

132 FERC ¶ 61,097
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.

East Cheyenne Gas Storage, LLC

Docket No. CP10-34-000

ORDER ISSUING CERTIFICATES

(Issued August 2, 2010)

1. On December 18, 2009, East Cheyenne Gas Storage, LLC (East Cheyenne) filed an application under section 7(c) of the Natural Gas Act (NGA),¹ requesting a certificate of public convenience and necessity authorizing the construction and operation of a new interstate natural gas storage facility, the East Cheyenne Gas Storage Project, in the nearly depleted West Peetz and Lewis Creek oil and gas reservoirs located in Logan County, Colorado. In addition, East Cheyenne requests that the Commission: (i) authorize construction of the proposed, temporary West Peetz Compressor Station and, pursuant to NGA section 7(b),² pre-granted authorization to abandon, dismantle, and remove this temporary facility following the commissioning of the project's storage processing facility;³ (ii) grant Part 157, Subpart F and Part 284, Subpart G blanket certificates;⁴ (iii) approve its pro forma tariff under which East Cheyenne will provide open-access interstate storage and hub services, including interruptible wheeling services; (iv) authorize East Cheyenne to charge market-based rates for its proposed interstate storage, hub, and wheeling services; and (v) grant limited waivers as set forth herein.

¹ 15 U.S.C. § 717f(c) (2006).

² *Id.* § 717f(b).

³ *See infra* P 9 (describing the processing facility as consisting of a 23,675-horsepower (hp) compressor station, natural gas liquids (NGL) recovery plant, gas dehydration facilities, and amine-treating facilities).

⁴ *See* 18 C.F.R. Part 157, Subpart F and Part 284, Subpart G (2010).

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

I. Background

3. East Cheyenne is a Delaware limited liability company authorized to do business in Colorado and is owned by Merchant Energy Partners, LLC (Merchant Energy), a subsidiary of Quantum NGS Holdings, LLC.⁵ Neither East Cheyenne nor its upstream owners have any ownership interests in operating natural gas storage facilities in the United States other than their interests in the project.

4. East Cheyenne is currently not a "natural gas company" within the meaning of section 2(6) of the NGA⁶ and currently holds no section 7 certificates. Upon completion of the proposed construction, however, East Cheyenne will become a natural gas company within the meaning of NGA section 2(6) and be subject to the Commission's jurisdiction.

5. East Cheyenne has no existing NGA-jurisdictional operations. East Cheyenne, however, produces relatively small quantities of oil from existing wells in the West Peetz and Lewis Creek Fields and plans to increase its production of oil and NGLs through non-jurisdictional enhanced oil recovery (EOR) activities in the two fields before it receives authorization to construct and operate the proposed storage facility. The EOR and NGL activities are subject to the jurisdiction of the Colorado Oil and Gas Conservation Commission (COGCC). East Cheyenne plans to continue its EOR activities concurrently with its development and operation of the project.

6. East Cheyenne currently operates the West Peetz and Lewis Creek Fields, both of which are structural traps on the east flank of the D-J Basin in Logan County, Colorado. East Cheyenne currently produces, from the J Sand, approximately ten barrels of oil per day from each field. These fields have produced oil and gas from the Cretaceous D and J sands since about 1952. The West Peetz Field has produced 1.8 million barrels of oil and 3.7 Bcf of gas and the Lewis Creek Field has produced 5.4 million barrels of oil and 4.1 Bcf of gas. For East Cheyenne's proposed storage service two storage zones, the D Sand and the J Sand, would be utilized in both the West Peetz and Lewis Creek fields.

⁵ Quantum NGS Holdings, LLC is a joint a venture between Larry Bickle and Quantum Energy Partners, a private equity firm.

⁶ See 15 U.S.C. § 717a(6) (2006).

II. Proposal

7. As discussed earlier, East Cheyenne proposes to convert the West Peetz and Lewis Creek Fields, two nearly depleted oil and gas fields, to natural gas storage service. The fields are located approximately twenty-three miles north of Sterling, in Logan County, Colorado. The project will be constructed in two phases. The first phase of construction includes facilities for the EOR activities, and upon Commission approval, injection/withdrawal (I/W) wells and appurtenant facilities, as well as the temporary West Peetz Compressor Station.⁷ The second phase of construction completes East Cheyenne's proposed storage project with the 24-inch header, additional I/W wells, a storage processing facility, and appurtenant facilities.

8. East Cheyenne states that when completed the project will have a total capacity of 29.5 billion cubic feet (Bcf): approximately 18.9 Bcf of working gas capacity (11.5 Bcf within the West Peetz Field and 7.4 Bcf within the Lewis Creek Field) and 10.6 Bcf of cushion gas (5.7 Bcf in the West Peetz Field and 4.9 Bcf in the Lewis Creek Field). The project will have a maximum injection capability of 350 million standard cubic feet per day (MMscf/d) and a maximum withdrawal capability of 350 MMscf/d. The project will interconnect through a header system with the Rockies Express Pipeline LLC (REX) and Trailblazer Pipeline Company LLC (Trailblazer) interstate pipeline systems.

A. New Facilities

9. When completed the project will consist of: (i) ten natural gas storage I/W wells, including associated metering, at six new well pads, (ii) five monitoring wells, (iii) four produced water injection/disposal wells, (iv) a centrally located storage processing facility, consisting of a 23,675-hp compressor station,⁸ an NGL recovery plant, gas dehydration facilities, and amine-treating facilities, (v) methanol injection units at each well pad, (vi) approximately 66,000 feet of 4- to 24-inch-diameter pipelines (with associated pig launchers and receivers and valving) connecting the wellheads to the storage processing facility, and (vii) a header system consisting of 3.57 mile, 16-inch and 24-inch diameter parallel pipelines, with metering, extending from the storage processing

⁷ The West Peetz Compressor station will include two leased 1,340 hp compressor units in support of East Cheyenne's non-jurisdictional EOR activities, and two leased jurisdictional 1,340 hp units to support the initial jurisdictional storage services.

⁸ This permanent compressor station at the storage processing facility will include five 4,735-hp reciprocating compressor units, four of which (18,940 hp) will be jurisdictional, with the remaining unit to be used for ongoing EOR and NGL recovery activities.

facility to interconnections with REX and Trailblazer. In addition to the permanent facilities, East Cheyenne will also construct temporary compression facilities (the West Peetz Compressor Station), to be located within the footprint of the processing facility, that will support EOR and Phase I natural gas storage operations described below.

1. Phase I Construction and Activities

10. East Cheyenne proposes to construct the project in two phases. The first phase consists of constructing a non-jurisdictional 16-inch, 3.57-mile interconnecting pipeline from REX to the proposed temporary West Peetz Compressor Station, located within the storage processing facility footprint, as well as a meter station at the interconnect with REX. No additional compression is necessary to support this phase of the project. East Cheyenne will purchase and receive natural gas from REX and inject the gas into the West Peetz Field in order to recover additional oil in the field. East Cheyenne states that this gas will not be withdrawn and sold into interstate commerce, but will be recycled into the West Peetz Field to support EOR activities. No gas storage or transportation of natural gas in interstate commerce will be conducted during this stage of construction. A uni-directional check valve will be installed on the 16-inch pipeline to ensure gas will not be delivered into REX prior to Commission certification. East Cheyenne asserts that the proposed Phase 1 activities are subject to COGCC's jurisdiction. East Cheyenne recently received the necessary permits from COGCC.

11. East Cheyenne states that once it receives certificate authority it will construct the temporary West Peetz Compressor Station, drill four I/W wells and install appurtenant facilities. East Cheyenne will install two 1,340-hp EOR compressors at the West Peetz Compressor Station to collect lift gas and production gas and recompress it for re-injection into the J Sand. To support its early stage storage operation, East Cheyenne will also install two 2,680-hp compressors next to the EOR compressors to recompress up to 36 MMscf/d of gas to be injected and stored in the West Peetz D Sand for ultimate re-delivery to the REX pipeline. East Cheyenne will also install a dew point control plant to process and remove NGLs. Additionally, East Cheyenne intends to convert the 16-inch line from the REX interconnect to the West Peetz Compressor Station to jurisdictional natural gas service to support the early stage of its natural gas storage operations. Additional metering facilities at the REX interconnect will also be installed. The four I/W wells will also be used for jurisdictional service. Approximately 4 Bcf of working gas capacity will be created in this phase of construction.

