140 FERC ¶ 61,182
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

D'Lo Gas Storage, LLC — Docket No. CP12-39-000

ORDER ISSUING CERTIFICATES

(Issued September 6, 2012)

1. On December 29, 2011, D'Lo Gas Storage, LLC (D'Lo Gas) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) for authorization to construct and operate a salt dome natural gas storage facility and associated pipeline facilities in Simpson County, Mississippi. D'Lo Gas also requests blanket construction and transportation certificates under Subpart F of Part 157 and Subpart G of Part 284 of the Commission's regulations. D'Lo Gas requests authority to charge market-based rates for its proposed open-access firm and interruptible natural gas storage and hub services. In addition, D'Lo Gas requests waiver of the Commission's "shipper must have title" policy, certain other tariff requirements, as well as other filing requirements, and approval of its proposed *pro forma* gas tariff.

2. The Commission will grant the requested certificate authorizations, subject to the conditions described herein. The Commission will also grant D'Lo Gas's request for market-based rate authority and its request for waivers, as more fully discussed and conditioned below.

I. Background

3. D'Lo Gas is a limited liability company organized under the laws of Mississippi for the purpose of developing and owning natural gas storage facilities in Mississippi. D'Lo Gas is 100 percent owned by D'Lo Holdings, LLC. D'Lo Gas is not currently a "natural gas company" within the meaning of section 2(6) of the NGA[1] and holds no

[1] 15 U.S.C. § 717a(6) (2006).

section 7 certificates.[2] Upon completion of construction and commencement of the operations authorized herein, D'Lo Gas will be a natural gas company within the meaning of NGA section 2(6), subject to the Commission's jurisdiction.

II. Proposal

4. D'Lo Gas states that this proposed project is needed to satisfy continued growth in demand for natural gas storage services in the Gulf Coast region to service markets requiring natural gas storage service in Mississippi, and the Northeastern, Mid-Atlantic and Southeastern regions of the United States. D'Lo Gas proposes to construct and operate a new, high-deliverability, multi-cycle salt cavern natural gas storage facility in Simpson and Rankin Counties, Mississippi. D'Lo Gas states that this location is ideal for a storage project because of the close proximity of extensive natural gas pipeline infrastructure and the attendant limited environmental impact. The proposed project will interconnect with three interstate pipelines – Kinder Morgan Midcontinent Express Pipeline (MEP), Southern Natural Gas Company (Southern Natural), and Gulf South Pipeline Company (Gulf South) (two interconnections) – and one intrastate pipeline – Southcross Mississippi Pipeline, LP (Southcross). Once fully operational, the proposed project would consist of three salt dome storage caverns that would provide a total of 24 Bcf of natural gas storage working gas capacity.

5. D'Lo Gas proposes to provide firm and interruptible storage services and interruptible hub services, including parking, loan, and balancing and imbalance trading services, at market-based rates. D'Lo Gas requests authority to charge market-based rates for these services, claiming that it lacks market power for its proposed storage and hub services.

A. Facilities

6. D'Lo Gas proposes to construct and operate the following facilities:

- Three salt dome storage caverns to be developed using solution mining techniques. Each cavern would have 8 billion cubic feet (Bcf) of working gas capacity and a designed individual volume of 9.76 million barrels (bbls), for a total combined project working gas capacity of 24 Bcf;

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[2] On October 2010, the Commission granted D'Lo Gas an exemption from NGA section 7 certificate requirements that allowed it to drill test wells on the proposed project site to determine the feasibility for the proposed project. *See D'Lo Gas Storage, LLC*, 133 FERC ¶ 61,088 (2010).

- A new solution mining facility having leaching capacity of 4,000 to 8,000 gallons per minute (gpm);
- A new compressor station with four 8,000 horsepower (HP) and one 4,735 HP Caterpillar natural gas-driven compressors totaling 36,735 HP and appurtenant equipment, housed in a permanent building located adjacent to the Solution Mining Facility;
- Seven source water wells having a total production capability of 1,000 gpm and, five brine disposal wells having injection capability of 1,000 gpm;
- Five meter and regulator stations and approximately 5.4 miles of pipeline (ranging from 12 to 30 inches in diameter) to interconnect with, Southern Natural, MEP, Southcross, and Gulf South;
- Four-tenths mile of 30-inch diameter natural gas pipeline for the Cavern Well Corridor;
- Three and seven-tenths miles of 20-inch diameter source water pipeline and 20-inch diameter brine disposal pipeline;

7. The proposed D'Lo Gas Storage Project is designed to provide 1,200 MMcf per day of maximum withdrawal and 590 MMcf per day of maximum injection capability, with a capability of six cycles per year. In addition, the project would have a receipt and delivery capacity of 500 MMcf per day at interconnections with Gulf South and MEP, a receipt and delivery capacity of 250 MMcf per day at the interconnection with Southern Natural, and a receipt and delivery capacity of 50 MMcf per day at the interconnections with Southcross and Gulf South.

8. Additionally, D'Lo Gas requests a blanket certificate under Part 157, Subpart F of the Commission's regulations to perform routine activities in connection with the construction, acquisition, maintenance, and operation of its facilities.

B. <u>Storage and Hub Services and Rates</u>

9. D'Lo Gas seeks a blanket certificate under Part 284, Subpart G, to offer open-access firm and interruptible storage and hub services. D'Lo Gas also requests approval of the *pro forma* tariff included in its application as Exhibit P. D'Lo Gas proposes to provide firm storage service under Rate Schedule FSS, interruptible storage service under Rate Schedule ISS, and enhanced interruptible storage service under Rate Schedule

EISS.[3] D'Lo Gas also proposes to offer a variety of hub services, including firm and interruptible parking service under Rate Schedules FP and IPS, firm and interruptible loan service under Rate Schedules FLS and ILS, enhanced park and loan services under Rate Schedules EP and ELS, interruptible wheeling service under Rate Schedule IWS, imbalance trading service under Rate Schedule ITS, and firm and interruptible hourly balancing services under Rate Schedules FHBS and IHBS.[4] In addition, D'Lo Gas proposes to offer an inventory transfer service under which storage customers will be able to transfer title to a quantity of gas stored in the project's storage caverns to or from other storage customers.

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

11. D'Lo Gas conducted a non-binding open season from March 22 through May 7, 2012, for firm storage capacity in the first of its proposed storage caverns with a planned in-service date of 2015. During this open season, D'Lo Gas states it received formal bids for 10.15 Bcf of firm storage capacity, exceeding the anticipated 8 Bcf of capacity of the first cavern.

C. Requests for Waivers

12. Because it proposes to charge market-based rates, D'Lo Gas requests waiver of certain filing, accounting, and reporting requirements which the Commission has previously found inapplicable to storage providers that are granted market-based rate authority. These regulations include: (1) sections 157.6(b)(8) and 157.20(c)(3) (applicants to submit cost and revenue data); (2) sections 157.14(a)(13), (14), (16), and (17) (cost-based exhibits); (3) section 157.14(a)(10) (gas supply data); (4) the accounting and reporting requirements of Part 201 and sections 260.1, 260.2 and 260.300 (Form Nos. 2, 2A, and 3Q, respectively); (5) section 284.7(e) (reservation charge); and (6) section 284.10 (straight fixed-variable rate design methodology).

13. D'Lo Gas also requests a waiver of several additional Commission regulations and policies, such as the "shipper must have title" policy, the policy requiring imbalance

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[3] Enhanced interruptible storage service will provide customers an interruptible storage service with a priority below that accorded firm services, but above the priority given to other non-enhanced interruptible services.

[4] *See* D'Lo Gas's Application at Exhibit P.

management services, segmentation requirements, and certain North American Energy Standards Board (NAESB) requirements.

III. Public Notice, Interventions, and Comments

14. Notice of D'Lo Gas's application was published in the *Federal Register* on January 19, 2012 (77 Fed. Reg. 2,715). Wilmut Gas Company, Mobile Gas Service, City of Vicksburg, Mississippi Hub, LLC, Enstor Operating Company, LLC (Enstor) and Leaf River Energy Center LLC (Leaf River) filed timely, unopposed motions to intervene. Enstor's motion to intervene included comments in support of the application and Leaf River's motion to intervene included comments questioning the adequacy of the application. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.[5]

IV. Discussion

15. 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.

A. Certificate Policy Statement

16. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.[6] 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 natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating construction of new natural gas facilities.

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[5] 18 C.F.R. § 385.214(c) (2012).

[6] *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).

17. 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 its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

18. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Here, D'Lo Gas is a new entrant in the natural gas storage market and has no existing customers. Thus, there will be no subsidization. Moreover, under its market-based rate proposal, D'Lo Gas assumes the economic risks associated with the costs of the project's facilities to the extent that any new capacity is unsubscribed or revenues are not sufficient to recover costs. Accordingly, the Commission finds that D'Lo Gas satisfies the threshold requirement of the Certificate Policy Statement.

19. We next look at any adverse effects the proposed project might have on existing customers of the applicant. Again, since D'Lo Gas is a new company proposing to construct and operate a new storage facility, it has no existing customers that would be impacted by its current proposal.

20. With respect to the potential impact of the proposed D'Lo Gas Storage Project on existing storage providers or their captive customers, D'Lo Gas states that, as reflected in its market study, it will simply be a new entrant in an already competitive market. As such, it avers that its project will not adversely impact any existing facilities and their captive customers. Moreover, D'Lo Gas asserts that its project will provide additional competitive service options, thereby further enhancing competition in the market.

21. Leaf River is owner/operator of a salt dome natural gas storage facility located in Smith, Jasper, and Clarke Counties, Mississippi. Leaf River has been authorized to commence service[7] from two of the four natural gas storage caverns it was certificated to

[7] *See Leaf River Energy Center LLC*, Docket No. CP08-8-000 (unpublished delegated letter orders issued March 21, 2011, and August 22, 2011).

construct[8] and states that it commenced providing service from the first of those caverns on March 24, 2011. Leaf River requested and received authority to provide its interstate storage services at market-based rates. In its Motion to Intervene and Comments, Leaf River states that it "has substantial amounts of unsubscribed capacity available for contracting" and that it "is currently leaching additional cavern capacity," notwithstanding the fact that it "has found it difficult over the past year to secure new customer commitments to purchase firm storage services in any substantial quantity for any price, let alone a price that Leaf River would consider adequate in view of the substantial investment required to bring storage capacity to the market." In view of this situation, Leaf River argues that the Commission must find that D'Lo Gas has failed to establish that the benefits associated with its project will outweigh the adverse impacts that adding additional storage capacity to the market would allegedly impose on incumbent natural gas storage operators, like Leaf River.

22. Leaf River specifically faults D'Lo Gas for filing its application prior to holding an open season and obtaining precedent agreements or other customer commitments.[9] However, as indicated above, D'Lo Gas did conduct a non-binding open season for capacity in the first of its three proposed storage caverns earlier this year. In response, it received formal bids for more than the proposed total capacity of that cavern.[10] While, as stated in the cases cited by Leaf River, it is general Commission policy that an open season should be conducted prior to the filing of an application, failure by an applicant to do so is not a bar to the Commission's acting on the application (as it in fact did in the cases cited). Under the circumstances presented here, we find D'Lo Gas has sufficiently complied with the Commission's open season requirements.

23. Leaf River contends that it is "imperative that the Commission apply the same policies and considerations to its evaluation of [D'Lo Gas's] application as [it] has applied in its evaluation of certificate applications which Leaf River and other independent gas storage operators have presented."[11] We agree. In that vein, we note

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[8] *Leaf River Energy Center LLC,* 125 FERC ¶ 61,131 (2008).

[9] Leaf River cites *Pine Prairie Energy Center*, *LLC*, 135 FERC ¶ 61,168 (2011) (*Pine Prairie*) and *Turtle Bayou Gas Storage Co*., 135 FERC ¶ 61,233, at n.40 (2011) (*Turtle Bayou*).

[10] In a May 11, 2012 filing, D'Lo Gas stated that it plans to solicit expressions of interest in the second and third caverns closer to their respective 2016 and 2018 planned in-service dates.

[11] Motion to Intervene at P 7.

that the formal bids for 10.15 Bcf of capacity D'Lo Gas received in its recent open season compare favorably with the "serious expressions of interest" in service requiring two thirds of its working gas capacity that Leaf River presented as a particularized showing of market demand in support of its own project.[12]

24. Likewise, the Commission recognized in the Certificate Policy Statement that while it does have an obligation to ensure fair competition, the Commission does not need to protect incumbent pipelines from the potential loss of market share.[13] There is no suggestion that D'Lo Gas would be competing on anything other than a fair basis. In fact, while Leaf River at one point alleges that granting D'Lo Gas's application would somehow favor new entrants over incumbent storage providers, it later acknowledges that it has capacity available to provide service *today*, with no additional expenditure of capital. The Certificate Policy Statement characterizes the potential lowering of the price of storage capacity, as complained of by Leaf River, as a positive benefit.[14] The impacts that Leaf River identifies, i.e., devaluation of existing storage capacity and any resultant potential financial stress for existing storage providers, are not adverse impacts to be weighed under the Certificate Policy Statement, but rather risks expected in the competitive market they have entered.

25. We note that while the Commission did express concern in the Certificate Policy Statement that under the Commission's then-current rate model captive customers of existing pipelines could be asked to pay for unsubscribed capacity in their rates,[15] the fact that Leaf River and the other independent storage providers in the area provide service at market-based rates precludes this possibility. One of the factors underlying the Commission's granting market-based rate authority to Leaf River was ease of entry into the relevant market.[16] It is disingenuous for Leaf River to propose that we now erect barriers to other new competitors seeking to enter the market.

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[12] *See Leaf River Energy Center, LLC*, 125 FERC ¶ 61,131, at P 29 (2008). *See also Golden Triangle Storage, Inc.*, 138 FERC ¶ 61,036, at P 6 (2012), cited by Leaf River (where there were no bids received during the open season).

[13] Certificate Policy Statement, 88 FERC at 61,748.

[14] Certificate Policy Statement, *clarified,* 90 FERC at 61,397.

[15] Certificate Policy Statement, 88 FERC at 61,748.

[16] *Leaf River Energy Center LLC,* 125 FERC ¶ 61,131, at P 41 (2008).

26. The Commission is satisfied that approval of D'Lo Gas's proposal should have no adverse impact as contemplated by the Certificate Policy Statement on existing pipelines or storage providers, or their captive customers. The proposed D'Lo Gas storage facility will be located in a competitive market and will enhance storage options available to pipelines and their customers and, thus, will increase competitive alternatives.

27. Regarding potential impacts on the economic interests of landowners and communities which would be affected by project, D'Lo Gas's proposed storage field, including the caverns, related above-ground facilities, and a storage buffer zone, will permanently occupy approximately 120 acres of land, 76 acres of which D'Lo Gas owned or controlled by lease at the time of its application. D'Lo Gas states that it anticipates successful negotiation of agreements for the remainder of the requisite property rights.

28. Moreover, D'Lo Gas states that the proposed storage project is only three miles from the corridor of the interconnecting pipelines, which will minimize construction of interconnecting lateral pipelines. In addition, D'Lo Gas indicates that it will make use of temporary and permanent access roads, pipeline corridors, and pullback areas necessary for the construction and maintenance of the pipeline facilities. No property owner or community interest has filed comments opposing D'Lo Gas's proposal.

29. The D'Lo Gas Storage Project would make high-deliverability natural gas storage capacity available to three interconnecting interstate pipelines and one intrastate pipeline and their customers, providing greater liquidity, supply options, and supply security to these markets. As a salt dome storage facility, the project would be capable of providing natural gas at high rates of deliverability and on short notice, thereby providing reliability to a region prone to hurricane and other supply disruptions. Also, the project would be well suited to support highly variable loads such as natural gas-fired electricity generators. Based on the above findings, the Commission concludes that the proposed project will provide benefits to the market without any identifiable adverse impacts on existing customers, other pipelines, landowners, or communities. Thus, consistent with the Certificate Policy Statement and section 7(c) of the NGA, the Commission concludes that approval of D'Lo Gas's proposal is required by the public convenience and necessity, subject to the conditions discussed below.

B. Market-Based Rates

30. As stated above, D'Lo Gas requests authority to charge market-based rates for its proposed firm and interruptible storage and hub services.

31. Generally, the Commission evaluates requests to charge market-based rates for storage services under the analytical framework of its Alternative Rate Policy

Statement.[17] Under the Alternative Rate Policy Statement, the Commission's framework for evaluating requests for market-based rates has two principal purposes: (1) to determine whether the applicant can withhold or restrict services in a manner that would result in significant price increases over a significant period of time; and (2) to determine whether the applicant can discriminate unduly in price or terms and conditions of service.[18] To find that an applicant cannot withhold or restrict services, increase prices over an extended period, or discriminate unduly, the Commission must first find that there is lack of market power[19] because customers have good alternatives[20] or that the applicant or the Commission can mitigate the market power with specific conditions.[21]

32. The Commission's analysis of whether an applicant has the ability to exercise market power consists of three major steps. First, the Commission reviews whether the applicant has specifically and fully defined the relevant markets[22] 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.[23]

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[17] *See Alternative 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).

[18] *Orbit Gas Storage, Inc*., 126 FERC ¶ 61,095 (2009).

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

[20] 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." Alternative Rate Policy Statement, 74 FERC at 61,230.

[21] *Rate Regulation of Certain Natural Gas Storage Facilities,* Order No. 678, FERC Stats. & Regs., Regulations Preambles 2006-2007 ¶ 31,220, at P 29 (2006) (Order No. 678), *order on clarification and reh'g,* Order No. 678-A, 117 FERC ¶ 61,190 (2006) (Order No. 678-A).

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

[23] *Id*. at 61,231.

Additionally, as part of the first step, the applicant must identify the relevant geographic market.[24] Second, the Commission measures an applicant's market share and market concentration.[25] Third, the Commission evaluates other relevant factors, such as ease of entering the market.

33. In 2006, the Commission issued Order No. 678 which explicitly adopted a more expansive definition of the relevant product market for storage to include close substitutes for gas storage services, including pipeline capacity and local production/LNG supply.[26] 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.[27]

1. Geographic Market

34. D'Lo Gas's market power study in Exhibit I identifies the relevant product market as firm and interruptible natural gas storage and hub services. D'Lo Gas defines the relevant geographic market as East Texas, Louisiana, Mississippi, and Alabama known as the "Gulf Coast Production Area."[28] The geographic market currently has forty competing natural gas storage facilities not affiliated with the project. In developing its analysis, D'Lo Gas states that it included only those storage facilities that are available to the market and excluded non-storage alternatives such as local gas supply, liquefied natural gas supply, and financial instruments promulgated in Order No. 678.[29]

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

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

[26] *See* Order No. 678, *supra* note 21, at P 25.

[27] *See id.* P 27.

[28] *See* Exhibit 4 to Exhibit I of D'Lo Gas's application.

[29] *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs., Regulations Preamble 2006-2007 ¶ 31,220, at P 26 (2006) (Order No. 678), *order on clarification and reh'g*, 117 FERC ¶ 61,190 (2006) (Order No. 678-A).

2. Market Share, Market Concentration, and Other Factors

35. The Commission uses the Herfindahl-Hirschman Index (HHI) to analyze whether a competitive market exists for a specific product, and to determine market concentration for gas pipeline and storage markets.[30] The Alternative Rate Policy Statement states that a low HHI (generally less than 1,800) indicates that sellers are less likely to be able to exert market power because customers have sufficiently diverse alternatives in the relevant market.[31] While a low HHI suggests a lack of market power, a high HHI (generally greater than 1,800) requires closer scrutiny in order to make a determination about a seller's ability to exert market power. D'Lo Gas's market power study shows an HHI calculation is 737 for working gas capacity and 771 for maximum daily deliverability in the Gulf States production area region.[32] These measures of market concentration are below the 1,800 HHI level, indicating that D'Lo Gas does not have market power in the relevant market area.

36. Lastly, D'Lo Gas cannot exercise market power because the relevant market is easy to enter. The Commission has found previously that barriers to entry in the Gulf States region are not significant.[33] D'Lo Gas's market power study shows that there are currently forty separate competing, existing storage expansions or new storage facilities certificated by the Commission in the Gulf States market area.

37. Based on these factors, the Commission finds that D'Lo Gas's analysis demonstrates that its proposed project will be in a highly competitive area where numerous storage service alternatives exist for potential customers. The Commission also finds that D'Lo Gas's analysis properly identifies good alternatives and that D'Lo Gas's entry will increase the storage alternatives in the Gulf States region. Furthermore, the Commission finds that, within the relevant market, D'Lo Gas's prospective market shares are low and that the market concentration is well below the threshold which would require closer scrutiny. Finally, the Commission finds that barriers to entry are likely to

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

[31] Order No. 678, FERC Stats. & Regs. ¶ 31,220, at P 55 (noting that the Commission is not changing the 1,800 HHI threshold level).

[32] *See* Exhibit Nos. 4 and 6 of Exhibit I of D'Lo Gas's Application.

[33] *See, e.g., Tarpon Whitetail Gas Storage, LLC*, 123 FERC ¶ 61,274, at P 28 (2008); *Enstor Houston Hub Storage and Transportation, LP*, 123 FERC ¶ 61,019, at P 32 (2008); *Port Barre Investments, L.L.C. d/b/a Bobcat Gas Storage*, 116 FERC ¶ 61,052, at P 25 (2006) (*Bobcat*).

be low in the relevant market area. Thus, the Commission concludes that D'Lo Gas will lack significant market power.

3. **Hub Services**

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

39. D'Lo Gas's bingo-card analysis[34] shows that there are a number of alternative paths available to shippers desiring to wheel natural gas among interstate natural gas pipelines in the Gulf States region. In addition, D'Lo Gas's market power study shows that its market share for wheeling delivery capacity at alternative hubs and market centers in the Gulf States region will be 3.25 percent and its market share for receipt capacity will be 3.72 percent.[35] These percentages are similar to the percentages the Commission has determined to be acceptable in the past.[36] The HHI for delivery capacity is 1,350 and for receipt capacity is 1,350, which are below the 1,800 level set forth in the Alternative Rate Policy Statement. The market power study also shows that D'Lo Gas will be unable to exercise market power because there are ample competitive alternatives for D'Lo Gas's proposed wheeling services and alternative interconnection paths exist for every possible flow of gas among the pipelines with which D'Lo Gas would interconnect.

4. **Commission Determination**

40. For these reasons, in addition to the fact that D'Lo Gas's request for market-based rate authority is unopposed, the Commission will approve D'Lo Gas's request to charge market-based rates for all firm and interruptible storage, hub, and wheeling services. Nevertheless, D'Lo Gas must notify the Commission if future circumstances significantly affect its present market power status. The Commission's approval of market-based rates for the indicated services is subject to re-examination in the event that: (i) D'Lo Gas adds storage capacity beyond the capacity authorized in this order; (ii) an affiliate increases storage capacity; (iii) an affiliate links storage facilities to D'Lo Gas; or

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[34] *See* Exhibit Nos. 8 and 9 of Exhibit I of D'Lo Gas's Application.

[35] *See* Exhibit No. 9 of Exhibit I of D'Lo Gas's Application.

[36] *See, e.g.*, *Arlington Storage Co., LLC*, 125 FERC ¶ 61,306 (2008) (*Arlington*).

(iv) D'Lo Gas, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to D'Lo Gas. Because these circumstances could affect its market power status, D'Lo Gas shall notify the Commission within 10 days of acquiring knowledge of any such changes. The notification shall include a detailed description of the new facilities and their relationship to D'Lo Gas.[37] The Commission reserves the right to require a market power analysis at any time.[38]

C. Waivers of Filing, Reporting and Accounting Requirements

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

42. For the same reasons, D'Lo Gas requests waiver of the accounting and annual reporting requirements in sections 260.1, 260.2, and 260.300 (filing of annual reports in FERC Form Nos. 2 and 2-A), as well as Part 201 (adherence to Uniform System of Accounts) of the Commission's regulations. Similarly, D'Lo Gas requests waiver of the requirements pertaining to straight fixed-variable rate design set forth in sections 284.7(d), (e), and 284.10 of the Commission's regulations, also as being inapplicable to market-based rates. Finally, D'Lo Gas requests waiver of the filing requirement contained in section 157.14(a)(10) to submit total gas supply data (Exhibit H) as being inapplicable to natural gas storage services.

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[37] *See Bobcat*, 116 FERC ¶ 61,052; *Copiah County Storage Co.*, 99 FERC ¶ 61,316 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002).

[38] *See Liberty Gas Storage LLC*, 113 FERC ¶ 61,247, at P 51 (2005); *see also Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141, at P 40 (2005). We note that in Order Nos. 678 and 678-A, the Commission chose not to impose a generic requirement that storage providers, granted market-based rate authority on the basis of a market power analysis, file an updated market power analysis every five years, or at other periodic intervals. *See* Order No. 678-A, 117 FERC ¶ 61,190 at PP 12-15.

43. The cost-related information required by the above-described regulations is not relevant in light of our approval of market-based rates for D'Lo Gas's storage and hub services. Thus, consistent with previous Commission orders,[39] we will grant D'Lo Gas's request for waiver of the regulations requiring cost-based rate related information for these services. In addition, we grant a waiver of section 157.14(a)(10) requiring an applicant to submit total gas supply data because the filing requirement is inapplicable to natural gas storage services.

44. We have also found in orders dealing with similar projects no ongoing regulatory need to have cost-based financial statements prepared in accordance with the Uniform System of Accounts. Accordingly, we will grant D'Lo Gas's request for waiver of accounting requirements, as provided in Part 201. In addition, we will grant the requested waiver of sections 260.2 (Form No. 2-A) and 260.300 (Form No. 3-Q) but such waivers do not extend to the Annual Charge Assessment (ACA).[40] Therefore, D'Lo Gas is required to file page 520 of Form No. 2A, reporting the gas volume information which is the basis for imposing an ACA charge.[41] We will also require D'Lo Gas to maintain sufficient records consistent with the Uniform System of Accounts should the Commission require D'Lo Gas to produce these cost-based reports in the future.

D. Tariff Provisions

45. D'Lo Gas proposes to offer firm and interruptible storage and hub services on an open-access basis, pursuant to Part 284 of the Commission's regulations, under the terms and conditions set forth in the *pro forma* tariff attached as Exhibit P to the application. As a reminder, D'Lo Gas will need to comply with the Commission's electronic filing requirements set forth in Order No. 714[42] and Part 154 of the Commission's regulations.[43] D'Lo Gas shall file actual tariff records consistent with the directives in

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[39] *See, e.g.*, *Tricor Ten Section Hub*, *LLC*, 136 FERC ¶ 61,242, at PP 40-41 (2011); *Black Bayou Storage, LLC*, 123 FERC ¶ 61,277, at P 35 (2008); *Bobcat*, 116 FERC ¶ 61,052, at P 33.

[40] *See BGS Kimball Gas Storage*, LLC, 117 FERC ¶ 61,122, at P 49 (2006).

[41] *See Chestnut Ridge Storage*, *LLC*, 128 FERC ¶ 61,210, at P 45 (2009); *Arlington*, 125 FERC ¶ 61,306 at P 71.

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

[43] 18 C.F.R. § 154.4 (2012).

this order at least 60 days prior to the commencement of service. Certain proposed tariff provisions are discussed further below.

1. NAESB Standards

46. The Commission has adopted in its regulations various standards for conducting business practices and electronic communication with interstate pipelines as promulgated by the North American Energy Standards Board (NAESB) Wholesale Gas Quadrant (WGQ).[44] The standards are intended to govern nominations, allocations, balancing measurement, invoicing, capacity release, and mechanisms for electronic communication between pipelines and those with whom they do business. In its *pro forma* tariff records, D'Lo Gas proposes to comply with Version 1.9 of the NAESB WGQ Standards. The Commission accepts D'Lo Gas's proposal but directs D'Lo Gas, at the time it files actual tariff records in this proceeding, to: (1) reflect the latest version of the NAESB Standards adopted by the Commission; and (2) remove the incorporation by reference of NAESB WGQ Standards 1.3.2 which is required to be stated in its tariff.[45]

2. System Map

47. D'Lo Gas's tariff does not include a system map as required by section 154.106 of the regulations.[46] The Commission will require D'Lo Gas, at the time it files actual tariff records, to include a map that complies with Commission regulations.

3. Rate Schedule FSS

48. Section 5.1(8) of Rate Schedule FSS provides that D'Lo Gas may retain storage inventory not withdrawn from storage, free and clear of any adverse claims, after a shipper's FSS agreement expires and the shipper has not renewed its agreement. The Commission has found that provisions for confiscation of gas left in storage when the agreement terminates or upon notice, are operationally justified deterrents to shipper behavior which could threaten the system or degrade D'Lo Gas's ability to provide service to its firm customers. However, in accordance with Order No. 637[47] and

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[44] *See Standards for Business Practices for Interstate Natural Gas Pipelines,* Order No. 587-U, FERC Stats. & Regs. ¶ 31,307 (2010).

[45] *See* Order No. 587-U, FERC Stats. & Regs. ¶ 31,307 at P 39.

[46] *See* 18 C.F.R. § 154.106 (2012).

[47] *See Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services,* Order No. 637, FERC

(continued…)

Commission action in other proceedings,[48] the Commission will require D'Lo Gas to credit the value of the gas retained to its existing customers. Accordingly, the Commission directs D'Lo Gas to file revised tariff provisions to implement a mechanism to credit the value of any retained gas.

4. Interruptible Imbalance Trading Service

49. Section 284.12(b)(2) of the regulations requires pipelines to establish provisions for the netting and trading of imbalances.[49] Imbalance trading regulations are necessary to reduce the business and financial risks of imbalances and the associated penalties.[50] The NAESB WGQ business practice standards as incorporated into the Commission's regulations require, among other things, that pipelines: (1) define the largest possible areas on their systems in which imbalances have similar operational effect; (2) explain why imbalances crossing those lines are not sufficiently similar in operational effect; (3) notify shippers of their imbalances and post imbalances automatically without charging a fee; and (4) process, without charging a separate fee, imbalance trades submitted by shippers or third parties acting to facilitate imbalance trading.[51]

50. D'Lo Gas proposes to offer its shippers the ability to trade imbalance quantities at mutually agreed upon receipt and delivery points. To facilitate this service, D'Lo Gas proposes to assess an imbalance trading charge for each dekatherm of gas scheduled and confirmed with D'Lo Gas as an imbalance trade, including imbalance quantities traded

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Stats. & Regs. ¶ 31,091, at 31,294, *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 Association of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Association v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

[48] *See Colorado Interstate Gas Co.*, 95 FERC ¶ 61,321, at 62,125 (2001); *ANR Storage Co.*, 96 FERC ¶ 61,162 (2001); and *Blue Lake Gas Storage Co.*, 96 FERC ¶ 61,164 (2001).

[49] *See* 18 C.F.R. § 284.12 (2012).

[50] *See Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-G, FERC Stats. & Regs. ¶ 31,062, at 30,644 (1998).

[51] *See id.* at 30,678-79.

between customers.[52] The Commission has encouraged the use of third party providers offering imbalance management services.[53] Pursuant to the Commission's regulations incorporating the NAESB WGQ Standards, D'Lo Gas, however, may not charge its shippers to process or facilitate imbalance trades resulting from imbalances occurring on its system or under its proposed rate schedules. For this reason, the Commission will require D'Lo Gas, at the time it files actual tariff records, to revise Rate Schedule IBTS to exclude the assessment of imbalance trading charges for shippers trading imbalances occurring on the D'Lo Gas system.

5. Priority, Interruption of Service, and Operational Flow Orders

51. Section 6.5 of the General Terms and Conditions (GT&C) relates to priority of service for any customer executing a storage service agreement with D'Lo Gas.[54] Specifically, section 6.5.3(a) provides for the implementation of interruption of service when D'Lo Gas is unable to receive or deliver all the quantities which are scheduled:

> "If firm storage service must be interrupted, then interruption of service to firm storage Customers shall be pro rata based on MDWQ, MDIQ, or MSQ, as applicable. Interruption of service to Interruptible Customers under Rate Schedules ISS, Hub Service, and to firm Customers utilizing Excess Injection Gas and/or Excess Withdrawal Gas (pursuant to Section 2 of Rate Schedule FSS) shall be on a first come, first served basis."

With respect to interruptible customers, it is not clear how D'Lo Gas intends to implement interruption of service "on a first come, first served basis" and the Commission is concerned that allocating capacity on the basis of the day an interruptible contract was signed, for example, may result in capacity being allocated in a discriminatory manner. Therefore, the Commission will require D'Lo Gas to revise its tariff to provide further clarity and explain with specificity how interruption of service for interruptible customers will be implemented.

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[52] *See* Exhibit P of D'Lo Gas's Application, *Pro Forma* Section 5.6.

[53] *See, e.g.*, *Cadeville Gas Storage LLC*, 132 FERC ¶ 61,115 (2010); *Perryville Gas Storage LLC*, 130 FERC ¶ 61,065 (2010); *Freebird Gas Storage, LLC*, 124 FERC ¶ 61,313 (2008).

[54] *See* Exhibit P of D'Lo Gas's Application, *Pro Forma* Section 6.5.

6. **Minimum Gas Quantity**

52. Sections 6.7.1, 6.7.2, and 6.7.3 of the GT&C provide that D'Lo Gas will not be obligated to receive, deliver, or wheel at any point any quantity of gas when the total quantity at the point results in a net metered flow which is less than or equal to 10,000 dekatherms (Dth) per day.

53. Under sections 284.7(b) and 284.9(b) of the Commission's regulations, the transporter may not discriminate as to the level of volumes transported.[55] The Commission, however, has allowed a pipeline to include a minimum volume restriction in its tariff when the pipeline was able to show that quantities below the threshold were too small to be metered and the pipeline provided operational and cost justification for the restriction.[56] For example, in *Gulf South*,[57] the Commission accepted a proposal for a 100 Dth per day threshold for connections of new receipt and delivery points. In that case, the Commission relied on Gulf South's assertions that serving small volume points presented operational challenges because these receipt points were difficult to measure, which increased the potential for lost system gas.[58] In addition, Gulf South stated that the costs associated with operating small points would be greater than the maximum rate would cover.[59]

54. Unlike *Gulf South*, where Gulf South provided operational and cost justification for its 100 Dth per day minimum volume condition, D'Lo Gas has not provided any justification here. For this reason, D'Lo Gas is required to eliminate the proposed minimum volume condition or, in the alternative, justify that a 10,000 Dth per day minimum volume condition is warranted.

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[55] 18 C.F.R. §§ 284.7(b) and 284.9(b) (2012).

[56] *See, e.g., Gulf South Pipeline Co., LP*, 103 FERC ¶ 61,105, at P 13 n.7 (2003) (*Gulf South*); *Trailblazer Pipeline Co.*, 39 FERC ¶ 61,103, at 61,336 (1987); *Texas Eastern Transmission Corp.*, 37 FERC ¶ 61,260, at 61,680-81 (1986).

[57] 103 FERC ¶ 61,105 at P 13.

[58] *Id.*

[59] *Id*. PP 9 and 12.

7. Gas Quality

55. D'Lo Gas included a provision on gas quality and interchangeability in section 6.10 of its *pro forma* tariff, but did not provide the other information required by the Commission's Gas Quality Policy Statement.[60] The Gas Quality Policy Statement provides that applicants should: (i) ensure that their Exhibit P *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 the competing pipelines serving customers to be served directly by the new entrant, as well as the relevant information about the gas supplies to be received by the new entrant for transportation or storage; and (iii) show how they derived their gas quality and interchangeability specifications stated in their *pro forma* tariff.[61]

56. In *Perryville*,[62] the Commission found that Perryville did not provide information required by the Gas Quality Policy Statement, and directed Perryville to submit conforming changes to its tariff before Perryville could go into service. Consistent with *Perryville*, the Commission will require that D'Lo Gas submit conforming changes to its tariff record consistent with requirements set forth in the Gas Quality Policy Statement for review and approval before the D'Lo Gas Project goes into service.

8. Standards of Conduct

57. Section 6.22 of the GT&C relates to Standards of Conduct for any customer agreement with D'Lo Gas. The Commission's Standards of Conduct in Part 358 of its regulations ensure that transmission providers cannot extend their market power over transmission by giving marketing affiliates unduly preferential treatment.[63] However,

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

[61] *Id*. P 45.

[62] *See Perryville Gas Storage LLC*, 130 FERC ¶ 61,065 (2010).

[63] *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).

section 358.3(k)(3) provides that "[a] transmission provider does not include a natural gas storage provider authorized to charge market-based rates."[64] Because the Commission is approving D'Lo Gas's request to charge market-based rates for firm and interruptible storage and interruptible hub services, the Commission finds that, under the current circumstances, D'Lo Gas is exempt from the Standards of Conduct.[65]

9. Penalty Revenue Crediting

58. In Order No. 637, the Commission found that penalties are not required, but to the extent that a pipeline assesses penalties, they must be limited to only those transportation situations that are necessary and appropriate to protect against system reliability problems.[66] Further, section 284.12(b)(2)(v) of the regulations states that "[p]ipelines may not retain net penalty revenues, but must credit them to shippers in a manner to be prescribed in the pipeline's tariff."[67] D'Lo Gas's tariff does not contain a methodology for disposition of penalty revenue.[68] For this reason, D'Lo Gas is directed, at the time it files actual tariff records, to develop and specify in its tariff a penalty revenue crediting mechanism.

10. Requested Waiver of Tariff Requirements

a. Segmentation

59. Section 284.7(d) of the regulations provides that to the extent it is operationally feasible, 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.[69] D'Lo Gas requests waiver of the segmentation requirements in section 284.7(d),

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[64] *See* 18 C.F.R. § 358.3(k)(3) (2012).

[65] *See* Exhibit P of the Application, *Pro Forma* Section 6.22.

[66] *See Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,314 (2000).

[67] *See* 18 C.F.R. § 284.12(b)(2)(v) (2012).

[68] *See* Exhibit P of the Application, *Pro Forma* Section 6.5.5(i).

[69] *See* 18 C.F.R. § 284.7(d) (2012).

contending that segmentation is not feasible because its system will consist of a stand-alone storage facility with no separate transportation services.

60. The Commission has found in several proceedings that the requirements of section 284.7(d) do not apply to pipelines engaged solely in natural gas storage and which do not provide firm stand-alone transportation services.[70] Because D'Lo Gas is such a storage provider, the requirements of section 284.7(d) do not apply to it. The Commission also finds that other tariff provisions related to segmentation, such as the allocation of primary point rights in segmented releases and within-the-path scheduling, do not apply to D'Lo Gas.

b. <u>Acquisition of Off-System Capacity and Waiver of "Shipper Must Have Title" Policy</u>

61. D'Lo Gas requests a generic waiver of the "shipper must hold title" policy for any off-system capacity it may acquire in the future to enable it to use that capacity to transport natural gas owned by other parties in connection with its storage or hub services. GT&C section 6.31 of D'Lo Gas's *pro forma* tariff states that D'Lo Gas will only provide transportation and storage services for others using such capacity pursuant to its open access tariff.[71]

62. D'Lo Gas's off-system capacity statement implements the Commission's policy with respect to pipelines' acquisition of off-system capacity. In *Texas Eastern Transmission Corp.*,[72] the Commission found that pipelines no longer need to obtain prior approval to acquire capacity on another pipeline, provided the acquiring pipeline has filed tariff language specifying that it will only transport for others using off-system capacity pursuant to its existing tariff provisions and rates.[73] The proposed tariff language is consistent with the requirements set forth in *Texas Eastern*. Therefore, the Commission will accept the proposed language and grant waiver of the "shipper must have title" policy, but clarifies that D'Lo Gas may only use capacity obtained on other

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[70] *See, e.g., Tricor Ten Section Hub, LLC*, 136 FERC ¶ 61,242, at PP 44-45; *Bobcat*, 116 FERC ¶ 61,052, at P 37; *Clear Creek Gas Storage Co.*, 96 FERC ¶ 61,071, at 61,318 (2001).

[71] *See* Exhibit P of the Application, *Pro Forma* Section 6.31.

[72] 93 FERC ¶ 61,273 (2000), *reh'g denied*, 94 FERC ¶ 61,139 (2001) (*Texas Eastern*).

[73] *See Texas Eastern*, 93 FERC at 61,885-86.

pipelines in order to render the services set forth in its tariff. That is, D'Lo Gas may not use capacity on other pipelines to transport gas which will not physically or contractually enter its storage facility unless and until it has received Commission authorization to provide such transportation services. Further, D'Lo Gas is authorized to use the *Texas Eastern* waiver to provide storage service only in the geographic area covered by its market power study.

63. In order to ensure that D'Lo Gas uses acquired off-system capacity in a manner consistent with its market-based rate authority and tariff provisions, and to satisfy the Commission's responsibility to monitor and prevent the exercise of market power, the Commission directs D'Lo Gas, once it becomes operational, to make an annual informational filing on its provisions of service using off-system capacity, as detailed below.

64. Within 30 days after its first full year of operation, and every year thereafter, D'Lo Gas 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 D'Lo Gas;
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 D'Lo Gas; and
f. an identification of total volumes, by D'Lo Gas's rate schedule and customer, that D'Lo Gas has nominated on each off-system provider during the reporting period.

E. <u>Blanket Certificates</u>

65. D'Lo Gas requests a Part 157, Subpart F blanket certificate giving it section 7 authority to automatically, or after prior notice, perform certain routine activities related to the construction, acquisition, abandonment, and replacement and operation of pipeline facilities. Because D'Lo Gas will become a natural gas company upon its acceptance of an NGA section 7 certificate to construct and operate the proposed facilities, the Commission will issue the requested blanket construction certificate.

66. D'Lo Gas also requests a Part 284, Subpart G blanket certificate to provide open-access storage services and filed a *pro forma* tariff to provide open-access storage services. The Commission will grant D'Lo Gas a Part 284, Subpart G blanket certificate.

F. <u>Engineering Review</u>

67. The Commission staff evaluated the data submitted in D'Lo Gas's application and data responses, and concludes that its proposal is technically sound and reasonable. Commission staff further concludes, and we concur, that the facilities are properly designed to provide a total of 24 Bcf of total working capacity, with withdrawal capacity of up to 1,250 MMcf per day; that the geological and engineering parameters for the proposed underground salt cavern gas storage facilities are well defined; and that the cavern locations are well within the design criteria and confinement of the salt formation.

68. Because salt deforms plastically in a relatively short time, caverns will shrink over time. As stated in *A Brief History of Salt Cavern Use*, "large volume losses due to salt creep have occurred in natural gas storage caverns."[74] Further, the Interstate Oil and Gas Compact Commission's *Hydrocarbon Storage in Mined Caverns Report* (IOGCC Report) states that monitoring to demonstrate cavern stability and successful hydrodynamic containment should be carried out throughout the life of the facility.[75] In order to mitigate these concerns, the Commission will require D' Lo Gas to conduct, every five years, sonar surveys or other Commission approved plans to monitor the caverns' size and shape to ensure that salt creep does not damage the integrity of the caverns or result in lost gas or reductions in storage capacity. In addition, D'Lo Gas 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.

69. Further, the IOGCC Report states "[a]ll gaseous and/or liquid products injected into or withdrawn from the storage facility shall be metered using industry accepted standards. The measurement shall be counterchecked by using product level measurement in the cavern (using the level versus volume curve)."[76] The Commission will require D'Lo Gas to adopt this standard.

G. Environmental Review

70. On February 3, 2012, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was noticed in the Federal Register on January 19, 2012,[77] and mailed to affected landowners; federal, state, and local

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

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

[76] *Id.*

[77] 77 Fed. Reg. 2,715

government agencies; elected officials; Native American tribes; other interested parties; and local libraries and newspapers.

71. In response to the NOI, the Commission received comments from the National Park Service; Mississippi Department of Wildlife, Fisheries and Parks (MDWFP); and Choctaw Nation of Oklahoma. The National Park Service stated that it had no concerns regarding the Project. The MDWFP stated that there are no known occurrences of state or federal listed species in the immediate project area.

72. In response to our NOI, the Choctaw Nation of Oklahoma requested a copy of the Mississippi State Historic Preservation Office's (SHPO) comments, which we provided. Upon receipt of the SHPO's comments, the tribe concurred that the project should proceed, but requested to be consulted if there were unanticipated discoveries during construction. D'Lo Gas clarified that the tribe would be notified and consulted in accordance with its *Unanticipated Discovery Plan.*

73. To satisfy the requirements of the National Environmental Policy Act of 1969, our staff prepared an environmental assessment (EA) for the D'Lo Gas Storage Project. The analysis in the EA addressed geology; soils; water resources and wetlands; vegetation and wildlife; land use, recreation, and visual resources; cultural resources; air quality and noise; reliability and safety; cumulative impacts; and alternatives. The EA was placed into the public record on May 30, 2012.

74. In its Motion to Intervene and Comments, Leaf River alleges that D'Lo Gas's Resource Report 10 is deficient because it neglected to acknowledge that there is substantial unsubscribed storage capacity in the Gulf Coast region generally and in Mississippi specifically, including Leaf River Energy Center's uncommitted storage capacity and deliverability. Leaf River charges that D'Lo Gas's statement that "no proposed or approved storage project is expected to be available in the immediate vicinity of DGS within the time frame contemplated for making D'Lo Gas's project available for service to the market," [78] fails to acknowledge the Leaf River Energy Center and the 32 Bcf of working gas storage capacity that would be available to the market once all three of its authorized caverns are completed. Leaf River contends that D'Lo Gas's alternatives analysis should also account for the substantial expansion capacity that Leaf River asserts could easily be developed at low cost and with negligible environmental impacts at other existing storage projects, such as the Southern Pines Energy Center and the Mississippi Hub Gas Storage Project. Leaf River maintains that if the D'Lo Gas Project was not authorized (the "no-action" alternative), all current and reasonably

[78] Application, Resource Report 10, section 10.3 at 10-7.

foreseeable market needs for natural gas storage in the Gulf Coast region could be satisfied through present facilities as they exist now or may be expanded.

75. While Leaf River's storage facility was considered a system alternative in the EA, the EA concluded that Leaf River's storage facility could not meet all the project objectives of the D'Lo Gas Storage Project. Leaf River's facility does not interconnect with all of the pipelines proposed for the D'Lo Gas Storage Project, including the interstate Gulf South pipeline and the intrastate Southcross Pipeline. Also, D'Lo Gas would interconnect to a different pipeline than Leaf River on Southern Natural Gas Company's System. Moreover, the EA acknowledged in its no-action alternative analysis that expanding existing facilities could provide a substitute for D'Lo Gas's project, but not without creating different sets of environmental impacts.

76. Based on the discussion in the EA, the Commission concludes that if the proposed facilities are constructed and operated in accordance with D'Lo Gas's application and supplements, and our recommended mitigation, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

77. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction and replacement of facilities approved by this Commission.[79]

V. <u>Conclusion</u>

78. 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,

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued to D'Lo Gas under section 7 of the NGA to construct and operate the proposed facilities, as described herein and in the application.

(B) A blanket construction certificate is issued to D'Lo Gas under Subpart F of Part 157 of the Commission's regulations.

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

(D) The certificate authority issued in Ordering Paragraphs (A), (B), and (C) is conditioned on D'Lo Gas's compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations.

(E) The minimum pressure gradient for each storage cavern shall be limited to 0.20 psi/ft at the casing shoe. Additionally, D'Lo Gas must comply with all other engineering conditions set forth in Appendix A to this order.

(F) D'Lo Gas must comply with the environmental conditions set forth in Appendix B to this order.

(G) The facilities authorized herein must be constructed and made available for service within four years of the date of the order in this proceeding, as required by section 157.20(b) of the Commission's regulations.

(H) D'Lo Gas's request to charge market-based rates for firm and interruptible storage and hub services is approved, consistent with the discussion in the body of this order. This authorization is subject to reexamination in the event that: (a) D'Lo Gas expands its storage capacity beyond the amount authorized in this order; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to D'Lo Gas; or (d) D'Lo Gas, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to D'Lo Gas. D'Lo Gas shall notify the Commission within 10 days of any such changes. The notification shall include a detailed description of the new facilities and their relationship to D'Lo Gas.

(I) D'Lo Gas shall submit actual tariff records, including revised tariff records, that comply with the requirements contained in the body of this order no less than 60 days prior to the date the facilities are placed in service. D'Lo Gas shall also include a map as required by 18 C.F.R. § 154.106 at the time it files actual tariff records in this proceeding.

(J) D’Lo Gas is granted a waiver of the Commission’s regulations that have been deemed inapplicable to storage providers with market-based rates, as discussed in this order.

(K) D’Lo Gas is granted a waiver of the Commission’s “shipper-must-have-title” policy, subject to the conditions discussed in the body of this order.

(L) D’Lo Gas is granted a waiver of the segmentation requirements in section 284.7(d) of the Commission’s regulations.

(M) D’Lo Gas shall notify the Commission's environmental staff by telephone, electronic mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies D’Lo Gas. D’Lo Gas shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

This authorization is subject to the following engineering conditions:

1. The maximum inventory of natural gas stored in each cavern (8 Bcf of working, 3.9225 Bcf cushion) shall not exceed the certificated levels of 11.9225 Bcf of total gas capacity at 14.73 psia and 60º F for each of the proposed caverns without prior authorization by the Commission. The maximum shut-in stabilized pressure gradient for the cavern shall not exceed 0.9 psi/ft at the casing shoe. The minimum pressure gradient shall be limited to 0.25 psi/ft at the casing shoe.

2. Before each cavern is placed in-service, D'Lo Gas shall determine the final gas storage operating capacity, working gas capacity, cushion gas capacity and maximum and minimum pressures at the casing shoe shall be determined after the facility's operating parameters are evaluated and filed with the Commission (including data and work papers to support the actual operating capacity determination).

3. Before commencing storage operations, D'Lo Gas shall:

   (a) Conduct a Mechanical Integrity Test for each cavern before initiation of each well/cavern to natural gas storage and file the results with the Commission;

   (b) File with the Commission copies of the latest interference tracer surveys, or other testing or analysis on each cavern to verify the lack of communication between the caverns;

   (c) Establish and maintain a subsidence monitoring network over the proposed caverns' storage area;

   (d) Assemble, test, and maintain an emergence shutdown system;

   (e) Conduct and file with the Commission the results of the sonar surveys of each cavern, including plan view and cross sections; and

   (f) Determine and file with the Commission the volume of rubble at the base of each cavern, including the methodology of determining such volume.

4. Until one year after the storage inventory reaches or closely approximates the full authorized capacity, D'Lo Gas shall twice annually conduct a leak detection test during storage operations to determine the integrity of each cavern, well bore, casing and wellhead, and file the results with the Commission, unless otherwise ordered by the Commission.

5. Each cavern's well(s) shall be periodically logged to check the integrity of each casing string. Additionally, every five years, D'Lo Gas shall conduct sonar surveys of the caverns to monitor their dimensions and shape, including the cavern roof, and to estimate pillar thickness between openings throughout the storage operations, and file the results with the Commission. In the alternative, no less than 30 days before placing the caverns into service, D'Lo Gas may file with the Commission, for prior approval of the methodology, a detailed cavern integrity monitoring plan that is consistent with the intent of the sonar survey.

6. D'Lo Gas shall conduct an annual inventory verification study on each cavern, and file the results with the Commission.

7. The D'Lo Gas storage project shall be operated in such a manner as to prevent gas loss from migration.

8. D'Lo Gas shall file with the Commission semi-annual reports (to coincide with updates of the maximum and minimum storage pressures) containing the following information in accordance with section 157.214(c) of the Commission's regulations (volumes shall be stated at 14.73 psia and 60º F, and pressures shall be stated in psia):

   (a) The daily volume of natural gas injected into and withdrawn from each cavern;

   (b) The inventory of natural gas and shut-in wellhead pressure for each cavern at the end of each reporting period;

   (c) The maximum daily injection and withdrawal rates experienced for the storage field during the reporting period, and the average working pressure on such maximum days, taken at a central measuring point where the volume injected or withdrawn is measured;

   (d) The results of any tests performed to determine the actual size, configuration, or dimensions of each storage cavern;

   (e) A discussion of any operating problems and conclusions;

   (f) Other data or reports which may aid the Commission in the evaluation of the storage project.

9. D'Lo Gas shall file semiannual reports in accordance with section 157.214 (c) of the Commission's regulations until the maximum inventory reaches or closely approximates the maximum capacity authorized and for a period of one year following.

Appendix B

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

1. D’Lo Gas shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. D’Lo Gas must:
   a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
   b. justify each modification relative to site-specific conditions;
   c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
   d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification**.

2. The Director of the 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**, D’Lo Gas 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, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, D’Lo Gas 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.

D'Lo Gas'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. D'Lo Gas'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. D'Lo Gas shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, 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 the *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. **At least 60 days before construction begins**, D'Lo Gas shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. D'Lo Gas must file revisions to the plan as schedules change. The plan shall identify:

a. how D'Lo Gas 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 D'Lo Gas will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at

each site is clear to onsite construction and inspection personnel;

c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;

d. company personnel, including EIs and contractors, who will receive copies of the appropriate materials;

e. the location and dates of environmental compliance training and instructions D'Lo Gas will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training sessions;

f. the company personnel (if known) and specific portion of D'Lo Gas's organization having responsibility for compliance;

g. the procedures (including use of contract penalties) D'Lo Gas will follow if noncompliance occurs; and

h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:

(i) the completion of all required surveys and reports;

(ii) the environmental compliance training of onsite personnel;

(iii) the start of construction; and

(iv) the start and completion of restoration.

7. Beginning with the filing of its Implementation Plan, D'Lo Gas 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 D'Lo Gas'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 EIs during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);

d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;

e. the effectiveness of all corrective actions implemented;

f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and

g. copies of any correspondence received by D'Lo Gas from other federal, state, or local permitting agencies concerning instances of noncompliance, and D'Lo Gas's response.

8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, D'Lo Gas shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).

9. D'Lo Gas must receive written authorization from the Director of OEP **before placing each phase of the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.

10. **Within 30 days of placing the certificated facilities in service**, D'Lo Gas shall file an affirmative statement with the Secretary, certified by a senior company official:
    a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
    b. identifying which of the certificate conditions with which D'Lo Gas has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

11. D'Lo Gas shall not use any proposed new or to-be-improved access roads **until**:
    a. D'Lo Gas files with the Secretary the Mississippi State Historic Preservation Officer's (SHPO) comments on the need for survey of the access roads, any required report, and the SHPO's comments on any report; and
    b. The Commission staff reviews and the Director of OEP approves any cultural resources report, and notifies D'Lo Gas in writing that 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."

12. **Prior to construction of Cavern Well #3**, D'Lo Gas shall file with the Secretary, for the review and written approval of the Director of OEP, a plan detailing the

noise mitigation measures D'Lo Gas would implement to ensure that noise levels attributable to the well drilling activities do not exceed an day-night sound level (L_{dn}) of 55 A-weighted decibels (dBA) at the noise sensitive area (NSA) near Cavern Well #3. D'Lo Gas's plan shall also describe how it would ensure compliance with the noise-level restriction during the well drilling activities.

13. **Prior to construction of Cavern Well #2**, D'Lo Gas shall file with the Secretary, for the review and written approval of the Director of OEP, a noise analysis identifying the projected cumulative noise levels at NSA 2 attributable to drilling Cavern Well #2 and operation of the Compression and Solution Mining Facilities. If noise attributable to the drilling and compression/solution mining activities are projected to exceed an L_{dn} of 55 dBA at NSA 2, D'Lo Gas shall also file a mitigation plan to reduce the projected noise levels. During drilling operations, D'Lo Gas shall implement the approved plan, monitor noise levels, and make all reasonable efforts to restrict the noise attributable to the drilling and compression/solution mining activities to no more than an L_{dn} of 55 dBA at the NSA.

14. **Prior to construction of Cavern Well #3**, D'Lo Gas shall file with the Secretary, for the review and written approval of the Director of OEP, a noise analysis identifying the projected cumulative noise levels at NSA 1 attributable to drilling Cavern Well #3 and operation of the Compression and Solution Mining Facilities. If noise attributable to the drilling and compression/solution mining activities are projected to exceed an L_{dn} of 55 dBA at NSA 1, D'Lo Gas shall also file a mitigation plan to reduce the projected noise levels. During drilling operations, D'Lo Gas shall implement the approved plan, monitor noise levels, and make all reasonable efforts to restrict the noise attributable to the drilling and compression/solution mining activities to no more than an L_{dn} of 55 dBA at the NSA.

15. D'Lo Gas shall file a noise survey with the Secretary **no later than 30 days** after each set of compressor units at its Compression Facility is placed into service during phase 2 and 3. If the noise attributable to the operation of the equipment at the Compression and Solution Mining Facilities exceeds an L_{dn} of 55 dBA at any nearby NSA, D'Lo Gas shall install additional noise controls to meet the level **within 60 days** of the in-service dates. D'Lo Gas shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 30 days** after it installs the additional noise controls.

16. D'Lo Gas shall file a noise survey with the Secretary **no later than 60 days** after placing the Compression Facility in service. If the noise attributable to the operation of the equipment at the Compression Facility at full load exceeds an L_{dn} of 55 dBA at any nearby NSA, D'Lo Gas shall install additional noise controls to

meet the level **within one year** of the in-service date. D'Lo Gas shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.