

132 FERC ¶ 61,085
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.

BCR Holdings, Inc.

Docket No. CP10-40-000

ORDER ISSUING CERTIFICATES

(Issued July 29, 2010)

1. On January 8, 2010, BCR Holdings, Inc. (BCR) filed an application under section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² requesting a certificate of public convenience and necessity authorizing BCR to construct and operate a high-deliverability salt dome storage project in Lafourche Parish, Louisiana (the Bully Camp Gas Storage Project). BCR also requests (1) a blanket transportation certificate authorizing it to provide open-access firm and interruptible natural gas storage and hub services under Subpart G of Part 284 of the Commission's regulations with pregranted abandonment of services; and (2) a blanket construction certificate to perform certain routine activities under Subpart F of Part 157 of the Commission's regulations. In addition, BCR requests authority to charge market-based rates for its proposed services and waiver of certain filing, accounting, and reporting requirements.
2. As discussed in this order, the Commission will grant the requested certificate authorizations, subject to the conditions described herein. The Commission will also grant BCR's request for market-based rate authority and waiver of certain filing, accounting, and reporting requirements.

I. Background

3. BCR is owned by Three Cities Research, Inc., a private equity firm located in New York City. Upon completion of the proposed construction, BCR will become a natural

¹ 15 U.S.C. § 717f(c) (2006).

² 18 C.F.R. Part 157 (2010).

gas company within the meaning of section 2(6) of the NGA and be subject to the Commission's jurisdiction.

4. BCR designed the Bully Camp Gas Storage Project to be a high deliverability, multi-cycle salt cavern storage facility on the Bully Camp salt dome in Lafourche Parish, about 30 miles southwest of New Orleans, Louisiana. BCR owns the salt dome and has leases or options to obtain leases on most of the other property required for the project. On October 15, 2009, the Commission issued an order that granted BCR an exemption from section 7(c) to drill a test water supply well on BCR's compressor station site and a test re-entry well on the Bully Camp salt dome.³ The test water supply well was drilled successfully in November 2009 and plugged in accordance with Louisiana regulations.

5. An open season for proposed storage capacity took place between November 16 and December 18, 2009. No precedent agreements were signed following the open season. BCR asserts, however, that strong demand exists for storage capacity in the South Louisiana area among liquefied natural gas storage facilities, local distribution companies, generators, and natural gas marketers and producers.

II. Proposals

6. BCR proposes to construct and operate:

- Two storage caverns to be developed using solution mining techniques. Each cavern will have 7.5 billion cubic feet (Bcf) of working gas and 4.3 Bcf of cushion gas, for a total capacity of 23.6 Bcf;
- A compressor station with four 4,735 horsepower natural gas-driven compressor engines and appurtenant equipment;
- Eight fresh water supply wells and six brine disposal wells;
- A leaching plant, to be located on the eastern portion of the compressor station site, with storage tanks for raw water and brine;
- A temporary diesel fuel pipeline to be used during cavern construction;
- Four meter stations and facilities to interconnect with Gulf South Pipeline Company, LP (Gulf South), Texas Eastern Transmission Corporation (Texas Eastern); Bridgeline Holdings, LP (Bridgeline),

³ *BCR Holdings, Inc.*, 129 FERC ¶ 61,030 (2009).

an intrastate pipeline; and Discovery Gas Transmission, LLC's Larose Plant (Discovery plant);

- Four natural gas pipeline segments totaling about 6.1 miles in length (ranging from 10 inches to 20 inches in diameter) connecting to the proposed meter stations; and
- Six segments of water and brine pipeline totaling about 19.5 miles in length (ranging from 3 inches to 24 inches in diameter).⁴

7. The Bully Camp Gas Storage Project is designed to provide a maximum daily injection capacity of approximately 830,000 Mcf/d, an average daily injection capacity of approximately 409,000 Mcf/d, a maximum daily withdrawal capacity of approximately 1,200,000 Mcf/d (1.2 Bcf/d), and an average daily withdrawal capacity of approximately 948,000 Mcf/d. The proposed storage facility will be able to cycle up to 6.5 times per year.

8. BCR states that construction of the water supply wells, brine disposal wells, and access roads will commence upon receipt of Commission certification. Drilling of the cavern wells is planned to begin in the 3rd and 4th quarter of 2010, followed by cavern leaching, with a scheduled in-service date in the 4th quarter of 2013. Construction of the cavern pipelines and construction of the leaching plant will take place in the 4th quarter of 2010. Construction of the Gulf South, Discovery, Bridgeline, and Texas Eastern interconnection facilities and the compressor facilities will begin in the 1st quarter of 2012, with completion scheduled in the 4th quarter of 2013.

9. BCR proposes to provide firm storage service under Rate Schedule FSS and interruptible storage service under Rate Schedule ISS. BCR also proposes to offer a variety of interruptible hub services, including parking service under Rate Schedule IPS, loan service under Rate Schedule ILS, wheeling service under Rate Schedule IWS, imbalance trading under Rate Schedule IITS, and balancing service under Rate Schedule IBS.⁵

10. BCR requests authorization to charge market-based rates for its proposed storage and hub services. BCR's market power study, submitted as Exhibit I to its application, concludes that BCR lacks market power in the provision of storage services and interruptible hub services.

⁴ Entergy, Inc., the local electricity service provider, will construct a non-jurisdictional electrical transformer and power line to serve BCR's proposed facilities.

⁵ See Exhibit P of BCR's application.

11. BCR requests a Part 284, Subpart G blanket certificate to provide storage and hub services on an open-access, nondiscriminatory basis pursuant to its pro forma tariff. BCR also requests a blanket certificate under Part 157, Subpart F to perform routine activities in connection with the construction, acquisition, maintenance, and operation of its facilities.

12. Because it proposes to charge market-based rates, BCR 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 that are granted market-based rate authority.

III. Public Notice and Interventions

13. Public notice of BCR's application was published in the *Federal Register* on February 1, 2010 (75 Fed. Reg. 5069). Discovery Producer Services LLC filed a timely motion to intervene. Timely, unopposed motions to intervene are automatically granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure.⁶

14. National Grid Gas Delivery Companies and K&G Land Company, LLC (K&G), a local land-owner, filed motions to intervene out-of-time. The parties filing untimely motions to intervene have demonstrated an interest in this proceeding. Further, the untimely motions will not delay, disrupt, or otherwise prejudice this proceeding. Thus, we will grant the untimely motions to intervene.⁷

IV. Discussion

15. Because BCR proposes to construct and operate facilities that will be used to store natural gas in interstate commerce, BCR's proposal is subject to the jurisdiction of the Commission and the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Certificate Policy Statement

16. The Certificate Policy Statement provides guidance as to how the Commission will evaluate proposals for new construction.⁸ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and

⁶ 18 C.F.R. § 385.214(c) (2010).

⁷ 18 C.F.R. § 385.214(d) (2010).

⁸ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the 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.

17. 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 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.

18. BCR is a new entrant in the natural gas storage market and has no existing customers. Accordingly, BCR has satisfied the threshold no-subsidy requirement of the Certificate Policy Statement.