2. Phase II Construction and Activities

12. The second phase consists of the removal of the West Peetz Compressor Station, which will be replaced with permanent compressors to be constructed as part of the central storage processing facility. At this time, East Cheyenne will also drill six more natural gas I/W wells, five monitoring wells, and four water injection/disposal wells to

accommodate disposal of produced and processed waste water. East Cheyenne will construct bi-directional metering facilities and a methanol injection unit at each of the six well pads and construct piping to connect the I/W wells to the storage processing facility. East Cheyenne will disconnect the 16-inch header from REX, connect it to Trailblazer to enable bidirectional flow from the Trailblazer system and install a 24-inch diameter header pipeline and second meter station parallel to the 16-inch pipeline to connect with REX.

B. Market and Services

13. East Cheyenne conducted a non-binding open season for the project which closed on August 6, 2009. During this open season, East Cheyenne received expressions of interest for 27 Bcf of firm storage capacity. East Cheyenne states that these expressions of interest demonstrate that substantial market demand for the proposed services exist. East Cheyenne anticipates that interest will grow further once the project begins construction. However, no precedent agreements have been executed.

14. Once in service, East Cheyenne proposes to provide firm and interruptible storage services pursuant to Rate Schedules FSS and ISS, as well as, firm and interruptible hub services (i.e., parking, loan, and wheeling) to shippers at market-based rates, in accordance with the terms of its proposed pro forma tariff. East Cheyenne proposes to offer firm parking service under Rate Schedule FP and firm loaning service under Rate Schedule FL. Further, East Cheyenne proposes to offer three services to meet the needs of end-use customers, such as gas-fired power plants on the interconnected pipelines. The three services are: (1) no-notice storage service under Rate Schedule NNSS; (2) firm hourly balancing service under Rate Schedule FHBS; and (3) interruptible hourly balancing service under Rate Schedule IHBS. East Cheyenne contends that these three services would afford customers a degree of flexibility not otherwise available under the North American Energy Standard Board's (NAESB) generally applicable nomination cycles and that the Commission has previously authorized independent storage providers to offer no-notice and hourly balancing services.⁹

15. East Cheyenne also proposes to offer enhanced interruptible storage service under Rate Schedule EISS, enhanced interruptible loan service under Rate Schedule EILS, and enhanced interruptible wheeling service under Rate Schedule EIWS. The enhanced

⁹ See Application at 27, citing *MoBay Storage Hub LLC*, 126 FERC ¶ 61,241, at P 3 (2009) (firm hourly balancing service); *Orbit Gas*, 126 FERC ¶ 61,095, at P 28, 35 (2009) (no-notice service); *Atmos Pipeline and Storage, LLC*, 127 FERC ¶ 61,260, at P 14, 66 (2009) (firm and interruptible hourly balancing services); *Arlington Storage Co.*, 125 FERC ¶ 61,306, at P 64, 136 (2008) (no-notice service).

interruptible storage and hub services, East Cheyenne maintains, will offer customers a priority below firm services, but above other non-enhanced interruptible services. East Cheyenne contends that the proposed services are structured to allow customers that value the higher priority to agree to pay a capacity charge. East Cheyenne states that the services were designed in a comparable manner to other Commission reviewed and accepted independent storage companies' services.¹⁰

C. Market-Based Rates

16. East Cheyenne requests that the Commission find that East Cheyenne will not exercise market power with respect to the storage and hub services once the project facilities are completed and placed in service. East Cheyenne further requests that the Commission grant its request to charge market-based rates for such services.

D. Pre-Granted Abandonment Authorization Under NGA Section 7(b)

17. East Cheyenne requests pre-granted authorization to abandon and dismantle the proposed West Peetz Compressor Station following the date the permanent storage processing facility is placed into service. East Cheyenne believes the request will foster administrative efficiency and cites to previous Commission orders as precedent.¹¹ East Cheyenne states that the abandonment would not affect service to its customers.

E. Blanket Certificates and Waiver Requests

18. East Cheyenne requests a Part 284 Subpart G blanket certificate to provide open-access firm and interruptible natural gas storage services pursuant to its pro forma tariff. East Cheyenne also requests a blanket certificate under Part 157 of Subpart F to perform routine activities in connection with the construction, acquisition, maintenance, abandonment, and operation of the proposed facilities.

19. East Cheyenne requests waivers of certain filing and other requirements that it considers inapplicable to its proposal for storage and hub services with market-based rates. Because it proposes to charge market-based rates, East Cheyenne requests waiver of sections 157.6(b)(8) and 157.20(c)(3) of the Commission's regulations,¹² requiring

¹⁰ See Application at 28, citing *Atmos*, 127 FERC ¶ 61,260 at P 14; *MoBay*, 126 FERC ¶ 61,241 at P 18.

¹¹ See Application at 47, citing *Kern River Gas Transmission Co.*, 95 FERC ¶ 61,022 (2001).

¹² 18 C.F.R. §§ 157.6(b)(8), 157.20(c)(3) (2010).

East Cheyenne to submit information otherwise necessary for the Commission to make an up-front determination of the rate treatment of the East Cheyenne Storage Project and updated cost data after new facilities are placed into service. East Cheyenne also requests that the Commission grant waiver of the filing requirements of section 157.14(a)(13), (14), (16), and (17)¹³ to submit Exhibits K (Cost of Facilities), Exhibit L (Financing), Exhibit N (Revenues, Expenses, and Income), and Exhibit O (Depreciation and Depletion) since these exhibits are for cost-based rate authority.

20. For the same reasons, East Cheyenne requests waiver of the accounting and annual reporting requirements under Part 201 and sections 260.1, 260.2, and 260.300, respectively, of the Commission's regulations,¹⁴ except for the information necessary for the assessment of annual charges. Similarly, East Cheyenne requests waiver of the requirement pertaining to straight fixed-variable rate design set forth in sections 284.7(d), 284.7(e), and 284.10¹⁵ also as being inapplicable to market-based rate design. Finally, East Cheyenne requests waiver of the requirement in section 157.14(a)(10)¹⁶ that applicants file total gas supply data (Exhibit H) as being inapplicable to natural gas storage services. East Cheyenne notes that its customers will supply their own gas for storage.

II. Notice, Comment, and Interventions

21. Public notice of East Cheyenne's application was published in the *Federal Register* on January 14, 2010 (75 Fed. Reg. 2130). Motions to intervene, protests, and comments were due by January 27, 2010. No interventions or protests were filed in this proceeding.

22. James M. Nelson filed comments stating that he and East Cheyenne have not come to an agreement regarding the lease of certain mineral rights and further questioned some of East Cheyenne's assertions relating to the geology of the proposed storage facility. Mr. Nelson's concerns are addressed below.

¹³ *Id.* § 157.14(a)(18), (14), (16), and (17).

¹⁴ *Id.* Part 201; *id.* §§ 260.1, 260.2, 260.300.

¹⁵ *Id.* §§ 284.7(d)-(e), 284.10.

¹⁶ *Id.* § 157.14(a)(10).

III. Discussion

23. Since the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction, acquisition, operation, and abandonment of the facilities are subject to the requirements of subsections (b), (c), and (e) of section 7 of the NGA.¹⁷

A. Application of the Certificate Policy Statement

24. On September 15, 1999, the Commission issued a policy statement to provide guidance as to how the Commission evaluates proposals for certificating major new construction.¹⁸ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, possibility of overbuilding, subsidization by existing customers, applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.¹⁹

25. Under this policy, the threshold requirement in establishing the public convenience and necessity for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers.²⁰ The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effect the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline.²¹ If residual adverse effects on these interest groups are identified after efforts have been

¹⁷ 15 U.S.C. §§ 717f(b), 717f(c), and 717f(e) (2006).

¹⁸ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999) (Certificate Policy Statement), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000).

¹⁹ *See* Certificate Policy Statement, *supra* note 18, 88 FERC ¶ 61,227 at 61,737.

²⁰ *See id.* at 61,745-46.

