136 FERC ¶ 61,113
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Leader One Energy, LLC — Docket No. CP11-33-000

ORDER ISSUING CERTIFICATES

(Issued August 18, 2011)

1. On November 15, 2010, Leader One Energy, LLC (Leader One) filed an application under section 7(c) of the Natural Gas Act (NGA)[1] and Part 157 of the Commission's regulations[2] requesting a certificate of public convenience and necessity authorizing the construction and operation of a natural gas storage facility, the Leader One Gas Storage Project, to be located in Adams County, Colorado. Leader One also requests: (i) a blanket certificate under Part 284, Subpart G of the Commission's regulations[3] to provide firm and interruptible storage and hub services; (ii) a blanket certificate under Part 157, Subpart F of the Commission's regulations authorizing certain construction and other activities; (iii) authority to charge market-based rates for the proposed storage and hub services; (iv) approval of its proposed *pro forma* tariff; and (v) waiver of certain filing, accounting, and reporting requirements not applicable to storage providers charging market-based rates.

2. As discussed below, the Commission grants Leader One's requested certificate authorizations, subject to the conditions described herein. The Commission also grants Leader One's request for market-based rate authority and waiver of certain filing, accounting, and reporting requirements.

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[1] 15 U.S.C. § 717f(c) (2006).

[2] 18 C.F.R. Part 157 (2011).

[3] 18 C.F.R. Part 284 (2011).

I. Background

3. Leader One is a Colorado limited liability company whose majority owner is Energy Corporation of America (ECA).[4] Leader One is a newly-formed company, created to own and operate the proposed storage project. It is not currently a natural gas company within the meaning of section 2(6) of the NGA[5] and does not currently hold a section 7 certificate. Upon completion of construction and commencement of the operations approved herein, Leader One will be a natural gas company within the meaning of NGA section 2(6) and will be subject to the Commission's jurisdiction.

II. Proposal

A. Facilities

4. Leader One proposes to construct and operate a natural gas storage facility in Adams County, Colorado, approximately 37 miles northeast of Denver, using a depleted natural gas production field.[6] Leader One's project is designed to provide up to 13 billion cubic feet (Bcf) of storage capacity, with 11 Bcf of working gas and 2 Bcf of base gas. The project is designed to have a maximum injection capacity of 150 million cubic feet (MMcf) per day and a maximum withdrawal capability of 250 MMcf per day. Leader One estimates that construction of the facilities will take approximately 16 months.

5. Specifically, Leader One proposes to construct and operate the following facilities:

- As many as 14 new vertical or horizontal gas storage injection/withdrawal wells, using existing well pads wherever possible;

- Up to six new observation wells to monitor gas pressure and potential migration of gas beyond the reservoir boundaries, depending on the condition of existing wells, which will be re-entered and re-worked as needed;

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[4] ECA is a privately held company engaged in the production, gathering, aggregation, and sale of natural gas and oil. ECA owns and operates approximately 5,100 wells and 5,000 miles of pipeline in North America.

[5] 15 U.S.C. § 717a(6) (2006).

[6] Leader One proposes to convert the J-Sandstone Formation of the Deer Trail Field from production to storage. This formation is located approximately 6,300 feet below the surface. In total, seven production wells were drilled in the Deer Trail Field.

- One water disposal well, located adjacent to an observation well, to dispose of brine withdrawn from the reservoir during gas storage operations, depending on the amount of water produced, and up to 1.25 miles of three-inch diameter water disposal line to connect the compressor station to the water disposal well;

- A new compressor station comprising up to four 4,500-horsepower (hp) electric motor-driven compressor units (18,000 hp total) and buildings, communications and control equipment, emergency generation equipment, and an electrical supply substation;

- Hydrocarbon dew point control and condensate handling equipment within the compressor station to separate and temporarily store natural gas liquids and condensate produced with natural gas during gas storage operations;

- Condensate handling equipment located at the wellheads to separate and temporarily store condensate produced with natural gas during gas storage operations;

- A 22.4-mile long, 24-inch diameter Header Pipeline System that will provide two interconnections with Colorado Interstate Gas Company (CIG). Specifically, the system will consist of: (1) a 17.6-mile long Header Pipeline from the storage field to the western interconnection with CIG at its High Plains Pipeline; and (2) a 4.8-mile long pipeline extension, extending from the Header Pipeline to an interconnection with CIG at its Line 52;[7]

- Four pig launcher/receiver facilities to be located at the compressor station site and at milepost (MP) 17.57 of the Header Pipeline and MPs 0.5 and 4.73 of the 4.8-mile extension;

- Gathering lines connecting the injection/withdrawal wells to the compressor station;

- Ancillary facilities, such as valves, meters, filtration, safety, cleaning and inspection equipment as needed to operate the project; and

- Construction laydown and support facilities.

[7] Leader One Application, Exhibit F includes a map of the Header Pipeline System.

B. Open Season and Proposed Services

6. Leader One states that it conducted a non-binding open season for the project from September 15 through October 8, 2010. As a result of the open season, Leader One expects that the project's capacity will be fully subscribed before the commencement of construction. Leader One contends that the open season results suggest that the project is needed and will be supported by the market.

7. Leader One proposes to offer firm and interruptible storage services and related hub services, including hourly balancing and park and loan services, but excluding wheeling service. It proposes to provide the following storage services: Firm Storage Service (Rate Schedule FSS) and Interruptible Storage Service (Rate Schedule ISS). Leader One also proposes to offer firm and interruptible hub services including: Firm Hourly Balancing Service (Rate Schedule FHBS); Firm Parking Service (Rate Schedule FP); Firm Loan Service (Rate Schedule FL); Interruptible Hourly Balancing Service (IHBS); Interruptible Parking Service (Rate Schedule IP); and Interruptible Loan Service (Rate Schedule IL).

C. Blanket Certificate and Waiver Requests

8. Leader One requests a blanket certificate under Part 284, Subpart G of the Commission's regulations to provide storage and hub services on an open-access, non-discriminatory basis pursuant to its *pro forma* tariff. Leader One also requests a blanket certificate under Part 157 Subpart F of the Commission's regulations to perform routine activities in connection with the construction, maintenance, abandonment, and operation of the proposed facilities.

9. Leader One requests waiver of the Commission's "shipper must have title" rule so that it may use any off-system capacity that it may obtain in order to provide storage service within its geographic market area.

10. Because it proposes to charge market-based rates, Leader One requests waiver of certain filing, accounting, and reporting requirements applicable to cost-based rate proposals, which the Commission has previously found inapplicable to storage providers with market-based rate authority.