19. The BCR storage facility is located in a competitive market. The facility is proposed to serve new demand in a region that is experiencing steady growth in natural gas storage requirements. No pipeline or storage company in BCR's market area has protested its proposed facilities. Accordingly, the Commission concludes that BCR's proposal will have no adverse impact on existing pipelines or storage providers or their captive customers.

20. The BCR storage facility will be located on land BCR owns or will lease. BCR states that most of the necessary land rights have already been acquired and that it anticipates successful negotiation of agreements for the lease of the remaining land. Only one landowner filed comments, which are addressed in the environmental section below. The Commission finds that the proposed facilities will have minimal impacts on landowners and any affected communities.

21. Based on the above findings, the Commission concludes that the proposals will provide benefits to the market without any identifiable adverse impacts on existing customers, other pipelines, landowners, and communities. Thus, consistent with the Certificate Policy Statement and section 7(c) of the NGA, the Commission concludes that

approval of BCR's proposals is required by the public convenience and necessity, subject to the conditions discussed below.

B. Market-Based Rates

22. BCR requests authority to charge market-based rates for its proposed firm and interruptible storage services and its interruptible hub services.

23. Generally, the Commission evaluates requests to charge market-based rates for storage under the analytical framework of its Alternative Rate Policy Statement.⁹ Under the Alternative Rate Policy Statement, the Commission's framework for evaluating requests for market-based rates has two principal purposes: (1) to determine whether the applicant can withhold or restrict services and, as a result, increase 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.¹⁰ To find that an applicant cannot withhold or restrict services, significantly increase prices over an extended period, or discriminate unduly, the Commission must find that there is a lack of market power¹¹ because customers have good alternatives¹² or that the applicant or Commission can mitigate the market power with specified conditions.¹³

⁹ *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, *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *petitions for review denied sub nom., Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998). *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220 (2006), *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006) (Alternative Rate Policy Statement).

¹⁰ *See Blue Sky Gas Storage, LLC*, 129 FERC ¶ 61,210 (2009) (*Blue Sky*); *Orbit Gas Storage, Inc.*, 126 FERC ¶ 61,095 (2009).

¹¹ 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 at 61,230.

¹² A good alternative is an alternative to the proposed project that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative for an applicant's service. *See* Alternative Rate Policy Statement, 74 FERC at 61,230.

¹³ Generally, an applicant will include in its application an exhibit constituting its
(continued)

24. The Commission's analysis of whether an applicant has the ability to exercise market power includes three major steps. First the Commission reviews whether the applicant has specifically and fully defined the relevant markets¹⁴ to determine which specific products or services are identified, and the suppliers of the products and services, that provide good alternatives to the applicant's ability to exercise market power.¹⁵ Additionally, as part of the first step, the applicant must identify the relevant geographic market.¹⁶ Second, the Commission measures an applicant's market share and market concentration.¹⁷ Third, the Commission evaluates other relevant factors, such as ease of entering the market.

25. BCR's market power study defines the relevant products as firm and interruptible storage services and interruptible hub services. BCR identifies the relevant geographic market as the Gulf Coast production region.

26. BCR is a new market entrant with no existing jurisdictional or non-jurisdictional operations in the natural gas pipeline or storage industry. BCR's market power study identifies 104 gas storage fields in the Gulf Coast region that are approved for expansion or development and are expected to be in service by December 31, 2014.¹⁸ BCR's market power study also shows that the current combined market working gas capacity of all the storage facilities identified, including BCR's proposed facilities, is 1,253,217 million cubic feet (MMcf). The identified facilities are owned or controlled by 36 independent corporate entities, including BCR. The largest entity owns about 11.2 percent of the total working gas storage capacity in the market, and the eight largest entities hold 57 percent of the total working gas capacity in the market. The remaining 28 entities each hold 4.8 percent or less of the market. BCR will control only 1.2 percent

market power study in support of its request, as BCR has done in the instant case. See Exhibit I. The market power study usually defines the relevant products and geographic markets, measures market shares and concentrations, and evaluates other factors such as replacement capacity, ease of entry, and non-storage alternatives.

¹⁴ 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 at 61,231.

¹⁵ Alternative Rate Policy Statement, 74 FERC at 61,321.

¹⁶ *Id.* at 61,232-34.

¹⁷ *Id.* at 61,234.

¹⁸ BCR expects to complete and place the storage field into service in early 2014.

of working gas storage in the region. In addition, BCR's 1,200 MMcf per day of maximum deliverability will be only 2.2 percent of the region's total maximum deliverability of 55,633 MMcf per day. With this relatively small aggregate share of the relevant storage market, it is unlikely BCR will be able to exercise market power.

27. The Commission relies on the Herfindahl-Hirschman Index (HHI), which is used to analyze whether a competitive market exists for a specific product, to determine market concentration for gas pipeline and storage markets. 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 a closer scrutiny in order to make a determination about a seller's ability to exert market power.¹⁹ BCR's market power study shows HHI calculations of 561 for working gas capacity and 535 for maximum deliverability.²⁰ These measures of market concentration are significantly below the 1,800 HHI level, indicating that BCR would be unable to exert market power in the relevant market area.

28. Finally, BCR's market power study also shows that there are no significant barriers to entry in the relevant market. This is in accord with previous findings by the Commission that barriers to entry in the Gulf Coast region are not significant.²¹

29. Based on these factors, the Commission finds that BCR's analysis demonstrates that its proposed project will be in a highly competitive area where numerous storage service alternatives exist for potential customers. The Commission also finds that BCR's entry will increase the storage alternatives in the Gulf Coast region. Further, the Commission finds that BCR's prospective market shares are low and that the market concentration is well below the threshold which would require closer scrutiny. Finally, the Commission finds that barriers to entry are likely to be low in the relevant market area. Thus, the Commission concludes that BCR will lack significant market power.

¹⁹ Alternative Rate Policy Statement, 74 FERC at 61,235.

²⁰ See Exhibit I, Exhibit No. KLB-4 (Bully Camp Storage Market Share and HHI Analysis).

²¹ The Commission has found in numerous cases that there are no significant barriers to entry in the natural gas storage market in the Gulf Coast production region. See, e.g., *Tarpon Whitetail Gas Storage, LLC*, 123 FERC ¶ 61,274, at P 28 (2008) (*Whitetail*); *Enstor Houston Hub Storage and Transportation, LP*, 123 FERC ¶ 61,019, at P 32 (2008) (*Houston Hub*); *Port Barre Investments, L.L.C.*, 116 FERC ¶ 61,052, at P 25 (2006) (*Port Barre*).

30. The Commission uses a “bingo card” analysis to assess whether prospective customers of an applicant seeking market-based rate authority for interruptible wheeling service could obtain the same services from alternative providers. The Commission has relied on the bingo-card analysis to determine whether shippers can avoid the pipeline interconnections to be provided by the applicant by using alternative interconnections between the pipelines that are directly or indirectly connect to the applicant’s proposed facilities.²²

31. BCR’s bingo-card analysis shows that there are 39 receipt and delivery interconnections between the pipelines that are directly or indirectly interconnected to BCR.²³ Therefore, the Commission finds that good alternatives to BCR’s proposed wheeling services exist for prospective shippers. In addition, as BCR’s proposed storage facility will be located in the Gulf Coast production region which has access to many supply sources and multiple market regions, the Commission finds that BCR will be unable to exercise market power for hub services.