²¹ *See id.*

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.

26. East Cheyenne's proposal satisfies the threshold requirement that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. As discussed herein, East Cheyenne is a new entrant in the natural gas storage market and has no existing customers. Additionally, East Cheyenne has assumed the financial risk associated with the project because of its request to charge market-based rates. Therefore, there will be no subsidization. The Commission finds that East Cheyenne has satisfied the threshold requirement of the Certificate Policy Statement.

27. The proposed project will have no adverse impact on existing customers or services since East Cheyenne has no current customers or services. The Commission is also satisfied that there will be no negative impacts on existing storage providers or their captive customers. The proposal will also enhance storage options available to pipelines and their customers and thus will increase competitive alternatives. Furthermore, no storage company in East Cheyenne's market area has protested its proposal.

28. East Cheyenne has minimized impacts on landowners and communities. The project is located in a sparsely populated area where oil and gas production, as well as wind generation, already exist. East Cheyenne has acquired 85 percent of the mineral rights and 92 percent of storage rights in the two fields and the buffer area and continues to negotiate for the remaining mineral and storage rights. East Cheyenne also owns right-of-way easements for the entire length of the proposed header pipelines and interconnections with REX and Trailblazer.

29. Based on the benefits that the project will provide and the minimal adverse effects on other storage providers and their captive customers, and landowners and surrounding communities, the Commission finds that the public benefits from the project outweigh any adverse effects and approval of the project is required by the public convenience and necessity.

B. Market-Based Rates

30. East Cheyenne requests authority to charge market-based rates²² for its proposed firm storage service under Rate Schedule FSS, enhanced interruptible storage service under Rate Schedule EISS, and interruptible storage service under Rate Schedule ISS. East Cheyenne also proposes to offer firm, enhanced, and interruptible hub services, including parking services under Rate Schedules FP and IP, loan services under Rate Schedules FL, EILS, and IL, and wheeling services under Rate Schedules EIWS and IWS at market-based rates.²³ Further, East Cheyenne proposes to offer three additional services at market based rates, no-notice storage service under Rate Schedule NNSS, firm hourly balancing service under Rate Schedule FHBS, and interruptible hourly balancing service under Rate Schedule IHBS.

31. Generally, the Commission evaluates requests to charge market-based rates for storage services under the analytical framework of its Alternative Rate Policy Statement.²⁴ 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 in a manner that would result in significant price increases over a significant period of time; and (2) to determine whether the applicant can discriminate unduly in price or terms and conditions of service.²⁵ To find that an applicant cannot withhold or restrict services, increase prices over an extended period, or discriminate unduly, the Commission must first find that

²² Generally, an applicant will include in its application an exhibit constituting its market power study in support of its request, as East Cheyenne has done in the instant case. *See* Exhibit I of the Application. 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.

²³ *See* Application at 19 and 20.

²⁴ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996) (Alternative Rate Policy Statement); *see also Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220, 115 FERC ¶ 61,343 (2006), *reh'g denied*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

²⁵ *See* Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,231.

there is a lack of market power²⁶ because customers have good alternatives²⁷ or that the applicant or the Commission can mitigate the market power with specific conditions.²⁸

32. The Commission's analysis of whether an applicant has the ability to exercise market power consists of three major steps. First, the Commission reviews whether the applicant has specifically and fully defined the relevant markets²⁹ to determine which specific products or services are identified and the suppliers of those products and services that provide good alternatives to the applicant's ability to exercise market power.³⁰ Additionally, as part of the first step, the applicant must identify the relevant geographic market.³¹ Second, the Commission measures an applicant's market share and market concentration.³² Third, the Commission evaluates other relevant factors, such as ease of entering the market.

33. As further discussed below, the Commission finds that East Cheyenne's market power analysis demonstrates that its proposed storage facilities will be in a highly competitive production area where numerous storage and hub service alternatives exist for potential customers such that East Cheyenne lacks market power.

²⁶ 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 id.* at 61,230 (citation omitted).

²⁷ 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 Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220, 115 FERC ¶ 61,343, at P 40, 47 (2006), *reh'g denied*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

²⁸ *See Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220, 115 FERC ¶ 61,343, at P 29.

²⁹ *See Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 at 61,231.

³⁰ Relevant product market consists of the applicant's service and other services that are good alternatives to the applicant's services. *See id.*

³¹ *See id.* at 61,232-34.

³² *See id.* at 61,234.

1. Storage Services

34. East Cheyenne identifies the relevant product market as firm and interruptible natural gas storage and hub services. East Cheyenne defines the relevant geographic market as the region that contains storage facilities that are directly connected to REX and Trailblazer, or are otherwise accessible to those pipelines via market hubs,³³ and other direct pipeline interconnections. The geographic market has twenty-four competing natural gas storage facilities not affiliated with the project. In developing its analysis, East Cheyenne states that it included only those storage facilities directly connected to REX and Trailblazer, or the pipelines connected to the market hubs that are connected to East Cheyenne through REX and Trailblazer. East Cheyenne indicates that the Commission approved similar approaches to the one it has taken here to determine the relevant geographic market area in *Unocal Windy Hill Gas Storage, LLC*,³⁴ and *Blue Sky Gas Storage, LLC*,³⁵ where the geographic market only included those storage facilities that were connected to or directly accessible to the pipelines and hubs.

35. A company can exercise market power if it has a large market share, enabling it to raise prices acting alone or if it can act with others to raise prices.³⁶ The twenty-four gas storage facilities identified within East Cheyenne's geographic market are currently operational and possess a total working gas capacity of 253.8 Bcf.³⁷ East Cheyenne's 18.9 Bcf of working gas would increase the total working gas capacity to 272.7 Bcf. East Cheyenne's market share would be 6.9 percent of the total working gas capacity for this geographic market. In addition, in its analysis of its wheeling service, East Cheyenne indicates that the project will have a market share of 8.0 percent of receipt capacity and 4.4 percent of delivery capacity. East Cheyenne is unlikely to be able to exercise market power with its small market shares.

³³ See Exhibit 4 to Exhibit I of the Application at 6. For the purpose of defining the geographic market East Cheyenne listed the Cheyenne Hub in Weld County Colorado, the White River Hub in Rio Blanco County, Colorado, the Wamsutter Hub in Sweetwater County, Wyoming, and the Opal Hub in Lincoln County, Wyoming.

³⁴ *Unocal Windy Hill Gas Storage, LLC*, 115 FERC ¶ 61,218, at P 30 (2006), *order amending certificate*, 119 FERC ¶ 61,291 (2007).

³⁵ *Blue Sky Gas Storage, LLC*, 129 FERC ¶ 61,210, at P 22-23 (2009).

³⁶ See Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,234.

³⁷ See Exhibit I of the Application at Attachment A.

36. The Commission uses 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.³⁸ 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.³⁹ While a low HHI suggests a lack of market power, a high HHI (generally greater than 1,800) requires closer scrutiny in order to make a determination about a seller's ability to exert market power.

37. East Cheyenne's market power analysis reveals an HHI calculation of 1,745 for working gas capacity and an HHI calculation of 1,706 for maximum daily withdrawal capacity.⁴⁰ The HHI for working gas capacity and maximum daily withdrawal capacity are below the 1,800 level cited in the Alternative Rate Policy Statement, which indicates the market for gas storage in this region will remain sufficiently competitive. East Cheyenne asserts that it will be unable to exert market power, contending that: (i) its analysis shows a small market share for total working gas capacity as well as maximum daily withdrawal capacity; (ii) it is a new entrant with no affiliates in the relevant geographic market which is located within a large production area; (iii) storage service alternatives, such as production, were not considered in its analysis; and (iv) the majority of its competitors have regulated cost-based rates.⁴¹

³⁸ See Alternative Rate Policy Statement, 74 FERC ¶ 61,076 at 61,235.

³⁹ See *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220, 115 FERC ¶ 61,343, at P 55 (2006) (noting that the Commission is not changing the 1,800 HHI threshold level).

⁴⁰ See Exhibit I of the Application at Attachment A and B. East Cheyenne indicates that the data used to conduct its market power analyses were based primarily on the information presented in Intelligence Press' "Natural Gas Storage and LNG Facilities in the United State and Canada" published in 2004 as updated through various FERC filings, trade press research, information on company websites and other publicly-available materials.

