136 FERC ¶ 61,151
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.

Rager Mountain Storage Company LLC	Docket Nos.	CP11-5-000
		CP11-5-001
Peoples Natural Gas Company LLC		CP11-6-000
		CP11-6-001

ORDER ISSUING CERTIFICATES AND APPROVING MARKET-BASED RATES

(Issued August 31, 2011)

1. On October 7, 2010, and amended on March 31, 2011, Peoples Natural Gas Company LLC (Peoples) filed in Docket No. CP11-6-000 an application for a limited-jurisdiction certificate of public convenience and necessity pursuant to Natural Gas Act (NGA) section 7(c)[1] authorizing the lease by Peoples of 2 Bcf of intrastate working gas storage capacity at Peoples' Rager Mountain storage facility to Rager Mountain Storage Company LLC (Rager Mountain). Also on October 7, 2010, Rager Mountain filed in Docket No. CP11-5-000 an application, as amended on March 31, 2011, pursuant to NGA section 7(c) for a Part 157, Subpart A certificate to lease 2 Bcf of capacity and 45,000 Mcf/d of deliverability at Rager Mountain and a Part 284, Subpart G blanket transportation certificate to provide open-access interstate gas storage services using the leased capacity. Rager Mountain requests authorization to provide its proposed services at market-based rates, and authority to make a one-time sale to its initial storage customers of 2 Bcf of natural gas that Rager Mountain would purchase from Peoples as part of the lease agreement.

2. For the reasons set forth below, the Commission will approve the proposals of Peoples and Rager Mountain, subject to the conditions discussed herein.

[1] 15 U.S.C. § 717f (c) (2006).

I. Background

3. Peoples is a Pennsylvania limited liability company, formed and existing under the laws of the Commonwealth of Pennsylvania. Peoples is a Hinshaw pipeline[2] and provides natural gas transmission, distribution, and supplier of last resort services to approximately 360,000 customers in Pennsylvania, subject to the jurisdiction of the Pennsylvania Public Utilities Commission (Pa PUC). Peoples also currently holds a blanket certificate issued under section 284.224 of the Commission's regulations to provide NGA-jurisdictional interstate gas services using its Pennsylvania distribution facilities.

4. Peoples operates five reservoir storage fields in Pennsylvania: Gamble Hayden, Murrysville, Rager Mountain, Truittsburg, and Webster. The Rager Mountain field, which is geologically separate from the other fields operated by Peoples, is located in Cambia County, Pennsylvania, and encompasses 9,214 acres, including the protective boundary. The reservoir was discovered in 1966 and converted from production to storage operations in 1971. The storage formation is located in the Oriskany sandstone and Huntersville Chert, at a depth of between 7,800 and 8,100 feet. The Rager Mountain storage facility currently has seven injection/withdrawal wells and two observation wells, and Peoples is in the process of adding three more injection/withdrawal wells. Applicants state that the Rager Mountain field has a total capacity of 20.5 Bcf, of which 9.3 Bcf is working gas capacity and 11.2 Bcf is cushion gas capacity. Its maximum reservoir pressure is 3,215 psia at the wellhead, with maximum deliverability of 180,000 Mcf per day (Mcf/d). Two pipeline segments connect the Rager Mountain facility with Texas Eastern Transmission, LLC's Penn-Jersey Line. Peoples is requesting a limited-jurisdictional certificate to lease 2 Bcf of storage capacity, 45,000 Mcf/d of deliverability, and to provide injection/withdrawal service to Rager Mountain, a newly-formed affiliate, under the terms of a lease agreement.[3]

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[2] Under section 1(c) of the NGA, known as the Hinshaw amendment, a pipeline that engages in interstate sales or transportation of natural gas is exempt from the provisions of the NGA if it receives all of its gas within or at the boundary of its state; all of the gas is ultimately consumed within that state; and its facilities, rates and services are subject to regulation by a state commission.

[3] Peoples filed with the Pa PUC for approval to lease storage capacity and transfer gas in-place at the Rager Mountain field to Rager Mountain. Pursuant to a settlement supported by the Pa PUC trial staff, the Pennsylvania Office of Consumer Advocate, the Pennsylvania Office of Small Business Advocate, and Dominion Retail, Inc., Peoples agreed to maintain 7.3 Bcf of the working gas capacity at the Rager Mountain facility for its on-system customers and to make certain improvements at the storage facility, which include adding more injection/withdrawal wells. The settlement also provided that 50 percent of the net proceeds from the sale of 2 Bcf of gas to Rager Mountain will be

(continued…)

5. Peoples has historically used the Rager Mountain facility to serve its customers behind its city gates, subject to Pa PUC regulation. However, Peoples states that the full capacity of the field has not been needed for this service. Peoples states that over the past 20 years, winter withdrawals from the Rager Mountain storage facility have averaged 6.4 Bcf, and that over the past five years, the average winter withdrawals have dropped to 5.6 Bcf, or about 60 percent of the working gas capacity of the field. Peoples cites a reduction in on-system demand, the increased use of local production to fulfill demand requirements, and the evolution in the use of the facility from a base load pool to a peaking pool as reasons behind the decline in utilization.