32. For these reasons, and noting the fact that BCR’s request to charge market-based rates is unopposed, the Commission will approve BCR’s request to charge market-based rates for firm and interruptible storage and interruptible hub services, including wheeling service.

33. Nevertheless, BCR must notify the Commission if future circumstances significantly affect its present market power status. The Commission’s approval of market-based rates for the indicated services is subject to re-examination in the event that: (i) BCR adds storage capacity beyond the capacity authorized in this order; (ii) an affiliate increases storage capacity; (iii) an affiliate links storage facilities to BCR; or (iv) BCR, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to BCR. Since these circumstances could affect its market power status, BCR 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 BCR.²⁴ The Commission also reserves the right to require an updated market power analysis at any intervening time.

²² See, e.g., *Houston Hub*, 123 FERC ¶ 61,019 at P 34; *PetroLogistics Natural Gas Storage, LLC*, 122 FERC ¶ 61,193, at P 17 (2008); *Golden Triangle Storage, Inc.*, 121 FERC ¶ 61,313, at P 32 (2007) (*Golden Triangle*).

²³ BCR plans physical interconnections with three pipelines, Bridgeline, Gulf South, and Texas Eastern, as well as with the Discovery plant.

²⁴ See *Port Barre*, 116 FERC ¶ 61,052; *Copiah County Storage Co.*, 99 FERC ¶ 61,316 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002).

C. Waivers of Filing, Reporting and Accounting Requirements

34. Because it proposes to charge market-based rates, BCR requests waiver of the Commission's cost-based regulations in section 157.6(b)(8) (cost and revenue data for rates); section 157.20(c)(3) (final cost of construction); section 157.14(a)(13) (Exhibit K – Cost of Facilities), (14) (Exhibit L – Financing), (16) (Exhibit N – Revenues, Expenses, and Income), and (17) (Exhibit O – Depreciation and Depletion); section 260.1 (annual report for major natural gas companies); section 260.2 (annual report for nonmajor natural gas companies); section 284.7(e) (firm reservation charge) and section 284.10 (straight fixed-variable rate design).

35. The cost-related information required by these regulations is not relevant in light of our approval of market-based rates for BCR's storage services. Thus, consistent with our findings in previous orders,²⁵ the Commission will grant BCR's request for waivers, except for the information necessary for the Commission's assessment of annual charges. BCR is required to file page 520 of Form No. 2-A, reporting the gas volume information which is the basis for imposing an Annual Charge Adjustment (ACA) charge.²⁶ However, these waivers are subject to re-examination in the event that BCR's market power or market-based rates need to be re-examined. Further, the Commission also will require BCR to maintain sufficient records consistent with the Uniform System of Accounts should the Commission require BCR to produce these reports in the future.

36. In addition, BCR requests waiver of section 157.14 (a)(10) (gas supply data). Gas supply data is unnecessary since BCR's customers will supply their own gas. The Commission will grant a waiver of this regulation.

D. Proposed Tariff Provisions

37. BCR proposes to offer firm and interruptible storage and interruptible 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. On March 5, 2010, Commission staff issued BCR a data request concerning BCR's pro forma tariff. The Commission finds that BCR's proposed tariff, as revised in response to Commission staff's March 5, 2010 data request, generally complies with Part 284 of the Commission's regulations, with the exceptions discussed further below. BCR is directed to file actual tariff sheets no less than 60 days, and no more than 90 days, prior to the commencement of service.

²⁵ See, e.g., *SG Resources Mississippi, L.L.C.*, 118 FERC ¶ 61,252, at P 29 (2007).

²⁶ See *Wycoff Gas Storage Co., LLC*, 105 FERC ¶ 61,027, at P 65 (2003).

1. Segmentation

38. 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. BCR requests waiver of the segmentation requirements in section 284.7(d), contending that segmentation of capacity on its system is not feasible, since its system will consist of a single integrated storage facility and will not be offering stand-alone transportation services.

39. The Commission has found in several proceedings 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.²⁷ BCR meets these requirements. Thus, the Commission finds that the requirements of section 284.7(d) do not apply to BCR. 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 BCR.

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

40. BCR 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 other parties in connection with its storage or hub services. Section 29 of the General Terms and Conditions (GT&C) of BCR's pro forma tariff²⁸ states that BCR will only provide transportation and storage services for others using such capacity pursuant to its open access tariff.

41. BCR'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.*,²⁹ the Commission found that pipelines no longer need to obtain prior approval to

²⁷ See, e.g., *Bobcat*, 116 FERC ¶ 61,052, at P 37; *Pine Prairie Energy Center, LLC*, 109 FERC ¶ 61,215, at P 44 (2004) (*Pine Prairie*); *Egan Hub Partners, L.P.*, 98 FERC ¶ 61,284 (2002).

²⁸ Pro Forma Sheet Nos. 88-89.

²⁹ *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273 (2000), *reh'g denied*, 94 FERC ¶ 61,139 (2001) (*Texas Eastern*).

acquire capacity on another pipeline, provided the acquiring pipeline has filed tariff language specifying that it will only transport for others on off-system capacity pursuant to its tariff provisions and rates. BCR's proposed tariff language is consistent with the requirements set forth in *Texas Eastern*. Therefore, the Commission accepts BCR's tariff language and grants waiver of the shipper must have title policy, but clarifies that BCR may only use capacity obtained on other pipelines in order to render the services set forth in its tariff. That is, BCR may not use capacity on other pipelines to transport gas which will not physically or contractually enter its storage facility unless and until it has received Commission authorization to provide such transportation services. Further, BCR's authorized use of the *Texas Eastern* waiver to provide storage service shall be limited to the geographic area covered by BCR's market power study.³⁰

42. In order to ensure that BCR uses acquired off-system capacity in a manner consistent with its market-based rate authority and tariff provisions, and in order to satisfy our responsibility to monitor and prevent the exercise of market power, the Commission directs BCR to make 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, BCR is directed to file, for each acquisition of off-system capacity:

- a. the name of the off-system provider;
- b. the type, level, term, and rate of service contracted for by BCR;
- 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 BCR; and
- f. an identification of total volumes, by BCR's rate schedule and customer, that BCR has nominated on each off-system provider during the reporting period.

3. Transmission Provider Standards of Conduct

43. 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.³¹ However, section 358.3(k)(3) provides

³⁰ See *Perryville Gas Storage LLC*, 130 FERC ¶ 61,065, at P 51 (2010); *Blue Sky*, 129 FERC ¶ 61,210, at P 47; *Starks Gas Storage, L.L.C.*, 111 FERC ¶ 61,105, at P 55 (2005).

³¹ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs.

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that “[a] transmission provider does not include a natural gas storage provider authorized to charge market-based rates.”³² For this reason, BCR requests a waiver of the requirements of Part 358.

