

123 FERC ¶ 61,274
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Tarpon Whitetail Gas Storage, LLC

Docket No. CP08-46-000

ORDER ISSUING CERTIFICATES

(Issued June 19, 2008)

1. On December 21, 2007, Tarpon Whitetail Gas Storage, LLC (Whitetail) filed an application in Docket No. CP08-46-000 under section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the construction and operation of a natural gas storage facility and associated facilities (Whitetail Gas Storage Project) in Monroe County, Mississippi. Whitetail also requests a blanket construction certificate under Part 157, Subpart F of the Commission's regulations and a blanket certificate to provide open-access firm and interruptible storage and hub services under Part 284, Subpart G of the regulations.
2. In addition, Whitetail requests authority to charge market-based rates for the proposed storage services, and waiver of certain Commission filing requirements for storage providers proposing cost-based rates. Whitetail also requests approval of its proposed pro forma gas tariff.
3. As discussed below, the Commission finds that Whitetail's proposed project is required by the public convenience and necessity and issues Whitetail its requested certificate authorization, subject to conditions. The Commission also grants Whitetail's request to charge market-based rates for its storage services and its requested waivers, as more fully discussed and restricted below.

I. Background

4. Whitetail is a limited liability company and wholly-owned subsidiary of Tarpon Gas Storage, LLP.¹ Whitetail was formed on May 7, 2007 for the purpose of developing

¹Tarpon Gas Storage, LLP is a wholly-owned subsidiary of TGS Holdings.

the Whitetail Gas Storage Project. It has no existing jurisdictional or non-jurisdictional operations in the natural gas pipeline or storage industry, and upon receipt of its requested certificate authorizations, will become a natural gas company within the meaning of section 2(6) of the NGA. However, Whitetail is affiliated with companies involved in retail electric service, retail natural gas service, midstream gas processing, the sale of natural gas and natural gas liquids, and oil and gas exploration and development.²

II. The Proposal

A. New Facilities

5. Whitetail proposes to construct and operate a multi-cycle natural gas storage facility that will be converted from an existing natural gas production field known as the Aberdeen Gas Storage Field. The proposal includes drilling up to twenty new storage wells and two salt water disposal wells; constructing a 4.9-mile, 24-inch pipeline header; constructing a 1-mile 16-inch storage lateral; constructing a 14,200 horsepower (hp) compressor station; constructing a meter and regulator station; and constructing certain non-jurisdictional facilities. Specifically, the project will require three-phase, 480 Volts Alternating Current (VAC) electrical service to power facilities used in gas compression; standard 120/240 VAC at the plant site;³ a 120/240 VAC single-phase electric service drop at the Texas Eastern Transmission Company (TETCO) interconnect site; and a three-phase 480 VAC electric service drop at the east well pad site. Whitetail is working with Okolona City Electric (OCE) to provide electric service for the project.

6. Whitetail states that the project will have a total capacity of 20.8 Bcf (8.6 Bcf working gas and 14.2 Bcf cushion gas), a maximum withdrawal rate of 300 MMcf per day, and a maximum injection rate of 300 MMcf per day. Whitetail will locate its storage facility on approximately 106.4 acres.⁴

² Whitetail is affiliated with Spark Energy Ventures, LLC; Electric Now, LP; and MaxMin Resources, LLC.

³ The plant site consists of the Compressor Station Area, West Well Pad Area, Temporary Construction and Storage Area, and Existing Facilities Area.

⁴ The construction and development of the storage field itself would encompass about 2,850 acres. An additional buffer zone, defined by the Mississippi Oil and Gas Board (MOGB) as necessary to ensure reservoir integrity, would bring the total project area to 4,840 acres. Surface disturbance of the proposed project would be limited to a total of 106.4 acres.

7. The Whitetail project will include a compressor station consisting of four 3,550 hp natural gas driven compressor units for a total compression of 14,200 hp, as well as gas processing and dehydration facilities. As noted, Whitetail proposes to construct a 4.9-mile, 24-inch pipeline, which will interconnect with TETCO.

B. Markets and Services

8. Whitetail requests a blanket certificate under subpart G of Part 284 in order to provide firm and interruptible storage and transportation services on an open-access basis from the Whitetail Gas Storage Project. Whitetail also requests approval of its pro forma tariff. Whitetail's proposal includes firm storage service under Rate Schedule FSS, interruptible storage service under Rate Schedule ISS, firm parking service under Rate Schedule FP, firm loaning service under Rate Schedule FL, interruptible parking under Rate Schedule IP, and interruptible loaning under Rate Schedule IL. Whitetail also proposes to offer interruptible wheeling service under Rate Schedule IW. Whitetail defines the relevant geographic market to consist of east Texas, Louisiana, Mississippi, and Alabama: i.e., the "Gulf States Market."

C. Market-Based Rates

9. Whitetail proposes to offer its firm and interruptible storage services at market-based rates. Whitetail supports its proposal with a market power analysis in Exhibit I to its application that concludes that Whitetail will lack market power with respect to the services that it provides.

D. Requests for Waivers

10. Whitetail proposes to charge market-based rates, and requests waiver of certain of the Commission's filing, accounting, and reporting requirements applicable to cost-based rate proposals, which the Commission has previously found inapplicable to storage providers that are granted market-based rate authority. These regulations include: (1) section 157.6(b)(8) (applicants to submit cost and revenue data); (2) sections 157.14(a)(13), (14), (16), and (17) (cost-based exhibits); (3) the accounting and reporting requirements of Part 201 and sections 260.1, 260.2, 260.3, 260.300 (relating to the cost-of-service rate structure, i.e., Form 2A); (4) section 157.20(c) (3) (applicants to submit construction cost statement); (5) section 284.7(e) (reservation charge); and (6) section 284.10 (straight fixed-variable rate design methodology).