III. Notice, Interventions, and Comments

11. Notice of Leader One's application was published in the *Federal Register* on December 1, 2010.[8] No motions to intervene, notices of intervention, or protests were

[8] 75 Fed. Reg. 74,703 (2010).

filed. The National Park Service filed a statement saying that the proposed project would not affect any national parks and that it had no comments.

IV. Discussion

12. Since the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction 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

13. The Certificate Policy Statement provides guidance for evaluating proposals for certificating new construction.[9] 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 explained that in deciding whether to authorize construction of major new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's 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, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain.

14. Under this policy the threshold requirement for pipelines proposing new projects 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 construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission 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 the Commission proceed to complete the environmental analysis where other interests are considered.

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

15. Leader One is a new entrant in the natural gas storage market and has no existing customers. Therefore, there will be no subsidization. Thus, the Commission finds that Leader One satisfies the threshold requirement of the Certificate Policy Statement.

16. Since Leader One is a new company with no current customers or services, the proposed project will have no impact on its existing customers or services. Further, the project should not have any adverse impact on existing storage providers or their customers, since, as discussed below, the project will be located in a competitive market and will also enhance storage options available to pipelines and their customers. Additionally, no storage company or customer in Leader One's market area has protested Leader One's application.

17. The Leader One storage facility will be located on land in which Leader One has or will acquire the property rights. Leader One states that it has acquired 98.6 percent of the necessary pipeline right-of-way; 86 percent of the necessary surface rights; and 63 percent of the necessary subsurface rights for its proposed project. Leader One states that it anticipates obtaining the remainder of the property rights through landowner agreements. Additionally, no landowner has protested or filed adverse comments to the Leader One project. Thus, the Commission finds that the project will have minimal impacts on landowners and surrounding communities.

18. The proposed facilities will increase storage and hub services available to serve growing markets in the Rocky Mountain region. Based on the benefits the project will provide and the minimal adverse effects on other storage providers and their captive customers, landowners, and surrounding communities, the Commission concludes, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that approval of Leader One's proposals are required by the public convenience and necessity, subject to the conditions discussed below.

B. Market-Based Rates

19. Leader One requests authority to charge market-based rates[10] for its proposed firm storage service under Rate Schedule FSS and interruptible storage service under Rate Schedule ISS. Leader One also proposes to offer, under market-based rates, firm and interruptible hub services, including parking services under Rate Schedules FP and IP,

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[10] Leader One has included in its application a market power study in support of its request for market-based rates. *See* Exhibit I of the Application, affidavit of Edward C. Gallick. The market power study defines the relevant products and geographic markets, measures market shares and concentrations, and evaluates other factors such as replacement capacity, ease of entry, and storage alternatives.

loan services under Rate Schedules FL and IL, and balancing services under Rate Schedules FHBS and IHBS.

20. Generally, the Commission evaluates requests to charge market-based rates for storage services under the analytical framework of its Alternative Rate Policy Statement.[11] Under the Alternative Rate Policy Statement, the Commission evaluates requests for market-based rates pursuant to two principal purposes: (1) to determine whether the applicant can withhold or restrict services and, as a result, increase prices 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 of service.[12] To find that an applicant cannot withhold or restrict services, increase prices over an extended period, or discriminate unduly, the Commission must first find that there is a lack of market power[13] because customers have good alternatives[14] or that the applicant or the Commission can mitigate the market power with specific conditions.[15]

[11] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996), *petitions for review denied sub nom. Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement); *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220, *order on clarification and rehearing*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

[12] Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,231.

[13] The Commission defines "market power" as "the ability of a pipeline to profitably maintain prices above competitive levels for a significant period of time." *See* Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,230.

[14] A good alternative is an alternative to the proposed project that is available soon enough, has a price low enough, and has a quality high enough to permit customers to substitute the alternative for an applicant's service. *See* Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,230.

[15] *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 29.

21. The Commission's analysis of whether an applicant can exercise market power consists of three major steps. First, the Commission reviews whether the applicant has specifically and fully defined the relevant markets[16] to determine which specific products or services are identified and the suppliers of those products and services that provide good alternatives to the applicant's ability to exercise market power.[17] Also, as part of this first step, the applicant must identify the relevant geographic market.[18] Second, the Commission measures an applicant's market share and market concentration.[19] Third, the Commission evaluates other relevant factors, such as ease of entering the market.

1. **Storage Services**

22. Leader One identifies the relevant product market as firm and interruptible storage and hub services (excluding wheeling services).[20] Leader One has included local natural gas production as a non-storage alternative to the services it proposes to provide.[21] Leader One contends that the local production it has included in the product market meets availability, quality comparability, and price comparability requirements for a good alternative under the Commission's regulations.[22]

23. Leader One states that all local production that is not under contract for more than one year and is sold in the relevant geographic market during a peak period can be considered to be readily available. Leader One further states that most of the local production included in its market power study is held by producers/marketers who, in turn, sell to end users under short-term contracts. Since some end users, such as local distribution companies, may hold contracts for longer periods, Leader One considers only

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[16] Relevant product market consists of the applicant's service and other services that are good alternatives to the applicant's services. *See* Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,231.

[17] Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,231.

[18] *See id.* at 61,232-34.

[19] *See id.* at 61,234.

[20] Leader One does not propose to offer wheeling services.

[21] Leader One cites *Steckman Ridge, LP*, 123 FERC ¶ 61,248, at P 33-34 and P 37 (2008), where the Commission specifically recognized local production as a good alternative and accepted market share and market concentration estimates that include it.

[22] Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,231.

75 percent of local production as readily available.[23] In addition, Leader One only includes local production within the CIG footprint, and further limits the local production to only to those counties with a receipt point on CIG. Leader One contends that this results in a conservative estimate of the local production available as an alternative to storage, since the 478,799 MMcf estimate of local production included in its market study analysis represents only 25 percent of the total local production available in the Rocky Mountain/Mid-Continent Area. Leader One concludes that the quality of local production is identical to storage because both services provide an identical unit of gas at the same point in time.