44. BCR is not interconnected with an affiliated transmission provider and the Commission in this order approves BCR’s request to charge market-based rates for firm and interruptible storage and interruptible hub services, including wheeling service. Thus, the Commission finds that BCR is exempt from the Standards of Conduct and grants BCR’s requested waiver.

4. Crediting of Penalty Revenues to Existing (Non-Offending) Customers

45. The March 5, 2010 data request required BCR to address whether its tariff implements a mechanism to credit the value of gas retained to its existing customers. BCR asserts that it does not expect retained gas to be significant. However, if retained volumes and net proceeds to BCR from the sale of retained gas become substantial, BCR will consider implementing a provision for crediting such new proceeds to its customers.³³

46. Section 284.12(b)(2)(v) of the Commission’s regulations provides in relevant part that “[p]ipelines may not retain net penalty revenues, but must credit them to shippers in a manner to be prescribed in the pipeline’s tariff.”³⁴ In Order No. 637, the Commission noted that the prospect of retaining revenues from penalties offers an incentive for pipelines to propose or implement inappropriate penalties that can hinder efficiency and

¶ 31,161, *order on reh’g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh’g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh’g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. Nat’l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh’g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, 73 Fed. Reg. 16,228 (Mar. 27, 2008), FERC Stats. & Regs. ¶ 32,630 (2008).

³² *See* 18 C.F.R. § 358.3(k)(3)(2009).

³³ *See* March 29, 2010 response to Question 9 of Staff’s March 5, 2010 data request.

³⁴ *See* 18 C.F.R. § 284.12(b)(2)(v) (2010).

competition.³⁵ In Order No. 637-A, the Commission explained that allowing pipelines to retain the revenues from penalties can discourage pipelines from developing the other non-penalty mechanisms that might give shippers positive incentives to control their imbalances, and thus required the crediting of penalty revenues to eliminate the financial incentive that retention of penalties provides the pipeline.³⁶ Thus, consistent with Commission precedent, the Commission will require BCR to implement a mechanism to credit the value of gas retained to its existing (non-offending) shippers.³⁷

5. Interruption of Service under Rate Schedule ILS

47. In section 2.5 of its Rate Schedule ILS (Interruption of ILS) BCR uses the phrase “sole discretion.” The Commission finds that the proposed provision is too broad with regard to interrupting the continuation of any or all services. Thus, consistent with Commission precedent, the Commission will require to replace all references to the phrase “in its sole discretion” with the phrase “with reasonable and nondiscriminatory discretion.”³⁸

6. Definitions

48. Sections 2.51 and 2.52 (Definitions) of the General Terms and Conditions (GT&C) of BCR’s tariff imply that all gas quantities nominated will be scheduled. In *Whitetail*, the Commission required Whitetail to revise similar language to clarify that scheduled quantities are subject to the other provisions of the tariff controlling the priorities of service and factors that may result in scheduled quantities less than nominated quantities.³⁹ Therefore, when it submits its actual tariff filing, the Commission will require BCR to revise GT&C sections 2.51 and 2.52 to clarify that

³⁵ *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 31,315 (2000).

³⁶ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, at 31,609 (2000).

³⁷ *See, e.g., Windy Hill*, 119 FERC ¶ 61,291 at P 51-56 (accepting a proposal to credit to all of its customers whose gas was not purchased or retained, the net proceeds from the sale of the retained gas); *see also Pine Prairie*, 109 FERC ¶ 61,215 at P 46 (accepting a proposal to credit net proceeds to non-offending shippers).

³⁸ *Freebird Gas Storage, LLC*, 111 FERC ¶ 61,054, at P 42 (2005).

³⁹ *See Whitetail*, 123 FERC ¶ 61,274 at P 66.

scheduled quantities are subject to the scheduling priorities in GT&C section 7 and the nomination, confirmation, and scheduling provisions of GT&C section 12.

7. Interruption of Service

49. GT&C section 8.6 provides, in relevant part that:

BCR shall not be liable for any Claims brought by any Person for loss or damage to any Person or property caused, in whole or in part, by any interruption of service, and Customer agrees to Indemnify BCR Group from and against all Claims resulting from, arising out of or in any way related to an interruption of Customer's service ... (but not to the extent caused by BCR's *gross* negligence or willful misconduct) (emphasis added).

50. BCR's proposed gross negligence liability standard is inconsistent with Commission policy that a simple negligence standard is appropriate for the liability and indemnification provisions of open access tariffs on the ground that all parties, including the pipeline, should be liable for their negligent acts.⁴⁰ Thus, when it submits its actual tariff filing, the Commission will require BCR to remove the gross negligence liability standard proposed in GT&C section 8.6 and replace it with a simple negligence standard. Similarly, BCR must remove all occurrences of the word "gross" from the term "gross negligence" and change it to read "negligence" in GT&C sections 9.5, 35, and 36. This action will prevent BCR from being insulated from loss or damages attributable to its own simple or ordinary negligence.

8. Billing and Payments

51. In GT&C section 19.7(b) BCR states that if any invoiced amount remains unpaid after the due date, BCR shall have the right, upon giving customer written notice, to suspend services under any or all service agreements.⁴¹ Pipelines that opt to suspend service are making an election of remedies, i.e., they are determining that the risk of continued service outweighs the potential collection of reservation or other charges during the time of the suspension. Since the pipeline is making an election to suspend service and is not providing the service required under the contract during the suspension,

⁴⁰ See *Orbit Gas Storage, Inc.*, 126 FERC ¶ 61,095, at P 58 (2009) (citing *Port Arthur LNG*, 115 FERC ¶ 61,344, at P 37 (2006)); *Cameron LNG, LLC*, 115 FERC ¶ 61,229, at P 37 (2006); and *Guardian Pipeline, L.L.C.*, 101 FERC ¶ 61,107, at P 18 (2002)).

⁴¹ Pro Forma Sheet No. 83.

the Commission has not permitted pipelines to impose reservation charges during the period of suspension.⁴² For these reasons, the Commission will require BCR to expressly state in GT&C section 19.7(b) that it will not impose reservation charges during the period of suspension.

52. Further, GT&C section 19.7(b) provides that:

Contemporaneously with suspension of Customer's services, BCR shall be *entitled* to provide notice to Customer and to the [Commission] that Customer's services shall be terminated if all amounts due to BCR are not paid within thirty (30) days of BCR's delivery of such notice to Customer (emphasis added).

53. Under proposed section 19.7(b), BCR appears to have the right, but not the obligation, to notify the customer and the Commission before terminating a service agreement. Section 154.602 of the Commission's regulations requires a natural gas company to give at least 30 days' notice to the Commission before terminating a service agreement.⁴³ Therefore, the Commission directs BCR to revise GT&C section 19.7(b) to clarify that if it elects to terminate a customer's service, BCR must provide notice to the Commission of the proposed termination of the customer's service at least 30 days prior to the proposed effective date of such termination.