6. Peoples indicates that certain efficiency enhancements, which it will make upon approval of the instant applications, will reduce the volume of gas that must be held in storage inventories in order to meet peak day requirements, thereby permitting the earlier scheduling of withdrawals and permitting Peoples to turn its facility on a more regular basis. Because Peoples will no longer need the 2 Bcf of gas presently stored using the capacity that will be leased to Rager Mountain, Peoples will transfer the 2 Bcf of gas to Rager Mountain under the terms of the settlement approved by the Pa PUC.

7. Rager Mountain requests certificate authority to lease 2 Bcf of working gas capacity from Peoples, with a maximum deliverability of 45,000 Mcf/d, and authorization to offer storage service utilizing the 2 Bcf of leased capacity at market-based rates. Rager Mountain also seeks a one-time waiver of the Commission's Part 284 open-access and unbundling requirements and Part 358 Standards of Conduct in order to make its initial service agreements with its new storage customers contingent upon the customers' agreement to also purchase the 2 Bcf of People's system-supply gas currently in storage.

A. <u>The Lease</u>

8. Peoples requests a limited-jurisdiction certificate authorizing it to lease 2 Bcf of intrastate storage capacity at the Rager Mountain field to Rager Mountain. Under an operating lease between Peoples and Rager Mountain, Peoples will continue to own, operate, and maintain all of the leased storage facilities and the related transmission facilities on an integrated basis. Rager Mountain will hold a lease interest in 2 Bcf of firm storage capacity and the corresponding firm storage injection and withdrawal entitlements. Rager Mountain will use the leased storage capacity and associated injection and withdrawal rights to perform services for others under Rager Mountain's own tariff. Transportation on People's pipeline segments between the storage facility and the interconnection with Texas Eastern is included in Rager Mountain's injection and withdrawal rights.

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flowed through to Peoples' ratepayers. The Pa PUC issued an Initial Decision on March 22, 2011, and a Final Order on April 29, 2011, approving the settlement.

1. Term Of Lease

9. The lease of capacity and associated service will commence on the effective date of the initial tariff filed with the Commission and continue for an initial term of five years, subject to evergreen rollover rights.[4] Specifically, the lease may be extended for two optional five-year terms, at the end of the initial five-year lease term and then again at the end of ten years. The lease provides that the arrangement is not to exceed fifteen years. Termination is subject to either party giving at least 12 months advance written termination notice prior to the then-current contractual termination date.

2. Leased Storage Rights

10. Both the leased storage capacity and the related transmission capacity will continue to be owned, operated, and maintained by Peoples. Also, since the interconnection with Texas Eastern is considered part of the storage facility, there will be no separate service or charge for transportation of gas between the Rager Mountain field and Texas Eastern.

3. Injections

11. Rager Mountain, on behalf of its customers, will have firm injection rights during the period April 16 through October 15, subject to injections not exceeding the total leased storage capacity of 2 Bcf at any time. Peoples will have no obligation to accept any injection quantities of gas during the period October 16 through April 15.

12. During the period April 16 through August 31, Rager Mountain may inject up to 15,000 Dth per day. Rager Mountain may inject up to 5,000 Dth per day[5] during the period September 1 through October 15. All gas for injection must be delivered at Peoples' interconnection with Texas Eastern.[6]

4. Withdrawals

13. During the period November 1 through March 31, Rager Mountain will have the right to withdraw up to 45,000 Dth per day from storage on a firm basis, up to 2 Bcf of total withdrawals. Rager Mountain must withdraw its entire storage gas inventory by

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[4] Peoples Amended Ex. Z-1 at 4 (Revised Lease Agreement attached to Peoples March 31, 2011 Amended Application).

[5] Revised Lease Agreement at 2. Special terms address the sale of gas in place during the first year of the lease.

[6] Revised Lease Agreement at 2.

April 1 of each calendar year. Peoples will deliver all withdrawal quantities to the interconnection with Texas Eastern.

14. Peoples will have no obligation to provide any withdrawal quantities during the period April 16 through October 15 each year. Peoples may provide additional withdrawal or injection quantities exceeding the respective limits on an interruptible basis when Peoples determines, in its sole discretion, that it is operationally able to provide the injections and/or withdrawals.[7]

5. Gas Transfer Agreement

15. The settlement agreement approved by the Pa PUC includes a revised Gas Transfer Agreement, which requires Peoples to transfer in place 2 Bcf of base gas to Rager Mountain. Upon completion of the transfer, Rager Mountain will sell the transferred base gas to a non-affiliated party or parties at market rates.[8] Rager Mountain will share any net proceeds on the sale of the transferred base gas with Peoples, with Rager Mountain retaining 50 percent of the net proceeds (determined by gross proceeds in excess of income taxes) and the remaining 50 percent being flowed through to Peoples' ratepayers.[9]

6. Rent And Payments

16. The lease requires Rager Mountain to pay an initial monthly lease payment of $155,191. The monthly lease payment is one-twelfth of the sum of the three costs noted below and is subject to annual adjustment to take effect in April of each year.[10] Specifically, the lease payments will recover: (1) the return, taxes and depreciation costs related to Peoples' efficiency improvement investment in the Rager Mountain facility after December 31, 2009; (2) 80 percent of the annual revenue requirement related to investment in the Texas Eastern interconnection; and (3) incremental facility operation and maintenance costs.