24. Leader One develops a more complex analysis to illustrate the price comparability between local production and the price of storage. Leader One states that it cannot compare directly the price of local production to the price of storage, since production is a commodity and storage is a service provided over time. Leader One contends that when determining whether local production is a good alternative to storage, the market power study must analyze the "time dimension" implicit in local production (i.e., providing gas at peak rather than at off-peak). As discussed in Attachment 2 (a), section I to the market power study, Leader One estimates the price of local natural gas production using Natural Gas Week, Energy Information Administration, and New York Mercantile Exchange data. Using this data, Leader One calculated a peak-price for local natural gas production of \$8.18 per Mcf. Leader One describes the threshold price of storage as the prevailing price of storage, plus ten percent (Alternative Rate Policy Statement 74 FERC ¶ 61,076 at 61,231). Leader One calculated a threshold price for storage of \$11.56 per Mcf, using the total storage charge on Kinder Morgan Interstate Gas Transmission, LLC (Kinder Morgan).[24] Since the \$8.18 per Mcf peak-price for local production is less than the \$11.56 per Mcf threshold price for storage, Leader One concludes that local production is price-comparable to storage. Therefore, Leader One asserts that local natural gas production meets the availability, quality, and price requirements for a good alternative.

25. Leader One identifies the relevant geographic market for storage services to include: (1) the alternative storage facilities in Oklahoma, Kansas, Colorado, and Wyoming directly connected to CIG; and (2) the alternative storage facilities in Kansas, Nebraska, Oklahoma, and Wyoming directly accessible by pipelines interconnected with

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[23] Leader One cites *Steckman Ridge* where the Commission accepted a 75 percent availability factor in the local production analysis in Steckman Ridge's market power study. *See* 123 FERC ¶ 61,248, at P 31 and P 37.

[24] Kinder Morgan's total charge is \$10.51 per Mcf. Increasing that price by ten percent yields the threshold price of \$11.56 per Mcf.

CIG.[25] Thus, Leader One's relevant geographic area includes Colorado, Kansas, southwest Nebraska, Oklahoma, and Wyoming, referred to collectively as the Rocky Mountain/Mid-Continent Area.

26. Attachment 3 to the market power study lists 31 natural gas storage facilities in the geographic market that are not affiliated with the project and Attachment 2(e) identifies hundreds of local production companies in the Rocky Mountain/Mid-Continent Area. Together, these facilities represent a total working gas capacity of 801,649 MMcf and a maximum daily deliverability of 8,927 MMcf per day. The Leader One facility will have 11 Bcf of working gas capacity and a maximum daily deliverability of 250 MMcf per day. This translates to market shares of 1.37 percent for working gas capacity and 2.80 percent for daily deliverability for Leader One in the Rocky Mountain/Mid-Continent Area.

27. The Commission uses the Herfindahl Hirschman Index (HHI) to analyze whether a competitive market exists for a specific product and to determine market concentration for gas pipeline and storage markets.[26] The Alternative Rate Policy Statement states that a low HHI (generally less than 1,800) indicates that sellers are less likely to be able to exert market power because customers have sufficiently diverse alternatives in the relevant market. While a low HHI suggests a lack of market power, a high HHI (generally greater than 1,800) requires closer scrutiny in order to make a determination about a seller's ability to exert market power.[27]

28. Leader One's market power analysis reveals an HHI calculation of 224 for working gas capacity and an HHI calculation of 657 for maximum daily withdrawal capacity.[28] The determination of HHI involves two calculations. First, the size of the total market and each storage or storage-alternative provider's share of that total market

[25] Leader One claims that the Commission has previously allowed applicants to define the geographic market to include storage alternatives directly connected to the same interstate or intrastate pipelines as the applicant's storage facility, and areas readily accessible to those same pipelines via market hubs or interconnecting pipelines in numerous market-based rate storage cases. Leader One cites *East Cheyenne Gas Storage, LLC*, 132 FERC ¶ 61,097 (2010); *Blue Sky Gas Storage, LLC*, 129 FERC ¶ 61,210 (2009); *Windy Hill Gas Storage, LLC*, 119 FERC ¶ 61,291 (2007), and *Windy Hill Gas Storage, LLC*, 115 FERC ¶ 61,218 (2006).

[26] Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,235.

[27] *Id*. at 74 FERC ¶ 61,076 at 61,235-36.

[28] *See* Attachment 3 of the market power study.

is calculated. Then, each storage or storage-alternative provider's market share is squared and the squares are summed to determine the overall HHI of the market. In its market power study, Leader One includes local production in step one, i.e., in calculating the total capacity available in the geographic market and each storage provider's market share. Thus, the Commission does not believe that Leader One's market power study gives any representation to local production in this component of the market power analysis and in determining the HHI.[29]

29. Leader One states that it has not included local producers in the HHI calculations because it contends that local producers cannot influence the market price by withholding output or act together with storage providers to exercise market power. However, the Commission believes that if local production is to be included in calculating the size of the product market (i.e., step one of the analysis), in order to develop a complete and accurate indication of the level of competition within the geographic market it is appropriate to also include local production in calculating market concentration (i.e., step two of the analysis).[30] Accordingly, having identified what we believe to be a weakness in Leader One's methodology for including local production in its market power analysis, and since inclusion of local production in the market power analysis in not a requirement for approval of market-based rates, we have re-examined Leader One's market power, excluding local production from our analysis.[31]

30. With local production excluded from the market power analysis, Leader One would have market shares of 3.41 percent of the market's total working gas capacity and 4.34 percent of the total maximum daily deliverability. The resultant HHIs would be

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[29] Had Leader One carried the total market share for local production identified in step one over into step two of the analysis, it would have resulted in an HHI of 3791 for working gas capacity and 1918 for maximum daily withdrawal capacity.

[30] *See, e.g., Magnum Gas Storage, LLC and Magnum Solutions, LLC,* 134 FERC ¶ 61,197 (2011); *UGI Storage Co.,* 133 FERC ¶ 61,073, *order on reh'g,* 134 FERC ¶ 61,239 (2011) (accepting market power analyses that included local producers in the HHI calculations).

[31] *See Ryckman Creek Resources, LLC,* 136 FERC ¶ 61,061, at P 36 (2011). We also note that the only support Leader One provides for its assumption that 75 percent of the local production in its Rocky Mountain/Mid-Continent geographic market will be readily available as an alternative to storage is the Commission's acceptance of that percentage in *Steckman Ridge, id.* at note 23. However, Leader One has provided no explanation as to why a local production availability factor accepted for a facility located in the Greater Mid-Atlantic area would necessarily be acceptable for a facility located in the Rocky Mountains.