9. Force Majeure

54. GT&C section 21.2 generally describes a force majeure event as "any cause not reasonably within the control of the party claiming force majeure and which the claiming party was and/or is unable to prevent or overcome through the exercise of reasonable commercial efforts," followed by illustrative descriptions of such event. Such descriptions include "malfunctions of or necessities for making repairs or alterations to storage wells, lines of pipe, pumps, compressors, dehydration equipment, valves, meters, gauges and control systems and well failure." The Commission has consistently held that interruptions from planned or scheduled maintenance are non-force majeure events.⁴⁴

⁴² *Golden Triangle*, 121 FERC ¶ 61,313 at P 49; *see also PG&E Gas Transmission, Northwest Corp.*, 105 FERC ¶ 61,382, at P 42 (2003) (stating that when the pipeline terminates service, it cannot continue to charge the shipper reservation charges).

⁴³ *See* 18 C.F.R. § 154.602 (2010).

⁴⁴ *See, e.g., Florida Gas Transmission Co.*, 107 FERC ¶ 61,074, at P 27-28 (2004) (stating that "scheduled maintenance and repairs are to be treated as non-force majeure

Therefore, the Commission directs BRT to add the words “unscheduled or emergency” before the words “repairs or alterations” in GT&C section 21.2(f).

10. Implementation of NAESB Standards

55. The Commission has adopted in its regulations various standards for conducting business practices and electronic communication with interstate pipelines as promulgated by the North American Energy Standards Board (NAESB).⁴⁵ The standards are intended to govern nominations, allocations, balancing, measurement, invoicing, capacity release, and mechanisms for electronic communication between pipelines and those with whom they do business. BCR states that it has adopted all relevant provisions of Version 1.8 of the NAESB standards in its pro forma tariff, except for the requested waivers applicable to storage projects authorized to charge market-based rates.

56. However, BCR’s pro forma tariff contains NAESB’s Quadrant Electronic Delivery Mechanism Related Standard 4.3.63. This standard is no longer in effect. Thus, the Commission directs BCR to delete NAESB Standard 4.3.63 from GT&C section 25 to ensure conformance with Version 1.8 of the NAESB standards. Further, BCR’s tariff must comply with the currently-effective version of the NAESB standards at the time BCR makes its compliance filing to this order.⁴⁶ When making its tariff compliance filing, BCR must provide a table or chart that identifies each required NAESB standard and its location in the tariff. To the extent a NAESB standard does not apply because of unique system characteristics or other operational aspects, the Commission does not require requests for specific waivers of such standards.⁴⁷ However, in accordance with our ruling in *Trans-Union*, if circumstances change and a standard becomes applicable to BCR’s operations, then BCR must file to modify its tariff to comply with the standard.

events.” The Commission disagreed with the pipeline’s assertion that “non-discretionary but planned events are appropriately included in its definition of force majeure”).

⁴⁵ *Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-T, 74 Fed. Reg. 9162 (March 3, 2009), FERC Stats. & Regs. ¶ 31,289 (2009) (incorporating by reference into its regulations Version 1.8 of the standards adopted by the Wholesale Gas Quadrant (WGQ) of the NAESB).

⁴⁶ *See Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-U, 75 Fed. Reg. 16,337 (Apr. 1, 2010), FERC Stats. & Regs. ¶ 31,307 (2010) (incorporating by reference into its regulations Version 1.9 of the standards adopted by the WGQ of the NAESB).

⁴⁷ *See Trans-Union Interstate Pipeline, L.P.*, 104 FERC ¶ 61,315, at P 20 (2003) (*Trans-Union*).

11. Security

57. The Commission issued a Creditworthiness Policy Statement setting forth its approach to credit issues relating to transportation on natural gas pipelines.⁴⁸ In the Creditworthiness Policy Statement, the Commission stated that pipelines must establish and use objective criteria for determining creditworthiness.⁴⁹

58. GT&C section 32.4 provides, in relevant part, that “in the event BCR requires Performance Assurance, such Performance Assurance in an amount equivalent to no less than one month of estimated fees and service charges must be received by BCR within five (5) Days of BCR’s written request for Performance Assurance.” In the Creditworthiness Policy Statement, the Commission held that when a customer is no longer creditworthy, the customer must be given at least five *business* days within which to provide advanced payment for one month’s service (emphasis added).⁵⁰ Thus, the Commission directs BCR to revise GT&C section 32.4 to permit its customers to provide performance assurance to BCR within five business days of BCR’s written request for performance assurance or, in the alternative, propose a new timeline that addresses the Creditworthiness Policy Statement’s concern that shippers be provided a reasonable amount of time to provide advanced payment for one month’s service.

59. Further, GT&C section 32.4 provides that “Performance Assurance to cover an increase in the market value of Quantities of Gas loaned to a Customer ... must be received within Three (3) days of BCR’s request for such additional Performance Assurance...” This provision conflicts with the Commission’s creditworthiness collateral timeline policy which allows shippers three *business* days to respond to BCR’s request to review the customer’s financial statements.⁵¹

12. Appendix A to Form of Hub Service Agreement for Rate Schedules ILS, IPS, IITS, and IBS

60. Appendix A to BCR’s form of hub service agreement for Rate Schedules ILS, IPS, IITS, and IBS contains a monthly minimum fee provision, which is inconsistent with

⁴⁸ *Creditworthiness Standards for Interstate Natural Gas Pipelines*, 111 FERC ¶ 61,412 (2005) (Creditworthiness Policy Statement).

⁴⁹ *Id.* P 10.

⁵⁰ *Id.* P 28. See also *Bluewater Gas Storage, LLC*, 117 FERC ¶ 61,122, at P 44 (2006).

⁵¹ See *Northern Natural Gas Co.*, 102 FERC ¶ 61,076 (2003) and *Tennessee Gas Pipeline Co.*, 102 FERC ¶ 61,075 (2003).

section 284.10(c)(1) of the Commission's regulations.⁵² Section 284.10(c)(1) requires a rate for interruptible service to be based on actual units of gas transported or, in this case, actual quantities of gas loaned, parked, traded or withdrawn.⁵³ Thus, the Commission directs BCR to remove the monthly minimum fee provision from Appendix A to its form of hub service agreement for Rate Schedules ILS, IPS, IITS, and IBS.

13. Typographical Errors

61. When it submits its actual tariff filing, BCR is required to correct the typographical and miscellaneous errors identified in Appendix A to this order.

E. Environmental Review

62. On February 2, 2010, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was published in the *Federal Register*⁵⁴ and mailed to 283 parties including federal, state, and local government officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

63. The Commission received comment letters in response to the NOI from one affected landowner (K&G), three federal agencies (National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS), and the U.S. Fish and Wildlife Service (FWS)), and two state agencies (Louisiana Department of Natural Resources (LDNR) and Louisiana Department of Wildlife and Fisheries (LDWF)). The primary issues raised concerned land use, essential fish habitat (EFH), migratory birds, and alternative facility sites.

64. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),⁵⁵ staff prepared an environmental assessment (EA) for the Bully Camp Gas

⁵² 18 C.F.R. § 284.10(c)(1) (2010).

⁵³ Section 284.10(c)(1), *Volumetric Rates*, states in relevant part, that:

[A]ny rate filed for service subject to this section [interruptible transportation service] must be a one-part rate that recovers the costs allocated to the service to the extent that the projected units of that service are actually purchased and may not include a demand charge, a minimum bill or minimum take provision or any other provision that has the effect of guaranteeing revenue.