⁴¹ See *id.* at 11. To support its contention, East Cheyenne indicates that four large market participants (i.e., CIG, Kinder Morgan, Inc., Questar Corp., and Southern Star Central Pipeline) have a combined market share of approximately 75 percent. The four companies provide the vast majority of their storage services at cost-based rates. Further, East Cheyenne indicates that the Commission has found where the majority of the storage services in the market are regulated and at cost-based rates the potential to collude with others in the market to exercise market power is mitigated, citing *Central New York Oil* (continued...)

2. Hub Services

38. East Cheyenne contends that the Commission has held that if an applicant can show that two or more types of services are substitutes for one another, then the applicant need not provide separate market power and concentration analyses for each service.⁴² As discussed above, East Cheyenne proposes to offer hub services in the form of firm and interruptible parking, loan and wheeling services. East Cheyenne contends that with the exception of interruptible wheeling service, its hub services are all variations of traditional firm and interruptible natural gas storage services, and thus they represent substitutes for firm and interruptible storage services. East Cheyenne indicates that it is relying on the market share and market concentration analyses discussed above as demonstrating that it lacks market power for hub services generally. East Cheyenne contends that its analysis is consistent with Commission policy in the granting of market-based rate authority for the proposed hub services.⁴³ We agree, and find that East Cheyenne will not be able to exercise market power in connection with the provision of its hub services.

3. Interruptible Wheeling Service

39. 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 those same services from alternative providers. The Commission has relied upon the “bingo card” analysis to determine whether shippers can avoid the pipeline interconnections provided by the applicant by utilizing alternative interconnections available between the pipelines that are directly or indirectly connected to the applicant.⁴⁴

And Gas Co., 117 FERC ¶ 62,261 (2006); *Wyckoff Gas Storage Co.*, 105 FERC ¶ 61,027 (2003); *Seneca Lake Storage, Inc.*, 98 FERC ¶ 61,163 (2002); *Central New York Oil and Gas Co.*, 94 FERC ¶ 61,194 (2001); *Honeoye Storage Corp.*, 91 FERC ¶ 62,165 (2000).

⁴² See Exhibit I of the Application at 8, citing *Blue Sky*, 129 FERC ¶ 61,210; *Windy Hill*, 119 FERC ¶ 61,291 (2006); *Pine Prairie Energy Center, LLC*, 109 FERC ¶ 61,215 (2004); *Unocal Keystone Gas Storage, LLC*, 106 FERC ¶ 61,033 (2004); *Moss Bluff Hub Partners, L.P.*, 80 FERC ¶ 61,181 (1997); *Egan Hub Partners, L.P.*, 77 FERC ¶ 61,016 (1996).

⁴³ See *id.* at 11, citing *Liberty Gas Storage LLC*, 113 FERC ¶ 61,247 (2005); *Unocal Keystone*, 106 FERC ¶ 61,033.

⁴⁴ See, e.g., *Blue Sky*, 129 FERC ¶ 61,210; *Windy Hill*, 119 FERC ¶ 61,291.

40. The “bingo card” provided by East Cheyenne in Exhibit I, Attachment C is completely filled-in, indicating that the pipelines that are directly and indirectly connected to the project are also interconnected with each other. As a result, numerous alternatives to East Cheyenne’s interruptible wheeling service exist. Specifically, there are sixteen receipt and delivery interconnections between the pipelines that are directly or indirectly interconnected to East Cheyenne that would be capable of providing competing wheeling services.

41. East Cheyenne also prepared a market share and market concentration analysis of competitive alternatives to its proposed interruptible wheeling service. East Cheyenne indicates that there will be at least five competing hubs and market centers in the Rockies/Plains region. East Cheyenne analyzes receipt capacity and delivery capacity separately in evaluating market share and market concentration for interruptible wheeling services. East Cheyenne contends that its analysis shows that it would be a very small participant in the relevant market, having a market share of 4.4 percent for delivery capacity at the market hubs in the relevant market, and a market share of 8.0 percent for receipt capacity at the hub in the relevant market, significantly less than other storage facilities that have received market-based rate authorization from the Commission.⁴⁵

42. In its analysis of market concentration for delivery and receipt capacity related to its proposed interruptible wheeling service, East Cheyenne indicates HHI levels of 2,855 and 2,468, respectively. East Cheyenne contends that while the HHI levels are above 1,800, the addition of East Cheyenne to the market significantly reduces the existing market concentration, from 3,104 to 2,855 for delivery capacity and from 2,840 to 2,468 for receipt capacity. East Cheyenne argues that the project will enhance competition among providers of wheeling and comparable services in the Rocky Mountain production area. Further, East Cheyenne states that its competitive hub analysis is conservative in that it does not include new hubs that have been proposed and approved by the Commission for market-based storage rates in the Rockies/Plains region,⁴⁶ which are not yet operational.

4. Commission Determination

43. The Commission finds that East Cheyenne’s market power study demonstrates that its proposed storage facilities will be in a highly competitive production area where

⁴⁵ See Exhibit C of the Application at Attachment I, citing *Unocal Windy Hill*, 119 FERC ¶ 61,291, and *MoBay Storage Hub, Inc.*, 117 FERC ¶ 61,298 (2006).

⁴⁶ See Exhibit I of the Application at 14, citing *Unocal Windy Hill*, 119 FERC ¶ 61,291.

numerous storage and hub service alternatives exist for potential customers. The Commission also finds that East Cheyenne's prospective market shares for interruptible wheeling service are low and that while the distinct HHIs for interruptible wheeling service are above the 1,800 threshold they are mitigated by East Cheyenne's small market share and the availability of competing services as demonstrated in the "bingo card" analysis. The Commission also recognizes that ease of entry into a market inhibits the potential for parties operating in that market to exercise market power. East Cheyenne asserts it would be placed at a competitive disadvantage relative to other merchant storage service providers operating in this market if it were denied market-based rate authorization, noting the large number of alternative storage products available to shippers in the Rockies/Plains region.⁴⁷ Further, East Cheyenne contends the project will be dependent on non-affiliated transportation providers for its services to be effective. East Cheyenne suggests that it will be directly interconnected with two different pipelines, as well as indirectly interconnected with numerous other pipelines. East Cheyenne, however, will not own or control any of the long-haul interstate transportation facilities to which its storage facilities are interconnected. Rather, East Cheyenne and its customers will have to rely upon the transportation services provided by independent, non-affiliated interstate pipelines in order for gas stored in the project facilities to be delivered to market. Moreover, many of the owners of the interstate pipelines with which East Cheyenne will be directly and indirectly interconnected have their own market area storage that can be marketed in competition with East Cheyenne's services.

44. Based on all of the above, the Commission concludes that East Cheyenne will lack market power. Further, East Cheyenne's proposal for market-based rates is unopposed and will provide valuable infrastructure facilities for growing Rockies gas production. For these reasons, the Commission will approve East Cheyenne's request to charge market-based rates for firm and interruptible storage, hub and wheeling services.

45. Nevertheless, East Cheyenne must notify the Commission if future circumstances significantly affect its present market power status. Thus, our approval of market-based rates for the indicated services is subject to re-examination in the event that: (a) East Cheyenne adds storage capacity beyond the capacity authorized in this order; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to East Cheyenne; or (d) East Cheyenne, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to East Cheyenne. Since these circumstances could affect its market power status, East Cheyenne shall notify the Commission within ten

⁴⁷ See Exhibit I of the Application at 16. East Cheyenne notes that it will compete with four projects (Windy Hill, SourceGas Storage LLC, Blue Sky, and Magnum Gas Storage, LLC) that will add over 60 Bcf of additional working gas capacity and over 1,100 MMcf/day of deliverability.

days of acquiring knowledge of any such changes. The notification shall include a detailed description of the new facilities and their relationship to East Cheyenne.⁴⁸ The Commission also reserves the right to require an updated market power analysis at any intervening time.⁴⁹

C. Waivers of Filing, Reporting and Accounting Requirements

46. In light of its request for authority to charge market-based rates and the fact that East Cheyenne has no pre-existing facilities, East Cheyenne requests that the Commission waive sections 157.6(b)(8) and 157.20(c)(3) of the Commission's regulations. These sections require the submission of information necessary for the Commission to make an up-front determination of the appropriate rate treatment for East Cheyenne's storage project, and require the filing of updated cost data after new facilities are placed into service. East Cheyenne also requests that the Commission waive the filing requirements of sections 157.14(a)(13), (14), (16), and (17), which require pipelines to submit Exhibit K (Cost of Facilities), Exhibit L (Financing), Exhibit N (Revenues, Expenses, and Income), and Exhibit O (Depreciation and Depletion) since East Cheyenne is seeking authority to charge market-based rates and these exhibits are required for cost-based-rate authority.