1,379 for working gas and 1,579 for deliverability. Since both measures of market concentration are below the 1,800 level, the Commission concludes that the market for gas storage in this region will remain sufficiently competitive. In addition, the Commission agrees with Leader One that it will be unable to exert market power because: (i) many storage alternatives in the Rocky Mountain/Mid Continent Area are subject to cost-of-service regulation; (ii) it is a new entrant with no affiliates in the relevant geographic market which is located within a large production area; and (iii) no significant barriers to entry exist in the Rocky Mountain/Mid-Continent Area.[32]

2. <u>Hub Services</u>

31. Leader One contends that its proposed hub services, i.e., parking, loaning, and balancing are essentially derivative storage services. Leader One indicates that it is relying on the market share and market concentration analyses, as discussed above, to demonstrate that it lacks market power for hub services. Leader One contends that its analysis is consistent with Commission policy in the granting of market-based rate authority for the proposed hub services.[33]

3. <u>Commission Determination</u>

32. Our analysis demonstrates that Leader One's proposed storage facilities will be located in a highly competitive market where numerous storage and interruptible hub service alternatives exist for potential customers. Leader One's prospective market shares are low and the HHIs for working gas capacity and for peak day deliverability are below the threshold necessitating further review. Thus, the Commission concludes that Leader One will lack market power. For these reasons, and given that Leader One's request for market-based rate authority is unopposed, the Commission will approve Leader One's request to charge market-based rates for firm and interruptible storage and hub services.

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[32] The Commission has certificated eight storage projects in the Rocky Mountain/Mid-Continent Area since 2000. Six of the projects have been placed in service, expanding the working gas capacity and daily deliverability by 15.64 and 16.38 percent, respectively. In addition, there are four storage projects in various stages of development.

[33] *See* Exhibit I at P 5, citing *Southeast Gas Storage, LLC*, 125 FERC ¶ 61,307, at P 27 (2008); *East Cheyenne, LLC*, 132 FERC ¶ 61,097, at P 38 (2010); *Liberty Gas Storage*, 127 FERC ¶ 61,221 (2009) and *Unocal Keystone Gas Storage, LLC*, 106 FERC ¶ 61,003 (2004).

33. Nevertheless, Leader One must notify the Commission if future circumstances significantly affect its present market power status. Thus, the Commission's approval of market-based rates for the indicated services is subject to re-examination in the event that: (a) Leader One adds storage capacity beyond the capacity authorized in this order; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to Leader One; or (d) Leader One, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to Leader One. Since these circumstances could affect its market power status, Leader One shall notify the Commission within ten days of acquiring knowledge of any such changes. The notification shall include a detailed description of the new facilities and their relationship to Leader One.[34] The Commission reserves the right to require an updated market power analysis at any intervening time.[35]

C. <u>Waivers of Filing, Reporting, and Accounting Requirements</u>

34. Because it proposes to charge market-based rates, Leader One requests waiver of sections 157.6(b)(8) and 157.20(c)(3) of the Commission's regulations, which would require it to submit and update cost data otherwise necessary for the Commission to determine the rate treatment of this project and its newly constructed facilities. Leader One also requests that the Commission grant waiver of the filing requirements of section 157.14(a)(13), (14), (16), and (17) that require an applicant to submit Exhibit K (Cost of Facilities), Exhibit L (Financing), Exhibit N (Revenues, Expenses, and Income), and Exhibit O (Depreciation and Depletion), since the Commission requires these exhibits for the purpose of determining cost-base rates. Finally, Leader One requests waiver of the accounting and annual reporting requirements under Parts 201 and 260 of the Commission's regulations and the requirement to use a straight fixed-variable rate design in section 284.7(e).

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[34] *See, e.g.*, *Port Barre Investments, L.L.C.*, 116 FERC ¶ 61,052 (2006) (*Port Barre)*; *Copiah County Storage Co.*, 99 FERC ¶ 61,316 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002).

[35] In Order Nos. 678 and 678-A, the Commission chose not to impose a generic requirement that storage providers, granted market-based rate authority on the basis of a market power analysis, file an updated market power analysis every five years, or at other periodic intervals. *See Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220, at P 6 (2006); *see also* Order No. 678-A, 117 FERC ¶ 61,190, at P 12-15 (2006) (affirming the Commission's decision). The Commission, however, has reserved the right to require an updated market power analysis. *See, e.g.*, *Liberty Gas Storage LLC*, 113 FERC ¶ 61,247, at P 51 (2005) (*Liberty*); *Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141, at P 40 (2005).

35. The cost-related information required by these regulations is not relevant in light of the Commission's approval of market-based rates for Leader One's storage and hub services. Thus, consistent with previous Commission orders,[36] the Commission will grant Leader One's request for waiver of the regulations requiring cost-based related information for these services. The Commission also grants a waiver of section 157.14(a)(10), which does not pertain to gas storage service, since Leader One's customers will supply their own gas.

36. The Commission has also found in previous orders no ongoing regulatory need to have cost-based financial statements prepared in accordance with the Uniform System of Accounts. Accordingly, the Commission will grant Leader One's request for waiver of accounting requirements, as provided in Part 201 (Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act). Also, the Commission will also grant Leader One's request for waiver of reporting requirements, as set forth in section 260.2 (Form No. 2-A, Annual Report for Nonmajor Natural Gas Companies) and section 260.300 (Form No. 3-Q, Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies), but the Commission notes that such waivers do not extend to the Annual Charge Assessment (ACA).[37] Therefore, the Commission will require Leader One to file the Gas Account-Natural Gas Schedule currently at page 520 of Form No. 2-A, reporting the gas volume information that is the basis for an ACA charge.[38] Also, the Commission will require Leader One to maintain records to separately identify the original cost and related depreciation on its storage facilities should the Commission require Leader One to produce those reports in the future.

D. <u>Tariff Provisions</u>

37. Leader One proposes to offer firm and interruptible storage and hub 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. The Commission directs Leader One to file actual tariff records consistent with the directives in this order, no less than 60 days prior to the commencement of service. Leader One will need to comply with the Commission's

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[36] *See, e.g., Port Barre,* 116 FERC ¶ 61,052 (2006); *Copiah County Storage Co.*, 99 FERC ¶ 61,316 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002).

[37] *BGS Kimball Gas Storage, LLC,* 117 FERC ¶ 61,122, at P 49 (2006).