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[7] Revised Lease Agreement at 3.

[8] Peoples Appendix D, Gas Transfer Agreement (Attached to Peoples March 31, 2011 Amended Application).

[9] Pa PUC March 22, 2011 Initial Decision at 4-5 (attached to Peoples April 29, 2011 Third Supplemental Data Request Response).

[10] Revised Lease Agreement at 4.

7. Retainage - Fuel And Losses

17. The lease also requires Rager Mountain to furnish Peoples with a quantity of gas for fuel and losses (retainage). The lease provides that retainage will be expressed as a percentage of quantities delivered for injection and will be 2.1 percent plus an amount that covers any incremental storage losses at the Rager Mountain facility. Incremental storage losses will be calculated based on a benchmark of the current Rager Mountain storage facility losses of 25,000 Mcf per month. The retainage percentage will be subject to redetermination annually.[11]

B. Proposed Market-Based Rates

18. Rager Mountain proposes to offer firm and interruptible storage service at market-based rates. The proposed firm storage service rate structure includes three reservation rate components, four usage components, and a provision for fuel reimbursement.

19. The Storage Reservation Charge is a monthly charge related to the total volume of storage space under contract. The Withdrawal Reservation Charge is a monthly charge related to the maximum daily amount of gas that may be withdrawn under a contract. The Injection Reservation Charge is a monthly charge related to the maximum daily amount of gas that may be injected under a contract.

20. Rager Mountain's usage charges would include a Storage Injection Charge (a charge for each dekatherm of gas injected into the storage); a Storage Withdrawal Charge (a charge for each dekatherm of gas withdrawn from storage); an Excess Injection Charge (a charge for each dekatherm of gas injected into the storage in excess of the customer's contractual limits); and an Excess Withdrawal Charge (a charge for each dekatherm of gas withdrawn from storage in excess of the customer's contractual limits).

21. Rager Mountain's proposed interruptible storage service rate structure includes three usage components and a provision for fuel reimbursement. The interruptible usage charges include a Storage Inventory Charge (a charge per dekatherm for each day gas is in storage); a Storage Injection Charge (a charge for each dekatherm of gas injected into the storage); and a Storage Withdrawal Charge (a charge for each dekatherm of gas withdrawn from storage).

22. The fuel reimbursement rates for both firm and interruptible service require the customer to compensate Rager Mountain for fuel consumed in performing storage service with gas in-kind, as defined in the General Terms and Conditions of Rager Mountain's tariff and as agreed to and stated in each customer's service agreement.

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[11] Revised Lease Agreement at 6.

II. Notice and Interventions

23. The Commission published notice of Peoples' and Rager Mountain's applications in the *Federal Register* on October 25, 2010.[12] The Commission published notice of the amended applications on April 18, 2011.[13] No motions to intervene, comments, or protests were filed.

III. Discussion

24. Since the capacity as issue will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the proposed lease of capacity and provision of service are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.[14]

A. Certificate Policy Statement

25. The Commission issued its Certificate Policy Statement in 1999 to provide guidance as to how the Commission evaluates proposals for certificating major new construction.[15] 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. While the applications of Peoples and Rager Mountain do not contemplate significant construction of new facilities, the Commission has found it appropriate to apply its Certificate Policy Statement to the extent applicable in cases where a company seeks to acquire significant existing facilities or lease the capacity of the facilities.[16]

26. As explained in the Certificate Policy Statement, in deciding whether to authorize 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,

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[12] 75 Fed. Reg. 65,470 (2010).

[13] 76 Fed. Reg. 21,727 (2011).

[14] 15 U.S.C. §§ 717f(c) and 717f(e) (2006).

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

[16] *See, e.g., Trunkline Gas Co., LLC,* 132 FERC ¶ 61,069, at P 8 (2010); *BGS Kimball Gas Storage, LLC,* 117 FERC ¶ 61,122, at P 19-23 (2006).

avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.[17]

27. Under this policy, the threshold requirement in establishing the public convenience and necessity for pipelines proposing a new project is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers.[18] 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.[19] If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

28. Because Rager Mountain is a new company and therefore has no existing customers, the threshold requirement of the Certificate Policy Statement is satisfied.

29. The Commission also finds that the benefits of the Applicants' proposals outweigh any impacts on competing existing pipelines and their captive customers. Granting the application will increase the amount of storage capacity available to the interstate market. Further, no pipelines or customers have raised any opposition to the Applicants' proposals in this proceeding.

