June 6, 2015 (Cavern 3).

8. Between 2010 and 2014, Tres Palacios did not request a time extension for compliance or offer any explanation for noncompliance with Engineering Condition 4 in any of its filings with the Commission.

9. Following a change in upstream ownership, in mid-2014, Tres Palacios's current management team began planning to conduct sonar surveys. This process was complicated by the existence of hanging metal pipes or "strings" in the gas-filled caverns, which would have to be cut or removed before sonar surveys could be conducted.

10. In March 2016, an intervenor with knowledge of the facility's operations moved for an order directing Tres Palacios to comply with certain engineering conditions in the Certificate Order, including Engineering Condition 4.⁵ On April 7, 2016, Tres Palacios requested a "waiver of the obligations set forth in Engineering Condition 4 to permit Tres Palacios to perform [an] alternative monitoring program" but had not requested an

³ See Certificate Order, 120 FERC ¶ 61,253 at Appx. A. ¶ 4.

⁴ Prior to 2010, Tres Palacios was owned by NGS Energy Fund, L.P. From 2010 to 2013, Tres Palacios was owned by Inergy Midstream L.P. In October 2013, Crestwood Equity Partners acquired a majority interest in Tres Palacios.

⁵ Underground Services Markham, LLC, Motion for Order Directing Compliance, Docket Nos. CP14-27-000, CP10-499-000, and CP07-90-000 (filed Mar. 23, 2016).

extension prior to this request.⁶ In that filing, Tres Palacios acknowledged its noncompliance with the Certificate Order, stating in a Commission filing, “Due to the presence of hanging tubing inside of the final cemented casing string in the caverns, Tres Palacios cannot currently perform the test required by Engineering Condition 4.”⁷

11. Tres Palacios explained that the hanging strings had to be cut or snubbed-out to allow sonar surveys of the facility and “there is not currently a tool that can cut the outer diameter string because any such tool has to fit through the smaller diameter [interior] string first.”⁸ Tres Palacios further stated that the snubbing operation (i.e., removing the casing strings while under pressure and remaining in gas storage operation) also was not feasible “due to the considerable expense and operating risk associated with properly maintaining gas under pressure within the cavern during the process.”⁹ “Instead, Tres Palacios ha[d] used alternative methods to measure the integrity of its storage caverns, similar to what the Commission has approved in other proceedings,” and requested to be allowed to use alternative methods going forward.¹⁰ Tres Palacios did not perform the sonar surveys by the deadlines set forth in the Certificate Order.

12. Tres Palacios eventually performed the necessary snubbing operations on Cavern 1 and Cavern 2 and conducted the required sonar surveys of: (1) Cavern 3 on April 8, 2016; (2) Cavern 1 on October 6, 2017; and (3) Cavern 2 on October 14, 2017. Caverns 1 and 2 had multiple casings strings.

13. The Office of Enforcement (OE) opened a non-public investigation upon referral from the Commission on September 21, 2017.¹¹

⁶ *Tres Palacios Gas Storage LLC*, Answer of Tres Palacios Gas Storage LLC, Docket Nos. CP14-27-000, CP10-499-000, and CP07-90-000, at 6 (filed Apr. 7, 2016).

⁷ *Tres Palacios Gas Storage LLC*, Answer of Tres Palacios Gas Storage LLC, Docket Nos. CP14-27-000, CP10-499-000, and CP07-90-000, at 6 (filed Apr. 7, 2016).

⁸ *Id.* at 6.

⁹ *Id.*

¹⁰ *Id.* at 6-8.

¹¹ *Tres Palacios Gas Storage LLC*, 160 FERC ¶ 61,107, at P 56 (2017).

14. Tres Palacios cooperated with Enforcement during the investigation.

III. VIOLATIONS

15. Enforcement has concluded that Tres Palacios was required to conduct sonar surveys of its certificated natural gas storage caverns every five years pursuant to Engineering Condition 4 of the Certificate Order.

16. Enforcement has concluded that Tres Palacios failed to timely conduct such sonar surveys in violation of the Certificate Order and section 7(e) of the Natural Gas Act, which empowers the Commission to “attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.”

IV. REMEDIES AND SANCTIONS

17. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from or related to Tres Palacios’ conduct evaluated in Enforcement’s Investigation, Tres Palacios agrees with the facts as stipulated in Section II of this Agreement, but neither admits nor denies the violations in Section III of the agreement. Tres Palacios further agrees to undertake obligations set forth in the following paragraphs.

