122 FERC ¶ 61,190
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Texas Gas Transmission, LLC — Docket No. CP07-405-000

ORDER ISSUING CERTIFICATE AND GRANTING ABANDONMENT AUTHORITY

(Issued February 29, 2008)

1. On June 25, 2007, as supplemented on December 4, 2007, Texas Gas Transmission, LLC (Texas Gas) filed an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations seeking authority to abandon certain facilities and expand in two phases its facilities at Midland Gas Storage Field in Muhlenberg County, Kentucky (Midland Field).[1] Texas Gas also seeks authorization to provide storage service through the expanded facilities at market-based rates. The project will provide up to 8.25 Bcf of new firm storage capacity and up to 92.2 MMcf/d of increased firm deliverability. Texas Gas proposes to place the facilities into service under a phased approach, with the facilities necessary to provide 5.31 Bcf of firm storage capacity for two identified expansion shippers going into service on November 1, 2008, and with all facilities necessary for the entire 8.25 Bcf of storage capacity in service by November 1, 2009. If the Commission denies market-based rate authority, Texas Gas proposes to construct only the facilities required to provide 5.31 Bcf of firm storage capacity under cost-based rates.

2. As discussed below, the Commission finds that Texas Gas' proposed construction and operation of the project are required by the public convenience and necessity, and

[1] As detailed later in this order, Texas Gas also requests authorization to "retire in place" certain certificated facilities, including compressors and auxiliary equipment. Although Texas Gas did not specifically request abandonment authority under section 7 (b) of the NGA, such authority is needed. *See, e.g., Columbia Gas Transmission Corp.*, 122 FERC ¶ 61,021 (2008), and *Texas Gas Transmission, LLC*, 117 FERC ¶ 61,261 (2006).

that Texas Gas meets the requirements for market-based rate authority under section 4(f) of the NGA. Accordingly, we will issue Texas Gas its requested certificate authorizations, subject to conditions, and grant Texas Gas' request for market-based rate authority under section 4(f) of the NGA and sections 284.501, 284.502, and 284.505 of the Commission's regulations.[2]

Background

3. Texas Gas is engaged in the transportation of natural gas from various sources in Texas and Louisiana to various markets throughout its interstate pipeline system. Texas Gas' market area storage complex consists of nine storage fields located in Indiana and Kentucky. Texas Gas received its initial authorization to construct and operate the Midland Field in 1969.[3] Since then, the Commission has authorized six expansions for additional storage wells and field lines making the Midland Field the largest storage field on Texas Gas' system, with a certificated capacity of 135.1 Bcf which includes 55.7 Bcf of working gas and 79.4 Bcf of base gas.[4] The two most recent authorizations in 2005 and 2006 permitted Texas Gas to convert base gas to top gas, increasing working gas capacity from 38.18 Bcf to 55.7 Bcf and peak day deliverability from 678.6 MMcf/d to 860 MMcf/d.

4. Texas Gas currently provides storage service from the Midland Field pursuant to cost-based rates, providing: (1) firm no-notice storage service under Rate Schedules NNS, SGT, and SNN; (2) firm storage service under Rate Schedule FSS; and (3) interruptible storage service under Rate Schedule ISS. Texas Gas has received requests for additional firm storage exceeding the physical capabilities of its storage system, prompting this request for authorization for another expansion of the Midland Field.

5. From November 6, 2006 through February 14, 2007, Texas Gas conducted a binding open season for storage service to be provided under incremental recourse rates.

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[2] 18 C.F.R. §§ 284.501, 284.502, and 284.505 (2007). *See Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220; o*rder on clarification and den'g reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

[3] *Texas Gas Transmission Corp*., 41 FPC 826 (1969).

[4] *Texas Gas Transmission Corp*., 117 FERC ¶ 61,261 (2006); 110 FERC ¶ 61,132 (2005); 92 FERC ¶ 62,061 (2000); 51 FERC ¶ 61,360 (1990); 51 FPC 1265 (1974); and 50 FPC 363 (1973).

The open season produced one acceptable binding bid from Anadarko Energy Services Company (Anadarko), under which it would contract for 2 Bcf of FSS service for a term of ten years at a fixed negotiated rate. In its December 4, 2007 supplement, Texas Gas stated that, since filing the application, it has continued to market the proposed capacity and has entered into a precedent agreement with CIMA Energy Ltd. (CIMA) for 3.05 Bcf of FSS service for a term of ten years, also at a fixed negotiated rate. Texas Gas requested authority to increase the proposed storage capacity for the first phase, to go into service by November 1, 2008, from 2 Bcf to 5.31 Bcf, to reflect the increased capacity represented in the CIMA precedent agreement.

Proposal

6. Texas Gas states that to accommodate the need for additional storage service for Anadarko and CIMA, as well as the need for storage capacity that will be created by the proposed Rockies Express East Pipeline, it proposes to expand its facilities at Midland Field in two phases to provide up to 8.25 Bcf of new firm storage capacity and up to 92.2 MMcf/d of increased firm deliverability. In the first phase, Texas Gas proposes to place new facilities into service by November 1, 2008, to provide the 5.31 Bcf of additional storage services for Anadarko and CIMA.[5] To accomplish this, Texas Gas proposes to do the following:

At the Midland 3 Compressor Station:

(1) install a discharge cooler and additional gas dehydration facilities;

(2) modify the control system to uprate two electric drive compressors (from 1,250 to 1,500 horsepower (hp) each);

(3) construct approximately 11 miles of 30-inch diameter mainline pipeline loop from the discharge side of the Midland 3 Compressor Station to a point near Hanson, Kentucky;

(4) construct a 2,900-foot extension of its E-9 16-inch storage lateral; and

(5) drill two horizontal injection/withdrawal wells (Well Nos. 17574 and 17575) and install related piping and measurement facilities including:

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[5] Texas Gas explains that, while the storage capacity represented in the two precedent agreements totals 5.01 Bcf, it must increase the capacity by 5.31 Bcf to reflect that storage contract demands under its FSS rate schedule are stated in terms of heat content, while certificated storage capacities are usually stated in terms of volume.

approximately 1,500 feet of new 12-inch field tributary pipeline from the new Well Nos. 17574 and 17575 to the E-9 lateral pipeline;

150 feet of new 8-inch field tributary pipeline from Well No. 17574 to the new 12-inch field tributary pipeline; and

150 feet of new 8-inch field tributary pipeline from Well No. 17575 to the new 12-inch field tributary pipeline.

At the Slaughters Compressor Station:

restage one existing centrifugal compressor.

To provide the second phase of additional firm storage service at the 8.25 Bcf level by November 1, 2009, Texas Gas proposes to:

At the Midland 3 Compressor Station:

(1) install one 5,488 HP Solar Centaur 50 gas turbine and auxiliary facilities;

(2) retire in place two existing 2,000 HP Delaval reciprocating compressor units, including certain auxiliary facilities; and

(3) install five new horizontal injection/withdrawal well facilities and related field piping modifications, including installation of the following facilities:

directionally drilled horizontal wells: Well Nos. 17570, 17571, 17572, 17573, and 17576;

approximately 3,000 feet of new 8-inch field tributary pipeline from the new Well No. 17570 to the existing West Header lateral pipeline;

approximately 1,800 feet of new 8-inch field tributary pipeline from the new Well No. 17571 to the existing W-1 lateral pipeline;

approximately 1,800 feet of new 8-inch field tributary pipeline from the new Well No. 17572 to the existing East Header lateral pipeline;

approximately 450 feet of new 8-inch field tributary pipeline from the new Well No. 17573 to the existing E-7 lateral pipeline; and

approximately 1,500 feet of new 8-inch field tributary pipeline from the new Well No. 17576 to the existing East Header Extension lateral pipeline.[6]

7. Texas Gas states that in the current market environment, the development of new storage capacity has contracting, financial and construction risks different from those faced in developing linear pipeline projects. To proceed with the development of the full 8.25 Bcf of new storage capacity in this project, Texas Gas states that it needs flexibility beyond what is generally available under traditional rate making principles. Texas Gas seeks a determination that it lacks market power over the proposed storage capacity under a traditional market power analysis and therefore qualifies for market-based rates. In the alternative, Texas Gas seeks a determination that it qualifies for market-based rates under section 4(f) of the NGA.[7] Texas Gas proposes to offer market-based firm storage service and interruptible storage service under rate schedules FSS-M and ISS-M respectively. If the Commission denies market-based rate authority, Texas Gas seeks authorization to construct only the facilities necessary to provide 5.31 Bcf of additional storage service for Anadarko and CIMA under cost-based rates.