[38] *Id. See also Unocal Windy Hill Gas Storage, LLC,* 115 FERC ¶ 61,218, at P 38 (2006).

electronic filing requirements set forth in Order No. 714[39] and Part 154 of the Commission's regulations.[40]

1. Waiver of Electronic Data Interchange Standards

38. Leader One requests a partial waiver of section 284.12(a)(1)(iv) of the Commission's regulations, which requires interstate pipelines to comply with Electronic Data Interchange (EDI) standards developed by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB). Leader One states that it will operate an interactive website that will provide for an electronic delivery mechanism in conformity with the Commission's requirements, but proposes not to implement the EDI standards until 90 days following a request from one of its customers that Leader One implement them. Consistent with Commission precedent,[41] the Commission will grant Leader One's request for a partial waiver, but will require Leader One to implement those standards within 90 days following receipt of such a request.

2. Segmentation

39. 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. Since Leader One's system consists of a single integrated storage facility and it will not offer stand-alone transportation service, it requests waiver of the segmentation requirements in section 284.7(d).

40. The Commission has previously stated that the requirements of section 284.7(d) do not apply to pipelines engaged solely in natural gas storage and which do not provide firm stand-alone transportation services.[42] Since Leader One meets these requirements, the Commission will grant a waiver of section 284.7(d). The Commission also finds that other tariff provisions related to segmentation, such as the allocation of primary point rights in segmented releases and within-the-path scheduling, do not apply to Leader One.

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[39] *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

[40] 18 C.F.R. Part 154.4 (2011).

[41] *See Tres Palacios Gas Storage, LLC*, 120 FERC ¶ 61,253, at P 52 (2007); *Unocal Windy Hill Gas Storage, LLC*, 115 FERC ¶ 61,218, at P 48 (2006).

[42] *See, e.g., Port Barre*, 116 FERC ¶ 61,052 at P 37; *Pine Prairie Energy Center, LLC*, 109 FERC ¶ 61,215, at P 44 (2004); *Egan Hub Partners, L.P.*, 98 FERC ¶ 61,284 (2002).

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

41. Leader One requests a generic waiver of the "shipper must have title" policy for any off-system capacity it may acquire in the future to enable it to transport natural gas owned by others in connection with its storage or hub services. Section 6.32 of the General Terms and Conditions (GT&C) of Leader One's *pro forma* tariff states that it will only provide transportation and storage services for others using such capacity pursuant to its open access tariff.

42. Leader One's off-system capacity statement implements the Commission's policy with respect to a pipeline's acquisition of off-system capacity. In *Texas Eastern Transmission Corp.*,[43] the Commission found that pipelines no longer need to obtain prior approval to acquire capacity on another pipeline, provided the acquiring pipeline filed tariff language specifying that it will only transport for others using off-system capacity pursuant to its tariff provisions and rates. Leader One's proposed tariff language is consistent with the requirements set forth in *Texas Eastern*. Therefore, the Commission accepts Leader One's tariff language and grants waiver of the "shipper must have title" policy, but clarifies that Leader One may only use capacity obtained on other pipelines in order to render the services set forth in its tariff. Thus, Leader One may not use capacity on other pipelines to transport gas which will not physically or contractually enter its storage facility unless and until it receives Commission authorization to provide such transportation services. Further, the Commission will limit Leader One's authorized use of the *Texas Eastern* waiver to provide storage service to the geographic area covered by Leader One's market power study.[44]

43. To ensure Leader One uses acquired off-system capacity in a manner consistent with its market-based rate authority and tariff provisions, and in keeping with the Commission's responsibility to monitor and prevent the exercise of market power, the Commission directs Leader One to submit an annual informational filing, once the project becomes operational, on its provisions of service using off-system capacity. Specifically, within 30 days after its first full year of operation, and every year thereafter, the Commission directs Leader One to file, for each acquisition of off-system capacity:

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[43] 93 FERC ¶ 61,273 (2000), *reh'g denied*, 94 FERC ¶ 61,139 (2001) (*Texas Eastern*).

[44] *See Perryville Gas Storage LLC*, 130 FERC ¶ 61,065, at P 51 (2010); *Blue Sky Gas Storage, LLC*, 129 FERC ¶ 61,210, at P 47 (2009); *Starks Gas Storage, L.L.C.*, 111 FERC ¶ 61,105, at P 55 (2005).

a. the name of the off-system provider;

b. the type, level, term, and rate of service contracted for by Leader One;

c. a description of the geographic location of 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 Leader One; and

f. an identification of total volumes, by Leader One's rate schedule and customer, that Leader One has nominated on each off-system provider during the reporting period.

4. Transmission Provider Standards of Conduct

44. The Commission's Standards of Conduct in Part 358 of the regulations ensure that transmission providers cannot extend their market power over transmission by giving energy affiliates unduly preferential treatment.[45] However, section 358.3(k)(3) provides that "[a] transmission provider does not include a natural gas storage provider authorized to charge market-based rates."[46] Since the Commission is approving Leader One's request to charge market-based rates for firm and interruptible storage and hub services, the Commission finds that, under current circumstances, Leader One is exempt from the Standards of Conduct.

5. Netting and Trading of Imbalances

45. Section 284.12(b)(2) of the Commission's regulations requires pipelines to establish provisions for netting and trading imbalances and other imbalance management services. Leader One requests an exemption from compliance with these requirements, noting that its tariff does not contain imbalance penalties, since the Commission has found that pipelines not assessing such penalties do not have to offer imbalance services.

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[45] *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. Reg. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010).

[46] *See* 18 C.F.R. § 358.3(k)(3) (2011).

46. Since Leader One is not proposing to assess imbalance penalties, the Commission finds that it qualifies for the requested exemption and grants the requested waiver.[47] Nevertheless, if it seeks to implement imbalance penalty provisions in the future, Leader One must comply with section 284.12(b)(2) of the regulations.

6. Priority of Service

47. Section 6.7.1(a) and (b) of the GT&C provides for the priority of firm service. Leader One offers four firm services - Rate Schedules FSS, FP, FL, and FHBS. However, Leader One only noted Rate Schedule FSS in this section of its *pro forma* tariff. In response to a staff data request dated February 16, 2011, Leader One agreed to revise the priority of service description in section 6.7. Leader One is directed to list all proposed firm services when it files actual tariff sheets.