47. For the same reasons, East Cheyenne requests waiver of the accounting and annual reporting requirements set forth in sections 260.1, 260.2 and 260.300 (filing of annual reports in FERC Form Nos. 2 and 2-A) as well as Part 201 (adherence to Uniform System of Accounts) of the Commission's regulations. Similarly, East Cheyenne requests waiver of the requirements pertaining to straight fixed-variable rate design set forth in sections 284.7(d), (e), and 284.10 of the Commission's regulations, also as being inapplicable to market-based rates. Finally, East Cheyenne requests waiver of the filing requirement

⁴⁸ See, e.g., *Port Barre Investments, L.L.C.*, 116 FERC ¶ 61,052 (2006); *Copiah County Storage Co.*, 99 FERC ¶ 61,316 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002).

⁴⁹ We note that in Order Nos. 678 and 678-A, the Commission chose not to impose a generic requirement that storage providers, granted market-based rate authority on the basis of a market power analysis, file an updated market power analysis every five years, or at other periodic intervals. See *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220, 115 FERC ¶ 61,343, at P 6 (2006); see also Order No. 678-A, 117 FERC ¶ 61,190, at P 12-15 (2006) (affirming the Commission's decision). The Commission, however, has previously reserved the right to require an updated market power analysis. See, e.g., *Liberty*, 113 FERC ¶ 61,247 at P 51; *Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141, at P 40 (2005).

contained in section 157.14(a)(10) to submit total gas supply data (Exhibit H) as being inapplicable to natural gas storage services.

48. The cost-related information required by the above-described regulations is not relevant in light of our approval of market-based rates for East Cheyenne's storage and hub services, including interruptible wheeling service. Thus, consistent with previous Commission orders,⁵⁰ the Commission grants East Cheyenne's request for waiver of the regulations requiring cost-based rate related information for these services. The Commission also grants a waiver of section 157.14(a)(10) requiring an applicant to submit total gas supply data since the filing requirement is inapplicable to natural gas storage services.

49. The Commission has also found in previous orders no ongoing regulatory need to have cost-based financial statements prepared in accordance with the Commission's Uniform System of Accounts.⁵¹ Accordingly, the Commission will grant the request to waive accounting requirements, as provided in Part 201 (Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act). In addition, the Commission grants the requested waiver of the requirement to file an annual report (Form Nos. 2 and 2-A), contained in sections 260.1 and 260.2 of the Commission's regulations. However, since such waiver does not extend to the Annual Charge Adjustment (ACA), East Cheyenne is required to file page 520 of Form No. 2 or 2-A, reporting the gas volume information, which is the basis for imposing an ACA charge.⁵² Moreover, East Cheyenne is required to maintain records to separately identify the original cost and related depreciation on its storage facilities should the Commission require East Cheyenne to produce those reports in the future.

D. Standards of Conduct

50. Part 358 of our regulations describes new standards of conduct to ensure that transmission providers cannot extend their market power over transmission by giving

⁵⁰ See, e.g., *Black Bayou Storage, LLC*, 123 FERC ¶ 61,277, at P 35 (2008); *Port Barre*, 116 FERC ¶ 61,052 at P 33; *Liberty*, 113 FERC ¶ 61,247 at P 54; *SG Resources Mississippi, L.L.C.*, 101 FERC ¶ 61,029, at P 26 (2002).

⁵¹ See, e.g., *Tres Palacios Gas Storage, LLC*, 120 FERC ¶ 61,253, at P 34 (2007); *Unocal Windy Hill*, 115 FERC ¶ 61,218 at P 37-38; *MoBay*, 117 FERC ¶ 61,298 at P 37.

⁵² See, e.g., *BGS Kimball Gas Storage, LLC*, 117 FERC ¶ 61,122, at P 49 (2006); *Unocal Windy Hill*, 115 FERC ¶ 61,218 at P 38.

energy affiliates unduly preferential treatment.⁵³ In Order No. 2004-A, the Commission “generically exempt[ed] from the definition of ‘Transmission Provider’ natural gas storage providers authorized to charge market-based rates that are not interconnected with the jurisdictional facilities of any affiliated interstate natural gas pipeline, have no exclusive franchise area, no captive ratepayers, and no market power.”⁵⁴ The Commission affirms that East Cheyenne qualifies for the generic exemption granted independent storage providers authorized to charge market-based rates, pursuant to Order No. 2004-A and as codified in section 358.3(a)(3) of the Commission’s regulations.⁵⁵

E. Tariff Provisions

51. East Cheyenne proposes to offer firm and interruptible storage and hub services on an open-access basis under the terms and conditions set forth in the pro forma tariff attached as Exhibit P to the application. The Commission finds that East Cheyenne’s proposed tariff generally complies with Part 284 of the Commission’s regulations. However, certain provisions are discussed further below. East Cheyenne shall file actual tariff sheets at least sixty days prior to the commencement of service.

1. Waiver of NAESB Standards

52. The Commission has adopted in its regulations various standards for conducting business practices and electronic communication with interstate pipelines as promulgated

⁵³ See 18 C.F.R. Part 358, Subchapter S (2010).

⁵⁴ *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. ¶ 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. National 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, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, 73 Fed. Reg. 16,228 (Mar. 27, 2008), FERC Stats. & Regs. ¶ 32,630 (2008).

⁵⁵ 18 C.F.R. § 358.3(a)(3) (2010).

by the NAESB.⁵⁶ 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. In its pro forma tariff sheets, East Cheyenne proposes to comply with Version 1.8 of the NAESB Standards. However, the latest version of the NAESB standards adopted by the Commission is Version 1.9.⁵⁷ Thus, the Commission accepts East Cheyenne's proposal but direct East Cheyenne, at the time it files actual tariff sheets in this proceeding, to reflect the latest version of the NAESB Standards adopted by the Commission.

53. East Cheyenne requests a limited waiver in the form of an extension of time to comply with section 284.12(a)(1)(v) of the Commission's regulations,⁵⁸ which requires interstate pipelines to comply with Electronic Data Interchange/Electronic Delivery Mechanism (EDI/EDM) related standards so as to allow East Cheyenne to postpone implementation of such standards until ninety days following receipt by East Cheyenne

⁵⁶ See *Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 698, 72 Fed. Reg. 38,757 (July 16, 2007), FERC Stats. & Regs. ¶ 31,251 (2007); *order granting clarification and denying reh'g*, Order No. 698-A, 121 FERC ¶ 61,264 (2007). *Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-S, 111 FERC ¶ 61,203 (2005). Pursuant to the June 14, 2005 errata notice in Docket No. RM96-1-026, the title of the May 9, 2005 final rule was changed from Order No. 654 to Order No. 587-S. *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. ¶ 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. National 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*, Order No. 717, 73 Fed. Reg. 63,796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, 129 FERC P 61,043, *order on reh'g*, Order No. 717-B, 129 FERC P 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC P 61,045 (2010).

⁵⁷ See *Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-U, 74 Fed. Reg. 16,337 (Apr. 1, 2010), FERC Stats. & Regs. ¶ 31,307 (2010).

⁵⁸ 18 C.F.R. § 284.12(a)(1)(v) (2010).

of a request to send information via EDI/EDM.⁵⁹ East Cheyenne states that it does not anticipate receiving a request for EDI/EDM in the foreseeable future. Consistent with Commission precedent, we grant East Cheyenne's request for limited waiver, but will require East Cheyenne to implement those standards within ninety days following the receipt of such a request.⁶⁰

2. Requested Waiver of Tariff Requirements

a. Segmentation

54. 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.⁶¹ East Cheyenne requests waiver of the Order No. 637 segmentation requirements in section 284.7(d), contending that segmentation is not feasible since it will not be offering stand-alone transportation services.