8. As listed above, Texas Gas proposes to construct 11 miles of 30-inch diameter mainline pipeline loop from the discharge side of the Midland 3 Compressor Station to a point near Hanson, Kentucky. Texas Gas is not proposing incremental cost-based transportation rates for the loop line, nor is it proposing to roll the costs of the loop line into its existing rates. Rather, Texas Gas proposes to provide transportation service on the loop line to and from storage under its existing general system transportation rate schedules, with such service being separately contracted for by Midland Field expansion customers. Texas Gas proposes that all capital costs of the new 11 mile loop line be allocated to its market-based storage rates. Therefore, Texas Gas contends that there will be no subsidization of the proposed expansion by existing customers.[8]

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[6] Texas Gas states that the tributary and lateral lines will be constructed pursuant to its blanket certificate authorized in Docket No. CP82-407-000. *Texas Gas Transmission, LLC*, 20 FERC ¶ 62,417 (1982).

[7] Energy Policy Act of 2005, Pub. L. No. 109-58, § 312, 119 Stat. 594, 688 (2005).

[8] *See* Texas Gas' August 31, 2007 data response at Item 7.

Notices, Interventions, and Comments

9. Notice of Texas Gas' application was published in the *Federal Register* on July 11, 2007 (72 Fed. Reg. 37,775). Atmos Energy Corporation; Constellation NewEnergy-Gas Division, LLC; New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation; KeySpan Delivery Companies; Louisville Gas and Electric Company; The Peoples Natural Gas Company, d/b/a Dominion Peoples, and Hope Gas, Inc., d/b/a Dominion Hope (Dominion); Memphis Light, Gas and Water Division, City of Memphis, Tennessee (Memphis); ProLiance Energy, LLC (ProLiance); PSEG Energy Resources & Trade, LLC (PSEG); Western Tennessee Municipal Group, the Jackson Energy Authority, City of Jackson, Tennessee, and the Kentucky Cities (Cities); and Silvia K. Simons (Ms. Simons) filed timely, unopposed motions to intervene.[9] Cities, Memphis, ProLiance and Ms. Simons filed comments. Texas Gas filed a motion for leave to reply and comments. The comments and reply comments are discussed below.

10. Notice of Texas Gas' supplement to the application was published in the *Federal Register* on December 13, 2007 (72 Fed. Reg. 70,831). Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc. filed a joint motion to intervene.

Discussion

11. Since the proposed facilities will be used to store and transport 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. Since the facilities Texas Gas seeks to abandon are facilities certificated to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposed abandonment requires Commission authorization under section 7(b) of the NGA.

Public Convenience and Necessity

12. On September 15, 1999, the Commission issued a policy statement providing guidance as to how proposals for certificating new construction will be evaluated.[10] Specifically, the policy statement explains that the Commission, in deciding whether to

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[9] Timely, unopposed motions to intervene are granted pursuant to Rule 214, 18 C.F.R. § 385.214 (2007).

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

authorize the construction of new pipeline facilities, balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

13. Under this policy the threshold requirement for existing 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 area and their captive customers, or landowners and communities affected by the route of a new pipeline. 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 then proceed to complete the environmental analysis where other interests are considered.

14. As discussed more thoroughly below, current customers will not subsidize the new storage services since the new services will be provided on an incremental basis and no costs associated with the proposed expansion will be allocated to existing customers. The construction of the facilities as proposed will not result in any adverse operational effects on existing Texas Gas customers because the level and quality of service provided existing shippers remains unchanged. The proposed project will have no adverse effect on other pipelines in the area or Texas Gas' captive customers.

15. Construction of the proposed facilities will have minimal adverse impacts on landowners or communities because, other than the 11 mile mainline loop, the facilities will be confined to the existing Midland 3 and Slaughters Compressor Station sites, and the areas currently used for gas storage and for transportation into and from the Midland Field. The approximately 11 miles of 30-inch mainline pipeline loop will parallel existing pipeline right-of-way owned by Texas Gas. While Texas Gas must obtain new right-of-way, it states that it is committed to acquiring such right-of-way through good faith negotiations, wherever possible. Therefore, Texas Gas does not expect to have to obtain additional rights-of-way or exercise eminent domain to construct this project, except, possibly, as discussed immediately below.

16. Only one landowner opposed the project. As discussed in the Environmental analysis section, Ms. Simons complains that Texas Gas' easement reduces the utility and market value of the Ms. Simons' property. As discussed herein, we find that Texas Gas'

proposed project is required by the public, convenience and necessity. As such, issues of compensation for land taken by a pipeline under the eminent domain provisions of the NGA are matters for state or federal court.[11] Accordingly, we deny Ms. Simons' request to reject Texas Gas' application.

17. Texas Gas has demonstrated that there is a need for the additional services, the rate treatment will not result in subsidization of the project by existing shippers, and no other pipelines, their captive customers or landowners will be adversely affected. For all of these reasons, the Commission finds that Texas Gas' proposal complies with the Certificate Policy Statement.

Market-Based Rates

18. Texas Gas seeks authority to provide firm and interruptible storage service at market-based rates, under new Rate Schedules FSS-M and ISS-M, respectively. However, Texas Gas has not sufficiently demonstrated under our traditional approach that it lacks market power. Nevertheless, as discussed below, we find that based on the facts presented, and with appropriate conditions, Texas Gas meets the requirements established for receiving authority to charge market-based storage rates under NGA section 4(f) and the implementing regulations: sections 284.501, 284.502, and 284.505 of the Commission's regulations.[12]

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[11] In certification proceedings under section 7 of the NGA, the Commission often receives comments from affected landowners who express concerns over potential loss or damage to their property or mineral rights. Under section 7(h) of the NGA, when the certificate holder cannot acquire rights-of-way by contract or is unable to agree with the property owner on the amount of compensation, the certificate holder may acquire the property rights by exercising the right of eminent domain in a court action. Thus, the power of eminent domain rests with the certificate holder, not the Commission. It is incumbent upon the certificate holder to make good faith efforts to negotiate with landowners for any needed rights. However, if the parties cannot reach agreement, issues of compensation for land taken by a pipeline under the eminent domain provisions of the NGA are matters for a state or federal court.

[12] 18 C.F.R. §§ 284.501, 284.502, and 284.505 (2007).

Traditional Market Power Analysis

19. The Commission has approved market-based rates for storage services where applicants have demonstrated under the criteria in the Commission's Alternative Rate Policy Statement[13] that they lack market power[14] or have adopted conditions that significantly mitigate market power. The Alternative Rate Policy Statement requires evidence that good alternatives exist in the geographic market so the applicant is unable to exercise market power. To be considered a good alternative, a competing storage service must be a substitute for the service provided by Texas Gas and be available at a competitive price.[15] The Commission uses the Herfindahl-Hirschman Index (HHI) screens as indicators of whether the storage provider may have the ability to exercise market power, which for this purpose is defined as the ability to increase its rates more than 10 percent and still retain its market share. The Alternative Rate Policy Statement states that a low HHI – generally less than 1,800 – indicates that sellers cannot 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

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[13] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*; Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 74 FERC ¶ 61,076, *reh'g denied*, 75 FERC ¶ 61,024 (1996), *petitions for review den'd sub nom. Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

[14] Market power is defined as the ability to profitably maintain prices above competitive levels for a significant period of time. Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,230.