7. Curtailment Provision

48. Leader One's curtailment provisions at sections 7 or 8 of Rate Schedules FSS, FHBS, FP, FL, ISS, IHBS, IP, and IL provide that when Leader One's capability to receive or deliver gas is impaired due to an "emergency situation or when an unexplained capacity loss occurs" or "due to any cause whatsoever," capacity, withdrawals, and/or injections will be allocated according to the priority of service set forth in section 6.7 of the GT&C. These provisions, in section 7 or 8 of the various Leader One rate schedules identified above, are too broad and allow Leader One the unfettered ability to curtail service.[48] The Commission has stated that service should be curtailed for force majeure or for the specific operational reasons listed in the tariff.[49] Accordingly, the Commission will require Leader One to revise its tariff to delete the phrases "emergency situation or when an unexplained capacity loss occurs" and "due to any cause whatsoever." Section 6 or 7 of the various rate schedules should substitute the words "force majeure" or provide that service may be curtailed due to the specific operational reasons listed in the tariff.

8. Gas Quality

49. Leader One's *pro forma* tariff includes gas quality standards that will apply to storage services that it will provide. Leader One's tariff includes a provision which states that the specifications stated in Leader One's tariff will govern gas quality, "unless

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[47] *See Orbit Gas Storage, Inc.*, 126 FERC ¶ 61,095 (2009); *Pine Prairie Energy Center, LLC,* 109 FERC ¶ 61,215, at P 47 (2004).

[48] *Ouachita River Gas Co., L.L.C*., 68 FERC ¶ 61,402, at 62,606 (1994); *Overthrust Pipeline Co.*, 53 FERC ¶ 61,125, at 61,413-414 (1990).

[49] *Natural Gas Pipeline Co. of America*, 41 FERC ¶ 61,164, at 61,410 (1987).

Colorado Interstate Gas Company's quality specifications are more stringent." The Commission's *Policy Statement on Natural Gas Quality and Interchangeability* clearly states that only natural gas quality and interchangeability specifications contained in a Commission-approved tariff can be enforced.[50] Leader One has not shown that all of Colorado Interstate Gas Company's (CIG) gas quality standards are needed for the operation of its system and the inclusion of two sets of standards is confusing and not in compliance with the *Policy Statement*. To provide clarity, the reference to CIG's quality specifications should be removed because the gas quality standards set forth in Leader One's tariff are the standards which will apply to the services provided by Leader One. If Leader One believes that certain gas quality provisions from CIG tariff are essential to its operations, Leader One should amend its tariff to include those provisions explicitly.

9. **Implementation of NAESB Standards**

50. The Commission adopted in its regulations various standards for conducting business practices and electronic communication with interstate pipelines, as promulgated by NAESB. The standards govern nominations, allocations, balancing, measurement, invoicing, capacity release, and mechanisms for electronic communication between pipelines and those with whom they do business. In its *pro forma* tariff sheets, Leader One proposed to comply with Version 1.9 of the NAESB Standards. The Commission accepts Leader One's proposal but directs Leader One, at the time it files actual tariff sheets in this proceeding, to reflect compliance with the latest version of the NAESB Standards, as adopted by the Commission.

V. **Engineering Analysis**

51. Commission staff evaluated the data submitted by Leader One in its application and responses to staff's data requests, and concludes that the proposal is technically sound and feasible. The project will have a total certificated capacity of 13 Bcf, with approximately 11 Bcf of working gas capacity and 2 Bcf of cushion gas capacity. The maximum bottom-hole pressure for the project is approximately 2,200 psia with a maximum injection rate of 250 MMcf per day.

VI. **Environmental Analysis**

52. On March 31, 2010, the Commission approved Leader One's request to use our pre-filing review process in Docket No. PF09-3-000. As part of the pre-filing process, on April 30, 2010, the Commission issued a *Notice of Intent to Prepare an Environmental*

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[50] *Natural Gas Interchangeability Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*, 115 FERC ¶ 61,325 (2006).

Assessment (NOI). On July 30, 2010, Leader One filed its intent to modify the proposed project by adding more pipeline facilities and by revising the design capacity of the planned storage field. To address these changes, on August 6, 2010, the Commission issued a *Supplemental Notice of Intent to Prepare an Environmental Assessment* (Supplemental NOI). The NOI and Supplemental NOI were mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local newspapers; and affected property owners.

53. The Commission received comments in response to the NOI and Supplemental NOI from one federal agency, two state agencies, one affected landowner (Mr. Mark Linnebar), and one interested member of the general public (Mr. Thomas M. Sauter). The National Park Service (NPS) commented that the Project would have no impact on national parks. The Colorado Department of Public Health and Environment (CDPHE) stated that the area is in attainment for carbon monoxide and particulates and non-attainment for ozone, and that these air quality impacts should be addressed in the EA. The Colorado Division of Wildlife (CDW) commented that construction in riparian areas should be limited from March 15 to June 30 to minimize impacts on breeding wildlife. Mr. Linnebar stated that he did not believe the project would have an impact on wildlife, or have any environmental consequences or adverse effects. Mr. Sauter expressed concerns about the fact that Leader One was a limited liability company, possible contamination of groundwater due to operation of the storage field, and safety.

54. After Leader One filed its application, the Commission's staff prepared an environmental assessment (EA) for Leader One's proposal, to satisfy the requirements of the National Environmental Policy Act of 1969.[51] The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, and alternatives. All substantive comments received in response to the NOI were addressed in the EA.

55. The EA addresses the comments to the NOI and Supplemental NOI. In regard to CDPHE's concerns about air quality impacts, the EA concludes that no operational emissions will be associated with the electric motor-driven compressors and that the proposed project will have minimal operational impacts on ambient air quality. Further, the EA concludes that with the implementation of the mitigation measures described in the Fugitive Dust Mitigation Plan, and given the intermittent and temporary nature of construction emissions, emissions associated with construction-related activities will not have a significant impact on the local or regional air quality. In addition, the EA discusses potential impact on riparian areas and describes Leader One's agreement to

[51] 42 U.S.C. §§ 4321-4370f (2006).

implement the timing restrictions requested by CDW. The EA also addresses possible groundwater contamination during operation and the drilling/well completion requirements within the watersheds/aquifer areas that will be within the storage area. The EA addresses safety during construction and operation of the project, noting that Leader One will construct and operate the project in compliance with the U. S. Department of Transportation safety standards in 49 C.F.R. Part 192. Finally, the EA states that issues related to limited liability companies are beyond the scope of the EA.

56. The EA was issued for a 30-day comment period and placed into the public record on March 18, 2011. The Commission received comments on the EA from NPS, CDPHE, and Leader One. NPS commented that the project would have no impact on national parks. CDPHE's comments were specific to air permitting requirements and the EA's discussion of air quality impacts. Leader One filed a response to CDPHE's comments on May 12, 2011.