55. 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 not providing stand-alone transportation services.⁶² Segmentation of capacity is inapplicable to storage service providers which do not provide other transportation services. Since East Cheyenne is such a storage provider, the requirements of section 284.7(d) do not apply to East Cheyenne. Other tariff provisions related to segmentation, such as the allocation of primary point rights in segmented releases and within-the-path scheduling, also do not apply to East Cheyenne.

⁵⁹ See Application at P 34, citing similar waivers granted in *Tres Palacios*, 120 FERC ¶ 61,253; *Unocal Windy Hill*, 115 FERC ¶ 61,218; *MoBay*, 117 FERC ¶ 61,298; *Saltville Gas Storage Co.*, 109 FERC ¶ 61,200 (2004); *Rendezvous*, 112 FERC ¶ 61,141; *Missouri Interstate Gas, LLC*, 102 FERC ¶ 61,172 (2003).

⁶⁰ See, e.g., *Tres Palacios*, 120 FERC ¶ 61,253 at P 52; *Saltville Gas Storage Co.*, 109 FERC ¶ 61,200 at P 37. *Missouri Interstate Gas, LLC*, 102 FERC ¶ 61,172 at P 10.

⁶¹ See 18 C.F.R. § 284.7(d) (2010).

⁶² See, e.g., *Port Barre*, 116 FERC ¶ 61,052 at P 37; see also *Pine Prairie*, 109 FERC ¶ 61,215 at P 44.

b. **Acquisition of Off-System Capacity and Waiver of “Shipper Must Hold Title” Policy**

56. East Cheyenne requests a generic waiver of the “shipper must hold title” policy for any off-system capacity it may acquire in the future to enable it to use that capacity 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 East Cheyenne’s pro forma tariff⁶³ states that East Cheyenne will only provide transportation and storage services for others using such capacity pursuant to its open access tariff.

57. East Cheyenne’s off-system capacity statement implements the Commission’s policy with respect to pipelines’ acquisition of off-system capacity. In *Texas Eastern Transmission Corp. (TETCO)*,⁶⁴ the Commission found that pipelines no longer need to obtain prior approval to acquire capacity on another pipeline, provided the acquiring pipeline has filed tariff language specifying that it will only transport for others on off-system capacity pursuant to its tariff provisions and rates.⁶⁵ East Cheyenne’s proposed tariff language is consistent with the requirements set forth in *TETCO*. Therefore, the Commission accepts East Cheyenne’s tariff language and grants waiver of the “shipper must have title” policy, with the following clarification.

58. Because East Cheyenne has proposed only to offer firm and interruptible storage and interruptible hub services, and does not propose to offer any transportation services other than storage and hub services, East Cheyenne may only use capacity obtained on other pipelines in order to render the services set forth in its tariff. That is, East Cheyenne 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, East Cheyenne’s authorized use of the *TETCO* waiver to provide storage service shall be limited to the geographic area covered by East Cheyenne’s market power study.⁶⁶

59. In order to ensure that East Cheyenne 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, East

⁶³ See Exhibit P of the Application, Pro Forma Sheet No. 154.

⁶⁴ *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273 (2000), *reh’g denied*, 94 FERC ¶ 61,139 (2001).

⁶⁵ See *Texas Eastern*, 93 FERC at 61,885-86.

⁶⁶ See *Starks Gas Storage, L.L.C.*, 111 FERC ¶ 61,105, at P 55 (2005).

Cheyenne is directed to make, once it becomes operational, an annual informational filing on its provisions of service using off-system capacity, as detailed below.

60. Within thirty days after its first full year of operation, and every year thereafter, East Cheyenne 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 East Cheyenne;
- c. a description of the geographic location-boundaries, receipt and delivery points, and segments comprising the capacity;
- d. the operational purpose(s) for which the capacity is utilized;
- e. a description of how the capacity is associated with specific transactions involving customers of East Cheyenne; and
- f. an identification of total volumes, by East Cheyenne's rate schedule and customer, that East Cheyenne has nominated on each off-system provider during the reporting period.

c. Netting and Trading of Imbalances

61. Section 284.12(b)(2) of the Commission's regulations requires pipelines to establish provisions for netting and trading imbalances and other imbalance management services.⁶⁷ East Cheyenne states that in Order No. 637-A,⁶⁸ the Commission found that it is unnecessary to require pipelines that do not assess penalties for imbalances to offer imbalance management services. East Cheyenne requests an exemption from compliance with these requirements, noting that its tariff does not contain imbalance penalties, and

⁶⁷ See 18 C.F.R. § 284.12(b)(2) (2010).

⁶⁸ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *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 Ass'n 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 Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

that in Order No. 637-A, the Commission found that pipelines not assessing such penalties do not have to offer imbalance services.

62. Since East Cheyenne is not proposing to assess imbalance penalties, the Commission finds that it qualifies for the requested exemption.⁶⁹ Nevertheless, if it seeks to implement imbalance penalty provisions in the future, East Cheyenne must comply with § 284.12(b)(2) of the Commission's regulations.

3. Use of Index Pricing

63. Under GT&C section 5.5(i), East Cheyenne will use index pricing to calculate penalties for customer violations of an action alert or operational flow order (OFO). Specifically, the action alert penalty will equal 110 percent or, in the case of an OFO, 300 percent, of the Platts Gas Daily Midpoint posting for the Cheyenne Hub for the day on which the deviation from the action alert occurred. These provisions satisfy the criteria that the Commission has established for price indices in jurisdictional tariffs.⁷⁰ Accordingly, the Commission will accept East Cheyenne's proposal.

4. Gas Quality

64. East Cheyenne included a provision on gas quality in GT&C section 9, but did not provide the other information required by the Gas Quality Policy Statement.⁷¹ In the Gas Quality Policy Statement, the Commission stated that it intends to apply this policy in its review of pro forma tariffs filed as part of section 7(c) certificate applications.⁷² The Gas Quality Policy Statement provides that NGA section 7 applicants should (i) ensure that their pro forma tariff includes general terms and conditions addressing quality and interchangeability; (ii) include relevant information about the gas quality and interchangeability specifications of interconnecting pipelines, and of competing pipelines serving customers to be served directly by the new entrant, as well as the relevant information about the gas supplies to be received by the new entrant for transportation or

⁶⁹ See *Orbit Gas*, 126 FERC ¶ 61,095 at P 41; *Pine Prairie*, 109 FERC ¶ 61,215 at P 47.

⁷⁰ See *Price Discovery in Natural Gas and Electric Markets*, 109 FERC ¶ 61,184, at Ordering Paragraph (D) (2004).

⁷¹ See *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*, 115 FERC ¶ 61,325 (2006) (Gas Quality Policy Statement).

⁷² See *id.* P 45.

storage; and (iii) applicants must show how they derived their gas quality and interchangeability specifications stated in their pro forma tariff.⁷³

65. East Cheyenne's pro forma tariff includes non-specific terms and conditions addressing quality and interchangeability that are vague and non-specific.⁷⁴ The Commission has held that only natural gas quality and interchangeability specifications contained in a Commission-approved gas tariff can be enforced.⁷⁵ Accordingly, the Commission requires East Cheyenne to submit the gas quality and interchangeability specifications to its tariff for Commission review at least sixty days before the East Cheyenne facility goes into service.

F. Part 157, Subpart F Blanket Construction Certificate

66. East Cheyenne has applied for a blanket construction certificate under Part 157, Subpart F of the Commission's regulations to authorize it to perform certain routine activities, such as to automatically, or after prior notice, perform certain eligible activities related to the construction, acquisition, replacement and operation of pipeline facilities. Because East Cheyenne will become a natural gas company upon its acceptance of an NGA section 7 certificate, we will grant East Cheyenne's request for a Part 157, Subpart F blanket construction certificate.