[15] Under the Alternative Rate Policy Statement, the Commission looked only to the availability of other storage alternatives (in the relevant geographic market) in assessing whether a storage provider can exercise significant market power. In Order No. 678, the Commission modified its market-power analysis to better reflect the competitive alternatives to storage. Specifically, we adopted a more expansive definition of the relevant product market for storage to explicitly include close substitutes for gas storage services, including pipeline capacity, local production, and liquefied natural gas (LNG) supplies. However, the applicant has the burden to demonstrate that the non-storage products and services, as well as the other storage services, used in its calculation of market concentration and market share are good substitutes. *Rate Regulation of Certain Natural Gas Storage Facilities,* Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 6, 25 and 27 (2006), Order No. 678-A*, order on clarification and reh'g*, 117 FERC ¶ 61,190 (2006).

greater than 1,800 – requires closer scrutiny in order to make a determination about a seller's ability to exert market power.[16]

20. Generally, the Commission considers the geographic market for storage providers to include only those states in close proximity to the applicant's facilities in order to ensure that the cost of providing storage service, including transportation charges, is comparable. However, Texas Gas contends its geographic market area includes not only storage providers that are directly connected to Texas Gas, but also storage providers that are directly connected to pipelines that are directly connected to Texas Gas. Texas Gas asserts that it could identify two major geographic markets: (1) the Midwest Market which consists of Kentucky and the states of Indiana, Illinois, West Virginia, Ohio, and Michigan; and (2) the Midwest/Mid-Atlantic Market which includes all the states in the Midwest Market as well as Pennsylvania and Maryland.

21. However, Texas Gas has not shown that the availability and cost (including transportation rates) of alternative storage services across its proposed geographic market provide viable substitutes for its proposed expansion project service. A more conservative approach, absent such a showing, would focus on a narrower geographic region excluding Michigan, Maryland, and Pennsylvania, which are not accessible directly to customers on the Texas Gas system. This approach acknowledges the uncertainty of third party transportation capacity and the added transportation cost of accessing those storage fields. When storage located in Michigan, Maryland, and Pennsylvania is excluded from the geographic market, relevant HHIs would exceed 2,600 and relevant market shares would exceed 15 percent.[17] Under the Alternative Rate Policy

[16] HHI calculations of market concentration are used as a screening tool and are not dispositive of whether we will grant a request for market-based rates. Instead, we will consider all relevant factors, on a case-by-case basis. There is no rigid brightline threshold level for the HHI, below which an applicant would automatically qualify for market-based rates, or above which an applicant would be excluded from market-based rates. Alternative Rate Policy Statement, 74 FERC at 61,235.

[17] Staff developed a market study which includes the states contiguous to the Midland Field and excludes Michigan, Maryland, Pennsylvania, and backhaul service to the Lebanon Hub. Backhaul service was eliminated because of the uncertainty that such service is available on a basis that would allow it to be considered comparable to the proposed storage service. The study includes storage located in Kentucky, Indiana, Illinois, West Virginia, and Ohio. For working gas, the resulting HHI was 2,843 and Texas Gas' market share was 16.12 percent; for peak day deliverability the HHI was 2,655 and Texas Gas' market share was 15.25 percent.

Statement, this level of market concentration would require further scrutiny before the Commission could make a finding of a lack of market power. The record in this proceeding does not have sufficient additional information on these issues. However, because Texas Gas requested market-based rate authority, in the alternative, pursuant to NGA section 4(f) and Order No. 678, we instead turn to that alternative case.

NGA section 4(f)

22. In Order No. 678, the Commission promulgated rules to implement new section 4(f) of the NGA to permit underground natural gas storage service providers that are unable to show that they lack market power to negotiate market-based rates.[18] Specifically, Order No. 678 requires that underground natural gas storage providers must meet the following criteria in order to negotiate market-based rates: (1) the capacity enabling provision of the service must relate to a "specific facility" requiring construction which is placed in service after the date of the Energy Policy Act of 2005, be it a new storage cavern or a facility which expands capacity at an existing cavern or reservoir;[19] (2) the market-based rates must be in the public interest and necessary to encourage the construction of storage capacity in the area needing storage services;[20] and (3) customers must be adequately protected.[21] We will consider below Texas Gas' proposed project with respect to the specific requirements for market-based rate authority pursuant to section 4(f).

23. In order to obtain authority to charge market-based rates for storage capacity under section 284.505(a),[22] the storage capacity must be related to a specific facility put into service after August 8, 2005. Since, Texas Gas plans to build the facilities necessary to provide the firm service in 2008 and 2009, it meets this requirement.

24. The Commission stated in Order No. 678 that in determining whether market-based rates are in the public interest, it would consider, among other things, the risk faced by the project sponsors, the extent to which additional capacity is needed in the area of

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[18] Order No. 678, FERC Stats. & Regs. ¶ 31,220 (2006), Order No. 678-A, *order on clarification and reh'g*, 117 FERC ¶ 61,190 (2006).

[19] Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 115.

[20] *Id*. P 125-132.

[21] *Id*. P 153-159.

[22] 18 C.F.R. § 284.505(a) (2007).

the project, and the strength of the applicant's showing that the facilities would not be built but for market-based rate treatment.[23] Each applicant also must make a showing as to why market-based rates are necessary to encourage the construction of the storage capacity.[24] As discussed below, the Commission finds that Texas Gas has established that market-based rates are in the public interest and necessary to encourage the construction of the storage capacity in the area needing storage service.

25. Under Order No. 678, an applicant can demonstrate that storage services are needed in the area by including evidence of the following circumstances: (i) general lack of storage in the area; (ii) full utilization of existing storage capacity; (iii) pipeline constraints in the area; and (iv) projected increased demand for natural gas in the area to be served. All of these factors are present in this case.

26. The Commission's Staff Storage Report estimates that 60 Bcf of incremental working gas capacity will be needed in the Midwest by 2020.[25] Moreover, Texas Gas' existing storage capacity, including its two previous expansion projects, is fully contracted and Texas Gas indicates that it was the receipt of requests for additional firm storage that prompted its consideration of yet another expansion of its storage capacity.

27. There are also pipeline constraints in Texas Gas' area of operation. The placement of the storage facilities, including the looping, could act to mitigate the impacts of pipeline constraints into the Texas Gas market.

28. Given the above, we find that there is a demonstrated additional need for natural gas storage in the area to be served by Texas Gas' proposed project.

29. Regarding the requirement that an applicant show that the facilities would not be built but for market-based rate treatment, in Order No. 678, the Commission indicated that perhaps the best means of demonstrating that cost-based rates will not be sufficient to encourage the construction of storage capacity would be for an applicant to present evidence that it offered its capacity at cost-based rates through an open season and was unable to obtain sufficient long-term commitments for service.[26] Texas Gas received

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[23] Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 128.

[24] *Id.* P 129.

[25] *See* Federal Energy Regulatory Commission, *Staff Report: Current State of and Issues Concerning Underground Natural Gas Storage* at p. 15 (Sept. 30, 2004).

[26] Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 129.

only one bid during its open season, for just 2 Bcf of the proposed 8.25 Bcf of capacity of the project for a term of 10 years. Subsequently, Texas Gas entered into a second agreement, for 3.05 Bcf of service, also for a 10-year term. Texas Gas states that a number of customers, generally natural gas marketing companies, have expressed interest in contracting for expansion storage capacity on a short-term basis, but because of the lack of liquidity in both the cash and financial markets, it has been unable to find customers willing to enter into long-term storage contracts for the full capacity of it proposed project.