57. Many of CDPHE's comments point out inconsistencies it identified in the EA and asks that the revised or final EA reflect its suggested changes. The Commission notes that the EA issued on March 18, 2011 was the final EA. The Commission finds that there is no need to revise the EA because none of CDPHE's proposed revisions will change the conclusions in the EA. The Commission concludes that most of the details sought by CDPHE are more appropriately addressed in CDPHE's air permit application process. Nevertheless, the Commission will address the inconsistencies identified by CDPHE and provide some clarifications.

58. CDPHE commented that section 2.6.2 of the EA is not clear on whether Adams County meets the National Ambient Air Quality Standards (NAAQS) for particulate matter less than 2.5 microns in diameter ($PM_{2.5}$), carbon monoxide (CO), and particulate matter less than 10 microns in diameter (PM_{10}). There are three designations that qualify as meeting the NAAQS: "attainment," "attainment/maintenance," and "unclassifiable/attainment." Adams County is considered unclassifiable/attainment for $PM_{2.5}$ because it cannot be classified on the basis of available information as meeting or not meeting the NAAQS primary or secondary ambient air quality standards for the pollutant. The project is not located in the attainment/maintenance area for CO and PM_{10}, as indicated in the EA, but is located in an area of full attainment for the emissions. In its May 12, 2011 response, Leader One clarified that Adams County is an attainment area and meets the NAAQS for all pollutants except for Ozone (O_3).

59. CDPHE asks why the four electric motor-driven compressors proposed at the new compressor station were not discussed in Table 2-10 of section 2.6 of the EA. The electric compressors do not have emissions attributable to the new compressor station because air emissions associated with running the electric compressor are attributable to the power facility where the electricity is generated and are accounted for in the air permitting process of that facility. Therefore, emissions from the four electric compressors are not included in the EA's evaluation. Because some of the specific

equipment has not been selected yet, Leader One made some assumptions as to what control measures will be used. Its assumptions are based on typical equipment used at similar facilities. Leader One indicates in its application that emissions may be revised, as necessary, if emissions from the equipment selected have different emissions than that proposed in the application.

60. CDPHE points out that on page 59, the EA states that the nitrogen oxide (NO_x) emissions for the project are 2.6 tons per year (tpy) but that Table 2-10 indicates that NO_x emissions for the project are 11.15 tpy. Table 2-10 correctly shows the total operating emissions from the compressor station and the well pads. This table also shows that the emissions from the compressor station alone are 2.6 tpy. Thus, paragraph 7 of page 59 should read emissions from "the compressor station" instead of "the Project."

61. CDPHE comments that the EA's conclusion that operational emissions are "expected to be minimal" is not appropriate because modeling results are not provided in the EA. Modeling is usually not required in situations where requested emission rates are below CDPHE's air quality thresholds because these sources are not expected to contribute negatively to local and regional air quality. In its comments, Leader One indicates that according to Table 1 of the Colorado Modeling Guideline, the emissions shown in Table 2-10 are below the levels that require modeling to be submitted with an air permit application. The EA states that the proposed compressor units will have electric engines, which will not have emissions associated with them, and that the emergency generator will only be used in the event of a power loss. The Commission finds that the EA's conclusion is valid.

62. CDPHE is concerned that the construction schedule for the project will begin in June 2011, even though Leader One has not obtained an air permit from the state yet. In its response, Leader One states that its planned June 2011 start date is contingent upon receipt of all applicable permits and approvals. The Commission recognizes that no construction can commence prior to issuance of the applicable permits, that CDPHE has an independent process for evaluating air permits, and that Leader One will have to comply with those requirements. Environmental conditions in Appendix B to this order require Leader One to document its receipt of all authorizations required under federal law (like the air permit) before it will be permitted to begin construction.

63. CDPHE requests clarification about the construction activities scheduled in 2012. Leader One states that the only construction emissions in 2012 will be from four horizontal wells, if drilled, and during the two months required to complete the compressor station. Construction activities are dependent on outside factors, including the issuance of the air permit, so the schedule outlined in the EA is subject to change.

64. CDPHE comments that the construction emissions reported in Table 2-11 will have a significant impact on air quality and that modeling of construction emissions should be available in order for CDPHE to assess the impacts on air quality. The

Commission notes that air dispersion modeling is not typically conducted for construction emissions due to the short-term nature of these emissions and because they are not expected to make long-term contributions to local and regional air quality. Pollutant attainment calculations and modeling are based on several years of data. The Commission concludes that it would not be appropriate to include a temporary source in long-term modeling simulations. As stated in section 2.6 of the EA, the construction emissions will be temporary and are estimated to be below the non-attainment threshold of 100 tpy and under the General Conformity thresholds. Therefore, the Commission will not require modeling.

65. Finally, CDPHE suggests a reexamination of the EA's conclusion regarding the applicability of General Conformity Determination. No estimates of air emissions have changed based on any of CDPHE's comments. The emissions associated with construction in non-attainment areas are below the General Conformity threshold and a General Conformity Determination is not applicable for the project.

66. On April 18, 2011, Leader One filed a letter suggesting that the Commission add a statement to the discussion of the National Emission Standards for Hazardous Air Pollutants in section 2.6 of the EA, and that it change the units of distance in Table 2-16 in section 2.7 of the EA. As stated above, the EA issued on March 18, 2011 was the final EA and it will not be revised.

67. Based on the analysis in the EA, the Commission concludes that if constructed and operated in accordance with Leader One's application and supplements, and in compliance with the environmental conditions in Appendix B to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

68. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the condition 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 the Commission.[52]

[52] *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).

VII. <u>Blanket Certificates</u>

69. Leader One requests a Part 157, subpart F blanket certificate, giving it section 7 authority to automatically, or after prior notice, perform certain activities related to the construction, acquisition, abandonment, and replacement and operation of pipeline facilities. Because Leader One will become an interstate pipeline with the issuance of a certificate to construct and operate the subject facilities, the Commission will issue the requested certificate.

70. Leader One also requests a Part 284, subpart G blanket certificate in order to provide open-access storage services, and filed a *pro forma* Part 284 tariff to provide its open-access services. The Commission will grant Leader One a Part 284 blanket certificate.

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

<u>The Commission orders</u>:

(A) A certificate of public convenience and necessity is issued to Leader One under section 7(c) of the NGA, authorizing the construction and operation of the proposed storage facilities, as described more fully in this order and in the application.

(B) A blanket construction certificate is issued to Leader One under Subpart F of Part 157 of the Commission's regulations.