30. As stated above, among the factors considered under the Certificate Policy Statement are impacts on landowners and communities to be affected by proposed facilities. An important element of the consideration is how much of the necessary right-of-way the applicant has been able to obtain through negotiation with landowners and the extent to which the applicant may need to rely on the exercise of eminent domain. As the instant proposals involve existing facilities, no exercise of eminent domain will be necessary; therefore, there will be no impacts on landowners and communities. In view of the above discussion, the Commission finds that Rager Mountain's application to acquire a leasehold interest in People's Rager Mountain storage facility satisfies the Certificate Policy Statement.

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[17] Certificate Policy Statement, 88 FERC at 61,737.

[18] *Id.* at 61,745-46.

[19] *Id.*

31. However, as the Commission has explained,[20] a lease arrangement involves additional considerations. The Commission views a pipeline's lease of capacity in another company's pipeline or storage facilities differently from a pipeline being a transportation or storage customer under another pipeline's rate schedule. The Commission views a lease of pipeline or storage capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's facilities.[21] To enter into a lease agreement for the use of existing facilities and capacity therein, the lessee generally needs to be a natural gas company under the NGA with section 7(c) certificate authority. Once the lessee acquires the capacity, the lessee in essence owns that capacity and use of the capacity is subject to the lessee's tariff. The lessor, while it may remain the operator of the pipeline system or storage capacity, no longer has any rights to use the leased capacity.[22]

32. The Commission's practice has been to approve a lease if it finds that: (1) there are benefits from using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the terms of the lease; and (3) the lease arrangement does not adversely affect existing customers.[23] The lease agreement between Peoples and Rager Mountain satisfies these requirements.

33. First, the lease will create public benefits by allowing 2 Bcf of incremental storage capacity to be made available on the interstate gas market subject to a Commission-approved open-access tariff. Peoples, the lessor, has historically used the subject capacity in providing its local distribution services. However, it no longer needs the entire capacity of the Rager Mountain facility for its own services. While Peoples is not making a permanent sale of the unused capacity to Rager Mountain, the lease arrangement will make additional storage capacity available to the interstate market without the necessity of additional construction.

34. The criterion that the lease payments be less than, or equal to, the lessor's firm transportation rates for comparable service over the terms of the lease, was developed in the context of one interstate pipeline company obtaining capacity from another interstate

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[20] *The East Ohio Gas Co*., 133 FERC ¶ 61,076, at P 27-28 (2010); *Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185, at P 10 (2005).

[21] *Id.*

[22] *Id.*

[23] *Islander East Pipeline Co., L.L.C.,* 100 FERC ¶ 61,276, at P 69 (2002); *Gulf Crossing Pipeline Co. LLC,* 123 FERC ¶ 61,100, at P 111 (2008); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 31 (2008), *reh'g denied*, 127 FERC ¶ 61,164 (2009).

pipeline. The purpose was to ensure that the lessee pipeline was not paying (and passing through to its shippers) more under the proposed lease than it would have if it had obtained firm transportation service from the lessor-pipeline instead. Here, Peoples, a Hinshaw pipeline, does not have a tariffed service option comparable to the service Rager Mountain will be obtaining pursuant to the lease agreement. However, it appears that the payments Rager Mountain will make to Peoples under the lease are calculated to recover costs associated with the leased capacity incurred by Peoples. Moreover, since Rager Mountain will be offering its services at market-based rates, Rager Mountain's ability to pass the lease payments through to its jurisdictional customers will be constrained by prevailing market conditions and the value placed by potential customers on the capacity and service.

35. Finally, the record supports a finding that the lease arrangement will not adversely affect existing customers. Peoples is leasing only excess storage capacity to Rager Mountain. Further, on April 29, 2011, the Pa PUC issued a Final Order, which found that the lease arrangement was in the public interest and in the interest of Peoples' existing ratepayers.[24] As noted above, Rager Mountain has no existing customers to be adversely affected by the lease.

36. The Commission has found that capacity leases in general have several potential public benefits. Leases can promote efficient use of existing facilities and capacity, avoid construction of duplicative facilities, reduce the risk of overbuilding, reduce costs ultimately borne by gas consumers, minimize environmental impacts, and result in administrative efficiencies for shippers.[25] The subject lease arrangement between Peoples and Rager Mountain will promote these objectives by allowing additional storage capacity to be available on the interstate market without construction of duplicative facilities.

B. Market -Based Rates

37. Rager Mountain seeks authority to provide storage services at market-based rates. Generally, the Commission evaluates requests to charge market-based rates for storage

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[24] Pa PUC April 29, 2011 Final Order (attached to Peoples April 29, 2011 Third Supplemental Data Request Response).