11. Whitetail also requests waiver of several additional Commission regulations and policies. Since Whitetail proposes to provide only natural gas storage service, and no stand-alone transportation services, it requests waivers of the section 284.7(d)

requirement pertaining to segmentation and the section 157.14(a)(10) requirement to provide a showing of accessible gas supplies.

12. Further, Whitetail seeks a waiver of the Commission's "shipper must have title" policy to enable it to obtain off-system capacity that may be necessary to provide the storage services to its customers. In support of its request, Whitetail proposes tariff language stating that Whitetail will only transport gas for others using such off-system capacity pursuant to its open-access tariff and subject to Commission-approved rates.

III. Notice, Interventions, and Comments

13. Public notice of Whitetail's application was published in the *Federal Register* on January 15, 2008 (73 Fed. Reg. 2486). Mr. Richard Evans (Mr. Evans) filed a motion to intervene and comments. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations.⁵ Monroe Gas Storage Company, LLC (Monroe) filed an untimely motion for leave to intervene. Monroe's motion shows that it has a direct and substantial interest in this proceeding, and that granting the motion will not delay the proceeding or cause undue prejudice to the other parties. For good cause shown, Monroe's motion will be granted.⁶

IV. Discussion

14. Since Whitetail will use the proposed facilities to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction, acquisition, and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. The Certificate Policy Statement

15. The Commission's September 15, 1999 Certificate Policy Statement provides guidance as to how it will evaluate proposals for certificating new construction.⁷ The Certificate Policy Statement established criteria for determining whether there is a need

⁵18 C.F.R. § 385.214 (2007).

⁶ 18 C.F.R. § 385.214 (d) (2007).

⁷*Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our 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, and the avoidance of the unnecessary exercise of eminent domain or other disruptions of the environment.

16. 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 route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we 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 we proceed to complete the environmental analysis where other interests are considered.

17. 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. Whitetail is a new entrant in the natural gas storage market and has no existing customers. Therefore, there will be no subsidization. Moreover, under its market-based rate proposal, Whitetail assumes the economic risks associated with the costs of the project's facilities to the extent that any capacity is unsubscribed. Thus, the Commission finds that Whitetail has satisfied the threshold requirement of the Certificate Policy Statement.

18. The proposed Whitetail project will have no impact on existing services since Whitetail is a new company that has no current customers or services. Further, the Whitetail project should not have any adverse impact on existing storage providers or their customers. As discussed below, the proposed project will be located in a competitive market and will serve demand in a region that is experiencing rapid growth in natural gas usage. The proposal will also enhance storage options available to existing pipelines and their customers and, thus, will increase competitive alternatives. Further, no storage company in Whitetail's market area has protested Whitetail's application.

19. In addition, there will be minimal adverse impacts on landowners associated with the construction and operation of this storage project. Whitetail states that it owns in fee

the plant site area, which includes the compressor station site, west well pad area, and temporary construction area, that will be affected by most of the permanent impacts associated with the project. Further, Whitetail states that it will lease the rights of way for the 4.9-mile pipeline header, the east well pad site, and the TETCO interconnect site. Whitetail states that the project has received broad support. This assertion is supported by the fact that only one landowner, Mr. Evans, commented on its application.

20. Mr. Evans states that Whitetail is a for-profit gas storage endeavor and that gas will be purchased at low prices in the summer and then sold for profit at higher prices in the winter. Mr. Evans also states that in 1996 a different (unsuccessful) attempt was made to establish the Aberdeen field into a gas storage facility and that the leasing offer made to him by that project's sponsor was higher and more expansive than that offered by Whitetail. Mr. Evans is concerned about the possible use of eminent domain with regard to his property.⁸

21. Whitetail responds that it proposes to use the land beneath Mr. Evans' property only for storage purposes and not for mineral rights purposes. Whitetail states that negotiations have as yet been unsuccessful, but continue. We are authorizing Whitetail to provide storage services to a variety of clients including marketers, pipelines, and other energy companies. Whitetail will not be engaged in the business of buying and selling natural gas for profit. As to Mr. Evans' concern about the use of eminent domain with regard to his property, we note Whitetail's representations that negotiations with Mr. Evans have as yet been unsuccessful. We note further that Whitetail may use eminent domain only if agreement with Mr. Evans cannot be reached.

22. For these reasons, we find that any adverse impacts on landowners and communities will be minimal. Further, the Commission concludes that the Whitetail project will enhance the development of an efficient interstate pipeline transportation system by providing customers access to additional high-deliverability storage capacity. Based on the benefits the Whitetail project will provide to the market and the lack of any identified significant adverse effect on existing customers, other pipelines, landowners, or communities, we find, consistent with the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity requires approval of Whitetail's storage project.

⁸ Mr. Evans' comments regarding environmental aspects of the project are discussed in the Environmental Analysis, below.

B. Market-Based Rates

23. Whitetail proposes to offer its firm and interruptible storage, hub, and wheeling services at market-based rates. Whitetail supports its proposal with a market power analysis that concludes that Whitetail will lack market power with respect to the services that it provides.

24. The Commission has approved market-based rates for storage services where applicants have demonstrated, under the criteria in the Commission's Alternative Rate Policy Statement, that they lack significant market power or have adopted conditions that significantly mitigate market power.⁹ 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 price 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. To find that an applicant cannot withhold or restrict services, significantly increase prices over an extended period, or unduly discriminate, the Commission must find either that there is a lack of market power¹⁰ because customers have good alternatives,¹¹ or that the applicant or the Commission can mitigate the market power with specified conditions. The Commission's analysis of whether an applicant has the ability to exercise market power includes three major steps: (1) definition of the relevant markets; (2) measurement of a firm's market share and market concentration; and (3) evaluation of other relevant factors.

25. In support of its request for market-based rate authority Whitetail included, as Exhibit I to its application, a market power study based on the criteria set forth in the

⁹ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines* (Alternative Rate Policy Statement), 74 FERC ¶ 61,076 ; *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996); *petitions denied and dismissed, Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998).

¹⁰ Market power is defined as the ability to profitably maintain prices above competitive levels for a significant period of time. Alternative Rate Policy Statement, at 61,230.

¹¹ A good alternative is an alternative 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 61,231.

Alternative Rate Policy Statement.¹² Whitetail's market power analysis for the storage market defines the relevant product and geographic markets, measures market share and concentration, and evaluates other factors. The market power study defines the relevant geographic market as consisting of east Texas, Louisiana, Mississippi, and Alabama, and includes firm and interruptible natural gas storage, hub, and wheeling services. The geographic market used in Whitetail's analysis consists of 40 competing natural gas storage facilities located in the Gulf States Market.

26. The Commission uses the Herfindahl Hirschman Index (HHI) test to determine market concentration for gas pipeline and storage markets. The Alternative Rate Policy Statement states that a low HHI – generally less than 1,800 – indicates that sellers cannot exert market power because customers have sufficiently diverse sources of supply in the relevant market. 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.¹³

27. Whitetail utilizes two measures of natural gas storage capacity in its analysis of market concentration: working gas capacity and peak day deliverability. Whitetail's market power analysis shows an HHI¹⁴ for working gas capacity of 895, with Whitetail's market share being 1.2 percent, and an HHI for peak day deliverability of 794, with Whitetail's market share also being 1.2 percent. These values are significantly below the 1,800 level cited in the Alternative Rate Policy Statement and therefore no further market power analysis is required. The market power study demonstrates and we find that these relatively small market shares along with numerous alternatives to the proposed services, given the number and size of existing storage facilities and interruptible wheeling services in the relevant market, will not enable Whitetail to exert market power in the relevant market area.

28. In addition, we find that Whitetail does not possess market power because the relevant market is easy to enter; the Commission has found in numerous cases that there are no significant barriers to entry in the natural gas storage market in the Gulf Coast

¹² Whitetail commissioned Kenneth L. Beckman of International Gas Consulting to prepare a market power study. Whitetail's market power study includes an analysis for market-based rates for new storage and interruptible wheeling service.

¹³ Alternative Rate Policy Statement, at 61,235.

¹⁴ An HHI is calculated by summing the squares of each storage seller's market share. Alternative Rate Policy Statement, at 61,235.

production region.¹⁵ Further, Whitetail identifies 6 storage projects in the relevant market that are currently in various stages of development or expansion, and an additional fifty storage projects that may be coming online after 2007.¹⁶

29. The Commission has stated that interruptible wheeling service is not a storage service.¹⁷ Whitetail's market power study identifies the wheeling service as a separate product market. Traditionally, in evaluating whether shippers of an applicant seeking market-based rate authority for interruptible wheeling services could obtain the same services from alternative providers, the Commission has used a matrix referred to as a "bingo card," which identifies all possible interconnects for pipelines attached to a hub and indicates whether good alternatives exist.¹⁸ Whitetail states that it did not submit a "bingo-card" analysis of competitive alternatives for its wheeling services at this time because Whitetail only proposes a single physical interconnection to an interstate pipeline.

30. Whitetail states that it intends to provide the Commission with a "bingo-card" analysis with respect to market power for wheeling services making use of any such additional interconnections at the time it applies to the Commission to amend its certificate to provide for additional interconnections and to provide such service. Whitetail submits that no "bingo card" or other market power analysis is necessary for its use of off-system capacity to provide interruptible wheeling service because Whitetail must obtain such off-system capacity through transactions in the competitive marketplace. The Commission finds that if at any time Whitetail does obtain additional interconnections to an interstate pipeline, Whitetail must submit a properly supported rate proposal for a proposed wheeling service.

31. In prior orders, we have approved requests to charge market-based rates for storage services based on a finding that a proposed project would not be able to exercise

¹⁵ See, e.g., *Enster Houston Hub Storage and Transportation, LP*, 123 FERC ¶ 61,019, at P 32 (2008); *Port Barre Investments, L.L.C.*, 116 FERC ¶ 61,052, at P 25 (2006); *Katy Storage and Transportation, L.P.*, 106 FERC ¶ 61,145, at P 19 (2004); *Unocal Keystone Gas Storage, LLC*, 106 FERC ¶ 61,033, at P 16 (2004).

¹⁶ See *Application* at Exhibit I, Exhibit KLB-5 and Exhibit KLB-6.

¹⁷ See *Liberty Gas Storage L.L.C.*, 113 FERC ¶ 61,247, at 61,976 (2005); *Keystone Gas Storage, L.L.C.* 106 FERC ¶ 61,122 (2004).

¹⁸ See *BGS Kimball Gas Storage, L.L.C.*, 117 FERC ¶ 61,638 (2006).

market power due to its HHI analysis, small size, its anticipated small share of the market, and the existence of numerous competitors.¹⁹ In accord with such precedent, the Commission concludes that Whitetail will lack market power. For these reasons, we will approve Whitetail's request to charge market-based rates for all firm and interruptible storage, and hub services. Whitetail's proposed wheeling service is denied as discussed below.

32. In addition to other reporting requirements imposed herein, Whitetail must notify the Commission if future changes in circumstance significantly affect its present market power status. Thus, our approval of market-based rates is subject to reexamination in the event that: (a) Whitetail seeks to add storage capacity beyond the capacity authorized in this proceeding; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to Whitetail; or (d) Whitetail, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to Whitetail. Since these circumstances could affect its market power status, Whitetail 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 Whitetail.²⁰ The Commission also reserves the right to require such an analysis at any intervening time.²¹

33. A pipeline with market-based rates has no maximum recourse rate. Notwithstanding, the tariff should provide for rate certainty. With regard to gas losses and unaccounted for gas, Whitetail clarifies, in its April 9, 2008 response, that the proposed tariff's rate summary sheets, the fuel provisions of the Rate Schedules, and General Terms and Conditions (GT&C) Sections 19 and 33.3(b) all refer to the same rate. Further, Whitetail continues, as a market-based rate, the fuel reimbursement charge is not limited to the collection of the enumerated items. The Commission requires Whitetail to revise the language on the rate summary sheets to reflect this clarification.

¹⁹ *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002); *Egan Hub Partners, L.P.*, 95 FERC ¶ 61,395 (2001); *Moss Bluff Hub Partners, L.P.*, 80 FERC ¶ 61,181 (1997); *Egan Hub Partners, L.P.*, 77 FERC ¶ 61,016 (1996).

²⁰ See *Copiah County Storage Co.*, 99 FERC ¶ 61,316; *Egan Hub*, 99 FERC ¶ 61,269 (2002).

²¹ See *Liberty Gas Storage LLC*, 113 FERC ¶ 61,247, at P 51 (2005) and *Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141, at P 40 (2005).

34. GT&C section 12.2 also addresses gas losses. Whitetail clarifies that this section refers to losses of gas other than losses experienced in the course of normal operations, such as losses due to a pipeline failure. For such losses, Whitetail does not propose to negotiate a recovery charge. Rather, it requests that the Commission approve a tracker mechanism that allocates such costs proportionally among all customers under Rate Schedules FSS, ISS and IP on the basis of the percentage of each customer's storage inventory as of the day immediately preceding the day on which a loss occurs to the total amount of gas in all customers' accounts on that day.

35. The Commission is concerned that this provision gives Whitetail undue discretion to change its billing to customers. As noted by Whitetail, its negotiated market-based rates, including the retainage charge for fuel and losses, is not limited to recovery of the enumerated items. Whitetail's proposal implies that it will maintain accounts of its costs, with some designated to be recovered through its market-based rates and section 12.2 - gas losses recovered through a separate, cost-based, charge. Further, Whitetail then requests waiver of the requirement to file Form No. 2 or 2-A, thus not permitting customers or the Commission to review its allocation of costs between market-based rate and cost-based rate recovery mechanisms. The Commission finds the proposed mixing of cost recovery mechanisms unacceptable. The Commission further notes that, if Whitetail were a cost-based rate company, Commission policy is not to permit extraordinary gas losses to be passed through an automatic tracking mechanism²² - a protection Whitetail, a market-based rate company, is requesting. The Commission requires Whitetail to remove from proposed GT&C section 12.2 all the language from "Any losses of Gas..." to the end of the section when it files its actual tariff.

C. Waivers of Filing, Reporting, and Accounting Requirements

36. Because Whitetail proposes to charge market-based rates for its proposed storage services and has no existing interstate pipeline operation, Whitetail requests waiver of the Commission's cost-based 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) (cost based exhibits); (3) section 157.14(a)(10) (showing of accessible gas supplies); (4) the accounting and reporting requirements of Part 201 and section 260.2 relating to cost-of-service rate structure (Form 2A);²³ (5) section 284.7(e) (reservation charge); and (6) section 284.10 (straight fixed-variable rate design methodology).

²² See *Colorado Interstate Gas Co.*, 121 FERC ¶ 61,161 (2007); *reh'g denied*, 123 FERC ¶ 61,183 (2008).

²³ Whitetail does propose to file pages 520 and 520a.

37. The cost-related information required by these regulations is not relevant in light of our approval of market-based rates for Whitetail's storage services and the rejection of Whitetail's proposed cost-based tracker. Thus, consistent with our findings in previous orders,²⁴ the Commission will grant Whitetail's request for waivers of the regulations requiring the filing of cost-based information, reservation charges, and the use of a straight fixed variable rate design. We will also grant a waiver of section 157.14(a)(10) requiring an applicant to submit gas supply data, which does not pertain to natural gas storage. Whitetail is required to file page 520 and 520a of Form No. 2-A, reporting the gas volume information which is the basis for imposing an Annual Charge Adjustment (ACA) charge.²⁵ In addition, the Commission will require Whitetail to maintain records of cost and revenue data consistent with the Uniform System of Accounts should the Commission require Whitetail to produce these reports in the future.

D. Tariff Provisions

38. Whitetail filed pro forma tariff sheets to its FERC Gas Tariff setting forth the terms and conditions under which it will provide open-access market-based rate storage and interruptible wheeling services.²⁶ We find Whitetail's proposed tariff sheets generally complies with the Commission's regulations, with the exceptions noted below. Whitetail shall file actual tariff sheets consistent with the directives in this order at least 30 days but no more than 60 days prior to the commencement of service.

1. Rate Schedule IW – Interruptible Wheeling

39. Whitetail requests Part 284 blanket certificate authority to provide wheeling services under Rate Schedule IW. Whitetail admits its receipt and delivery points are at the same point, but states that it may have additional points in the future with other pipelines. Whitetail also proposes market-based wheeling rates, but provides no studies in support of its proposal. Rather, Whitetail proposes to provide the data at a later time when it proposes to amend its certificate to provide additional interconnections and provide such service.

²⁴ See, e.g., *Port Barre Investments, L.L. C.*, 116 FERC ¶ 61,052, at P 34 (2006); *Liberty Gas Storage, LLC*, 113 FERC ¶ 61,247, at P 54 (2005)

²⁵ See *BGS Kimball Gas Storage, L.L.C.*, 117 FERC ¶ 61,122, at P 49 (2006); *Unocal Windy Hill Gas Storage L.L.C.*, 115 FERC ¶ 61,218, at P 38 (2006).

²⁶ Additionally, Whitetail filed answers to a staff data request on April 9, 2008, clarifying certain issues and statements in its tariff.

40. The Commission rejects Whitetail's Rate Schedule IW and the proposed market based rate as premature. When Whitetail is able to provide wheeling or other transportation services, Whitetail may request such authority by making the appropriate filings with the Commission.

2. NAESB Standards

41. The Commission has adopted in Part 284 of its regulations various standards promulgated by the North American Energy Standards Board (NAESB). These standards govern nominations, allocations, balancing measurement, invoicing, capacity release, and mechanisms for electronic communication between pipelines and those with whom they do business. Whitetail states that its pro forma tariff complies generally with Version 1.7 of the NAESB Standards, the latest version of the standards adopted by the Commission at the time Whitetail filed its certificate application. When Whitetail files actual tariff sheets in this proceeding, it must revise its tariff to conform to the latest NAESB standards adopted by the Commission at the time of filing. The filing must include a cross-reference showing each NAESB standard number, the tariff section containing the standard, and whether Whitetail incorporated the standard verbatim or by reference. Whitetail should file any information it believes relevant to its compliance with the NAESB Standards.

42. The Commission's standard for pipelines to incorporate NAESB standards into their tariffs is verbatim or by reference. For the most part, Whitetail incorporated the vast majority of the NAESB standards by reference. The Commission has stated that when a pipeline includes a NAESB standard in its tariff, it should include the words of the NAESB standard rather than words of the pipeline's own choosing. A pipeline must include the complete, verbatim NAESB standard. A review of Whitetail's filing reveals that certain NAESB standards were incomplete and/or not verbatim.²⁷ Consequently, Whitetail is directed to revise its tariff to include these standards completely and verbatim.

3. Segmentation

43. 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

²⁷ NAESB Standards 0.3.3, 0.3.10, 1.3.1, 1.3.2, 1.3.5, 1.3.8, 1.3.9, 1.3.26, 1.3.33, 3.3.9, 3.3.10, 3.3.19, 5.3.2, 5.3.3, 5.3.8, 5.3.13, 5.3.14, 5.3.16, 5.3.24, 5.3.26, and 5.2.28.

for the purpose of releasing that capacity to replacement shippers to the extent segmentation is operationally feasible.²⁸ Whitetail has requested a waiver from the segmentation requirement in section 284.7(d), contending that its system consists of a single integrated storage facility that operates in one compact geographic location, and therefore, there is nothing to segment.

44. The Commission has found that the requirements of section 284.7(d) do not apply to pipelines engaged solely in natural gas storage that do not provide other stand-alone transportation services.²⁹ Whitetail meets this requirement and the Commission holds that the segmentation requirements of section 284.7(d) do not apply to Whitetail. 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 Whitetail. If Whitetail offers firm transportation services in the future, this waiver will no longer apply.

4. Netting and Trading of Imbalances

45. Section 284.12(b)(2)(ii) of the Commission's regulations requires pipelines to establish procedures permitting shippers and their agents to net imbalances across contracts and to trade imbalances with other shippers. Whitetail requests an exemption from compliance with Orders 587-G and 587-L regarding the imbalance netting and trading requirements, asserting that its tariff does not contain imbalance penalties.³⁰ Since Whitetail is not proposing to assess imbalance penalties, the Commission finds that it qualifies for the requested exemption.³¹ Nevertheless, if it seeks to implement imbalance penalty provisions in the future, Whitetail must comply with § 284.12(b)(2)(ii) of the Commission's regulations.

²⁸ 18 C.F.R. 284.7(d)(2007).

²⁹ See, e.g., *Pine Prairie Energy Center, LLC*, 109 FERC ¶ 61,215, at P 44 (2004); *Clear Creek Gas Storage Co.*, 96 FERC ¶ 61,071 (2001).

³⁰ Order No. 587-G, 63 *Fed. Reg.* 20,072 (April 23, 1998), FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000 ¶ 31,062 (April 16, 1998); Order No. 587-L, 65 *Fed. Reg.* 41,873 (July 7, 2000), FERC Stats. & Regs., Regulations Preambles ¶ 31,100 (June 30, 2000).

³¹ See *Pine Prairie Energy Center, LLC*, 109 FERC ¶ 61,215, at P 47 (2004).

5. EDI/EDM and FF/EDM Requirements

46. Whitetail requests a partial waiver of section 284.12(a)(1)(iv) of the Commission's regulations which require interstate pipelines to comply with the electronic data interchange (EDI) standards established by NAESB. Whitetail requests a waiver of the EDI standard until 90 days following a request from one of its customers that it implement EDI. We grant Whitetail's request for an extension of time of the EDI standards, but require Whitetail to implement those standards within 90 days following the receipt of such a request.

6. Off-System Capacity and "Shipper Must Hold Title"

47. Whitetail requests a generic waiver of the Commission's "shipper must hold title" policy for any off-system capacity it may obtain to transport natural gas owned by other parties in order to provide storage services. Proposed section 30 of Whitetail's tariff includes a statement that Whitetail may transport gas for others using off-system capacity pursuant to its open access tariff and subject to Commission-approved rates.

48. In *Texas Eastern Transmission Corporation (TETCO)*,³² 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 and rates. Whitetail's proposed tariff language is consistent with the requirements set forth in *TETCO* and authorizations granted other storage companies.³³

49. We accept Whitetail's proposed tariff language and grant waiver of the shipper must have title policy, with the following clarifications. Because Whitetail has proposed only to offer firm and interruptible storage and interruptible hub services, and has proposed no rates or tariff provisions relating to any transportation services other than storage, Whitetail may only use capacity obtained on other pipelines in order to move gas into and out of storage. That is, Whitetail may not use its header facilities and 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, Whitetail's authorized use of the *TETCO* waiver to

³² 93 FERC ¶ 61,273 (2000); *reh'g denied*, 94 FERC ¶ 61,139 (2001).

³³ See, e.g., *Tres Palacios*, 120 FERC ¶ 61,253, at P 48 (2007); *Windy Hill*, 115 FERC ¶ 61,218 (2006); *SG Resources Mississippi, L.L.C.*, 101 FERC ¶ 61,029, at P 30-33 (2002).

provide storage service shall be limited to the geographic area covered by its market study.

50. To ensure that Whitetail uses acquired off-system capacity in a manner consistent with its market-based rate authority and tariff provisions, and to satisfy our responsibility to monitor and prevent the exercise of market power, we direct Whitetail, once it becomes operational, to make an annual informational filing regarding its provision of service using off-system capacity, as detailed below.³⁴

51. Within 30 days after its first full year of operation, and every year thereafter, Whitetail is directed to file a report with the Commission, 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 Whitetail;
- 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 Whitetail; and
- f. an identification of total volumes, by Whitetail's rate schedule and customer, that Whitetail has nominated on each off-system provider during the reporting period.

7. General Terms and Conditions

52. Sections 154.108, 154.109 and 154.110 of the Commission's regulations describe the composition of a pipeline tariff, specifically rate schedules, the GT&C and pro forma service agreements. Rate schedules should fully describe the kind or classification of services to be rendered, and the GT&C should only contain terms and conditions of service applicable to all or any of the rate schedules. Whitetail's proposed storage Rate Schedules FSS and ISS and the related pro forma service agreements describe the service to be rendered. Whitetail also proposes GT&C section 6. This section is only applicable to Rate Schedules FSS and ISS, and describes generally how customers inject gas into storage at points of receipt and receive gas at points of delivery. Whitetail, in its April 9

³⁴ See, e.g., *Starks Gas Storage L.L.C.*, 111 FERC ¶ 61,105, at P 54-57 (2005). Whitetail has agreed to be subject to these conditions. Application at P 35.

response, states that Section 6 restates without contradiction the attributes of service found in each Rate Schedule.

53. Section 2.18 of the GT&C provides a definition of “Interruptible:”

“Interruptible” means that the storage, parking, wheeling, or loaning is subject to interruption at any time by WHITETAIL. A Customer may be required to withdraw Gas held in storage pursuant to Customer’s Storage Service Agreement for Interruptible service or Customer’s Hub Services Agreement, or provide Gas to WHITETAIL, should such capacity or quantities be required by a Firm Storage Service.

54. The second sentence of this definition of the word describes customer obligations under specific services in the event the service is interrupted. These requirements should be part of the Rate Schedules’ description of the services, and not part of the definition of a word.

55. The Commission rejects GT&C Section 6 as duplicative of language in the Rate Schedules and applicable pro forma service agreements, and both sections 2.18 and 6 are inconsistent with §§ 154.108 , .109 and .110 of the Commission’s regulations. As for GT&C section 2.18, the second sentence should be removed and re-located in the appropriate Rate Schedules.³⁵

56. Proposed section 17.2 of the GT&C addresses liability from the standpoint of force majeure. Force majeure is defined very broadly as a superior or irresistible force or an event or effect that cannot be reasonably anticipated or controlled, including testing, future Commission orders, decisions or rulings of any government agency, or maintenance to plant facilities. Testing and maintenance are part of Whitetail’s duties under a certificate of public convenience and necessity. Such pipeline operator duties can not be considered force majeure.³⁶ Commission orders, decisions or rulings of any government or regulatory agency having proper jurisdiction are not force majeure events. Whitetail shall revise section 17.2 of the GT&C accordingly.

³⁵ The Commission notes that a similar problem exists for GT&C section 7, which describes Rate Schedule IW service. However, as the Commission rejects Rate Schedule IW elsewhere in this order, this Section is also rejected by that finding.

³⁶ *Portland Natural Gas Transmission System*, 76 FERC ¶ 61,123 (1996).

57. Whitetail proposes at GT&C section 17.1(c) to provide a reservation charge credit for non-force majeure curtailment of service only if service falls below 98 percent of scheduled quantities. In its April 9, 2008 response, Whitetail committed to modify the non-force majeure reservation charge credit provision to provide a full credit when service falls below 100 percent of scheduled quantities. The Commission requires Whitetail to make this modification.

58. Sections 9.3 and 9.4 of the GT&C discuss its customers' contractual obligations with other interconnecting pipelines. Whitetail, in its April 9, 2008 response, explains that its customers, as a practical matter, will have transportation agreements with interconnecting pipelines. Section 9.3, Whitetail continues, is intended to ensure that customers' nominations satisfy the NAESB requirements, and section 9.4 is intended to assign customers' imbalances incurred on the interconnecting pipelines to the customers. The Commission finds that Whitetail cannot impose and enforce a contractual relationship between its customers and interconnecting pipelines. Every rate schedule Whitetail proposes already contains a provision that the customer accepts responsibility for arranging transportation with interconnecting pipelines. If the objective of Section 9.3 is to acquire the data necessary to complete an NAESB nomination, it is the customers' obligation to provide that information to Whitetail, as reflected in proposed GT&C section 8 (Nominations and Scheduling). If the customer's nomination data is incomplete or unconfirmed by the interconnecting pipeline, then Whitetail can reject the nomination. Customer imbalances on interconnecting pipelines are not Whitetail's concern. Imbalances, their management and any resulting penalties are matters between the customer and the interconnecting pipeline. The Commission requires Whitetail to remove sections 9.3 and 9.4 of the GT&C.

59. Sections 9.5 and 13.1 of the GT&C both describe gas measurement standards. Section 9.5 states that the gas delivered shall be measured by Whitetail in accordance with the transporter's tariff,³⁷ while section 13 states all procedures verifying the quantity of gas delivered shall be measured in accordance with the standards prescribed in Report No. 3 of the American Gas Association. Whitetail is required to clarify the inconsistency in its tariff.

60. Section 9.6 of the GT&C provides that Whitetail will be held harmless for all costs and penalties assessed customers by interconnecting pipelines, unless the costs or penalties were due to Whitetail's negligence. Section 21 of the GT&C, Whitetail clarifies in its April 9, 2008 response, assigns to customers all costs incurred by Whitetail

³⁷ Exhibit P, GT&C, section 9.5; Original Sheet No. 139.

as a consequence of customers' actions on interconnecting pipelines. The provision, Whitetail continues, is a backstop for any penalties that might be assessed by an interconnecting pipeline outside of the scope of a customer's transportation agreement service agreement with that pipeline. The Commission believes these two sections address the same set of costs, but in an inconsistent manner. In assigning cost responsibility, section 9.6 has a negligence provision, whereas section 21 does not. The Commission requires Whitetail to combine the two sections into a single section that reflects Whitetail's proposed negligence standard.

61. Section 14.4 of the GT&C reads:

If Customer's failure to pay the undisputed portion of any invoice rendered hereunder continues beyond thirty (30) days after the due date of such invoice, then WHITETAIL, in addition to all other legal remedies available to it, shall have the right and option to suspend further deliveries of Gas until such default shall have been cured. If Customer's failure to pay the undisputed portion of any invoice rendered hereunder continues beyond sixty (60) days after the due date of such invoice, then WHITETAIL, in addition to all other legal remedies available to it, shall have the right and option to terminate service hereunder.

Section 28.2 provides Whitetail's remedies in the event of a customer's default, which include suspension and termination. Whitetail, in its April 9, 2008 response, clarified that should remedies be pursued for a customer's failure to pay under section 14.4, Whitetail will do so in accordance with section 28. The Commission requires Whitetail to include in section 14.4 a statement that remedies will be pursued in accordance with section 28 of the GT&C.

8. Miscellaneous Tariff Issues

62. The second paragraph of Whitetail's Preliminary Statement states that it "will seek" market-based rates for its services. Since this order grants Whitetail's market-based rates, this language should be modified or removed when Whitetail files its actual tariff.

63. Proposed Rate Schedule FSS, section 9, provides for injection and withdraw ratchets. However, as the storage facility has not been built and its operational characteristics are not yet known, Whitetail proposes to provide the ratchet terms of service when it files its actual tariff. The Commission accepts this approach and requires Whitetail to enter its injection and withdraw ratchet terms of service when it files its actual tariff.

64. Whitetail proposed a set of gas quality standards at GT&C, section 10(a). TETCO is the only pipeline with whom Whitetail will interconnect. In its April 9, 2008 data response, Whitetail proposed to modify its gas quality section to conform to TETCO's Eastern's then-effective gas quality standards as of the date Whitetail files its actual tariff. The Commission accepts this proposal.

65. Whitetail's proposed GT&C section 24 references multi-customer contracts. In its April 9, 2008 data response, Whitetail indicated it had copied this provision from another tariff, and was unsure what this provision was originally intended to address. Whitetail indicated that it would agree to remove this section from its tariff. The Commission requires Whitetail to remove this section when it files its actual tariff.

66. Section 2.1(a) of the various Rate Schedules and GT&C sections 2.21 through 2.25 imply that all gas quantities nominated will be scheduled. Whitetail, in its April 9, 2008 data response, clarifies that scheduled quantities are subject to the other provisions of the tariff controlling the priorities of service and factors that may result in scheduled quantities less than nominated quantities. Whitetail states that it is willing to agree to revise the language to avoid confusion. The Commission requires Whitetail to clarify these sections when it files its actual tariff.

E. Engineering Analysis

67. Commission staff reviewed Whitetail's engineering analysis of the facility proposed for natural gas storage, including the design capacity of the proposed facility. Based on this review, we conclude that the facilities are designed to provide 20.8 Bcf of total storage capacity (8.6 Bcf working gas and 14.2 Bcf cushion gas). Further, we conclude that the natural gas facilities proposed by Whitetail are designed to withdraw up to 300 MMcf per day. Whitetail shall comply with the engineering conditions listed in Appendix A to this order.