A. Civil Penalty

18. Tres Palacios shall pay a civil penalty of \$700,000 to the United States Treasury by wire transfer within ten days of the Effective Date of this Agreement, as defined herein.

B. Compliance

19. Tres Palacios shall make two annual compliance monitoring reports to Enforcement for two years following the Effective Date of this Agreement, which shall be submitted no later than thirty days after the first one-year anniversary of the Effective Date. The second annual compliance monitoring report shall be submitted one year from the date of the first report. After the receipt of the second annual report, Enforcement may, at its sole discretion, require Tres Palacios to submit reports for one additional year.

20. Each compliance monitoring report shall: (1) identify any known violations of Commission-required Tres Palacios certificate conditions, to include Tres Palacios’ Certificate Order, including a description of the nature of the violation and what steps were taken to rectify the situation; (2) describe all compliance measures and procedures Tres Palacios instituted or modified during the reporting period related to compliance with Commission-required certificate conditions, including the Certificate Order; (3) describe

all Commission-related compliance training that Tres Palacios administered during the reporting period, including the dates such training occurred, the topics covered, and the procedures used to confirm which personnel attended; and; (4) detail any upcoming sonar surveys, the due dates of the sonar surveys, the anticipated dates the surveys will be conducted and whether Tres Palacios has funds available to obtain the surveys.

21. Each compliance monitoring report shall also include an affidavit executed by an officer of Tres Palacios stating that it is true and accurate to the best of his/her knowledge.

22. Upon request by Enforcement, Tres Palacios shall provide to Enforcement documentation supporting the contents of its reports.

V. TERMS

23. The “Effective Date” of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein that arose on or before the Effective Date as to Tres Palacios and any affiliated entity, and their respective agents, officers, directors, or employees, both past and present.

24. Commission approval of this Agreement without material modification shall release Tres Palacios and forever bar the Commission from holding Tres Palacios, any affiliated entity, any successor in interest, and their respective agents, officers, directors, or employees, both past and present, liable for any and all administrative or civil claims arising out of the conduct covered by the Investigation, including conduct addressed and stipulated to in this Agreement, which occurred on or before the Agreement’s Effective Date.

25. Failure by Tres Palacios to make the civil penalty payment, or to comply with the compliance reporting obligations agreed to herein, or any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Natural Gas Act (NGA), 15 U.S.C § 717t-1(a), and may subject Tres Palacios to additional action under the enforcement provisions of the NGA.

26. If Tres Palacios does not make the required civil penalty payment described above within the times agreed by the parties, interest shall begin to accrue at the rates specified at 18 C.F.R. § 35.19a(a)(2)(iii) from the date that payment is due, in addition to any other enforcement action and penalty that the Commission may take or impose.

27. This Agreement binds Tres Palacios and its agents, successors, and assignees. This Agreement does not create any additional or independent obligations on Tres Palacios, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

28. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or Tres Palacios has been made to induce the signatories or any other party to enter into the Agreement.

29. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor Tres Palacios shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Tres Palacios.

30. In connection with the civil penalty provided for herein, Tres Palacios agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 22 of the NGA, 15 U.S.C. § 717t-1 (2018). Tres Palacios waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

31. This Agreement can be modified only if in writing and signed by Enforcement and Tres Palacios, and any modifications will not be effective unless approved by the Commission.

32. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts the Agreement on the entity's behalf.

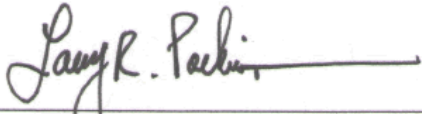
33. The undersigned representative of Tres Palacios affirms that he or she has read the Agreement, that with the exception of the alleged violations in Section III all of the other matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

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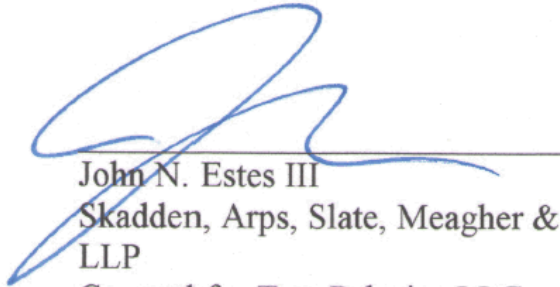
34. This Agreement may be executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and Accepted:



Larry Parkinson
Director, Division of Investigations
FERC

Date: 1/8/21



John N. Estes III
Skadden, Arps, Slate, Meagher & Flom
LLP
Counsel for Tres Palacios LLC

Date: 1/7/21

Document Content(s)

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