[25] *See, e.g., Dominion Transmission, Inc.*, 104 FERC ¶ 61,267, at P 21 (2003); *Islander East Pipeline Co.*, 100 FERC ¶ 61,276 at P 70.

under the analytical framework of its Alternative Rate Policy Statement.[26] Under the Alternative Rate Policy Statement, the Commission's framework for evaluating requests for market-based rates has two principal purposes: (1) to determine whether the applicant can withhold or restrict services and, as a result, increase prices by a significant amount for a significant period of time; and (2) to determine whether the applicant can discriminate unduly in price or terms and conditions of service.[27] To find that an applicant cannot withhold or restrict services, significantly increase prices over an extended period, or discriminate unduly, the Commission must find that there is a lack of market power[28] because customers have good alternatives[29] or that the applicant or the Commission can mitigate the market power with specified conditions.

38. The Commission's analysis of whether an applicant has the ability to exercise market power includes three major steps. First, the Commission reviews whether the applicant has specifically and fully defined the relevant markets[30] to determine which specific products or services are identified, and the suppliers of the products and services, that provide good alternatives to the applicant's ability to exercise market power.[31] Additionally, as part of the first step, the applicant must identify the relevant geographic market.[32] Second, the Commission measures an applicant's market share and market

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

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

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

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

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

[31] Alternative Rate Policy Statement, 74 FERC at 61,321.

[32] *Id.* at 61,232-34.

concentration.[33] Third, the Commission evaluates other relevant factors, such as ease of entering the market.

39. In 2006, the Commission issued Order No. 678, which explicitly adopted a more expansive definition of the relevant product market for storage to include close substitutes for gas storage services, including pipeline capacity, and local production/LNG supply.[34] The Commission determined that for a non-storage product to be a good alternative to storage, it must be available soon enough, have a price low enough, and have a quality high enough to permit customers to substitute the alternative for the applicant's services.[35]

1. Geographic Market

40. Rager Mountain provides a market power analysis and market power data in Exhibit I and Supplemental Exhibit I to support its claim that it does not possess market power over storage services offered in the relevant geographic market. Rager Mountain defines the relevant geographic market as consisting of New York and Pennsylvania, where the Rager Mountain facility is located. [36] For purposes of its analysis, Rager Mountain defines the product market as solely consisting of the underground natural gas storage facilities in the relevant market. Further, for purposes of assessing its potential to exercise market power, Rager Mountain included all the storage facilities of its affiliates in determining its market share.

2. Market Concentration, Market Share, and Other Factors

41. The Commission examines concentration in the relevant market using the Herfindahl-Hirschman Index (HHI). The Alternative Rate Policy Statement states that a low HHI, generally less that 1,800, indicates that sellers cannot exert market power because customers have sufficiently diverse alternatives in the relevant market.[37] If the HHI is above 1,800, the Commission will give the applicant more scrutiny in order to make a determination about a seller's ability to exercise market power because the

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[33] *Id.* at 61,234.

[34] *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220, *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

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

[36] Application, Statement A of Exhibit I.

[37] Alternative Rate Policy Statement, 74 FERC at 61,235.

market is more concentrated. The Commission also considers an applicant's market share and other factors including ease of entry.

42. Rager Mountain's market power study encompasses 73 natural gas storage fields, including the Rager Mountain facility, which are owned or controlled by 13 companies. These fields have a total working gas capacity of approximately 539 Bcf and an aggregate daily deliverability of 10,968 MMcf/d.[38] Rager Mountain's market power analysis generates a market share of 3.2 percent and HHI of 2040 for working gas capacity and a market share of 3.3 percent and HHI of 1969 for maximum daily withdrawal capacity.

43. Rager Mountain maintains that there are no significant barriers to entry in the natural gas storage market in the New York and Pennsylvania region market. In support, Rager Mountain cited numerous recent increases in the storage capacity in or near the New York and Pennsylvania market, either through the development of new facilities, or expansion of existing facilities.[39] Rager Mountain cited at least 15 proposed storage expansions in the same region under various stages of development.[40]

3. Commission Determination

44. Since 1994, the Commission has found that the storage market in the New York and Pennsylvania region is competitive for small independent operators and has authorized market-based rates for numerous storage facilities in the area.[41] Further, since 1994 the HHI index in the New York and Pennsylvania market area has decreased from 4,900[42] to 2,251,[43] demonstrating ease of entry into the market place.

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[38] *See* Amended Application, Supplemental Exhibit I, Appendix 5-Update.

[39] Application, Appendix 6 of Exhibit I.

[40] *Id.*

[41] *See, e.g., Avoca Natural Gas Storage (Avoca),* 68 FERC ¶ 61,045 (1994); *Steuben Gas Storage Co.,* 72 FERC ¶ 61,102, *order on reh'g,* 74 FERC ¶ 61,060 (1996); *New York State Electric & Gas Corp*., 81 FERC ¶ 61,020 (1997); *Honeoye Storage Corp*., 91 FERC ¶ 62,165 (2000); *Central New York Oil & Gas Co. LLC*, 94 FERC ¶ 61,194 (2001) and 117 FERC ¶ 62,261 (2006); *Wyckoff Gas Storage Co.,* 105 FERC ¶ 61,027 (2003); *UGI LNG, Inc.*, 119 FERC ¶ 61,056 (2007); *Steckman Ridge, LP,* 123 FERC ¶ 61,248 (2008)*; Arlington Storage Co., LLC,* 125 FERC ¶ 61,306 (2008); *Chestnut Ridge Storage LLC*, 128 FERC 61,210 (2009); *UGI Storage Co.*, 133 FERC ¶ 61,073 (2010), *reh'g denied* 134 FERC ¶ 61,239 (2011).

[42] *Avoca,* 68 FERC at 61,151.

Rager Mountain's amended study shows a market share for working gas of 3.2 percent and a market share for maximum peak daily deliverability of 3.3 percent. The calculated HHIs are 2,040 for working gas and 1,969 for maximum daily deliverability. The Commission finds that while the HHI level of 1,969 for maximum peak day deliverability and 2,040 for working gas is above the Commission's threshold of 1,800, this will be mitigated by Rager Mountain's relatively small market share of 3.3 percent and 3.2 percent respectively for each service.

45. The Commission finds that Rager Mountain's analysis demonstrates that its proposed project will be in a highly competitive area where numerous storage service alternatives exist for potential customers. The Commission also finds that Rager Mountain's entry will increase the storage alternatives in the New York and Pennsylvania region. Finally, the Commission finds that barriers to entry are low in the relevant market area. Thus, the Commission concludes that Rager Mountain will lack significant market power. For these reasons, and noting the fact that Rager Mountain's request to charge market-based rates is unopposed, the Commission will approve Rager Mountain's request to charge market-based rates for firm and interruptible storage service.

46. Nevertheless, Rager Mountain must notify the Commission if future circumstances significantly affect its present market power status. The Commission's approval of market-based rates for Rager Mountain's storage services is subject to re-examination in the event that: (i) Rager Mountain adds storage capacity beyond the capacity authorized in this order; (ii) an affiliate increases storage capacity; (iii) an affiliate links additional storage facilities to Rager Mountain; or (iv) Rager Mountain, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to Rager Mountain. Since these circumstances could affect its market power status, Rager Mountain shall notify the Commission within ten days of acquiring knowledge of any such changes. The notification shall include a detailed description of the new facilities and their relationship to Rager Mountain.[44] The Commission also reserves the right to require an updated market power analysis at any intervening time.

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[43] *UGI Storage Co.*, 133 FERC ¶ 61,073 at P 81.

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

4. **Waiver of Cost-Based Regulations**

47. Rager Mountain requested a wavier of the data required by 18 C.F.R. §§ 157.6(b)(8) and 157.14(a)(10), (13), (14), (16), and (17),[45] referring to Exhibits H, K, L, N, and O. Rager Mountain states that the required data is only relevant if an applicant will charge cost-based rates and further, Exhibit H, which addresses gas supply, is only relevant to the operation of bundled storage services. Rager Mountain also notes that the lease will include all their capital requirements and operating and maintenance costs.[46]

48. Rager Mountain also requests waiver of certain filing, accounting, and reporting requirements applicable to cost-based rate proposals, which the Commission previously found inapplicable to storage providers that are granted market-based rate authority. These regulations include: (1) sections 157.6(b)(8), 157.20(c)(3), and 157.14 of the Commission's regulations which require the submission of Exhibits K, L, N, and O; (2) section 157.14(a)(10) of the Commission's regulations which requires the submission of gas supply data; (3) the accounting and reporting requirements in Part 201 and sections 260.1, 260.2, 260.3, and 260.300 (relating to the cost-of-service rate structure, i.e., Form Nos. 2 and 2A); (4) section 284.7(e) (reservation charge); (5) section 284.10 (cost-based rate design methodology); and (6) any other waivers necessary and appropriate for the authorizations requested herein.

49. In light of the Commission's approval of market-based rates for Rager Mountain's storage services, the cost-related information required by the above-described regulations is not relevant. Thus, consistent with findings in previous orders,[47] the Commission will grant Rager Mountain's request for waivers of the regulations requiring the filing of cost-based information, reservation charges, and the use of a straight fixed-variable rate design. The Commission also grants a waiver of section 157.14(a)(10), requiring an applicant to submit gas supply data, which does not pertain to natural gas storage service. 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. 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 will also grant Rager Mountain's request to waive reporting

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[45] Rager Mountain October 7, 2010 Application at 43.

[46] Applicants December 6, 2010 Response to November 17, 2010 Data Request, Question 5.

[47] *See, e.g., Orbit Gas Storage, Inc*, 126 FERC ¶ 61,095 (2009) (*Orbit Gas*); *Port Barre*, 116 FERC ¶ 61,052 at P 33-34; *Liberty Gas Storage, LLC*, 113 FERC ¶ 61,247, at P 54-55 (2005).

requirements, as mandated in section 260.2 (FERC Form No. 2-A, Annual Report for Non-Major Natural Gas Companies), and section 260.300 (FERC Form No. 3-Q, Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies), but the Commission notes that such waivers do not extend to the annual charge assessment (ACA).[48] Therefore, Rager Mountain is required to file the Gas Account-Natural Gas Schedule currently at page 520 of Form No. 2-A, reporting the gas volume information which is the basis for imposing an ACA charge.[49]

C. Standards of Conduct

50. The Commission's Standards of Conduct in Part 358 of its regulations ensures that transmission providers cannot extend their market power over transmission by giving marketing affiliates unduly preferential treatment. However, section 358.3(k)(3) provides that "[a] transmission provider does not include a natural gas storage provider authorized to charge market-based rates." For this reason, Rager Mountain requests that the Commission confirm that Rager Mountain is exempt from the Standards of Conduct requirements of Part 358. Since the Commission is approving Rager Mountain's request to charge market-based rates for firm and interruptible storage services, the Commission finds that, under current circumstances, Rager Mountain is exempt from the Standards of Conduct.

D. Segmentation

51. Rager Mountain requests a blanket certificate under 18 C.F.R. Part 284, Subpart G[50] to provide storage services from the Rager Mountain storage facility and has filed pro forma tariff provisions. Rager Mountain requests a waiver of the Order No. 637 segmentation requirements in section 284.7(d) of the Commission's regulations, which provides that an interstate pipeline's tariff 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. In support of its waiver request, Rager Mountain contends that it will not be offering stand-alone firm transportation services from the Rager Mountain field; all firm services will be provided as part of Rager Mountain's storage services.

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[48] *See BGS Kimball Gas Storage, LLC*, 117 FERC ¶ 61,122 at P 49.

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

[50] *Id.* at 44.

52. The Commission has found that the requirements of section 284.7(d) do not apply to pipelines engaged solely in natural gas storage, i.e., companies which do not provide stand-alone transportation services.[51] The proposed operation of the Rager Mountain facility meets the *Clear Creek* requirement. Thus, the Commission holds that the requirements of section 284.7(d) do not apply to Rager Mountain. Other tariff provisions related to segmentation, such as the allocation of primary point rights in segmented release and within-the-path scheduling, also do not apply to Rager Mountain.

E. Pro Forma Tariff Issues

53. Rager Mountain's application included a Pro Forma Tariff. The Commission directs Rager Mountain to file actual tariff records consistent with the directives in this order at least sixty days prior to commencing service. As a reminder, Rager Mountain will need to comply with the Commission's electronic filing requirements set forth in Order No. 714[52] and Part 154 of the Commission's regulations.

1. Open Season

54. GT&C section 3.1(a) appears to provide Rager Mountain the option to sell capacity created as a result of an expansion either through an open season or on a first-come, first served basis. The Commission has found that tariff provisions that provide a pipeline with the discretion to hold an open season for expansion capacity prior to the in-service date of the facilities are unjust and unreasonable and unduly discriminatory.[53] Moreover, as indicated below, Rager Mountain has no authority to construct facilities in conjunction with its lease of capacity. Therefore, the Commission directs Rager Mountain to remove this section from its tariff.

2. Fees and Construction of New Facilities

55. Rager Mountain will provide its customers with storage service using leased capacity in facilities owned and operated by its affiliate, Peoples. Rager Mountain does not seek a blanket certificate under 18 C.F.R. Part 157, Subpart F to authorize construction of eligible facilities. Further, under the terms of the lease agreement with Peoples, Rager Mountain will not have the right, need, or opportunity to engage in any construction. Therefore, Rager Mountain should remove Pro Forma Tariff Record

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[51] *Clear Creek Gas Storage Co.,* 96 FERC ¶ 61,071 (2001) (*Clear Creek*).

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

[53] *Pine Prairie Energy Center, LLC*, 135 FERC ¶ 61,168, at P 36 (2011) (stating that the Commission will apply its "open season policies to all new construction projects, including market-based rate storage projects, that create capacity").

Section 29 discussing the construction of new facilities and procedures for reimbursement by a shipper or explain why this tariff provision is appropriate.

3. Creditworthiness – Financial Assurances

56. Rager Mountain, in Pro Forma Tariff Record Section 6.31, proposes in part to determine Credit Exposure for a service that requires it to construct new facilities as an amount to be determined by Rager Mountain prior to the start of construction that is reasonable in light of the risks of the construction project. As discussed above, Rager Mountain has not requested a Part 157 blanket construction certificate and under the terms of the lease agreement with Peoples, Rager Mountain will not have the right, need, or opportunity to engage in any construction. Therefore, the tariff provisions pertaining to Credit Exposure for a service requiring the construction of new facilities should be revised to remove from the determination of Credit Exposure anything tied to the construction of new facilities or Rager Mountain should explain why this tariff provision is appropriate.

4. Gas Quality

57. In the Gas Quality Policy Statement,[54] the Commission explained that it intended to apply the policy in its review of pro forma tariffs filed as part of section 7(c) certificate applications.[55] 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 storage; and (iii) show how they derived their gas quality and interchangeability specifications stated in their pro forma tariff.

58. Rager Mountain included a provision on gas quality in Pro Forma Tariff Record Section 6.10 that requires that gas delivered by either party conform with Rager Mountain's gas quality standards. The gas quality specifications are consistent with its sole interconnecting party, Texas Eastern.[56] Accordingly, the Commission finds Rager Mountain's gas quality and interchangeability specifications to its tariff are consistent with the Gas Quality Policy Statement.

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

[55] *Id*. P 46.

[56] *See* FERC NGA Gas Tariff, Texas Eastern Database 1, 5., Quality of Gas, 2.0.0.

5. Miscellaneous Tariff Issues

a. Missing Tariff Records

59. Rager Mountain's Pro Forma Tariff is missing several tariff records, specifically the cover sheets for the Rate Statements (Section No. 4.0), Rate Schedules (Section No. 5.0), General Terms and Conditions (Section No. 6.0), and Forms of Service Agreements (Section No. 7.0). Rager Mountain is directed to include the missing Tariff Records.

b. Missing Defined Terms

60. In the FSS Rate Schedule – Firm Storage Service, Pro Forma Tariff Section No. 5.1 , Rager Mountain did not provide a definition of Excess Injection Charge or an Excess Withdrawal Charge. Rager Mountain should include definitions of these terms in its tariff.

61. In Pro Forma Tariff Section No. 6.16, Rager Mountain uses a defined term of "Facilities" with respect to a customer's obligation for providing insurance coverage. Rager should include a definition for this term in Pro Forma Tariff Section No. 6.2, Definitions, in its tariff.

c. North American Energy Standards Board

62. The Commission has adopted in its regulations various standards for conducting business practices and electronic communication with interstate pipelines as promulgated by the North American Energy Standards Board (NAESB). The standards are intended to govern nominations, allocations, balancing measurement, invoicing, capacity release, and mechanism for electronic communication between pipelines and those with whom they do business.

63. In its pro forma tariff sheets, Rager Mountain has proposed to make its tariff comply with Version 1.9 of the NAESB Standards, the latest version of the NAESB standards adopted by the Commission. The Commission will accept Rager Mountain's proposal subject to the following directive. At the time it files its actual tariff records in this proceeding, Rager Mountain is directed to reflect the latest version of the NAESB Standards adopted by the Commission.

F. Engineering Analysis

64. While Peoples will continue to operate its facilities subject to the regulation of the Pa PUC, use of the capacity that will be leased to Rager Mountain is subject to the jurisdiction of the Commission. For this reason, the Commission needs adequate assurance that the leased storage service will be adequate to support the service that it intends to provide. Consequently, Rager Mountain submitted substantial engineering and

geological data regarding the facilities that adequately demonstrates that it will have the ability to perform its proposed services.

65. Staff analyzed the data submitted in the applications, amendments, and data request responses and has determined that there are no engineering issues in regards to the lease, and that the proposed project is technically sound and feasible. Completion of the construction activities approved by the Pa PUC in anticipation of Peoples lease arrangement will enable it to operate the storage facility to assure Rager Mountain's customers aggregate storage volumes of 2 Bcf of gas and aggregated deliverability of 45,000 Mcf/d as provided under the lease agreement and authorized by Rager Mountain's certificate authorization.

G. Environment

66. The lease of storage capacity from Peoples to Rager Mountain will not in itself involve any ground disturbance. The applications of Peoples and Rager Mountain qualify for categorical exclusions pursuant to 18 C.F.R. § 380.4(a)(27) (2011). The Commission therefore finds that its grant of the necessary authorizations for Rager Mountain to lease the capacity does not require an environmental assessment under the National Environment Policy Act.

67. 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,

The Commission orders:

(A) Peoples is granted a certificate of public convenience and necessity to lease capacity in the Rager Mountain storage facility to Rager Mountain, and Rager Mountain is granted a certificate of public convenience and necessity to lease capacity from Peoples, as described in their applications, as amended, and discussed herein.

(B) Rager Mountain is granted a Part 284, Subpart G blanket transportation certificate to provide open-access storage services using the leased capacity

(C) Rager Mountain is granted waiver to permit its initial storage service agreements to be contingent on the customers' purchase of the 2 Bcf of gas in place at the Rager Mountain field.

(D) Rager Mountain's request to charge market-based storage rates for firm and interruptible storage service is approved, as discussed above and subject to the conditions in this order.

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

(F) Rager Mountain's requests for waivers of the Commission's regulations are granted, as discussed in the body of this order.

(G) Rager Mountain shall submit actual tariff records that comply with the requirements contained in the body of this order no less than 30 days or more than 60 days prior to the commencement of interstate service.

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

By the Commission.

(S E A L)

Kimberly D. Bose
Secretary.