30. Texas Gas states there is not sufficient demand under long-term contracts for the proposed storage services at cost-based or negotiated rates to justify Texas Gas making the substantial investment required for the full 8.25 Bcf increment of capacity proposed in this case.

31. Texas Gas argues that given the fact that this project is not fully subscribed, it would not have an opportunity to earn a fair return on its investment under cost-based rates because it would be forced to discount its rates for service when the market value of its capacity is below the maximum cost-based rate, yet it could not charge above its maximum cost-based rate even when the market value of its storage capacity rises above that level. However, under market-based rates, Texas Gas states it would be willing to incur the costs associated with constructing its full increment of proposed storage capacity and enter into shorter-term contracts based upon current market conditions. Thus, we find that market-based rates are necessary to encourage Texas Gas to construct the entire 8.25 Bcf of storage capacity proposed.

32. The final requirement for obtaining market-based rate authority under section 4(f) is that customers be adequately protected. In Order No. 678, the Commission discussed various ways in which an applicant for market-based rates could ensure that both existing cost-based customers and potential market-based customers are adequately protected. We noted that protection of potential storage customers started with a fair and open opportunity to contract for proposed new capacity and stated that one way applicants could demonstrate that this requirement had been met was by showing that it had conducted a fair and transparent open season. We also stated that, like every Part 284 transporter, storage providers charging market-based rates under section 4(f) must comply with the nondiscriminatory access requirements of the Commission’s regulations. We further stated that applicants which already serve customers under prior authorizations would be required to demonstrate that existing customers will not be subject to additional costs, risks or degradation of service resulting from new services provided under section 284.505 of the Commission’s regulations. Additionally, successful applicants for 4(f) authority would be required to separately account for the costs, services, and commitments provided pursuant to section 4(f) authorizations and to provide such service under an open-access tariff stating the terms and conditions of the

service offered. Finally, Order No. 678 provides that an applicant for section 4(f) authority must demonstrate how it intends to safeguard against withholding and specify whether, and if so, how, it will establish a reserve price.[27]

33. We find that Texas Gas' open season, which included an incremental cost-based reserve price for the proposed storage capacity, provided adequate protection for the potential storage customers that ultimately signed binding precedent agreements for capacity.

34. We also find that Texas Gas has shown, with one exception discussed below, that existing customers will not be subject to any additional costs, risks, or degradation of service resulting from the new services. When the contracts for existing, cost-based storage services expire, that capacity will continue to be posted for sale in accordance with Texas Gas' current tariff and will remain subject to cost-based rates. The expansion service offered is incremental to the storage service that Texas Gas is currently providing. Texas Gas, not its existing customers, will bear the risks of any cost overruns or under-collection of revenue associated with this project. Additionally, only customers that utilize the newly-created capacity will pay for costs associated with the new facilities.

35. Further, Texas Gas will separately account for all costs and revenues associated with the facilities used to provide the market-based services. The separation of costs and revenues will enable the Commission to ensure that existing customers do not subsidize the costs of the proposed expansion. As stated above, the facilities as proposed will not result in any adverse operational effects on existing Texas Gas customers because the level and quality of service provided existing shippers remains unchanged consistent with previous Texas Gas orders.[28] In addition, the implementation of market-based rates for this project will not change how customers bid on or nominate cost-based storage services and related transportation services. Customers will continue to nominate receipts into and deliveries from storage using the same methodology and at the same point currently in use.

36. The market-based storage services offered by Texas Gas will be governed by the General Terms and Conditions (GT&C) of Texas Gas' Commission-approved tariff. This will protect existing customers from any perceived degradation of service or from the possibility of Texas Gas offering market-based rate customers a higher quality of service.

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[27] Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 154-67.

[28] *Texas Gas Transmission, LLC*, 117 FERC ¶ 61,261, at P 14 (2006).

Texas Gas' proposal assures that the quality of storage service being provided is comparable for all customers and that no undue preference will be given regarding conditions of service to any customer group.

37. The one concern we have regarding protection of Texas Gas' cost-based rate customers involves Texas Gas' proposal to offer a new market-based rate interruptible storage service from the incremental capacity in addition to its existing cost-based interruptible storage service. We find this aspect of Texas Gas' proposal to be unclear. Therefore, we will require Texas Gas to file, within 45 days of this order, an explanation of how the offer of market-based interruptible storage service will be made in such a way as to ensure the protection of cost-based interruptible storage service customers, and to propose appropriate tariff provisions to fully ensure the protections. Authorization to provide interruptible storage at market-based rates is conditioned on prior Commission approval of Texas Gas' clarified proposal.

38. Regarding protections for those customers that may subsequently seek service using that portion of the proposed expansion not currently subscribed (or expansion project capacity which may become available in the future, *e.g.*, upon expiration of the initial service agreements), Texas Gas has stated that it will post all available market-based storage capacity on its website. Texas Gas is also proposing to add tariff provisions that would allow it to sell its storage capacity through interactive auctions that it contends would prevent withholding of capacity, price discrimination, or favoritism.[29] Texas Gas states that its proposed auction adheres to the principles for creating an auction outlined in Order No. 637.[30] These principles include: (i) notification of auction;

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[29] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,294 (2000); *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099 (2000); *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000); *aff'd in part and remanded in part sub nom. Interstate Natural Gas Association of America v. FERC,* 285 F.3d 18 (D.C. Cir. 2002); *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g,* 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Association v. FERC,* 428 F.3d 255 (D.C. Cir. 2005). (Auctions, if properly designed, can provide for efficient allocation of capacity and natural gas, reduce the transaction costs of finding and arranging capacity transactions, and provide for more accurate dissemination of relative pricing information to the marketplace. Auctions also can be used as methods of mitigating the effects of market power by limiting the ability of sellers to withhold capacity, to price discriminate, or to show favoritism.)

[30] Order No. 637, FERC Stats. & Regs. ¶ 31,091 at 31,296.

(ii) predictable timing; (iii) open to all bidders on non-discriminatory basis; (iv) user-friendly with accessible rules; (v) full disclosure prior to auction of procedures for bidding and selecting winning bid; (vi) no favoritism in selecting winning bid, including monitoring of the application of selection criteria and methods for verifying reserve price; and (vii) disclosure of transaction information, including prices and volumes.

39. Texas Gas states that the posting of available capacity and auctions will prevent withholding and provide fair and adequate notice of availability of capacity. Texas Gas argues that these procedures, together with the Commission's own customer protections, *e.g.*, requirements for the filing of quarterly and annual reports by pipelines and market oversight powers, are adequate to meet the customer-protection requirements of section 4(f).

40. We disagree. Section 284.505(a)(2) requires that a storage service provider seeking market-based rate authority pursuant to section 4(f) must provide a means of protecting customers from the potential exercise of market power. "[A] proposal that acts to prevent withholding as a method of exercising substantial market power, tempered with a reasonable reserve price which would allow a section 4(f) applicant to recover its investment appears to be the best way to satisfy the test."[31] In Order No. 678, the Commission required that under section 4(f), "the applicant must demonstrate how it intends to comply with the no-withholding requirement, and must also specify whether, and if so, how it will establish a reserve price."[32] However, Texas Gas' auction proposal is not clear on how a reasonable reserve price would be set to ensure that capacity will not be withheld and that customers will be protected. Accordingly, Texas Gas is directed to file, within 45 days of the date of this order, information clarifying how its auction process will work for both excess capacity being marketed by Texas Gas and upon customer request. In this clarification, Texas Gas must explain how its "minimum acceptable bid" (the reserve price) would be set in both circumstances and make any

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[31] Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 163.

[32] *Id.* P 165.

> A few examples of how this price may be set include: prices offered by competing storage sellers in the same market, . . ., applicant's total costs; applicant's other already agreed upon rates (*e.g.*, the highest initial rate agreed to at arms-length with a non-affiliate in the initial open season); or another type of reserve price for which the applicant can provide a just and reasonable basis convincing to the Commission based on the facts of a specific case.

tariff changes necessary to reflect this clarification. In addition, Texas Gas should explain how the auction process would work for interruptible storage service. Authorization for Texas Gas to provide storage at market-based rates utilizing the currently unsubscribed expansion capacity is conditioned upon prior Commission approval of revised customer protection measures.

Cross Subsidy by Cost-Based Customers

41. Memphis and Cities argue that while Texas Gas has pledged to separately account for market-based storage facilities, the Commission should ensure that cost-based rate customers do not subsidize the proposed expansion and are fully insulated from such costs. Memphis further argues that to the extent Texas Gas is granted market-based authority under section 4(f) of the NGA, Texas Gas must not only separately account for the costs, services and commitment,[33] but also "retain these records for as long as they may be required under the Commission's existing practices for pipelines operating under the Uniform System of Accounts."[34]

42. Memphis also alleges that it is unclear whether and to what extent Texas Gas intends to assign and/or allocate a portion of the ongoing operation and maintenance (O&M) and administrative and general (A&G) cost to the Midland Field expansion and that Texas Gas should be required to provide a detailed explanation of how it intends to identify and isolate these costs so that they are not borne by system shippers. Cities argues that consistent with Order No. 678-A, the Commission should require Texas Gas to explain whether and how it plans to charge its market-based rate customers for use of the pre-existing facilities from which they benefit.

43. The Commission's policy when approving incremental rates is to require assignment of costs to the customers receiving the service to ensure that the project is not subsidized by existing customers. The Commission requires the pipeline to isolate the incremental costs, keeping separate books and records so that parties during a rate case can examine such records to ensure that they are not subsidizing a facility from which they are not receiving service.[35] Texas Gas is proposing bifurcated rates, charging cost-

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[33] Order No. 678-A, 117 FERC ¶ 61,190 at P 24.

[34] Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 157 (*citing*, 18 C.F.R. Part 225).

[35] *Dominion Cove Point LNG, LP*, 120 FERC ¶ 61,213, at P 18 (2007); *Dominion Transmission, Inc.*, 120 FERC ¶ 61,235, at P 23 (2007); *Empire State Pipeline*,

(continued…)

based rates for the existing 55.7 Bcf of the working gas in the Midland Field and market-based rates for the newly-proposed 8.25 Bcf of working gas. Texas Gas will separately account for all costs and revenues associated with facilities used to provide the incremental market-based services. The maintenance of separate records will help enable the Commission to ensure that existing customers will not subsidize the costs of the expansion.[36]

44. In its August 31, 2007 data response, Texas Gas addressed Memphis' concerns regarding the assignment and/or allocation of a portion of ongoing O&M and A&G costs for the Midland Field expansion. Texas Gas explains that it will assign to the market-based storage service an appropriate portion of the O&M and A&G costs allocated to its storage facilities. The transportation O&M and A&G costs will be allocated based on the ratio of the expansion transmission miles (approximately 11 miles) to the total transmission miles. The storage O&M and A&G costs will be allocated on the ratio of the Gas Plant in Service (Account 101) balance relating to market-based storage assets to the Gas Plant in Service balance relating to total storage assets. The transmission and storage costs assigned to the market-based storage service will be excluded from the cost of service used to derive rates for the cost-based services in Texas Gas' next section 4 rate case.

45. With the proper allocation of the Midland Field expansion and transportation costs, the cost-based customers will be adequately protected. Therefore, the Commission will approve the proposal and require that Texas Gas' books be maintained with

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116 FERC ¶ 61,074, at P 115 (2006); *El Paso Natural Gas Co.*, 104 FERC ¶ 61,303, at P 36 (2003); and *Iroquois Gas Transmission System, L.P.*, 100 FERC ¶ 61,275, at P 37 (2002).

[36] Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 98. (In granting market-based rates for pipelines that provide cost-based services, the Commission intends to ensure that no subsidization by existing cost-based shippers takes place. To date, when granting market-based rates in these circumstances, the Commission has required that the applicant separately account for all costs and revenues associated with facilities used to provide the market-based service. We intend to continue this practice and will codify in new § 284.504 of the Commission's regulations the requirement that pipelines that provide cost-based services must separately account for all costs and revenues associated with facilities used to provide the market-based services. This will ensure that market-based services are not subsidized by cost-based services, as well as ensure that pipeline-owned storage is not afforded an unfair rate advantage over independent storage provides.) (footnote omitted).

applicable cross-reference as required by section 154.309 of the Commission's regulations. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 proceedings. Texas Gas is required to retain such separate records for its cost-based and market-based storage and the related transportation for the period of time it operates the Midland Field. In its compliance filing, Texas Gas must clarify its proposed accounting treatment of the costs and allocated expenses attributable to the 11 mile transmission expansion so that the accounting of storage-related costs and transmission-related costs are maintained separately.[37]

Reclassifying Cushion Gas as Working Gas

46. Memphis and Cities raise concerns about Texas Gas' proposal to reclassify cushion gas as working gas. Cities allege that the cushion gas is part of Texas Gas' existing rate base, with existing customers paying a return on its value, and thus Texas Gas' rates may no longer be just and reasonable. Memphis argues that Texas Gas has not shown that the conversion of cushion gas to working gas is consistent with the public interest and complains that Texas Gas proposes to keep the entire gain on the sale of cushion gas. Memphis states that Texas Gas' proposal raises issues of material fact concerning who has borne the financial burden of the Midland Field's cushion gas and who has had the risk of capital losses. Memphis further contends that approval of the proposal would be directly contrary to *Transco,*[38] in which the Commission found that a hearing was required to address the treatment of the gain on the proposed sale of storage gas.

47. Texas Gas asserts that its existing customers did not initially pay for cushion gas, have not reimbursed Texas Gas through depreciation or amortization expense for the capital used to purchase cushion gas, and have not borne the risks associated with the cushion gas. Texas Gas states that it records the cost of cushion gas as a capital asset in

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[37] The Commission understands it to be Texas Gas' proposal that the transportation related to the new expanded storage service will be provided under Texas Gas' existing cost-based open-access transportation rate schedules at the existing approved rates. Texas Gas should separately account for the costs of the 11 mile pipeline loop and all allocable costs to ensure that other transportation customers are fully protected against bearing any of the costs associated with this expansion. The market-based rate authority granted in this order does not extend to the associated transportation services.

[38] *Transcontinental Gas Pipe Line Corp.,* 119 FERC ¶ 61,105 (2007) (*Transco*).

Account No. 117.1 and that retaining the gain on its sale is consistent with numerous Commission decisions.[39] Texas Gas contends that customers who do not incur the costs of a utility asset through payment of depreciation expenses have no claim to any gain on its sale. Texas Gas alleges that is the case in this proceeding. Texas Gas claims that since it alone bore the risks associated with the cushion gas, it is entitled to retain any gain it receives on the sale of the converted cushion gas.

48. The Commission's well-established policy on the sale of an asset is to permit regulated companies to realize the gains, or absorb any losses, when selling a capital asset.[40] Texas Gas has demonstrated that it records the cost of the cushion gas as a capital asset in Account No. 117.1. Therefore, under Commission policy on the sale of an asset, it is permitted to retain any gain associated with the sale. Such a finding is consistent with the Commission's ruling in *Natural* which found a protester's argument for an incremental rate without merit since Natural's customers did not bear the cost of the cushion gas and therefore could not realize the gain or absorb any losses on the sale.[41] Further, this is the third expansion of the Midland Field in which Texas Gas is converting cushion gas to working gas. Consistent with our finding in Texas Gas' previous two cases[42] and *Natural*, we will permit Texas Gas to convert cushion gas that it paid for to working gas, realizing the gain or absorbing any losses on the sale.

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[39] *Citing Equitrans L.P.*, 70 FERC ¶ 61,050, at 61,151 (1995); *National Fuel Gas Supply Corp*., 62 FERC ¶ 61,200, at 62,481; *Williston Basin Interstate Pipeline Co.*, 64 FERC ¶ 61,297, at 63,130, *reh'g denied*, 65 FERC ¶ 61,334, at 62,571 (1993); *Panhandle Eastern Pipe Line Co*., 61 FERC ¶ 61,357, at 62,433 (1992).

[40] *See Natural Gas Pipeline Co. of America*, 101 FERC ¶ 61,125, at P 43 (2002) (*Natural*); *Trunkline Gas Co.*, 90 FERC ¶ 61,017, at 61,097-98 (2000); *Williams Gas Processing-Gulf Coast Gathering Co.*, 87 FERC ¶ 61,144, at 61,594 (1999); *East Tennessee Natural Gas Co.*, 75 FERC ¶ 61,110, at 61,369 (1996); *El Paso Natural Gas Co*., 46 FERC ¶ 61,358, at 62,098 (1989); *Florida Gas Transmission Co*., 20 FERC ¶ 61,298, at 61,581 (1982).

[41] *Natural*, 101 FERC ¶ 61,125 at P 43.

[42] *Texas Gas Transmission, LLC*, 110 FERC ¶ 61,132 (2005) and 117 FERC ¶ 61,261 (2006).

<u>Compliance with Market-Based Rate Filing Requirements</u>

49. Cities allege that the Commission should require Texas Gas to comply with the market-based rate filing requirement in section 284.503 of the Commission's regulations. Cities contend that Texas Gas has: (1) included its own capacity, backhauls from the Lebanon area, as an alterative to its storage service; (2) failed to provide information about competitor's prices and costs; and (3) failed to provide information on potential competitors, including their costs and the distance in miles from its facilities and major consuming markets. Cities argue that Texas Gas should be required to supplement its application accordingly.

50. We agree that Texas Gas' failure to include information, such as the items identified by Cities, leaves the Commission with insufficient information to make a determination that Texas Gas lacks market power. However, we do have sufficient information to consider Texas Gas' alternative request for market-based rate authority under the provisions of section 4(f) of the NGA.[43] Accordingly, Cities' request is denied.

<u>Changed Circumstances Impact on Existing Customers</u>

51. ProLiance requests assurance that, if Texas Gas is granted market-based rates and a change in circumstance occurs, the Commission will conduct a review of Texas Gas' rates to ensure that no market issues have arisen and that no current or future cost-based customers subsidize any expenses or capital improvements used for the new storage. As discussed above, Texas Gas is required to separately account for its services provided under market-based rates, keeping separate books and records to ensure that the costs have been properly allocated so that the cost-based rate customers are not subsidizing the market-based rate service or the proposed 11-mile-30-inch loop line. Such a mechanism will provide adequate protection to ProLiance and Texas Gas' other cost-based rate customers.

52. ProLiance also asks that the Commission require Texas Gas to notify the Commission if future circumstances significantly affect its present market status, consistent with the Commission's requirements in *Monroe*.[44] In *Monroe*, our approval of market-based rates was based upon a showing that the applicant lacked market power.

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[43] *See* 18 C.F.R. § 284.505 (2007)(listing the requirements for storage providers seeking market-based rates under NGA § 4(f).

[44] *Monroe Gas Storage Co.*, 121 FERC ¶ 61,285, at P 30 (2007) (*Monroe*).

Accordingly, Monroe was required to notify the Commission of changes in circumstances that could affect its market power status. In this proceeding, where authorization for market-based rates is being granted under NGA section 4(f), we have made no finding regarding Texas Gas' lack of market power. Therefore, reporting of the type required in *Monroe* is not appropriate. However, we will be vigilant to insure that the various protections we have found to exist remain adequate to protect consumers.

53. The Commission will regularly monitor storage providers with market-based rates and based on our findings will take further action as necessary to ensure that customer protections are adequate over time. In addition to our monitoring activity, customers can also raise concerns through several procedural avenues.[45] Regular Commission monitoring of market-based storage operators based on existing forms and data posting, supplemented as necessary with more specific information, coupled with our authority under NGA section 5, meets the periodic review requirement of NGA section 4(f).[46]

Pro Forma Tariff

54. While Texas Gas proposes, at Exhibit P of its application, two new Rate Schedules (FSS-M and ISS-M) to provide service at market-based rates, Texas Gas did not update its Statement of Rates for Storage of Natural Gas at Sheet No. 33 of its FERC tariff to reflect its market-based rates. In order to provide Texas Gas' shippers with adequate information on the services and rates it provides, Texas Gas is required to revise Sheet No. 33 to reflect market-based rates for Rate Schedules FSS-M and ISS-M and revise Sheet No. 1 to include reference to the currently effective FSS-M and ISS-M Storage Rates. In general, except for charging market-based rates for the proposed FSS-M and ISS-M rate schedules, the proposed rate schedules mirror the existing and approved cost-based storage Rate Schedules FSS and ISS. However, Texas Gas in several instances in Rate Schedules FSS-M and ISS-M referred to the cost-based Rate Schedules FSS and ISS. To eliminate any ambiguity as to the applicable rate schedule, Texas Gas is required to remove any reference in the FSS-M and ISS-M rate schedules that rely upon the FSS and ISS rate schedules, since a shipper with FSS-M or ISS-M service may not receive service under the FSS or ISS rate schedules.[47]

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[45] Order No. 678-A, 117 FERC ¶ 61,190 at P 29.

[46] Order No. 678-A, 117 FERC ¶ 61,190 at P 25.

[47] *See* Appendix B for required tariff revisions.

55. To provide clarity to Texas Gas shippers and consistent with Commission policy, Texas Gas is directed to revise its tariff accordingly, submitting its revised pro forma FERC Gas tariff to be filed within 45 days of this order. That filing will reflect the changes to the proposed pro forma FERC Gas Tariff that are required by this certificate order and any intervening regulatory changes generally applicable to the tariffs of natural gas storage companies.

Request for Waivers

56. Since Texas Gas is proposing market-based storage rates, it requests waiver of exhibits required for a section 7(c) application where the applicant proposes cost-based rates. Texas Gas is requesting waiver of section 157.6(b)(8) and sections 157.14(a)(11), (13), (14), (15), and (16).[48] As the Commission is authorizing market-based rates, the request for waiver is granted. The Commission notes that Texas Gas is still required to comply with the accounting and annual reporting requirements under Part 201 and sections 260.1 and 260.2 (Form Nos. 2 and 2-A). These reports include the market-based and cost-based rate storage volumes and the associated transportation costs. The information is the basis for imposing an Annual Charge Adjustment (ACA). Further, as stated above, Texas Gas is required to maintain books and records for the market-based storage rates and associated under general system cost-based transportation rates on the 11 mile loop line with applicable cross-reference as required by section 154.309 of the Commission regulations. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 proceedings.

57. The waivers are also conditioned upon Texas Gas maintaining sufficient records of cost and revenue data consistent with the Uniform System of Accounts.

Engineering analysis

58. Commission staff completed an engineering analysis of the proposed project and found that: the compression proposed for the expansion is properly designed to achieve the proposed maximum deliverability; Texas Gas' proposal will effectively increase the working gas capacity of the Midland storage field; the proposed project will result in a working gas capacity of 63.95 Bcf and a cushion gas capacity of 71.15; and, the

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[48] The specific exhibits for which Texas Gas requests waiver are: 157.6(b)(8) – detailed cost of service data; 157.14(a)(11) Exhibit I – market data; 157.14(a)(13) Exhibit K– cost of facilities; 157.14(a)(14) Exhibit L – financing plans; 157.14(a)(15) Exhibit M– construction, operation, and management; and 157.14(a)(16) Exhibit N– revenues, expenses, and income.

maximum daily withdrawal rate for the Midland storage field will increase to 952.2MMcf per day. However, in order to properly monitor the storage fields and ensure that gas migration does not occur, Texas Gas shall file an annual inventory verification study for the Midland storage field.

Environmental analysis

59. On July 23, 2007, we issued a Notice of Intent to Prepare an Environmental Assessment for the proposed Texas Gas Storage Expansion Project Phase 3 and Request for Comments on Environmental Issues (NOI). The NOI was sent to approximately 150 individuals, organizations, federal and state agency representatives, county and local government agencies, elected officials, local libraries and newspapers, property owners affected by the pipeline route, and other interested individuals. In response to the NOI, we received one comment from a landowner, Ms. Simons, stating this would be the third pipeline easement across the landowner's property and requesting that this project not take more land.

60. Our staff prepared an environmental assessment (EA) for Texas Gas' proposal. The EA addresses land requirements; water use and quality; fish, vegetation, and wildlife; threatened and endangered species; cultural resources; air quality; noise; land use; and alternatives. The EA discusses the expanding easement issue raised by Ms. Simons. Specifically, the EA determines that 25 feet is the standard offset for a pipeline loop, and that this standard pipeline spacing would be appropriate for this project. To address this, environmental condition 13 requires Texas Gas to reduce its proposed 50-foot separation between the 30-inch-diameter looping pipeline and the existing pipeline to no more than 25 feet. Further, the condition requires Texas Gas to reduce its new permanent right-of-way width to an additional 25 feet beyond the edge of its existing permanent right-of-way. Environmental condition 4 requires Texas Gas to file revised alignment sheets for the facilities approved by this Order that show the new right-of-way requirements.

61. In addition, Ms. Simons asked that we relocate the pipeline on an adjacent property that currently does not contain a right-of-way. The EA states that routing the pipeline to avoid Ms. Simons' property would involve increasing the length of pipe needed, would have greater impacts on previously undisturbed areas, and would simply transfer the impacts associated with construction from one property owner to another.[49]

62. Ms. Simons further states that the pipeline would reduce the resale value of her property. We believe the extent of such impact to be subjective. However, the EA does

[49] Page 40 of the EA.

include a recommendation to reduce the permanent right-of-way. This would reduce the encumbrance on her property. Further, Texas Gas will implement its Upland Erosion Control, Revegetation, and Maintenance Plan to avoid or mitigate impacts, and restore the land so that its current use can continue.[50]

63. The EA was distributed to federal and state agencies, persons responding to the NOI, and local libraries and newspapers for public comment on November 13, 2007. Two comments on the EA were received: a letter dated December 6, 2007, from the U.S. Fish and Wildlife Service (FWS) and a letter dated January 22, 2008, from Ms. Simons.

64. The EA states that the FWS concluded, in a letter dated August 24, 2007, that the project would have "no effect" on any federally listed species. However, in its comments on the EA the FWS stated that Texas Gas' surveys for Indiana bat summer roost habitat were not conducted by a qualified biologist (one who holds a federal permit to collect Indiana bats in Kentucky). Therefore, even though Texas Gas has committed to clearing the 33 identified Indiana bat summer roost trees between November 15 and March 31, the FWS recommended that Texas Gas commit to felling all trees on the right-of-way during this timeframe.

65. Texas Gas responded in a letter dated January 4, 2008, stating that it had consulted further with the FWS. Texas Gas and the FWS agreed that Texas Gas would have a qualified biologist survey the project area, and after the survey would immediately cut the potential roost trees. We have determined that this mitigation addresses the concern raised by the FWS. Consequently, we are amending our previous finding of "no effect" to a "not likely to adversely affect" determination on Indiana bats. The FWS concurs.

66. Ms. Simons' comments on the EA reiterate the concerns she raised previously. These concerns have already been addressed in the EA. However, her letter further states that Texas Gas is threatening to use eminent domain if she does not sign a contract. If efforts to negotiate an easement fail, section 7(h) of the NGA grants certificate holders the right of eminent domain as necessary to obtain the right-of-way and extra workspace areas.

67. Finally, Ms. Simons asks that Texas Gas delay construction on her property until after the crops are harvested in October or November. Texas Gas proposes to place its pipeline into service in November 2008. Therefore, delaying construction until November would not allow Texas Gas to meet the project's objective. As a result, we

[50] Page 28 of the EA.

deny Ms. Simons' request. However, we note that Texas Gas must compensate landowners for all damages, including crop loss.

68. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with Texas Gas' application filed June 25, 2007, as supplemented on December 4, 2007, supplemental data responses, and staff's recommendations, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

69. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.[51] Texas Gas shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Texas Gas. Texas Gas shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

Conclusion

70. For all of the reasons discussed above, the Commission concludes that Texas Gas' proposal to construct and operate the storage expansion project, as described herein, is required by the public convenience and necessity and, accordingly, a certificate and abandonment authorization will be issued to Texas Gas for this project.

71. The Commission on its own motion, received and made a part of the record all evidence, including the application (s), as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Texas Gas authorizing it to expand its facilities at Midland Field as more particularly described herein and in the application as supplemented.

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

(B) The abandonment of facilities, as described in this Order and the application, is approved.

(C) Texas Gas is required to notify the Commission within 10 days of the date of the abandonment of the facilities described herein.

(D) Texas Gas shall construct and make available for service the facilities authorized herein within two years from the date of this order in accordance with section 157.20(b) of the Commission's regulations.

(E) Texas Gas shall not operate the Midland storage fields above the following certificated levels: Working gas – 63.95 Bcf; Base Gas – 71.15 Bcf; Total Capacity – 1351.1 Bcf; Maximum daily withdrawal rate – 952.2 MMcf/d. Additionally, Texas Gas shall conduct an annual inventory verification study on the Midland storage fields.

(F) The certificate issued to Texas Gas is conditioned on its compliance with the Natural Gas Act and all relevant Commission regulations, in particular with Part 154 and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations.

(G) Texas Gas' request to charge market-based storage rates for firm and interruptible storage service is approved as discussed and subject to the conditions in this order.

(H) Within 45 days of the issuance date of this Order and consistent with the above discussion, Texas Gas must submit the following as addressed in the body of this order: revised pro forma tariff sheets, an explanation of the interruptible storage service, and a clarification of the auction process.

(I) The certificate issued in Paragraph (A) above is conditioned on Texas Gas' compliance with the environmental conditions included in Appendix A of this order.

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

(K) Texas Gas is granted waiver of section 157.6(b)(8) requiring cost of service data and section 157.14 of the Commission's regulations requiring submission of Exhibits K, L, N, and O which presume cost-based rates are being charged and collected; the waiver, however, does not extend to the Commission's assessment of annual charges, therefore, Texas Gas is required to maintain records to separately identify the original cost and related depreciation on its storage gas facilities, reporting such information in the Form No. 2, for calculation of the ACA and to maintain accounts and financial information of its storage facility consistent with generally accepted accounting principles.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX A

Environmental Conditions

As recommended in the EA, this authorization includes the following conditions:

1. Texas Gas 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. Texas Gas must:

   a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
   b. justify each modification relative to site-specific conditions;
   c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
   d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**

2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:

   a. the modification of conditions of this Order; and
   b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.

3. **Prior to any construction**, Texas Gas shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's 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 and data responses. **As soon as they are available, and before the start of construction**, Texas Gas shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller that 1:6,000 with station positions for all facilities approved by this Order. All

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

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

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

Secretary for review and written approval by the Director of OEP describing how Texas Gas will implement the mitigation measures required by this Order. Texas Gas must file revisions to the plan as schedules change. The plan shall identify:

a. how Texas Gas will incorporate these requirements into 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;
b. the number of environmental inspectors assigned per project area, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
c. the company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
d. the training and instruction Texas Gas will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
e. the company personnel (if known) and specific portion of Texas Gas' organization having responsibility for compliance;
f. the procedures (including the use of contract penalties) Texas Gas will follow if noncompliance occurs; and
g. 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 mitigation training of onsite personnel;
    iii. the start of construction; and the start and completion of restoration.

7. Texas Gas shall employ at least one environmental inspector on its project. The environmental inspector shall be:

a. responsible for monitoring and ensuring compliance with all mitigative measures required by this Order and other grants, permits, certificates or other authorizing documents;
b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
d. a full-time position, separate for all other activity inspectors;

e. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
f. responsible for maintaining status reports.

8. Texas Gas shall file updated status reports prepared by the (head) environmental inspector with the Secretary on a **biweekly** basis **until** all construction-related activities, including restoration and initial permanent seeding, are complete on its project. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

a. the current construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmental sensitive areas;
b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
c. a description of corrective actions implemented in response to all instances of noncompliance, and their cost;
d. the effectiveness of all corrective actions implemented;
e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
f. copies of any correspondence received by Texas Gas from other federal, state, or local permitting agencies concerning instances of noncompliance, and Texas Gas' response.

9. Texas Gas must receive written authorization from the Director of OEP **before commencing service** on each segment of its project, respectively. Such authorization will only be granted following a determination that rehabilitation and restoration of the sites are proceeding satisfactorily.

10. **Within 30 days of placing the certificated facilities in service**, Texas Gas shall file an affirmative statement with the Secretary, certified by a senior company official:

a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
b. identifying which of the certificate conditions Texas Gas has complied with or will comply with. This statement shall also identify any areas along the ROW where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

11. Texas Gas shall develop a Horizontal Directional Drill (HDD) Contingency Plan that describes how the drilling operations would be conducted and monitored at Pond River, Pond 5, and Pond 6, to minimize the potential for inadvertent drilling mud releases or failure of the drill. Further, the HDD Contingency Plan shall discuss procedures Texas Gas would implement for clean-up of drilling mud releases and sealing the drill hole if a drill cannot be completed. This plan shall be filed with the Secretary for the review and written approval by the Director OEP prior to construction.

12. Texas Gas shall defer construction and use of all facilities and staging, storage, and temporary work areas and new or to-be-improved access roads until:

a. Texas Gas files the Phase II report for sites 15Hk299 and 15Hk309, and the Kentucky State Historic Preservation Office's (SHPO) comments on the report;
b. Texas Gas files the SHPO's comments on the Hanson Compressor Station and the Sharon School facility;
c. Texas Gas files any required treatment plan and the SHPO's comments on the plan;
d. the Advisory Council on Historic Preservation is offered an opportunity to comment, if historic properties would be adversely affected; and
e. the Director of OEP reviews and approves all reports and plans, and notifies Texas Gas in writing that it may proceed.

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

13. Texas Gas shall maintain no more than a 25-foot offset between the new 30-inch-diameter loop pipeline and its existing pipeline and add no more than 25 feet of permanent right-of-way to its existing permanent right-of-way.

14. Texas Gas shall make all reasonable efforts to ensure its predicted noise levels from the Midland III Compressor Station are not exceeded at nearby noise sensitive areas (NSA) and file noise surveys showing this with the Secretary **no later than 60 days** after placing the modified Midland III Compressor Station in service. However, if the noise attributable to the operation of the Midland III Compressor Station at full load exceeds a day-night sound level of 55 decibels on the A-weighted scale at any nearby NSAs, Texas Gas shall file a report on what changes are needed and shall install additional noise controls to meet the level **within one year** of the in-service date. Texas Gas shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

APPENDIX B

Revisions to Pro Forma Tariff Sheets

1. Revise existing First Revised Sheet No.1, directing readers to a rate sheet for "Currently Effective FSS-M and ISS-M Storage Rates."

2. Provide a rate sheet for Rate Schedules FSS-M and ISS-M, similar to the existing Sheet No. 33 for FSS and ISS Storage Rates.

3. Pro Forma Sheet 195 at Section 1-Availability, first line provided blank spaces for quantity to storage and deliverability before "____ MMBtu of storage and ____ MMBtu/day of deliverability…" Texas Gas is required to fill in the respective blank spaces before MMBtu of storage and MMBtu/day of peak day deliverability.

4. Pro Forma Sheet No. 196 at Section 6-Excess Withdrawals, first line, "Customer's FSS storage…" Texas Gas is required to insert FSS-M, so the sentence reads, "Customer's FSS-M storage…."

5. Pro Forma Sheet No. 198 at Section 9.4, first line concerning "FSS service…" Texas Gas is required to inset FSS-M, so the sentence reads, "FSS-M service...."

6. Pro Forma Sheet No. 199 at Section 10.1, fourth line concerning "FSS Customer." Texas Gas is required to insert FSS-M so the sentence reads, "FSS-M Customer…."

7. Pro Forma Sheet No. 199A at Section 1-Availability, first line with blank space for the quantity of "____ MMBtu of storage and ____ MMBtu/day of deliverability..." Similar to the revisions on Sheet No. 195 listed above, Texas Gas is required to fill in the respective blank spaces before the quantity of MMBtu of storage and quantity of MMBtu/day of peak day deliverability.

8. Pro Forma Sheet No. 199C at Section 5.2, the last sentence, "The ISS Overrun Service Rate is a negotiated market-based rate as provided in the in the ISS-M Agreement between Customer and Pipeline." The ISS Overrun Service Rate is a cost-based rate; therefore Texas Gas is required to delete any reference to ISS Overrun Rate being a negotiated market-based rate. Texas Gas is required to revise the last sentence, clarifying that the market-based-rate for overrun service

can only apply to service under the ISS-M Rate Schedule and remove the duplicate term “in the.”

9. Pro Forma Sheet No. 199D at Section 6-Excess Withdrawals, first line “Customer’s ISS.” Texas Gas is required to insert ISS-M, so that portion of the sentence reads, “Customer’s ISS-M.”

10. Pro Forma Sheet No. 199D at Section 9.2, third line, “its ISS service...” Texas Gas is required to insert ISS-M, so that portion of the sentence reads, “its ISS-M service....”

11. Pro Forma Sheet No. 199D at Section 9.2, fourth line, “If ISS service…” Texas Gas is required to insert ISS-M, so that portion of the sentence reads, “If ISS-M service….”

12. Pro Forma Sheet No. 199E at Section 9.3, first line, “their ISS service...” Texas Gas is required to insert ISS-M, so that portion of the sentence reads, “their ISS-M service….”

13. Pro Forma Sheet No. 298 at Section 40(a), second line, “Docket No.___...” Texas Gas is required to insert CP07-405-000, so that portion of the sentence reads, “Docket No. CP07-405-000....”

14. Pro Forma Sheet No. 514A at Section 2.1, fourth line, “Rate Schedule FSS…” Texas Gas is required to insert FSS-M, so that portion of the sentence reads, “Rate Schedule FSS-M….”

15. Pro Forma Sheet No. 514A at Section 2.2, third line, “Rate Schedule FSS…” Texas Gas is required to insert FSS-M, so that portion of the sentence reads, “Rate Schedule FSS-M….”

16. Pro Forma Sheet No. 514E at Section 2.1, fourth line, “Rate Schedule ISS…” Texas Gas is required to insert ISS-M, so that portion of the sentence reads, “Rate Schedule ISS-M….”

17. Pro Forma Sheet No. 514E at Section 2.2, third line, “Rate Schedule ISS...” Texas Gas is required to insert ISS-M, so that portion of the sentence reads, “Rate Schedule ISS-M….”

18. Pro Forma Sheet No. 514G at 8.6, first line, “Rate Schedule ISS...” Texas Gas is required to insert ISS-M, so that portion of the sentence reads “Rate Schedule ISS-M….”