⁵⁴ 75 Fed. Reg. 6378 (2010).

⁵⁵ 42 U.S.C. §§ 4321-4370f (2006).

Storage Project. The U.S. Army Corps of Engineers (COE) participated in the preparation of the EA as a cooperating agency. On May 14, 2010, the EA was placed into the public record of this proceeding⁵⁶ and issued for a 30-day comment period. The EA addressed geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, reliability and safety, cumulative impacts, and alternatives. As summarized below, the EA also addressed all substantive comments received in response to the NOI.

65. K&G submitted scoping comments objecting to BCR's proposed route for the Texas Eastern interconnect pipeline where it would cross K&G's property at Milepost 2.3 near Highway 1. K&G stated that the proposed pipeline would prohibit them from developing this area of their property.⁵⁷ The EA identified an alternative pipeline alignment (Extended HDD Alternative) that is environmentally preferable to the proposed route on K&G's property. This alternative entails BCR moving the entry point for its horizontal directional drill (HDD) to a site far enough south of Highway 1 to allow K&G to develop its frontage property. As recommended in the EA, Environmental Condition 15 of this order requires BCR to revise its HDD plan for the Bayou Lafourche crossing to incorporate the Extended HDD Alternative.

66. The NMFS submitted scoping comments regarding potential impacts on EFH.⁵⁸ The EA concluded that the proposed project would result in minimal impacts on EFH given the limited amount of disturbance, the abundance of similar habitat adjacent to the project area, BCR's commitment to implement the protective measures included in its Wetland and Waterbody Construction and Mitigation Procedures (*Procedures*), and the recommended completion of the wetland mitigation plan. As recommended in the EA, Environmental Condition 11 requires BCR to complete its consultation with NMFS, COE, and LDNR regarding its development of a mitigation plan for the project's impacts on wetlands.

67. The FWS' scoping comments regarding migratory birds expressed concern for wading bird rookeries and bald eagles protected under the Migratory Bird Treaty Act. The EA disclosed that no wading bird rookeries were identified in the project area. Nevertheless, BCR has committed to adopt the FWS time-of-year and distance restriction should any rookeries be identified during construction. In addition, no bald eagle nests

⁵⁶A notice announcing the availability of the EA was published in the *Federal Register* on May 21, 2010 (75 Fed. Reg. 28,602 (2010)).

⁵⁷ K&G's comments were addressed in sections B.4 and C.4 of the EA.

⁵⁸ NMFS' comments were discussed in section B.3.2 of the EA.

were identified within 1,500 feet of the project area. BCR has committed to contact the FWS immediately for further consultation if any bald eagle nests are identified within 1,500 feet of the project area prior to construction. The EA concluded that BCR's proposed mitigation would adequately minimize any impacts on migratory birds.

68. The LDNR scoping comments stated that BCR's application for a Coastal Use Permit was complete and that review had begun to determine compliance with the Louisiana Coastal Resource Program and consistency with the federal Coastal Zone Management Act. As discussed in section B.4 of the EA, BCR would seek a coastal zone consistency determination through its joint application to the COE and LDNR for a Coastal Use Permit. The Commission will require BCR to document that it has received the appropriate federal authorizations, which includes the coastal zone consistency clearance, prior to beginning construction of the project.

69. The LDWF's scoping comments described BCR's consultation with interested agencies at a pre-application meeting and alternative brine disposal well locations. Alternatives were discussed and analyzed in section C of the EA, including an analysis of brine disposal well locations.

70. Following issuance of the EA, the Commission received comment letters from the FWS, NMFS, and K&G. The FWS commented that the EA did not discuss mitigation for the temporary impacts on wetlands. As stated in the EA,⁵⁹ impacts on estuarine emergent, palustrine emergent, and palustrine scrub/shrub wetlands would be temporary, as BCR would allow these areas to return to pre-construction conditions within the construction and operational rights-of-way. As described in section A.6 of the EA, BCR would implement the specific wetland mitigation measures stipulated in its *Procedures* during construction and operation of the project. These measures ensure that temporary wetland impacts are sufficiently minimized to the maximum extent practical.

71. Additionally, the FWS stated that the wetland mitigation plan should include a monitoring component and the FWS should be consulted in the development of this plan. Accordingly, Environmental Condition 11 includes the FWS in the process of developing the final wetland mitigation plan. The FWS and NMFS expressed concern over the right-of-way being at a lower elevation than the surrounding wetlands in the area, suggesting that it could serve as a pathway for the intrusion of salt water into surrounding fragile brackish and intermediate wetlands. These agencies recommended BCR mitigate for this possible impact by monitoring the right-of-way for one year. BCR has committed to monitor the right-of-way for wetland restoration for three years in its *Procedures*. The Commission concludes that Environmental Condition 11 and BCR's adherence to its *Procedures* will address the FWS comments.

⁵⁹ Environmental Assessment, Page 32.

72. The NMFS' June 9, 2010 comments provided similar concerns as the FWS comments and stated that it believes it is unlikely that all wetland areas impacted by construction activities would recover fully. As previously discussed, BCR will monitor and record the success of wetland revegetation annually for the first three years after construction or until revegetation is successful (80 percent of the type, density, and distribution of the vegetation in adjacent wetland areas not disturbed by construction), as required by its *Procedures*. If revegetation is not successful within three years, BCR will develop and implement (in consultation with a professional wetland ecologist) a remedial revegetation plan to actively revegetate the wetland. BCR's revegetation efforts must continue until wetland revegetation is successful.

73. NMFS recommended the final EA and a Finding of No Significant Impact (FONSI) be withheld until a monitoring and mitigation plan has been developed. The Commission notes that the May 14, 2010 EA that NMFS commented on was the final EA. In its subsequent letter dated June 10, 2010, NMFS stated that without a final wetland monitoring and mitigation plan, they are unable to concur with the EA conclusions that the project will not have substantial adverse effect on managed fisheries or their designated EFH. Environmental Condition 11 requires the completion of this plan prior to construction. The Commission finds that there is no need to delay the FONSI until the wetland mitigation plan is developed because construction approvals are contingent upon the completion of the plan.

74. Finally, NMFS stated that the EA should address white shrimp, and not pink shrimp. Other than a brief reference to pink shrimp in its discussion of the NMFS' Fishery Management Plans, the EA discussion of this species addresses white shrimp.

75. K&G's comments described its ongoing negotiation with BCR, including a June 15, 2010 meeting where K&G proposed new alternatives to locate the Texas Eastern interconnect pipeline on the north side of K&G's property. As previously discussed, Environmental Condition 15 requires BCR to consult with K&G as it revises its HDD plan for the Extended HDD Alternative on the K&G property. It is evident that BCR and K&G continue to negotiate a mutually agreeable facility configuration on K&G's property. To encourage the continuation of this negotiation, Environmental Condition 15 allows for BCR to file documentation of an agreement with K&G in lieu of the Extended HDD Alternative.