(C) A blanket transportation certificate is issued to Leader One under Subpart G of Part 284 of the Commission's regulations.

(D) The certificate authority issued in Ordering Paragraphs (A), (B), and (C) is conditioned upon Leader One's compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions in Parts 154, 157, and 284, and the applicable requirements of section 157.20 of the regulations.

(E) Leader One must comply with the engineering conditions set forth in Appendix A to this order.

(F) Leader One must comply with the environmental conditions set forth in Appendix B to this order.

(G) The facilities authorized herein must be constructed and made available for service within four years of the date of the order in this proceeding, as required by section 157.20(b) of the Commission's regulations.

(H) Leader One's request to charge market-based rates for firm and interruptible storage and hub services is approved, consistent with the discussion in the body of this order. This authorization is subject to reexamination in the event that: (a) Leader One expands its storage capacity beyond the amount authorized in this order; (b) an affiliate increases storage capacity; (c) an affiliate links storage capacity to Leader One; or (d) Leader One, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to Leader One. Leader One shall notify the Commission within 10 days of any such change. The notification shall include a detailed description of the new facilities and their relationship to Leader One. The Commission reserves the right to require an updated market power analysis at any time.

(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 the first full year of operation of the project, and every year thereafter, Leader One shall make an annual informational filing on its provisions of service using off-system capacity, as detailed in this order.

(L) Leader One must submit actual tariff records that comply with the requirements contained in the body of this order no less than 60 days prior to the commencement of service.

(M) Leader One must submit revised tariff records referencing the latest NAESB Standards adopted by the Commission, as discussed in the body of this order, at the time that it files actual tariff records in this proceeding.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

APPENDIX A

Engineering Conditions for the Leader One Gas Storage Project

(A) The maximum inventory of natural gas stored in the Leader One Gas Storage Project shall not exceed the certificated levels of 13 Bcf, with 11 Bcf of working gas capacity and 2 Bcf of cushion gas capacity at 14.73 psia and 60 degrees Fahrenheit, and the maximum bottom hole storage pressure shall not exceed 2,200 psia, without prior authorization by the Commission.

(B) Leader One shall operate the Project in such a manner as to prevent/minimize gas loss or migration.

(C) Leader One shall submit semiannual reports (to coincide with the termination of the injection and withdrawal cycles) containing the following information with volumes stated at 14.73 psia and 60 degrees Fahrenheit and pressures stated in psia:

(1) The daily volumes of natural gas injected into and withdrawn from the storage reservoir;

(2) The monthly volumes of water produced from the storage reservoir;

(3) The volume of natural gas in the reservoir at the end of the reporting period;

(4) The maximum daily injection and withdrawal rates experienced during the reporting period;

(5) Average working pressure on such maximum days taken at a central measuring point where the total volume injected or withdrawn is measured;

(6) Results of any tracer program by which leakage of injected gas may be determined; if leakage of gas exists, the report should show the estimated total volume of gas leakage, the volume of recycled gas, and the estimated remaining inventory of gas in the reservoir at the end of the reporting period;

(7) Any surveys of pressures in gas wells, and the results of back-pressure tests conducted during the reporting period;

(8) The latest revised structural and isopach maps showing the bottomhole locations of the wells and the location of the gas-water contact; these maps

need not be filed if there is no material change from the maps previously filed;

(9) For the reporting period, a summary of wells drilled, worked over, or recompleted with subsea depth of formation and casing settings, and copies of any new core analyses, back-pressure tests, or well log analyses;

(10) Discussion of current operating problems and conclusions; and

(11) Such other data or reports which may aid the Commission in the evaluation of the Project.

(D) Reports shall continue to be filed semiannually until the storage inventory volume and pressure have reached or closely approximate the maximum permitted in the Commission's order certificating the Project. Thereafter, the reports shall be filed on a semiannual basis for a period of one year.

APPENDIX B

Environmental Conditions for the Leader One Project

1. Leader One shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by this Order. Leader One must:

   a. request any modification to these procedures, measures, or conditions in a filing with the 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 Office of Energy Projects (OEP) before using that modification.

2. The Director of OEP has delegated 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 project construction and operation.

3. **Prior to any construction**, Leader One shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EIs' authority and have been or will 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**, Leader One 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 all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

5. Leader One 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, 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 shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area**.

This requirement does not apply to extra workspace allowed by Leader One's Upland Erosion Control, Revegetation, and Maintenance Plan and/or 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 resources 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 the Certificate and before construction** begins, Leader One shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Leader One must file revisions to the plan as schedules change. The plan shall identify:

a. how Leader One will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by this Order;

b. how Leader One will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
e. the location and dates of the environmental compliance training and instructions Leader One will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
f. the company personnel (if known) and specific portion of Leader One's organization having responsibility for compliance;
g. the procedures (including use of contract penalties) Leader One will follow if noncompliance occurs; and
h. for 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 environmental compliance training of onsite personnel;
    (iii) the start of construction; and
    (iv) the start and completion of restoration.

7. **Prior to receiving written authorization from the Director of OEP to commence Project construction activities**, the Applicants shall file with the Secretary documentation that they have received all authorizations required under federal law (or evidence of waiver thereof).

8. Beginning with the filing of its Implementation Plan, Leader One shall file updated status reports with the Secretary on a biweekly basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

a. an update on Leader One's efforts to obtain the necessary federal authorizations;
b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
c. 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);

d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;

e. the effectiveness of all corrective actions implemented;

f. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and

g. copies of any correspondence received by Leader One from other federal, state, or local permitting agencies concerning instances of noncompliance, and Leader One's response.

9. **Prior to construction**, Leader One shall file the revised crossing plan for the horizontal directional drill at MP 14.7 with the Secretary for the review and written approval of the Director of OEP. Further, Leader One shall provide documentation of review of the revised plan by the U.S. Army Corps of Engineers, if required.

10. **Prior to construction**, Leader One shall file with the Secretary its final Invasive Species Management Plan and any comments or edits received from the Natural Resources Conservation Service, Colorado Department of Agriculture, or Colorado State University Extension Office for review and written approval by the Director of OEP.

11. Leader One shall file a noise survey with the Secretary no later than 60 days after placing the proposed compressor station in service. If the noise attributable to the operation of all of the equipment at the proposed compressor station at full load exceeds a day-night sound level of 55 decibels on the "A-weighted" scale at any nearby noise sensitive areas, Leader One shall install additional noise controls to meet the level within one year of the in-service date. Leader One shall confirm compliance with the above requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls.