

136 FERC ¶ 61,242  
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.

Tricor Ten Section Hub, LLC

Docket No. CP09-432-000

ORDER ISSUING CERTIFICATES

(Issued September 30, 2011)

1. On June 12, 2009, Tricor Ten Section Hub, LLC (Tricor) filed an application under section 7(c) of the Natural Gas Act (NGA),<sup>1</sup> requesting a certificate of public convenience and necessity authorizing the construction and operation of a new interstate natural gas storage facility in the depleted Ten Section oil and gas field located in Kern County, California. In addition, Tricor requests that the Commission: (1) issue Part 157, Subpart F and Part 284, Subpart G blanket certificates;<sup>2</sup> (2) approve its *pro forma* tariff under which Tricor will provide open-access interstate storage and hub services; (3) authorize Tricor to charge market-based rates for its proposed interstate storage services and interruptible hub services; and (4) grant limited waivers as set forth herein.

2. As discussed below, we grant Tricor's requested certificate authorizations, subject to the conditions described herein. We also grant Tricor's request for market-based rate authority and waiver of certain filing and other requirements.

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<sup>1</sup> 15 U.S.C. § 717f(c) (2006).

<sup>2</sup> See 18 C.F.R. Part 157, Subpart F and Part 284, Subpart G (2011).

## **I. Background**

3. Tricor is a limited liability company organized and existing under the laws of the State of Delaware.<sup>3</sup> Tricor is currently not a “natural gas company” within the meaning of section 2(6) of the NGA<sup>4</sup> and currently holds no section 7 certificates. Upon completion of the construction and initiation of the operations authorized herein, Tricor will become a natural gas company within the meaning of NGA section 2(6) and be subject to the Commission’s jurisdiction.

## **II. Proposal**

4. Tricor proposes to construct and operate a natural gas storage facility twelve miles southwest of the city of Bakersfield, in Kern County, California, to serve the gas and power markets in California, Arizona, New Mexico, Nevada, Oregon, Washington, Idaho, Wyoming, Colorado, and the western sections of Utah and Texas. The project will convert a depleted oil and gas reservoir in the Ten Section production field in Kern County into a high deliverability, multi-cycle natural gas storage facility with approximately 22.4 billion cubic feet (Bcf) of working gas capacity. Tricor states that its storage facility will be completely cycled four times per year and initially will have a maximum withdrawal capability of 1 billion cubic feet per day (Bcf/d) and a maximum injection capability of 800 million cubic feet per day (MMcf/d). The project will interconnect, through a 21-mile header system, with an interstate pipeline running between the cities of Daggett and Bakersfield, owned by Kern River Gas Transmission (Kern River) and Mojave Pipeline Company (Mojave).<sup>5</sup> The header pipeline has a design capacity of 1 Bcf/d.

5. Tricor proposes to provide open-access firm and interruptible storage services, as well as interruptible parking, loan, and balancing services, and an interruptible imbalance trading service. Tricor also proposes to provide advanced interruptible storage and hub services, as described below. Tricor requests authority to charge market-based rates for these services.

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<sup>3</sup> Tricor Energy, LLC owns and will operate Tricor Ten Section Hub. Tricor Energy is a California independent energy company that produces, transports, and sells slightly more than 20,000 Mcf per month of natural gas from its oil fields in California.

<sup>4</sup> 15 U.S.C. § 717a(6) (2006).

<sup>5</sup> Kern River and Mojave share a respective 63.636 percent-36.364 percent ownership interest in the pipeline. Mojave operates the pipeline.

**A. Proposed Facilities**

6. When completed, the Tricor storage facility will consist of: (1) twenty-six natural gas storage injection/withdrawal (I/W) wells, including associated metering facilities, at five new well pads; (2) nine monitoring wells; (3) five water disposal wells, two water supply wells, and associated facilities; (4) a 42,000-horsepower (hp) compressor station, consisting of six 7,000-hp electric drive reciprocating compressors, as well as gas dehydration facilities, control and safety systems, oil and water separation and treatment facilities, and other associated facilities; (5) two 9,600-foot long, 20-inch diameter field lines (high pressure and low pressure) connecting the twenty-six wellheads to the compressor station; and (6) a header system consisting of approximately twenty-one miles of 36-inch diameter bi-directional pipeline, with metering, extending from the compressor station to the interconnection with the Kern River-Mojave pipeline.

7. In addition, Tricor proposes to construct the following non-jurisdictional facilities: a new electric substation and a 1.6-mile, 230-kilovolt transmission line to be owned and operated by Pacific Gas and Electric Corporation (PG&E), a 30,000 barrel (bbl) oil tank at the compressor station, and a 0.3-mile oil pipeline to connect the compressor station to the existing facilities of Kern Oil.<sup>6</sup>

**B. Services**

8. Tricor proposes to provide firm and interruptible storage services pursuant to Rate Schedules FSS and ISS, interruptible hub services, such as parking, loan, and balancing services, and an interruptible imbalance trading service, all at market-based rates. Further, Tricor proposes to offer additional services designed to meet the needs of end-use customers, such as gas-fired power plants. These services are: Advanced Interruptible Storage Service (Rate Schedule AISS), Advanced Interruptible Loan Service (Rate Schedule AILS), Interruptible Imbalance Trading Service (Rate Schedule IBT) and Interruptible Balance Service (Rate Schedule IBS). The advanced interruptible storage and hub services, Tricor maintains, will offer customers a priority below firm services but above non-enhanced interruptible services.

9. Tricor maintains that the project will play a vital role in meeting the need for storage capacity in the western market. Tricor also maintains that the project will be useful to customers seeking to avoid imbalance penalties, capture the value of gas price differentials, and to support swing gas supply.

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<sup>6</sup> Tricor has contracted with Kern Oil, a refiner, to transport crude oil produced at the Ten Section production field in conjunction with the storage operations to Kern Oil's refinery located in Bakersfield.

10. Tricor conducted a non-binding open season for the project from June 1 until September 30, 2009. During this open season, Tricor received long-term, non-binding bids for 38 Bcf of firm storage service, which is more than the 22.4 Bcf of service being offered.<sup>7</sup> Thus, Tricor maintains, adequate market demand clearly exists for the project.

### **C. Market-Based Rates**

11. Tricor seeks authority to provide firm and interruptible storage services and interruptible hub services at market-based rates. Tricor requests market-based rate authority under both the Commission's 1996 Alternative Rate Policy Statement<sup>8</sup> and, alternatively, under section 4(f) of the NGA, Order Nos. 678 and 678-A,<sup>9</sup> and section 284.505 of the Commission's regulations.<sup>10</sup>

### **D. Blanket Certificates and Waiver Requests**

12. Tricor 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. Tricor 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.

13. Tricor requests waivers of certain filing and other requirements that it considers inapplicable to its proposal to provide storage and hub services at market-based rates. Specifically, Tricor requests waiver of sections 157.6(b)(8) and 157.14(a)(13), (14), (16), and (17) of the Commission's regulations,<sup>11</sup> requiring it to submit Exhibit K (Cost of Facilities), Exhibit L (Financing), Exhibit N (Revenues, Expenses, and Income), and Exhibit O (Depreciation and Depletion), as well as waiver of the requirement pertaining

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<sup>7</sup> See Tricor's October 6, 2009 Data Response to Rates Question No. 2.

<sup>8</sup> See *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996) (Alternative Rate Policy Statement).

<sup>9</sup> *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).

<sup>10</sup> 18 C.F.R. § 284.505 (2011).

<sup>11</sup> *Id.* §§ 157.6(b)(8), 157.14(a)(13), (14), (16), and (17).

to straight fixed-variable rate design set forth in sections 284.7(d), 284.7(e), and 284.10.<sup>12</sup>

14. Tricor also requests waiver of the accounting and annual reporting requirements under Part 201 and sections 260.1, 260.2, and 260.300 of the Commission's regulations,<sup>13</sup> except for the information necessary for the assessment of annual charges. Finally, Tricor requests waiver of the requirement in section 157.14(a)(10)<sup>14</sup> that applicants file total gas supply data (Exhibit H).

### **III. Notice, Comments, and Interventions**

15. Public notice of Tricor's application was published in the *Federal Register* on June 30, 2009 (74 Fed. Reg. 31,268). Motions to intervene, protests, and comments were due by July 14, 2009. Public Utilities Commission of the State of California filed a timely notice of intervention and six companies<sup>15</sup> filed timely motions to intervene.<sup>16</sup> Southern California Edison Company, PG&E, and Southern California Generation Coalition<sup>17</sup> filed untimely motions to intervene. We grant their late motions to intervene because they will not disrupt the proceeding or place additional burdens on existing parties.<sup>18</sup> No protests were filed in this proceeding.

16. Sixteen environmental comments were filed and are addressed either in the Environmental Assessment (EA) issued on November 29, 2010 or below.

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<sup>12</sup> *Id.* §§ 284.7(d)-(e), 284.10.

<sup>13</sup> *Id.* Part 201; *id.* §§ 260.1, 260.2, 260.300.

<sup>14</sup> *Id.* § 157.14(a)(10).

<sup>15</sup> Calpine Energy Services, L.P., Mojave Pipeline Company, Southern California Gas Company and San Diego Gas & Electric Company, Kern River Gas Transmission Company, and Niska Gas Storage LLC.

<sup>16</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214 (2011).

<sup>17</sup> The members of the coalition are Los Angeles Department of Water and Power, Glendale Water and Power, Burbank Water and Power, city of Anaheim, Imperial Irrigation District, JP Morgan Ventures Energy Corp., and RRO Energy Services, Inc.

<sup>18</sup> *See* 18 C.F.R. § 385.214(d) (2011).

#### IV. Discussion

17. Since the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.<sup>19</sup>

##### A. Application of the Certificate Policy Statement

18. The Certificate Policy Statement provides guidance for evaluating proposals for certificating new construction.<sup>20</sup> The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, the subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

19. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

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<sup>19</sup> 15 U.S.C. §§ 717f(c) and 717f(e) (2006).

<sup>20</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

20. As noted above, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Tricor's proposal satisfies the threshold requirement because, as a new entrant in the natural gas storage market, it does not have existing customers. Therefore, there will be no subsidization. Likewise, Tricor's proposed project will have no adverse impact on existing customers and services because Tricor has no current customers or services.

21. We are also satisfied that there will be no negative impacts on existing storage providers or their captive customers. The proposal will enhance storage options available to pipelines and their customers, increasing competitive alternatives. Furthermore, no storage company in Tricor's market area has protested its proposal.

22. We find that Tricor has designed its project to minimize impacts on landowners and communities. The project is located in a sparsely populated area where oil and gas production already exist, along with agricultural operations. Tricor states it owns or controls all of the surface and subsurface property and mineral rights necessary to construct and operate the proposed storage field and continues to negotiate for the remaining right-of-way easements for the entire length of the proposed header pipeline and interconnection.

23. In view of the above, we conclude that Tricor's proposed project should provide substantial public benefits without significant adverse impacts. Tricor's proposed storage service will provide customers with flexibility in the management of their gas supplies by enabling them to balance quantities needed to meet varying market area demands. Accordingly, we find, consistent with the criteria discussed in the Certificate Policy Statement, that the certificate authority requested is required by the public convenience and necessity, subject to the conditions discussed below.

## **B. Market-Based Rates**

24. As stated above, Tricor requests authority to charge market-based rates for its firm and interruptible storage services, as well as interruptible parking, loan, and balancing services, and interruptible imbalance trading. Tricor asserts that it will not possess market power and that its proposal satisfies the screening criteria for market-based rates. Tricor concludes that it cannot exercise market power in storage services because it is a small, new entrant in the market and will have to compete with established storage providers, many of which are larger. In the alternative, Tricor requests market-based rate authority pursuant to section 4(f) of the NGA and section 284.505 of the Commission's regulations.

25. Generally, the Commission has evaluated requests to charge market-based rates for storage under the analytical framework of its Alternative Rate Policy Statement.

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.<sup>21</sup> To find that an applicant cannot withhold or restrict services, significantly increase prices over an extended period, or discriminate unduly, the Commission must first find either that there is a lack of market power<sup>22</sup> because customers have good alternatives<sup>23</sup> or that the applicant or Commission can mitigate the market power with specified conditions.

26. 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 markets<sup>24</sup> 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.<sup>25</sup> Additionally, as part of the first step, the applicant must identify the relevant geographic market.<sup>26</sup> Second, the Commission measures an applicant's market share and market concentration.<sup>27</sup> Third, the Commission evaluates other relevant factors, such as ease of entering the market.

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<sup>21</sup> See *Blue Sky Gas Storage*, 129 FERC ¶ 61,210 (2009) (Blue Sky); *Orbit Gas Storage*, 126 FERC ¶ 61,095 (2009).

<sup>22</sup> The Commission defines "market power" as "the ability of a pipeline to profitably maintain prices above competitive levels for a significant period of time." Alternative Rate Policy Statement, 74 FERC at 61,230.

<sup>23</sup> 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." *Id.* at 61,230

<sup>24</sup> Relevant product market consists of the applicant's service and other services that are good alternatives to the applicant's services. *See id.* at 61,231.

<sup>25</sup> *See id.*

<sup>26</sup> *See id.* at 61,232-34.

<sup>27</sup> *See id.* at 61,234.

27. 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/liquefied natural gas (LNG) supply.<sup>28</sup> 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 service.<sup>29</sup>

### 1. Geographic Market

28. Tricor identifies the relevant geographic market for determining whether it will have the ability to exercise market power as the Western Market Region, which it defines to include the States of California, Arizona, New Mexico, Nevada, Oregon, Washington, Idaho, Wyoming, Colorado, and the western sections of Utah and Texas.<sup>30</sup> Tricor states that it can serve this broad market area through direct and indirect access to interstate and intrastate pipelines. Tricor additionally states that its identified geographic market is so large because demand for gas in California requires an infrastructure that encompasses the entire western region of the United States. Tricor states that it will be competing with all the storage providers that are attached to that infrastructure at any point.

29. Tricor's proposed geographic market is considerably broader than any previously used by the Commission as a basis for determining that a natural gas company in the western United States would lack market power in the provision of storage services. Moreover, we question Tricor's assertion that its project, located in southern California, will be able to effectively serve customers in Oregon or Washington.

30. In general, the relevant geographic markets found appropriate for determining market power have comprised the areas, including only those storage facilities that are connected to or directly accessible to the pipelines that the new applicant proposes to interconnect with or to pipelines connected to a market hub which can serve the applicant.<sup>31</sup> In *Ryckman*, the geographic market (Rocky Mountain Production Area,

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<sup>28</sup> See Order No. 678, *supra* note 9, at P 25.

<sup>29</sup> See *id.* P 27.

<sup>30</sup> See Exhibit I of the Application at 9.

<sup>31</sup> See *Ryckman Creek Resources*, 136 FERC ¶ 61,061, at P 38 (2011) (*Ryckman*); *Magnum Gas Storage* (*Magnum*), 134 FERC ¶ 61,197, at P 35 and 43 (2011); *East Cheyenne Gas Storage* (*East Cheyenne*), 132 FERC ¶ 61,097, at P 34 and 43 (2010); (continued...)

which was defined as Colorado, Kansas, Utah, and southern Wyoming) included storage facilities that are connected to pipelines (i.e., Questar Pipeline Company (Questar), Overthrust Pipeline Company (Overthrust), and Kern River) that are directly accessible to Ryckman's new storage facility.<sup>32</sup> In *Magnum*, the geographic markets included competitive alternatives that were directly connected to Questar and Kern River, or accessible to those pipelines via market hubs, in Utah, Wyoming, Colorado, Nebraska, Kansas, and Oklahoma (the Rockies/Plains Region) and the competitive alternatives directly connected to Kern River and Questar, or accessible to those pipelines via market hubs, in Utah, New Mexico, and southern California (the Southwest/Southern California Region).<sup>33</sup> In *East Cheyenne*, the geographic market included storage facilities that were directly connected to Rockies Express Pipeline LLC (REX) and Trailblazer Pipeline Company LLC (Trailblazer), or the interstate pipelines connected to the market hubs that are connected to East Cheyenne through REX and Trailblazer (for purposes of defining the geographic market, East Cheyenne used the Cheyenne Hub in Weld County, Colorado, the White River Hub in Rio Blanco, Colorado, the Wamsutter Hub in Sweetwater County, Wyoming, and the Opal Hub in Lincoln County, Wyoming).<sup>34</sup>

31. Tricor's storage facility is located in southern California and has direct interconnections with both Kern River and Mojave pipelines, serving the southern California market area. In addition, Tricor is indirectly connected to El Paso Natural Gas Pipeline Company (El Paso) through Mojave, serving Tricor's southern California market area.

32. Tricor's geographic market also encompasses as alternatives four storage facilities that are located in the State of Oregon (i.e., Calvin Creek, Mist, Newport, and Portland). These storage facilities are connected to Northwest Natural Gas Company's intrastate pipeline, but again, are not connected to or directly accessible to the Kern River, Mojave, or El Paso pipeline systems.<sup>35</sup> Likewise, the Washington State storage facilities included

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*Blue Sky*, 129 FERC ¶ 61,210, at P 23 and 30 (2009); *Unocal Windy Hill Gas Storage*, 115 FERC ¶ 61,218, at P 30 and 34 (2006).

<sup>32</sup> See *Ryckman*, 136 FERC ¶ 61,061, at P 38.

<sup>33</sup> See *Magnum*, 134 FERC ¶ 61,197, at P 35.

<sup>34</sup> See *East Cheyenne*, 132 FERC ¶ 61,097, at P 34.

<sup>35</sup> Additionally, Bradwood Landing storage facility located in Oregon that was listed in Tricor's market power analysis is not a good alternative because the Ninth Circuit Court of Appeals vacated NorthernStar Energy LLC's certificate for  
(continued...)

by Tricor in its geographic market (Jackson Prairie and Plymouth) are connected to Northwest Pipeline GP, but are not connected to or directly accessible to the Kern River, Mojave, or El Paso pipeline systems and do not serve Tricor's southern California market area. Tricor has defined its geographic market to include the Lovelock storage facility located in Nevada. This storage facility is directly connected to Paiute Pipeline Company, which does not have an interconnect with Kern River, Mojave, or El Paso. Finally, Tricor has failed to justify as a good alternative the Energia Costa Azul LNG storage facility located in northern Mexico. Tricor has not provided support for the utilization rate of this LNG storage facility and has not shown how LNG supplies at the Energia Costa Azul facility can be sold in the relevant geographic market at any time during a period of high demand and thus may be considered to be an available substitute for natural gas delivered from storage.

33. We find that Tricor has failed to demonstrate that the scope of its proposed geographic market, which essentially encompasses the entire western United States, is appropriate for use in determining whether Tricor would be able to exercise market power if authorized to charge market-based rates. Therefore, having identified what we believe to be a flaw in Tricor's identification of a relevant geographic market for market power purposes, we have reexamined Tricor's market power below, using what we believe to be a more appropriate geographic market. Our revised market includes storage facilities located in California (Lodi, Los Medanos, McDonald Island, Pleasant Creek, Kirby Hills, Wild Goose, Aliso Canyon, Honor Rancho, La Goleta, and Playa del Rey), which are directly accessible to Tricor's southern California hub. We also included storage facilities in Texas (Keystone and Waha) and New Mexico (Grama Ridge and Washington Ranch) that have direct interconnections with El Paso. Finally, we included storage facilities located in Utah (Chalk Creek, Clay Basin, and Coalville) because they are directly accessible to the Kern River pipeline.

## **2. Market Power: Market Share and HHI**

34. The Commission examines concentration in the relevant markets using the Herfindahl-Hirschman Index (HHI). 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.<sup>36</sup> While a low HHI suggests a

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Bradwood Landing due to bankruptcy procedures. *See Oregon v. FERC*, 636 F.3d 1203 (2011).

<sup>36</sup> *See* Order No. 678, *supra* note 9, at P 55 (noting that the Commission is not changing the 1,800 HHI threshold level).

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.<sup>37</sup>

35. Tricor provides three market power studies in its market power analysis based on its proposed western region geographic market: (1) the first study has a product market based solely on substitute underground storage facilities that are in service or approved or are expected to be in service by the end of 2012;<sup>38</sup> (2) the second has a product market that includes those facilities in the first study and peaking LNG facilities and authorized LNG facilities expected to be in service by the end of 2012;<sup>39</sup> and (3) the third study has a product market that includes those facilities in the first study and three western region LNG facilities.<sup>40</sup>

36. In Tricor's first study, the market power analysis generates a market share of 4.9 percent and an HHI of 1,567 for working gas capacity and a market share of 7.2 percent and a HHI of 1,580 for deliverability.<sup>41</sup>

37. In Tricor's second study, the market power analysis generates a market share of 4.8 percent and a HHI of 1,536 for working gas capacity and a market share of

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<sup>37</sup> Alternative Rate Policy Statement, 74 FERC at 61,235.

<sup>38</sup> See Exhibit G-1 of Tricor's market power analysis, supplemental filing on July 8, 2009. The identified facilities are located in the States of Washington (Jackson Prairie); California (Kirby Hills, Lodi, Wild Goose, Los Medanos, McDonald Island, Pleasant Creek, Aliso Canyon, Honor Rancho, LaGoleta, and Playa del Ray); Texas (Keystone and Waha); New Mexico (Washington Ranch and Grama Ridge); Oregon (Calvin Creek and MIST); and Utah (Chalk Creek, Clay Basin and Coalville).

<sup>39</sup> See Exhibit D-1 of Tricor's market power analysis, supplemental filing on July 8, 2009. These LNG facilities are located in the States of Oregon (Newport and Portland); Nevada (Lovelock); and Washington (Plymouth). This study also includes LNG facilities located in Mexico (Energia Costa Azul).

<sup>40</sup> See Exhibit D-1B of Tricor's market power analysis, supplemental filing on July 8, 2009. Two of these LNG facilities are located in the State of Oregon (Jordan Cove and Bradwood Landing) and the third LNG facility is located in Mexico (Energia Costa Azul).

<sup>41</sup> See Exhibit D-1 to Tricor's market power analysis, supplemental filing on July 8, 2009.

7.2 percent and a HHI of 1,580 for deliverability.<sup>42</sup> In Tricor's third study, the market power analysis generates a market share of 4.7 percent and a HHI of 1,481 for working gas capacity and a market share of 6.4 percent and a HHI of 1,353 for deliverability.<sup>43</sup> Tricor states that these studies show the impact of alternatives to underground storage. Tricor states that the number of existing underground gas storage facilities in its proposed western region geographic market area, together with proposed new facilities, expansions, and alternatives such as LNG facilities, make it virtually impossible for any new entrant to exercise market power.<sup>44</sup>

38. Using the revised geographic market as described above, we have recalculated Tricor's market shares. Our analysis indicates that Tricor's market share for working gas is 5 percent and the market share for maximum peak daily deliverability is 10 percent. The calculated HHIs are 1,559 for working gas capacity and 1,937 for maximum daily deliverability. The HHI of 1,559 for working gas capacity is below the 1,800 HHI level that the Commission uses to be indicative of a lack of market power. Further, the market share of 5 percent for working gas is small, which supports a finding that Tricor will lack market power for working gas. We find that while the HHI level of 1,937 for maximum peak day deliverability is above the Commission's threshold of 1,800, this will be mitigated by its market share of only 10 percent. In addition, we note that Tricor is a new entrant with no existing jurisdictional or non-jurisdictional operations in the natural gas pipeline or storage industry. In addition, Tricor has no affiliates in the relevant geographic market. Further, the majority of Tricor's competitors are cost-based. Finally, Tricor's proposal for market-based rates is unopposed. Taken together, we find these factors sufficiently mitigate Tricor's ability to wield market power for working gas and deliverability. Therefore, the Commission will authorize Tricor to charge market-based rates for its proposed storage services.

### **3. Notification of Changed Circumstances**

39. As required by section 284.504(b) of the Commission's regulations,<sup>45</sup> Tricor must notify the Commission if future circumstances significantly affect its present market

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<sup>42</sup> See Exhibit D-1 of Tricor's market power analysis, supplemental filing on July 8, 2009.

<sup>43</sup> See Exhibit D-1B of Tricor's Market Power Analysis, Supplemental Filing on July 8, 2009.

<sup>44</sup> See Exhibit I of the Application at 13 and 15.

<sup>45</sup> 18 C.F.R. § 284.504(b) (2011).

power status. The Commission's approval of market-based rates for the indicated services is subject to re-examination in the event that: (1) Tricor adds storage capacity beyond the capacity authorized in this order; (2) an affiliate increases storage capacity; (3) an affiliate links storage facilities to Tricor; or (4) Tricor or an affiliate acquires an interest in, or is acquired by, an interstate pipeline connected to Tricor. Since these circumstances could affect its market power status, Tricor shall notify the Commission within ten days of any such changes. The notification shall include a detailed description of the new facilities and their relationship to Tricor.<sup>46</sup> We reserve the right to require a market power analysis at any time.<sup>47</sup>

### **C. Requested Waiver of Filing, Reporting, and Accounting Requirements**

40. Because it proposes to charge market-based rates and does not have existing facilities, Tricor requests waiver of the Commission's cost-based rate regulations, which include: (1) section 157.6(b)(8) (certificate applicants to submit cost and revenue data); (2) sections 157.14(a)(13), (14), (16), and (17) and 157.20(c)(3) (cost-based exhibits); (3) the accounting and reporting requirements of Part 201 and 260.2 relating to cost-of-service rate structure (Form 2A); (4) section 284.7(e) (reservation charge); and (5) sections 284.10 and 284.7(e) (straight fixed-variable rate design methodology). Tricor also requests a waiver of the section 157.14(a)(10) that requires applicants to provide a showing of accessible gas supplies, which does not apply to Tricor's natural gas storage operations.

41. The cost-related information required by these regulations is not relevant in light of our approval of market-based rates for Tricor's storage services. Thus, consistent with our findings in previous orders,<sup>48</sup> we grant Tricor's request for waivers with one

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<sup>46</sup> See *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).

<sup>47</sup> See *Liberty Gas Storage LLC*, 113 FERC ¶ 61,247, at P 51 (2005); *Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141, at P 40 (2005). We note 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 Order No. 678-A, *supra* note 9, at P 12-15.

<sup>48</sup> See, e.g., *Caledonia Energy Partners*, 111 FERC ¶ 61,095, at P 20 (2005); *SG Resources Mississippi*, 101 FERC ¶ 61,029, at P 26 (2002); *Egan Hub Partners*, 95 FERC ¶ 61,395, at 62,473 (2001) and 99 FERC ¶ 61,269, at 62,142 (2002).

exception. We grant the requested waiver of section 260.2 (Form No. 2-A) of the regulations except for information necessary for the Commission's assessment of annual charges. Tricor is required to file page 520 of Form 2A, reporting the gas volume information which is the basis for imposing an Annual Charge Adjustment (ACA) charge.<sup>49</sup> We will require Tricor to maintain sufficient records consistent with the Uniform System of Accounts should the Commission require Tricor to produce these cost-based reports in the future.

**D. Pro Forma Tariff**

42. Tricor proposes to offer the following storage services under the associated Rate Schedules: Firm Storage Service (Rate Schedule FSS); Advanced Interruptible Storage Service (Rate Schedule AISS); Interruptible Storage Service (Rate Schedule ISS); Advanced Interruptible Loan Service (Rate Schedule AILS); Interruptible Loan Service (Rate Schedule ILS); Interruptible Parking Service (Rate Schedule IPS); Interruptible Imbalance Trading Service (Rate Schedule IBT); and Interruptible Balance Service (Rate Schedule IBS).<sup>50</sup> These storage services will be provided on an open-access, not unduly discriminatory basis, pursuant to Part 284 of the Commission's regulations. Tricor states that it will provide these storage services pursuant to its *pro forma* tariff attached as Exhibit P to its application. Tricor states that its *pro forma* tariff was modeled on the currently-effective tariff of Caledonia Energy Partners, L.L.C (Caledonia).<sup>51</sup> Tricor states that the General Terms and Conditions (GT&C) of its tariff are structured to conform to the Commission's requirements in Order Nos. 636<sup>52</sup>

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<sup>49</sup> See *Chestnut Ridge Storage*, 128 FERC ¶ 61,210, at P 45 (2009); *Arlington Storage Co.*, 125 FERC ¶ 61,306, at P 71 (2008).

<sup>50</sup> These services are listed in order of declining priority. See Sheet 4.1 in Exhibit P of the application.

<sup>51</sup> See Tricor's Supplemental Filing on June 23, 2009.

<sup>52</sup> *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

and 637<sup>53</sup> and comply with all of the currently applicable North American Energy Standards Board (NAESB) standards Version 1.8.

43. We direct Tricor to file actual tariff records consistent with the directives in this order at least sixty days prior to commencing service.<sup>54</sup> As a reminder, Tricor will need to comply with the Commission's electronic filing requirements set forth in Order No. 714<sup>55</sup> and Part 154 of the Commission's regulations.<sup>56</sup>

### 1. Segmentation

44. 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 such segmentation is operationally feasible.<sup>57</sup> Tricor requests an exemption from the

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<sup>53</sup> *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).

<sup>54</sup> The Commission notes that section 3.1 of the GT&C in Tricor's *pro forma* tariff provides that new storage capacity resulting from an expansion of Tricor's facilities will be sold via either an open season or on a first-come, first-served basis, at Tricor's sole option. The Commission, however, has clarified that it will apply its open season policies (which generally require that an open season should be conducted prior to the filing of an application) to all new construction projects, including storage projects with market-based rates, to ensure non-discriminatory access and the proper sizing of new facilities. *See Pine Prairie Energy Center*, 135 FERC ¶ 61,168, at P 36 (2011), *reh'g pending*. Accordingly, Tricor is required to revise section 3.1 of its tariff to provide that expansion capacity be offered only through open season procedures when Tricor files its actual FERC gas tariff prior to its storage facility being placed into service.

<sup>55</sup> *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

<sup>56</sup> 18 C.F.R. § 154.4 (2011).

<sup>57</sup> *See id.* § 284.7(d).

segmentation requirement in section 284.7(d), contending that its system consists of a single stand-alone storage facility with no separate transportation services, and therefore, segmentation is not feasible.

45. In *Clear Creek Gas Storage Company*, the Commission found that section 284.7(d) did not apply to pipelines engaged solely in natural gas storage and which did not provide stand-alone transportation services.<sup>58</sup> Since Tricor meets these requirements, we hold that section 284.7(d) does not apply to Tricor. We also find that other tariff provisions related to segmentation, such as the allocation of primary point rights in segmented release and within-the-path scheduling, do not apply to Tricor.

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

46. Tricor requests a waiver of the “shipper must hold title” policy for any off-system capacity it may need to acquire in order to provide storage services. Section 21 of its *pro forma* tariff states that Tricor will only provide transportation and storage services for others using such off-system capacity pursuant to its open-access gas tariff, subject to the rates approved by the Commission.

47. This language implements the Commission’s policy with respect to pipelines’ acquisition of off-system capacity. In *Texas Eastern Transmission Corporation* (TETCO), the Commission found that pipelines no longer need to obtain prior approval to acquire capacity on another pipeline, provided the acquiring pipeline filed tariff language specifying that it would only transport for others on off-system capacity pursuant to its existing tariff and rates.<sup>59</sup> Tricor’s proposed tariff language is consistent with the requirements set forth in TETCO and authorizations granted other storage companies authorized to charge market-based rates,<sup>60</sup> and is accepted with the following clarification. Because Tricor has only proposed to offer storage services and parking, loan, and balancing services and has proposed no rates or tariff provisions relating to any other transportation services, Tricor may only use capacity obtained on other pipelines pursuant to TETCO in order to move gas into and out of storage. That is, Tricor 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. Furthermore, Tricor’s authorized use of the TETCO

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<sup>58</sup> See *Clear Creek Gas Storage Co.*, 96 FERC ¶ 61,071 (2001).

<sup>59</sup> See *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273 (2000), *reh’g denied*, 94 FERC ¶ 61,139 (2001).

<sup>60</sup> See, e.g., *SG Resources Mississippi*, 101 FERC ¶ 61,029, at P 30-33.

waiver to provide storage service shall be limited to the modified geographic area covered by the Commission's market power study.

48. In order to ensure that Tricor 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, we direct Tricor, once it becomes operational, to make an annual informational filing on its provision of service using off-system capacity, as detailed below.

49. Within thirty days after its first full year of operation, and every year thereafter, Tricor 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 Tricor;
- 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 Tricor; and
- f. an identification of total volumes, by Tricor's rate schedule and customer, that Tricor has nominated on each off-system provider during the reporting period.

### **3. Standards of Conduct**

50. The Commission's Standards of Conduct in Part 358 of the regulations ensures that transmission providers cannot extend their market power over transmission by giving marketing affiliates undue preferential treatment.<sup>61</sup> 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."<sup>62</sup> For this reason, Tricor requests that the Commission confirm that Tricor is exempt from the Standards of Conduct requirements of Part 358. Since we are approving Tricor's request to charge market-based rates for firm and interruptible storage and interruptible hub services, we find that, under current circumstances, Tricor is exempt from the Standards of Conduct.

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<sup>61</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

<sup>62</sup> See 18 C.F.R. § 358.3(k)(3) (2011).

### **E. Implementation of NAESB Standards**

51. In Part 284 of our regulations, we adopted various standards for conducting business practices and electronic communication with interstate pipelines promulgated by the NAESB.<sup>63</sup> 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. In its *pro forma* tariff sheets, Tricor has proposed to make its tariff comply with Version 1.8 of the NAESB standards. We will accept Tricor's proposal but require Tricor's actual tariff records to comply with the current effective version of the NAESB standards at the time Tricor makes its compliance filing with the Commission.

### **F. Gas Quality**

52. In the Gas Quality Policy Statement, the Commission states that it intends to apply this policy in its review of *pro forma* tariffs filed as part of section 7(c) certificate applications.<sup>64</sup> 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) applicants must show how they derived their gas quality and interchangeability specifications stated in their *pro forma* tariff.<sup>65</sup>

53. Tricor included a provision on gas quality in GT&C section 7 of its *pro forma* tariff providing that gas delivered by or on behalf of the customer to Tricor shall conform to the third party transporter's gas quality standards. However, Tricor did not provide the other information required by the Gas Quality Policy Statement. The terms and conditions addressing Tricor's quality and interchangeability are vague and non-specific. The Commission has held that only natural gas quality and interchangeability

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<sup>63</sup> See *Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-U, FERC Stats. & Regs. ¶ 31,307 (2010).

<sup>64</sup> See *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*, 115 FERC ¶ 61,325, at P 45 (2006) (Gas Quality Policy Statement).

<sup>65</sup> See *id.*

specifications contained in a Commission-approved gas tariff can be enforced.<sup>66</sup> In response to a Commission Staff data request, Tricor stated that it will revise section 7.2 of its tariff, if the Commission deems it necessary, to specifically reference the Kern River-Mojave joint pipeline and its quality and interchangeability specifications when Tricor files its actual FERC gas tariff prior to its storage facility being placed into service.<sup>67</sup> Accordingly, we require Tricor to submit the gas quality and interchangeability specifications to its tariff that are made to be consistent with the Gas Quality Policy Statement for Commission review at least sixty days before the Tricor storage facility goes into service.

#### **G. Part 157, Subpart F Blanket Construction Certificate**

54. Tricor applied for a blanket construction certificate under Part 157, Subpart F of the Commission's regulations for authority to automatically or with prior notice to perform certain routine activities. Because Tricor will become a natural gas company upon its acceptance of an NGA section 7 certificate, we grant Tricor's request for a Part 157, Subpart F blanket construction certificate.

#### **H. Part 284, Subpart G Blanket Transportation Certificate**

55. Tricor also applied for a blanket transportation certificate under Part 284, Subpart G of the Commission's regulations required of all interstate pipelines seeking to provide open-access storage services. Under a Part 284 blanket certificate, Tricor will not require individual authorizations to provide storage services to particular customers. Tricor filed a *pro forma* tariff to provide open-access storage services. Since a Part 284 blanket certificate is required for Tricor to offer these services, we will grant Tricor a Part 284, Subpart G blanket certificate.

#### **I. Engineering Analysis**

56. Commission staff evaluated the data submitted in Tricor's application and data responses, and concludes that its proposal is technically sound and feasible. The project will be constructed in the Zone I reservoir of the Ten Section field. The proposed caprock is approximately 130 feet of the Fruitville Shale. The total capacity of the Ten Section field will be 45.7 Bcf, at a maximum shut-in bottomhole reservoir pressure of 2,860 psia, with a working gas capacity of 22.4 Bcf. Twenty-six storage wells will be directionally drilled from five well pads and are designed to be evenly distributed

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<sup>66</sup> See *id.* P 2.

<sup>67</sup> See Tricor's October 6, 2009 data response to Rates Question No. 1.

throughout the reservoir. The surface facilities, pipelines, and compressor station have all been sized to provide the proposed maximum injection and deliverability rate of 800 MMcf/d and 1 Bcf/d, respectively. As Tricor has indicated, there is a limited water drive, and because the maximum volume of gas to be certificated is less than the original gas-in-place, Tricor is ordered to determine the current location of the gas-oil contact and the oil-water contact (and gas-water contact, if one forms or has formed) before beginning initial gas injection, and again after fill-up has occurred and file those results with the appropriate semi-annual storage report. Tricor 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.

## **J. Environmental Analysis**

57. On August 21, 2009, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Ten Section Storage Project and Request for Comments on Environmental Issues and Notice of Public Scoping Meeting (NOI). The NOI was mailed to federal, state, and local officials; agency representatives; environmental and public interest groups; Indian tribes and Native American organizations; local libraries and newspapers; and affected property owners. Three California state agencies, four local government agencies, and three landowners submitted responsive comments.

58. During the public scoping meeting, held by Commission staff in Bakersfield, California on September 10, 2009, five people spoke about potential project impacts on agricultural land use, geological resources, water resources, special status species, socioeconomics, roads, and air quality.

59. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),<sup>68</sup> our staff prepared an environmental assessment (EA) for Tricor's proposal. The EA was prepared with the cooperation of the California Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR). The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, and alternatives. All substantive comments received in response to the NOI and during scoping were addressed in the EA.

60. The EA was issued for a thirty-day comment period and placed into the public record on November 29, 2010. The Commission received comments on the EA from three landowners, another individual, and Tricor. One of the landowners (J.G. Boswell

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<sup>68</sup> 42 U.S.C. §§ 4321 and 4331-4335 (2006).

Company/Boston Ranch Company) that commented on the EA had previously provided comments during project scoping.

61. On December 8, 2010, Michael Andrews wrote a comment that he had received a copy of the EA in the mail. He stated that he had not previously heard about the project nor had he been contacted by Tricor. Mr. Andrews stated that he is a landowner along the header pipeline route and is concerned about potential project-related impacts on his buildings and farming operations. In additional filings, on December 16, 2010 and February 2, 2011, Mr. Andrews indicated that the pipeline could damage his integrated farm drainage management system, and that an alternative route could affect his asparagus crop. Vashek Cervinka, in a filing on February 3, 2011, also expressed concern about the potential impacts the proposed header pipeline could have on the operation of the Andrews farm and its drainage system.

62. The EA indicated that effects on agricultural land would be minimized through Tricor's use of the Commission Staff's Upland Erosion Control, Revegetation, and Maintenance Plan (Commission Staff's Plan). Section IV.C of the plan requires that the pipeline be installed with enough cover to not interfere with existing drainage systems and any damaged drain tiles be repaired. Further, the plan requires that topsoil be segregated in cultivated fields during construction, returned to the trench after pipeline installation, with contours reestablished. Section V.C. of the plan requires Tricor to mitigate for compacted soils.

63. In a filing on December 9, 2010, Tricor stated that its representative met with Mr. Andrews on June 3, 2009 to discuss the project. On January 6, 2011, Tricor filed a letter with the Commission indicating that its representative met again with Mr. Andrews in December 2010, and presented him with alignment sheets for the proposed header pipeline route across his property showing no buildings would be affected.

64. On December 30, 2010 and April 23, 2011, attorneys for the J.G. Boswell Company, and its wholly-owned subsidiary Boston Ranch Company, filed comments on the EA. The J.G. Boswell Company previously filed comments during the scoping period, requesting that the header pipeline be routed around the Boston Ranch Company property, and those comments were addressed in the EA.

65. The Boston Ranch Company alleged that the EA ignored potential impacts on Williamson Act lands.<sup>69</sup> This is not the case. As Tricor pointed out in its January 12, 2011 Filing, under California Government Code section 51293, the Williamson Act allows for utility easements where the surface is returned to its

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<sup>69</sup> The California Land Conservation Act of 1965, Cal Gov't Code §§ 51200-51295 (West 2008), is discussed in section B.7.0 of the EA.

pre-construction condition and agricultural land use is not impaired. As stated in the EA, the project would not result in the loss of any agricultural lands under Williamson Act contracts, and Kern County, the responsible entity under the Williamson Act to make land use decisions, has determined that utilities such as Tricor's proposed header pipeline would be compatible with agricultural land use.<sup>70</sup>

66. The Boston Ranch Company indicated that it irrigates its tomatoes using a subsurface drip system. It harvests its tomatoes and cotton crops using equipment guided by global-positioning systems (GPS). The company is concerned that subsidence caused by the pipeline may affect its irrigation system and that aboveground cathodic protection devices could interfere with GPS-guided equipment. The company also stated that trenching for the pipeline could impact farming operations by altering the soil profile and scarring. On the Boston Ranch Company tract, the proposed pipeline route would cross Lokern clay soil, which is considered prime farmland if irrigated.

67. Natural gas pipelines regulated by the Commission often cross agricultural land with minimal effects. The EA discussed construction across agricultural areas in sections A.5.2.5, B.2.2, and B.7.0. About 90 percent of the proposed header pipeline route would cross agricultural land. As listed on Table A.7-1 of the EA, the pipeline would cross about 11.2 miles of plowed or crop land, not including alfalfa fields, vineyards, and orchards. After the pipeline is installed and the land restored to its previous condition, the property owner could grow crops over the right-of-way, so no agricultural land would be taken out of cultivation, except where aboveground facilities would be built. The EA discussed the pipeline crossing of prime farmland soils in section B.2.2. Impacts of soils would be temporary during construction and topsoil would be reestablished during right-of-way restoration in accordance with the Commission Staff's Plan.

68. Section A.5.5 of the EA stated that Tricor would not design its cathodic protection system until after the pipeline is installed. This means that Tricor has not yet identified the specific location of any aboveground cathodic protection devices. In a filing on January 12, 2011, Tricor clarified that cathodic protection anodes would be buried underground. The only element that would be aboveground would be test lead stations, which, Tricor stated, it would not locate in the middle of actively cultivated fields. Further, as Tricor noted, in the 1950s the Southern California Gas Company installed a pipeline across the Boston Ranch Company property, and this existing pipeline has apparently not interfered with irrigation systems or the use of GPS-guided farm equipment.

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<sup>70</sup> See EA at 74.

69. The Boston Ranch Company incorrectly characterized the EA as a “moving target” because Tricor filed comments on the EA. Commission staff produced the EA, not Tricor. None of staff’s conclusions in the EA have changed, and we address Tricor’s comments below.

70. The Boston Ranch Company argued that the EA should have considered additional emissions resulting from new or replacement drip irrigation equipment that it would have to install when Tricor’s proposed header pipeline construction disturbs its irrigation system. The Boston Ranch Company claimed that it may have to use at least four new additional diesel engines for field irrigation if existing irrigation infrastructure is disrupted during pipeline construction. The Boston Ranch Company asserted that the emissions from these engines should have been considered in the EA and additional permitting would be necessary.

71. The EA indicated that the project is unlikely to adversely affect existing drainage or irrigation infrastructure, so there is no need to evaluate the construction of new systems. Tricor stated, in its January 12, 2010 Filing, that installation of the pipeline would be scheduled to avoid typical irrigation periods. This should alleviate the need for additional diesel engines to power irrigation systems. However, in case schedules conflict, Tricor provided new emission estimates for a 100-horsepower diesel engine and assumed that construction would last about one month across the Boston Ranch Company property. Based on Tricor’s data, four additional diesel engines would add 0.5 ton of nitrogen oxides, 0.04 ton of volatile organic compounds, and 0.05 ton of particulate matter with an aerodynamic diameter less than 10 microns during the one month of construction. The temporary use of four more diesel engines, in addition to the other construction emissions evaluated in the EA, would still not exceed the General Conformity<sup>71</sup> applicability thresholds and would not result in a significant impact on air quality. The temporary use of additional engines would also not require any additional permitting.

72. The Boston Ranch Company stated that because the proposed header pipeline route would bisect existing irrigation water conveyance structures, over six miles of new or additional ditches and culverts would need to be constructed. The Boston Ranch

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<sup>71</sup> The General Conformity Rule is codified in 40 C.F.R. Part 51, Subpart W and Part 93, Subpart B, determining Conformity of General Federal Actions to State or Federal Implementation Plans. The lead federal agency must conduct a conformity determination if a federal action’s construction and operational activities are likely to result in generating direct and indirect emissions that would exceed the conformity threshold levels (*de minimis*) of the pollutant(s) for which an air basin is in non-attainment or maintenance.

Company asserted that emissions from new ditch construction should have been considered in the EA.

73. Table A5-3 of the EA showed that the proposed header pipeline would cross four canals on land owned by the Boston Ranch Company. These canals would be open cut. However, Tricor has indicated it may use alternative crossing methods (either horizontal directional drills or bores) if irrigation water is needed for farm operations at the time of crossing. Boston Ranch Company has not provided any justification for why six miles of new drainage or irrigation ditches would have to be constructed. Therefore, we do not believe any additional emissions associated with construction of additional drainage or irrigation structures need to be evaluated as part of the proposed project.

74. The Boston Ranch Company is concerned about subsidence of soils over the trench and claimed that the EA should have considered additional emissions generated by equipment used during restoration efforts to fix future subsidence. We disagree. Section A.5.3.2 of the EA stated that after pipeline installation, topography would be returned to its original contours, and the trench fill-over would be compacted. Pipeline contractors typically pile enough earth on top of the pipeline trench to account for backfill consolidation and subsidence. Commission staff would monitor construction and restoration activities to ensure that any major subsidence is corrected at that time. The EA analysis accounted for emissions produced by construction and restoration activities. There should not be any additional emissions generated to alleviate future subsidence.

75. The Boston Ranch Company claimed that the EA falls short on evaluating cumulative air quality impacts (stating that the EA only evaluated the project in comparison to various thresholds for emissions) and ignores the impacts of the project on the already degraded air quality in the San Joaquin Valley Air Basin. The Boston Ranch Company also suggested that the cumulative impacts analysis in the EA should have considered issues related to a California Environmental Quality Act (CEQA) decision for the project.<sup>72</sup>

76. In accordance with the General Conformity regulations, if the project's emissions would be below the General Conformity thresholds, the project is presumed to conform to the applicable implementation plan. The General Conformity applicability analysis of emissions included all direct emissions from the project itself and indirect emissions from the non-jurisdictional crude oil line, storage tank, electric substation, and distribution line. Section B.9.1.1 of the EA compared the direct and indirect emissions from the project with the General Conformity thresholds and these emissions were found to be below the General Conformity thresholds.

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<sup>72</sup> See J.G. Boswell Company's December 30, 2010 Filing at 3.

77. In addition, section B.9.1.4 of the EA included a screening analysis of long-term operational impacts from the compressor station. The results were combined with the background concentrations for each pollutant to represent a cumulative impact of the project and existing sources. These results were presented in the EA as a percentage of the National Ambient Air Quality Standards and as a percent increase over the existing background concentration for each pollutant.

78. The EA adequately addressed cumulative impacts on air quality, as discussed above. The EA also explained, in section A.8.0, that the Commission produced the environmental document to apply to a federal action under the NEPA. A CEQA review can be conducted by the DOGGR in connection with the state injection project approval process.

79. The Boston Ranch Company stated that the EA did not consider reasonable alternatives. We disagree. Section C of the EA discussed the No Action Alternative, System Alternatives, and Route Alternatives.

80. In response to scoping comments from the Boston Ranch Company, section C.3.3.6 of the EA analyzed a route alternative suggested by the Boston Ranch Company to completely avoid its property. However, in comments on the EA, the Boston Ranch Company offered the confusing contention that it owns all of the land crossed by the variation route that it selected to avoid its farm tract. In a filing on June 10, 2010, Tricor disagreed with the Boston Ranch Company statement, indicating that its research identified eight other entities owning land along the variation route. Regardless of who owns the land crossed by the alternative, the EA concluded that the proposed route was environmentally preferable. There is an existing buried irrigation water pipeline and sumps and wells related to the Paloma Oil Field along the north side of Millux Road that could be affected by the alternative route. The Boston Ranch Variation would be 0.8 mile longer than the proposed route and construction along the variation would affect 10 more acres.

81. On January 12, 2011, the Kern Water Bank Authority (Kern Water) filed comments on the EA. Kern Water indicated that while the majority of the water stored for its member entities is used for irrigation purposes, there are no specific storage acre/feet limitations for any particular use. While Kern Water stated that the EA was not accurate in the specific numbers of acre/feet stored for particular purposes, it did not present other numbers that might be correct. There are no environmental impacts associated with the allocation of water stored for any particular use.

82. Kern Water claimed that it is not aware of Tricor's latest revised Conservation Plan that was approved by the U.S. Fish and Wildlife Service (FWS) on September 2, 2010. Tricor filed the plan and the FWS letter with the Commission on September 3, 2010, so they are part of the public record for this proceeding. In its

September 2, 2010 letter, the FWS indicated that it concurred with Tricor's proposal to purchase 124.2 conservation credits at Kern Water's Conservation Bank as compensation for project-related effects on habitat for federally-listed species. Kern Water stated that as of January 12, 2011, Tricor had not yet purchased the conservation credits. Tricor, in its September 3, 2010 Letter to the Commission, committed to purchasing the conservation credits as part of its agreement with the FWS. Environmental Condition 1 of this order would require Tricor to adhere to all mitigation measures described in its application and supplemental filings. Further, Environmental Condition 18 would require Tricor to file documentation of consultations with Kern Water, a plan for crossing Kern Water land, and the Kern Water's comments on the plan.

83. On December 30, 2010, supplemented with a filing on January 7, 2011, Tricor offered comments on the EA. Some of Tricor's comments on the EA contradict data that Tricor had previously filed with the Commission. For example, in its December 30, 2010 comment on section A.5.1.4 of the EA, Tricor stated that the Ten Section field currently produces about 6,000 barrels per day of water rather than the 2,290 barrels given in the EA. However, the number in the EA was taken from Tricor's October 13, 2009 Filing, in response to the Commission staff's September 21, 2009 Data Request. Tricor's Response 18a said: "Using historical and current production records for the Ten Section Field the operations simulation calculated a maximum daily water production rate of 2,290 bbls/day for the entire field."<sup>73</sup>

84. Tricor disputes the EA description of hydrostatic testing, requesting that the statement in section A.5.2.4 that the header pipeline would be tested at a pressure approaching 1.5 times the maximum allowable operating pressure (MAOP) be changed. However, the EA statement was based on Tricor's response to Commission staff's September 21, 2009 Data Request question 19d, filed October 13, 2009, which said: "Testing is typically done to 1.5 times the planned MAOP."<sup>74</sup>

85. Tricor questioned the statement in section B.1.3 of the EA, that Zone 1 within the Upper Stevens Sands at the Ten Section field was "approximately 600 feet thick." In its December 30, 2010 comments, Tricor claimed that Zone 1 is 200 feet thick. However, Resource Report 6 in the environmental report included with Tricor's application to the Commission stated that Zone 1 was "about 650 feet thick." This estimate is for the gross thickness of the reservoir; net thickness would be less.

86. Tricor commented that based on the Conservation Plan that it developed with the FWS, the potential environmental impacts on three federally-listed species

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<sup>73</sup> Tricor's October 13, 2009 Data Response to Environmental Question 18a.

<sup>74</sup> Tricor's October 13, 2009 Data Response to Environmental Question 19d.

(i.e., San Joaquin kit fox, Tipton kangaroo rat, and blunt-nosed leopard lizard) have been mitigated to below a significant level, and that the determinations in the EA for these three federally-listed species should be clarified in order to support a Finding of No Significant Impact. As explained below, Tricor failed to recognize the difference between findings of effect under the Endangered Species Act (ESA)<sup>75</sup> and levels of impact analyzed under the NEPA. We agree that the projected level of impact on these species does not reach the level of significance under the NEPA. If significant impacts were identified, the Commission would have prepared an environmental impact statement rather than an EA, in accordance with the Council on Environmental Quality's regulations for implementing the NEPA.<sup>76</sup> The fact that the EA recommended a Finding of No Significant Impact confirms staff's conclusion that the anticipated level of impact on the San Joaquin kit fox, Tipton kangaroo rat, and blunt-nosed leopard lizard would not be significant within the NEPA compliance context.

87. Although Tricor's Conservation Plan would reduce the potential effects on federally-listed species as much as possible, the project will still adversely affect several species within the context of compliance with the ESA. The FWS acknowledged this finding in its September 2, 2010 Letter to Tricor. The FWS stated that temporary and permanent effects would still occur on federally-listed species through impacts on suitable habitat and potential habitat. In addition, the FWS stated that the San Joaquin kit fox, Tipton kangaroo rat, and blunt-nosed leopard lizard have an increased likelihood of being taken through project-related activities. As such, our staff made the correct determination that the project is likely to adversely affect these three species, under the ESA. Normally, this would require the Commission to enter into formal ESA section 7 consultation with the FWS. However, as stated in section B.5.2 of the EA, the FWS indicated that formal consultation with the Commission was not necessary for this project because it had approved Tricor's Conservation Plan and the FWS determined that the project is eligible for inclusion under the ESA section 10 Master Permit held by the Kern Water. The FWS reiterated this in its December 28, 2010 Letter to the Commission.

88. Tricor also commented that the EA does not discuss the specific measures outlined in Tricor's Conservation Plan and that none of the mitigation measures for federally-listed species are recommended in section D of the EA. The EA does not contain a comprehensive list of all environmental measures agreed to by Tricor. Rather, the EA summarizes select information from Tricor's Conservation Plan. The EA was not intended to be an encyclopedic repository of all data filed for the proposed action.

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<sup>75</sup> 16 U.S.C. §§ 1531-1544 (2006).

<sup>76</sup> See 40 C.F.R. §§ 1502.3 and 1508.27 (2011).

Environmental Condition 1 of this order requires that Tricor honor all its commitments, including the implementation of its Conservation Plan. Therefore, it is not necessary to list each of the individual conservation measures from the plan in section D of the EA or attach them as separate environmental conditions to this order.

89. Tricor commented that the EA failed to use the most recently filed set of operating emissions data for the compressor station showing a reduction in nitrogen oxides, carbon monoxide, and volatile organic compounds. Tricor's comments on the EA provided new information on the project, noting that the San Joaquin Valley Air Pollution Control District's (San Joaquin District) Non-attainment New Source Review (NNSR) Program requires a permit for all new or modified projects with an increase of emissions regardless of whether it is a major or minor source. Although the updated emissions Tricor reported would keep the project as a minor source, Tricor has applied for a NNSR permit. We note these changes; however, they do not change the impact of the project. Emissions from operation of the proposed compressor station would not be significant.

90. Tricor questioned the EA's description of its compliance with Rule 2201 of the San Joaquin District's regulations and that the reference to the use of a particulate filter system on the emergency generator engine driver should be replaced with the term "Tier 3." Once again, however, the EA discussion was based on Tricor's response to staff's September 21, 2009 Data Request question 55, filed October 27, 2009, which said: "Current plans are to provide low-NOx burners on the heat medium package and a particulate filter system on the emergency generator engine driver."<sup>77</sup>

91. Although Tricor provided updated operating emissions on June 10, 2010, this filing did not include an updated screening analysis. Regardless, the results of the screening analysis in section B.9.14 of the EA (based on Tricor's original estimate of emissions) found that no significant impacts on air quality would occur as a result of operation of the project. Tricor, in its comments on the EA, included a table providing results of a new screening analysis based on reduced operating emissions and revised language to update the EA. However, Tricor did not include the detailed screening analysis itself, and therefore staff could not fully evaluate it. However, with the reduced operating emissions mentioned above, the carbon monoxide and nitrogen dioxide modeling results would be expected to be lower than presented in the EA. In summary, none of the updated information provided by Tricor in response to the EA resulted in the need for additional analyses or changed conclusions about levels of impact.

92. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Tricor's application and supplements, and in compliance with the

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<sup>77</sup> Tricor's October 27, 2009 Data Response to Environmental Question 55.

environmental conditions in the 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.

93. 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.<sup>78</sup>

## V. Conclusion

94. For the reasons discussed above, we find 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.

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

### The Commission orders:

(A) A certificate of public convenience and necessity is issued to Tricor, in Docket No. CP09-432-000, authorizing the construction and operation of the described storage facilities.

(B) The certificate issued in Ordering Paragraph (A) is conditioned on Tricor'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 Tricor under Subpart F of Part 157 of the Commission's regulations.

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<sup>78</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Nat'l Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

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

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

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

(H) Tricor 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.

(I) Tricor must submit revised tariff records referencing the gas quality and interchangeability specifications to its tariff that are made to be consistent with the Gas Quality Policy Statement as discussed in the body of this order, at the time it files actual tariff records 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) Within thirty days after its first full year of operation, and every year thereafter, Tricor shall file an annual informational filing on its provisions of service using off-system capacity, as detailed in this order.

(M) Tricor must submit actual tariff records that comply with the requirements contained in the body of this order at least sixty days prior to the requested in-service date.

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

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

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

(Q) The motions to intervene out-of-time filed by Southern California Edison Company, Pacific Gas and Electric Corporation, and the Southern California Generation Coalition are granted.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## Appendix A

### Engineering Conditions for the Tricor Ten Section Hub Project

- A) The maximum inventory of natural gas stored in the Ten Section field shall not exceed the certificated levels of 45,700 MMcf at 14.73 psia and 60 degrees Fahrenheit, and the maximum bottom hole storage pressure shall not exceed 2,860 psia, without prior authorization of the Commission.
- B) Tricor shall operate the Ten Section Field in such a manner as to prevent/minimize gas loss or migration.
- C) Tricor shall conduct an annual inventory verification study on the Ten Section field.
- D) Tricor shall determine the current location of the gas-oil contact and the oil-water contact (and gas-water contact, if one forms or has formed) before beginning initial gas injection, and again after fill-up has occurred and file those results with their semi-annual report.
- E) Tricor shall submit semi-annual 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. (a) The daily volumes of natural gas injected into and withdrawn from the storage reservoir.  
(b) 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 semi-annually 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 semi-annual basis for a period of one year.

## Appendix B

### Environmental Conditions for the Tricor Ten Section Hub Project

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

1. Tricor Ten Section Hub LLC (Tricor) 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 environmental assessment (EA), unless modified by the order. Tricor 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 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**, Tricor shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, and shall include Route Variation 1-B as identified in section C.3.3.3 of the EA. **As soon as they are available, and before the start of construction**, Tricor

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.

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

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

This requirement does not apply to extra workspace allowed by our 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 sixty days of the acceptance of the Certificate and before construction** begins Tricor shall file an Implementation Plan (IP) with the Secretary for review and written approval by the Director of OEP. Tricor must file revisions to the plan as schedules change. The IP shall identify:
- a. how Tricor 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 Tricor will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - e. the location and dates of the environmental compliance training and instructions Tricor will give to all personnel involved with construction and restoration, and refresher training as the project progresses and personnel change, with the opportunity for OEP staff to participate in the training sessions;
  - f. the company personnel (if known) and specific portion of Tricor's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Tricor will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the environmental compliance training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. Tricor shall employ at least one EI per construction spread. The EIs shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the order and other grants, permits, certificates, or other authorizing documents;

- b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of the order, and any other authorizing document;
  - d. a full-time position, separate from all other activity inspectors;
  - e. responsible for documenting compliance with the environmental conditions of the order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - f. responsible for maintaining status reports.
8. Beginning with the filing of its IP, Tricor shall file updated status reports with the Secretary on a biweekly basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
  - a. an update on Tricor's efforts to obtain the necessary federal authorizations;
  - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;
  - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by Tricor from other federal, state, or local permitting agencies concerning instances of noncompliance, and Tricor's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Tricor shall file with the Secretary documentation that it has received all authorizations required under federal law (or evidence of waiver thereof).

10. Tricor shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way. **Prior to construction**, Tricor shall mail the complaint procedures to each landowner whose property would be crossed by the project.
  - a. In its letter to affected landowners, Tricor shall:
    - (1) provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
    - (2) instruct the landowners that if they are not satisfied with the response, they should call a telephone number provided by Tricor for its own company Hotline; the letter should indicate how soon to expect a response; and
    - (3) instruct the landowners that if they are still not satisfied with the response from Tricor's Hotline, they should contact the Commission's Dispute Resolution Service Helpline at 877-337-2237 or at [ferc.adr@ferc.gov](mailto:ferc.adr@ferc.gov).
  - b. In addition, Tricor shall include in its biweekly status report a copy of a table that contains the following information for each problem/concern:
    - (1) the identity of the caller and date of the call;
    - (2) the location by milepost and identification number from the authorized alignment sheet(s) of the affected property;
    - (3) a description of the problem/concern; and
    - (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
11. Tricor must receive written authorization from the Director of OEP **before placing 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.

12. **Within thirty days of placing the authorized facilities in service**, Tricor shall file an affirmative statement with the Secretary, certified by a senior company official:
  - a. that the facilities have been constructed and installed 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 Tricor 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.
  
13. **Prior to pipeline construction**, Tricor shall file with the Secretary the results of its geotechnical investigations at each proposed horizontal directional drill (HDD) location. Tricor shall also file a revised HDD Contingency Plan that outlines measures to be implemented in the case of an HDD failure or frac-outs, for the review and written approval of the Director of OEP.
  
14. **Prior to project construction**, Tricor shall file with the Secretary, for review and written approval by the Director of OEP, reports of all geotechnical investigations, including site-specific mitigation measures and detailed designs Tricor would implement to minimize adverse affects due to geological hazards, including but not limited to: active fault crossings, soil liquefaction, lateral spreading, and collapsing soils.
  
15. **Prior to project construction**, Tricor shall file with the Secretary documentation that it has executed an agreement with Pacific Gas and Electric Company for the construction and operation of the proposed electric facilities needed to supply power to the Tricor compressor station. In addition, for all proposed non-jurisdictional facilities Tricor shall provide:
  - a. maps showing the location of the facilities and dimensions of the construction and operational rights-of-way;
  - b. identification of any permits or approvals from local, state, or federal agencies necessary for the construction and operation of the proposed non-jurisdictional facilities, the status of those permits and approvals, and/or copies of applications and agency records of decision; and
  - c. copies of any environmental studies necessary to obtain permits or approvals for the non-jurisdictional facilities.

16. **Prior to pipeline construction**, Tricor shall file with the Secretary the location by milepost of all private water supply wells within 150 feet of the pipeline construction right-of-way. Tricor shall conduct, with the well owner's permission, pre- and post-construction monitoring of well yield and water quality for wells within 150 feet of construction activities. **Within 30 days of placing the facilities in service**, Tricor shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality and how each complaint was resolved.
17. **Prior to Project construction**, Tricor shall file with the Secretary its project-specific Restoration and Revegetation Plan, and documentation of consultations with the U.S.D.A. Natural Resources Conservation Service, for the review and written approval of the Director of OEP.
18. **Prior to pipeline construction**, Tricor shall file with the Secretary its final plan for crossing Kern Water Bank Authority (Kern Water) land, documentation of consultations with the California Department of Fish and Game and Kern Water, and any agency comments on the crossing plan.
19. Tricor shall not begin construction of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
  - a. Tricor files with the Secretary:
    - (1) reports of additional cultural resources investigations;
    - (2) a Cultural Resources Monitoring Plan; and
    - (3) comments on the reports and plan from the California State Historic Preservation Office and interested Indian tribes;
  - b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if any historic properties would be adversely affected; and
  - c. Commission staff reviews and the Director of OEP approves all reports and plans, and notifies Tricor in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.

All materials filed with the Commission containing **location, character, and ownership information** about cultural resources must have the cover

and any relevant pages therein clearly labeled in bold lettering:

**“CONTAINS PRIVILEGED INFORMATION - DO NOT RELEASE.”**

20. **Prior to project construction**, Tricor shall file with the Secretary a final Traffic Plan, and any comments on that plan from the California Department of Transportation and Kern County Roads Department, for review and written approval by the Director of OEP. The Traffic Plan shall include measures to control unauthorized off-road vehicle use of the header pipeline right-of-way.
21. Tricor shall not operate the diesel construction generator after month five of construction, and instead shall utilize electric power to operate the drilling rigs, mud pumps, light towers, and welding machines used on the well pads. Tricor shall document the switch from diesel-generated power to electric power during construction in its biweekly status report filed with the Secretary.
22. **Prior to pipeline construction**, Tricor shall file with the Secretary, for review and written approval by the Director of OEP, a noise analysis including all supporting detailed calculations, for each HDD entry and exit site. Tricor shall provide:
  - a. the distance and direction of each noise sensitive area (NSA) within 0.5 mile of an HDD entry or exit site;
  - b. a topographic map or plot plan showing the distance and direction of each NSA from the HDD entry and exist sites;
  - c. background noise levels and estimated drilling noise contributions at each NSA and the proposed length of time HDD activities would occur; and
  - d. site-specific plans identifying noise mitigation measures Tricor would implement at each HDD entry or exit site where estimated drilling noise contributions would exceed 55 A-weighted decibels of sound levels day and night (dBA  $L_{dn}$ ) at a nearby NSA, and the remaining noise levels with the mitigation measures in place.
23. Tricor shall file a noise survey with the Secretary **no later than sixty days** after placing the compressor station in service. If the noise attributable to the operation of all of the equipment at the compressor station at full load exceeds 55 dBA  $L_{dn}$  at any nearby NSA, Tricor shall install additional noise controls to meet the level **within one year** of the in-service date. Tricor should confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than sixty days** after it installs the additional noise controls.

24. **Prior to pipeline construction,** Tricor shall file with the Secretary an update of the status of the Maricopa Sun solar development approval process with Kern County, and documentation of consultations between Tricor, Maricopa Sun, and C&A Farms to resolve land use conflicts if the solar development is approved by the county.