76. The Commission has reviewed the information and analysis contained in the record, including the EA, regarding the potential environmental effect of the project. Based on consideration of this information, the Commission concludes that if constructed and operated in accordance with BCR's application, as supplemented, and in compliance with the environmental conditions in Appendix B to this order, the Commission's approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

77. 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.⁶⁰

F. Engineering Review

78. Commission staff completed an engineering analysis of the proposed facilities, including the design capacity. The Commission concludes that the facilities are properly designed to provide a total of 23.6 Bcf of total storage capacity (15 Bcf working gas and 8.6 Bcf cushion gas), with withdrawal capability of up to 1,200 MMcf per day. The Commission further concludes that the geological and engineering parameters for the proposed underground salt cavern gas storage facilities are well defined, and that the cavern locations are well within the design criteria and confinement of the salt formation.

79. Because salt deforms plastically in a relatively short time, caverns will shrink over time. As stated in *A Brief History of Salt Cavern Use*, large volume losses due to salt creep have occurred in natural gas storage caverns.⁶¹ Further, the Interstate Oil and Gas Compact Commission's *Hydrocarbon Storage in Mined Caverns Report* (IOGCC Report) states that monitoring to demonstrate cavern stability and successful hydrodynamic containment should be carried out throughout the life of the facility.⁶² In order to mitigate these concerns, the Commission will require BCR to conduct, every five years, sonar surveys or other approved plans to monitor the caverns' size and shape to ensure that salt creep does not damage the integrity of the caverns or result in lost gas or reductions in storage capacity.

80. Additionally, the IOGCC Report states "[a]ll gaseous and/or liquid products injected into or withdrawn from the storage facility shall be metered using industry accepted standards. The measurement shall be counterchecked by using product level

⁶⁰See, 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).

⁶¹ Thomas, Robert and Gehle, Richard, *A Brief History of Salt Cavern Use*, Solution Mining Research Institute, 2000.

⁶² *Hydrocarbon Storage in Mined Caverns, A Guide for State Regulators*, Interstate Oil and Gas Compact Commission, 2000.

measurement in the cavern (using the level versus volume curve).”⁶³ Therefore, the Commission will require BCR to file annually an inventory verification study to assist in identification of potential problems with the storage facility. BCR shall comply with the engineering conditions listed in Appendix C of this order.

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued to BCR under section 7 of the NGA to construct and operate facilities described in the body of this order, as more fully described in its application, subject to the environmental and engineering conditions stated in the body of this order and in the appendix.

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

(C) A blanket transportation certificate is issued BCR under Subpart G of Part 284 of the Commission’s regulations with pregranted abandonment of services.

(D) The authorization approved in Ordering Paragraph (A) is conditioned on BCR’s compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations.

(E) 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.

(F) BCR’s request to charge market-based rates for firm and interruptible storage and interruptible hub and wheeling services is approved, consistent with the discussion in the body of this order. This authorization is subject to reexamination in the event that: (a) BCR expands its storage capacity beyond the amount authorized in this order; (b) an affiliate acquires an interest in another storage field in the relevant geographic market area; (c) an affiliate links storage facilities to BCR; and (d) BCR or an affiliate acquires an interest in or is acquired by an interstate pipeline connected to BCR.

⁶³ *Id.*

BCR or an affiliate shall notify the Commission if any of the above conditions occurs within 10 days of acquiring such knowledge.

(G) BCR's request for waivers of the Commission's cost-based regulations is granted, as discussed herein. BCR is required to file page 520 of Form No. 2-A to report gas volume information as the basis for imposition of ACA charges. These waivers are subject to re-examination in the event that BCR's market power or market-based rates need to be re-examined. BCR shall maintain records consistent with the Uniform System of Accounts.

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

(I) Within 30 days after its first full year of operation and every year thereafter, BCR shall file an annual informational filing on its provisions of service using off-system capacity as discussed in the body of this order.

(J) BCR must submit actual tariff sheets that comply with the requirements contained in the body of this order no less than 60 days, and no more than 90 days, prior to the commencement of service.

(K) BCR shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental non-compliance identified by other federal, state, or local agencies on the same day that such agency notifies BCR. BCR shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(L) The untimely motions to intervene are granted as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Identification of Corrections in BCR Holdings, Inc.'s FERC Gas Tariff, Pro Forma Volume No. 1

Typographical Errors

| <u>Sheet No.</u> | <u>Reference</u> | <u>Commentary</u> |
|------------------|--|--|
| 5 | FSS Rate Statement, Fuel Reimbursement | Remove "(" before "Customer Service Agreement." |
| 12 | 2 | Correct "CHARACI'ER" to read "CHARACTER." |
| 15 | 8.1 | Remove the additional period at the end of the last sentence. |
| 29 | 8.2 | Remove the comma after "Customer shall transfer title to Customer Inventory." |
| 29 | 8.2 | Replace the period after "adverse claims of any kind" with a comma. |
| 36 | 2 | Correct "scheduled" to read "schedule." |
| 38 | 3(e) | Add a period at the end of the sentence. |
| 38A | 8.2 | Remove the comma before "[c]ustomer shall transfer title to IBS Gas quantities." |
| 38A | 8.5 | Correct the spacing between the terms "on" and "which." |
| 39 | GT&C Table of Contents, 23 | Correct "IMBURSEMENT" to read "REIMBURSEMENT." |
| 47 | 2.77 | Correct "Dally" to read "Daily." |
| 68 | 8.1 | Correct "MI)IQ" to read "MDIQ." |
| 70 | 11 | Replace the period before "and BCR shall not be obligated ..." with a comma. |
| 74 | 12.6 | Correct ",n" to read "in." |
| 74 | 12.10(c) | Correct "m" to read "in." |
| 81 | 19.1 | Correct the spacing between the terms " <i>ad valorem</i> ." |
| 83 | 19.7(a) | Replace the period after "If at any time payments for services and payments for interest are both due" with a comma. |
| 85 | 21.2(g) | Correct "fur" to read "for." |

| <u>Sheet No.</u> | <u>Reference</u> | <u>Commentary</u> |
|------------------|---|--|
| 86 | 24.3 | Correct “Services” to read “Service.” |
| 87 | Internet Electronic Transport Related Standards | Add a period at the end of the enumeration of the standards. |
| 88 | 27 | Add a comma after “however.” |
| 91 | 32.2 | Remove “I” before “BCR shall be entitled to require” |
| 93 | 32.5 | Correct “firm” to read “form.” |
| 93 | 32.7 | Correct “CONTEMPLAIFD” to read “CONTEMPLATED.” |

Miscellaneous Corrections

| <u>Sheet No.</u> | <u>Reference</u> | <u>Commentary</u> |
|--|---|--|
| 12, 13, 16, 17, 21, 26, 27, 30, 36 | 1(a), 2(c), 2.3, 2.1, 2.1(c), 2.3, 2.1(b), 2.1(a) | BCR’s pro forma tariff contains numerous references to “sufficient” in discussing capacities. BCR is directed to revise its tariff to define “sufficient.” |

Appendix B

This authorization is subject to the following environmental conditions:

1. BCR 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 the Order. BCR must:
 - a. request any modification to these procedures, measures, or conditions in a filing;
 - 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 the 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**, BCR shall file an affirmative statement, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI'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 shall include all of the staff's recommended facility locations. **As soon as they are available, and before the start of construction**, BCR shall file 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.