G. Part 284, Subpart G Blanket Transportation Certificate

67. East Cheyenne has also applied for a blanket transportation certificate under Part 284, Subpart G of the Commission's regulations to authorize it to provide open-access storage services. Under a Part 284 blanket certificate, East Cheyenne will not require individual authorizations to provide storage services to particular customers. East Cheyenne filed a pro forma tariff to provide open-access storage services. Since a Part 284 blanket certificate is required for East Cheyenne to offer these services, we will grant East Cheyenne a Part 284, Subpart G blanket certificate.

H. Pre-Granted Abandonment Authorization Under NGA Section 7(b)

68. East Cheyenne requests pre-granted authorization to abandon and dismantle the proposed West Peetz Compressor Station following the date the permanent storage processing facility is placed into service. We grant East Cheyenne's request to abandon

⁷³ *See id.*

⁷⁴ *See* Exhibit P, GT&C Section 9.

⁷⁵ *See* Gas Quality Policy Statement, *supra* note 71, 115 FERC ¶ 61,325 at P 2.

the temporary West Peetz Compressor Station when it places its processing facility into service, as the abandonment would not affect service to East Cheyenne's customers.

I. Engineering Analysis

69. Commission staff evaluated the data submitted in East Cheyenne's application and data responses, and concludes that its proposal is technically sound and feasible. The East Cheyenne storage facility will have a total certificated capacity of 29.533 Bcf, with approximately 18.9 Bcf of working gas capacity (11.5 Bcf within the West Peetz Field and 7.4 Bcf within the Lewis Creek Field), and 10.633 Bcf of cushion gas capacity (5.706 Bcf within West Peetz Field and 4.927 Bcf within Lewis Creek Field). The maximum bottom-hole pressure for the West Peetz D Sand⁷⁶ is approximately 1,900 psia.⁷⁷ All other zones have a maximum bottom-hole pressure of approximately 1,300 psia. East Cheyenne is required to follow all of the engineering conditions set forth in Appendix A of this order, many of which are standard reporting requirements for natural gas storage operations.

70. In his filed comment, Mr. James M. Nelson argues that East Cheyenne does not accurately describe the contour boundary of one of the existing wells in the J Sand Reservoir in Lewis Creek Field. The COGCC has a record of the description of the reservoir, including its contour boundaries and the wells completed in the reservoir. We will require that East Cheyenne ensure that its description of the reservoir and its boundaries is consistent with that which is on record with the COGCC and require East Cheyenne to file an affirmation of this consistency prior to commencing the construction of the storage facilities.

J. Environmental Analysis

71. On July 13, 2009, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed East Cheyenne Gas Storage Project and Request for Comments on Environmental Issues (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives;

⁷⁶ Two storage zones, the D Sand and the J Sand, would be utilized in both the West Peetz and Lewis Creek fields. The D Sand occurs at a depth of approximately 5,200 feet the project area and the J Sand occurs at a depth of approximately 5,300 feet in both fields.

⁷⁷ The D2 sand at West Peetz will be over pressurized as much as 700 psi above its initial reservoir pressure. This pressure, however, is below the fracture gradient of the field and will be monitored through the observation wells to ensure reservoir integrity.

Native American tribes; local libraries and newspapers; and affected property owners. We received scoping comments in response to the NOI from the U.S. Fish and Wildlife Service (USFWS), the U.S. Environmental Protection Agency (EPA), and an individual stakeholder in the project area. The primary issues raised concerned federally protected species, air quality protection, and mineral right negotiations.

72. To satisfy the requirements of the National Environmental Policy Act, our staff prepared an environmental assessment (EA) for East Cheyenne's proposal that was issued for a thirty-day comment period and placed into the public record on April 6, 2010. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, and alternatives. Comments received in response to the NOI were addressed in the EA.⁷⁸

73. The USFWS' scoping comments concerned threatened and endangered species and the effects of water depletions from the Platte River system on habitat for federally protected species. As discussed in the EA, East Cheyenne's construction and operation of the project are not expected to impact suitable habitat for any federally listed species or result in new depletions to the South Platte River system. Following further consultation with the USFWS, the EA concluded that the project activities will not affect federally protected species in the area.

74. The EPA suggested that the EA disclose the existing air quality conditions in the project vicinity and consider the project's potential construction and operational impacts on the existing air quality environment, analysis of air quality related values (AQRV), in particular, the impacts on ozone levels resulting from nitrogen oxide (NO_x) emissions from the new emission sources. The EA identified the existing air quality environment in the project area as being in compliance with the National Ambient Air Quality Standards (NAAQS) or in attainment for all criteria pollutants. The EA also identified the potential construction and operation emissions associated with the project. The Prevention of Significant Deterioration (PSD) permitting program specifies that licensing agencies consider the impacts on AQRVs of federal Class I areas within 100 kilometers. For the East Cheyenne Project, the process facility site would be located further than 100 kilometers (about 200 kilometers from the Rocky Mountain National Park) from any federal Class I areas. As stated in the EA, the storage processing facility would be a minor source under the PSD permitting program. Following Colorado Air Pollution

⁷⁸ The Commission only received one comment on the EA by which U.S. Army Corps of Engineers reaffirmed its earlier response to the NOI that no permit under section 404 of the Clean Water Act, 33 U.S.C. § 1344 (2006), was required for the project.

Control Division guidance, East Cheyenne conducted a refined air dispersion model to analyze the operational impacts of the project on the regional air quality. The EA identified the regional ambient background concentrations used in the air modeling and disclosed the results, including NO_x emissions, demonstrating that operation of the project would not exceed the NAAQS. Potential impacts on air quality would be minimized by East Cheyenne's strict adherence to all applicable federal and state regulations. The EA concluded that operation of the proposed facilities would have no long-term adverse impacts on either local or regional air quality. The EPA did not provide comments on the EA.

75. In a filed comment, Mr. James M. Nelson states that East Cheyenne had not obtained the mineral or surface rights for the portion of the proposed storage field underneath his family's property. He would like East Cheyenne to drill an oil well to the east of the existing well on his property in order to maximize oil recovery from his property. Mr. Nelson also is concerned that the use of horizontal drilling would allow East Cheyenne to illegally access oil underlying the Nelson property. Mr. Nelson states that he would be harmed if the Commission authorizes the gas storage project, as it would prevent an additional well on the Nelson's property from removing oil that he believes is still available in this area of the field. Mr. Nelson further states that he believes East Cheyenne's project activities would recover remaining oil and gas from existing royalty owners without fair compensation.

76. In its response on July 6, 2009, East Cheyenne contends that issues relating to historical oil production from the Lewis Creek Field's J Sands Reservoir Unit Area pertain to matters that are subject to the jurisdiction of the COGCC. In East Cheyenne's February 26, 2010 response to the Commission's February 17, 2010 data request, East Cheyenne stated it has initiated consultations with the COGCC regarding the continuation of the established boundaries of the "J" Sands Reservoir Unit Area of the Lewis Creek Field for oil production.

77. Although the project will not require construction of any facilities on Mr. Nelson's property, East Cheyenne does need to obtain mineral rights for the portion of the storage field underneath Mr. Nelson's property. East Cheyenne states that it would continue to make a good-faith effort to resolve outstanding issues with Mr. Nelson through its land acquisition and mineral rights negotiations. While a certificate of public convenience and necessity from this Commission carries with it the right to obtain the property rights necessary to construct the project, the Commission plays no role in assessing surface or mineral property values, or in determining the appropriate compensation for the transfer of such rights.⁷⁹ The Commission has no jurisdiction to consider issues related to any

⁷⁹ See, e.g., *Chestnut Ridge Storage LLC*, 128 FERC ¶ 61,210, at P 20 n.25 (2009); *Columbia Gas Transmission Corp.*, 128 FERC ¶ 61,179, at P 6 (2009).

mineral or surface lease agreements between Mr. Nelson and East Cheyenne. In addition, if the parties are unable to reach agreement regarding any subsurface uses necessitated by this authorization, Mr. Nelson will be able to raise his concerns before the court in an eminent domain proceeding.⁸⁰

78. Issues pertaining to additional oil recovery are subject to the jurisdiction of the COGCC. Mr. Nelson can further pursue his interests in this matter before the COGCC.

79. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with East Cheyenne's application and supplements, and in compliance with the environmental conditions in Appendix B to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

80. 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.⁸¹

IV. Conclusion

81. For the reasons discussed above, the Commission finds that the project is required by the public convenience and necessity and that a certificate authorizing the construction and operation of the facilities described in this order and in the application should be issued, subject to the conditions discussed herein.

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

⁸⁰ See 15 U.S.C. § 717f(h) (2006).

⁸¹ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

The Commission orders:

(A) A certificate of public convenience and necessity is issued to East Cheyenne, in Docket No. CP10-34-000, authorizing the construction and operation of the described storage facilities.

(B) The certificate issued in Ordering Paragraph (A) is conditioned on East Cheyenne's compliance with all applicable Commission regulations under the Natural Gas Act, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (g) of section 157.20 of the regulations.

(C) A blanket construction certificate is issued to East Cheyenne under Subpart F of Part 157 of the Commission's regulations.

(D) A blanket transportation certificate is issued to East Cheyenne under Subpart G of Part 284 of the Commission's regulations.

(E) East Cheyenne is authorized to abandon the temporary West Peetz Compressor Station following the date on which the permanent storage processing facility is placed into service.

(F) East Cheyenne's facilities shall be made available for service within eighteen months of the date of the order in this proceeding as required by section 157.20(b) of the Commission's regulations.

(F) East Cheyenne's request to charge market-based storage rates for firm and interruptible storage and hub services is approved, as discussed and subject to the conditions in this order.

(G) East Cheyenne shall notify the Commission within ten days of acquiring knowledge of: (a) East Cheyenne adding storage capacity beyond the capacity authorized in this order; (b) an affiliate's increasing storage capacity; (c) an affiliate's linking storage facilities to East Cheyenne; or (d) East Cheyenne or an affiliate's acquisition of an interest in, or being acquired by, an interstate pipeline connected to East Cheyenne. The notification shall include a detailed description of the new facilities and their relationship to East Cheyenne. The Commission also reserves the right to require an updated market power analysis at any intervening time.

(H) East Cheyenne must submit the gas quality and interchangeability specifications to its tariff for Commission review at least sixty days before the East Cheyenne facility goes into service.

(I) East Cheyenne must submit revised tariff sheets referencing the latest NAESB Standards adopted by the Commission as discussed in the body of this order, at the time it files actual tariff sheets in this proceeding.

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

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

(L) Limited waiver is granted of the Commission's regulations which requires interstate pipelines to comply with Electronic Data Interchange/Electronic Delivery Mechanism (EDI/EDM) related standards so as to allow East Cheyenne to postpone implementation of such standards until ninety days following receipt by East Cheyenne of a request to send information via EDI/EDM.

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

(N) East Cheyenne must submit actual tariff sheets that comply with the requirements contained in the body of this order at least sixty days prior to the date of service.

(O) The certificate issued in Ordering Paragraph (A) is conditioned upon East Cheyenne's compliance with the engineering conditions set forth in the Appendix A to this order.

(P) The certificate issued in Ordering Paragraph (A) is conditioned upon East Cheyenne's compliance with the environmental conditions set forth in the Appendix B to this order.

(Q) East Cheyenne shall notify the Commission's environmental staff by email, telephone or facsimile of any environmental non-compliance identified by other federal, state or local agencies on the same day that such agency notifies East Cheyenne. East Cheyenne shall file written confirmation of such notification with the Secretary of the Commission within twenty-four hours.

(R) East Cheyenne shall file with the Commission an affirmation that its description of the J Sand reservoir and the reservoir's boundary is consistent with the

description on record with the Colorado Oil and Gas Conservation Commission prior to the commencement of construction of the storage facilities.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Engineering Conditions for the East Cheyenne Gas Storage Project

A) Grant a certificate of public convenience and necessity authorizing East Cheyenne to construct and operate the East Cheyenne Gas Storage Project, as more fully described in the application.

B) The maximum inventory of natural gas stored in the West Peetz and Lewis Creek field shall not exceed the certificated levels without prior authorization of the Commission of 29.533 Bcf, with approximately 18.9 Bcf of working gas capacity (11.5 Bcf within West Peetz Field and 7.4 Bcf within the Lewis Creek Field), and 10.633 Bcf of cushion gas capacity (5.706 Bcf within West Peetz Field and 4.927 Bcf within Lewis Creek Field). The maximum bottomhole pressure for the West Peetz D sand is approximately 1,900 psia. All other zones have a maximum bottomhole pressure of approximately 1,300 psia.

C) East Cheyenne shall operate the East Cheyenne Gas Storage Field in such a manner as to prevent/minimize gas loss or migration.

D) East Cheyenne shall conduct an annual inventory verification study on each storage zone.

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

(1) The daily volumes of natural gas injected into and withdrawn from the storage reservoir. The monthly volumes of oil and water produced from the storage reservoir.

(2) The volume of natural gas in the reservoir at the end of the reporting period.

(3) The maximum daily injection and withdrawal rates experienced during the reporting period. Average working pressure on such maximum days taken at a central measuring point where the total volume injected or withdrawn is measured.

(4) Results of any tracer program by which the leakage of injected gas may be determined. If leakage of gas exists, the report should show the estimated

total volume of gas leakage, the volume of recycled gas, and the estimated remaining inventory of gas in the reservoir at the end of the reporting period.

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

(6) The latest revised structural and isopach maps showing the surface and bottomhole locations of the wells and the location of the gas-water contact. These maps need not be filed if there is no material change from the maps previously filed.

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

(8) Discussion of current operating problems and conclusions.

(9) Such other data or reports which may aid the Commission in the evaluation of the storage project.

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

Appendix B

Environmental Conditions for the East Cheyenne Gas Storage Project

As recommended in the environmental assessment (EA), this authorization includes the following conditions:

1. East Cheyenne Gas Storage, LLC (East Cheyenne) 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. East Cheyenne 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 delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the East Cheyenne Gas Storage 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**, East Cheyenne 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. **As soon as they are available, and before the start of construction**, East Cheyenne shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

5. East Cheyenne 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 workspace allowed by East Cheyenne'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**, East Cheyenne shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. East Cheyenne must file revisions to the plan as schedules change. The plan shall identify:
 - a. how East Cheyenne 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 East Cheyenne 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 environmental inspectors assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions East Cheyenne 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 East Cheyenne's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) East Cheyenne will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (i) the completion of all required surveys and reports;
 - (ii) the environmental compliance training of onsite personnel;
 - (iii) the start of construction; and
 - (iv) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, East Cheyenne shall file updated status with the Secretary on a **biweekly** basis **until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on East Cheyenne's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the 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);
 - 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 East Cheyenne from other federal, state, or local permitting agencies concerning instances of noncompliance, and East Cheyenne's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, East Cheyenne shall file with the Secretary documentation that it has received all authorizations required under federal law (or evidence of waiver thereof).
9. East Cheyenne 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**, East Cheyenne 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 East Cheyenne 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**, East Cheyenne shall file with the Secretary a revised version of its Upland Erosion Control, Revegetation, and Maintenance Plan specifying that it will (a) strip topsoil from either the full work area or from the trench and subsoil storage area (ditch-plus-spoil-side method) in actively cultivated or rotated croplands and pastures; and (b) implement wind erosion abatement measures (i.e., soil tackifiers) to prevent the loss of segregated topsoil.
12. East Cheyenne shall conduct, with the well owner's permission, pre- and post-construction monitoring of water well yield and water quality for wells within 150 feet of the construction work area. **Within 30 days of placing the facilities in service**, East Cheyenne shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality and how each was resolved.

13. East Cheyenne shall file a noise survey with the Secretary **no later than 30 days** after beginning use of the West Peetz compressor station. If the noise attributable to the operation of the equipment at the West Peetz compressor station exceeds a day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at any nearby noise-sensitive area (NSA), East Cheyenne 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. East Cheyenne shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 30 days** after it installs the additional noise controls.

14. East Cheyenne shall file a noise survey with the Secretary **no later than 60 days** after placing the Process Facility in service. If the noise attributable to the operation of all of the equipment at the Process Facility at full load exceeds an L_{dn} of 55 dBA at any nearby NSA, East Cheyenne shall install additional noise controls to meet the level **within 1 year** of the in-service date. East Cheyenne shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.