BCR's exercise of eminent domain authority granted under the NGA section 7(h) in any condemnation proceedings related to the Order must be consistent with

these authorized facilities and locations. BCR's right of eminent domain granted under NGA 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. BCR shall file 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. 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 BCR'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**, BCR shall file an Implementation Plan for review and written approval by the Director of OEP. BCR must file revisions to the plan as schedules change. The plan shall identify:
 - a. how BCR 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 the Order;
 - b. how BCR 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 BCR 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 BCR's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) BCR will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, BCR shall file updated status reports **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 BCR's efforts to obtain the necessary federal authorizations;
 - b. the construction status of each spread, 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 EIs 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 the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by BCR from other federal, state, or local permitting agencies concerning instances of noncompliance, and BCR's response.

8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, BCR shall file documentation that it has received all authorizations required under federal law (or evidence of waiver thereof).
9. BCR must receive written authorization from the Director of OEP **before placing each phase of the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the authorized facilities in service**, BCR shall file an affirmative statement, 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 BCR has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. **Prior to construction**, BCR shall complete its consultations with the COE, LDNR, FWS, and NMFS to develop a wetland mitigation plan and shall file the final plan (including any associated agency agreements or approvals). The plan shall include details regarding the amount, location, and types of mitigation proposed; specific performance standards to measure the success of the mitigation; and remedial measures, as necessary, to ensure that wetland mitigation is successful.
12. **Prior to construction of the Bayou Lafourche crossing**, BCR shall file a HDD noise analysis identifying the existing and projected noise levels at each noise-sensitive area (NSA) within 0.5 mile of the HDD entry site. If noise attributable to the HDD is projected to exceed a day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at any NSA, BCR shall file with the noise analysis a mitigation plan to reduce the projected noise levels for the review and written approval by the Director of OEP. During drilling operations, BCR shall implement the approved plan, monitor noise levels, and make all reasonable efforts to restrict the noise attributable to the drilling operations to no more than an L_{dn} of 55 dBA at the NSAs.
13. BCR shall file a noise survey **no later than 30 days** after beginning use of the Leaching Plant. If the noise attributable to the operation of the equipment at the Leaching Plant exceeds an L_{dn} of 55 dBA at any nearby NSA, BCR shall reduce

operation of this station or install additional noise controls until a noise level below an L_{dn} of 55 dBA at the nearby NSA is achieved. BCR shall confirm compliance with the above requirement by filing a second noise survey **no later than 30 days** after it installs the additional noise controls.

14. BCR shall file a noise survey **no later than 60 days** after placing the Bully Camp Compressor Station in service. If the noise attributable to the operation of the equipment at the Bully Camp Compressor Station at full load exceeds an L_{dn} of 55 dBA at any nearby NSA, BCR shall install the additional noise controls to meet the level **within one year** of the in-service date. BCR shall confirm compliance with the above requirement by filing a second noise survey **no later than 60 days** after it installs the additional noise controls.
15. **Prior to construction of the Texas Eastern interconnect pipeline**, BCR shall file, for review and written approval by the Director of OEP, a revised site-specific HDD plan for the Bayou Lafourche crossing that includes a drill entry site far enough south of the highway to allow K&G to develop its Highway 1 frontage property. BCR shall develop this plan in consultation with K&G. In lieu of a revised HDD plan, BCR may also provide documentation that it has reached a landowner agreement with K&G regarding its proposed HDD crossing.

Appendix C

This authorization is subject to the following engineering conditions:

1. The maximum inventory of natural gas stored in BCR's storage facility shall not exceed the certificated levels of 11.8 Bcf at 14.73 psia and 60° F for each cavern. The maximum shut-in stabilized pressure gradient for each cavern shall not exceed 0.9 psi/ft at the casing shoe. The minimum pressure gradient shall be limited to 0.24 psi/ft at the casing shoe.
2. The final gas storage operating capacity of each cavern, working gas capacity, cushion gas capacity and minimum pressure shall be determined after the facility's operating parameters are evaluated and filed with the Commission (including data and work papers to support the actual operating capacity determination).
3. Before commencing storage operations, BCR shall:
 - (a) Conduct a Mechanical Integrity Test for each cavern before initiation of each well/cavern to natural gas storage and file the results with the Commission;
 - (b) File with the Commission copies of the latest interference tracer surveys, or other testing or analysis on each cavern to verify the lack of communication between the caverns;
 - (c) Establish and maintain a subsidence monitoring network over the proposed caverns' storage area;
 - (d) Assemble, test, and maintain an emergence shutdown system;
 - (e) Conduct and file with the Commission the results of the sonar surveys of each cavern, including plan view and cross sections; and
 - (f) Determine and file with the Commission the volume of rubble at the base of each cavern, including the methodology of determining such volume.
4. Until one year after the storage inventory reaches or closely approximates the full authorized capacity, BCR shall twice annually conduct a leak detection test during storage operations to determine the integrity of each cavern, well bore, casing and wellhead, and file the results with the Commission, unless otherwise ordered by the Commission.
5. Each cavern's well(s) shall be periodically logged to check the integrity of each casing string. Additionally, every five years, BCR shall conduct sonar surveys of the caverns to monitor their dimensions and shape, including the cavern roof, and to estimate pillar thickness between openings throughout the storage operations, and file the results with the Commission. In the alternative, no less than 30 days before placing the caverns into service, BCR may file with the Commission for

prior approval of the methodology, a detailed cavern integrity monitoring plan that is consistent with the intent of the sonar survey.

6. BCR shall conduct an annual inventory verification study on each cavern, and file the results with the Commission.
7. The BCR storage project shall be operated in such a manner as to prevent gas loss from migration.
8. BCR shall file with the Commission semi-annual reports (to coincide with the maximum and minimum storage pressures) containing the following information in accordance with section 157.214(c) of the Commission's regulations (volumes shall be stated at 14.73 psia and 60° F, and pressures shall be stated in psia):
 - (a) The daily volume of natural gas injected into and withdrawn from each cavern;
 - (b) The inventory of natural gas and shut-in wellhead pressure for each cavern at the end of each reporting period;
 - (c) The maximum daily injection and withdrawal rates experienced for the storage field during the reporting period, and the average working pressure on such maximum days, taken at a central measuring point where the volume injected or withdrawn is measured;
 - (d) The results of any tests performed to determine the actual size, configuration, or dimensions of each storage cavern;
 - (e) A discussion of any operating problems and conclusions;
 - (f) Other data or reports which may aid the Commission in the evaluation of the storage project.
9. BCR shall continue to file the above semi-annual reports in accordance with section 157.214(c) of the Commission's regulations for a period of one year following the date facility operation at maximum level is initiated.
10. BCR shall file any test or study obtained from the test well described in Docket No. CP09-454-000 which authorized certain temporary acts and operations, as soon as the test well is completed.