F. Environmental Analysis

68. On January 23, 2008, Commission staff issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Whitetail Natural Gas Storage Project and Request For Comments on Environmental Issues* (NOI). On January 30, 2008, we issued a *Notice of Public Scoping Meeting and Site Visit for the Proposed Whitetail Natural Gas Storage Project* (Meeting Notice). The site visit was conducted during the day of February 14, 2008, and the public scoping meeting was held that evening. The NOI and the Meeting Notice were sent to about 250 individuals, organizations, federal and state agency representatives, county and local government agencies, elected officials, the local

newspaper and library, property owners in the proposed project area, and other interested individuals.

69. Staff received comments from the U.S. Fish and Wildlife Service (FWS), the Mississippi Natural Heritage Program (MNHP), and from Mr. Evans, a local landowner. Environmental issues raised are discussed in the applicable sections of the environmental assessment (EA) that was prepared for the Whitetail Natural Gas Storage Project to satisfy the requirements of the National Environmental Policy Act. The EA assessed the potential environmental effects of Whitetail's proposed project on geology, soils, water resources, wetlands, vegetation, wildlife, threatened and endangered species, cultural resources, land use, air quality, noise, and safety. The EA also addressed alternatives to the proposed project.

70. Comments from the FWS focused on the potential for the project to affect the bald eagle. The MNHP expressed concern over downstream aquatic impacts in the James Creek watershed and requested that best management practices be implemented that would avoid runoff of silt or contaminants into waterbodies and wetlands. Based on staff's discussion in the EA, we believe that Whitetail's use of its Erosion and Sedimentation Control Plan (ESCP) and a Spill Prevention, Control, and Countermeasure Plan (SPCC Plan) will ensure that proper erosion control and other protective measures are implemented and that any impacts from spills will be minimized. Thus, construction-related impacts in the James Creek watershed, including wetlands, will not be significant, although we anticipate a conversion of a small amount (less than 0.5 acre) of forested wetland to a more emergent type (an impact that would be mitigated for by Whitetail's contribution to a wetland mitigation bank, if required by a U.S. Army Corps of Engineers [COE] permit). Regarding the bald eagle, we agree with both the FWS and the MNHP that the project is not likely to affect bald eagles.

71. Mr. Evans' property is within the storage project boundary, but no surface disturbance on his property would occur. Mr. Evans' environmental comments were related to the bald eagle, construction in an impaired watershed, wetland impacts, impacts on the local freshwater aquifer and potable water wells, potential impacts on cultural resources, and the proposed siting of the Whitetail Compressor Station and related noise impacts.

72. As mentioned above, watershed and wetland impacts will be minimal, and the project is not likely to adversely affect the bald eagle. The James Creek watershed is listed as "impaired" as defined under section 303(d) of the Clean Water Act due to contaminants related to local agricultural practices. However, Whitetail's use of its ESCP (and a stormwater runoff plan that would require the installation of temporary and permanent erosion and sedimentation control structures) and SPCC Plan will adequately minimize impact on surface waters and minimize the transport of contaminants within the

watershed during construction. Further, Whitetail will be required to comply with any permit issued by the COE and/or the Mississippi Department of Environmental Quality, although neither of these agencies presented concerns during our public scoping process.

73. Based on the discussion in the EA, we conclude that the project will not cause significant impacts on groundwater, as potable water in the project area is extracted from a subsurface depth of about 600 to 900 feet while Whitetail will dispose of excess water produced by gas withdrawal by injecting it at a depth of about 4,700 feet and beneath impermeable rock layers. In addition, Whitetail will construct its storage wells and saltwater disposal wells using proper drilling and casing techniques and in accordance with Mississippi Oil and Gas Board regulations for the protection of groundwater.

74. Mr. Evans' comment on cultural resources related to a potential historic cemetery on or adjacent to his property. However, no cemeteries were identified within the project survey corridor and no project-related impacts on historic cemeteries are anticipated. The Mississippi State Historic Preservation Office concurs with our determination that the project would not affect properties on or eligible for listing on the National Register of Historic Places.

75. The EA evaluated alternatives to the proposed project, including the "no-action" alternative; system alternatives; alternative project sites; alternative pipeline routes; and alternative facility sites/design configurations. Based on the discussion in the EA, we conclude that none of the alternatives evaluated would confer an environmental advantage over the proposed project. This is due in part to staff's recommendation related to potential noise impacts, which we are attaching as an environmental condition to this order. Thus, Whitetail will be required to adhere to the noise limits discussed in the EA, and environmental condition 11 will ensure that operation of the Whitetail Compressor Station will not result in a significant noise impact.

76. On April 29, 2008, and subsequent to the issuance of the EA, Mr. Evans submitted additional comments related to the eventual disposition of a nearby unplugged well and the potential for the Whitetail project to use this well and introduce contamination into one of Mr. Evans' water wells. Mr. Evans also reiterated his concern that local noise levels (either existing levels or those to be associated with the new Whitetail Compressor Station) will disturb his new residence.

77. On May 13, 2008, Whitetail filed a response to Mr. Evans' concerns in which it reiterated that the well in question is one that has been re-assigned to Whitetail from existing operators. The well will either be used as an observation well or plugged. It would not be used for injection or saltwater disposal. We believe the Whitetail project can proceed with no contamination of Mr. Evans' water supply.

78. The new living space referenced by Mr. Evans was included as a Noise Sensitive Area (NSA) in the EA and is covered by environmental condition 11 included in Appendix B to this order. Thus, we are ensuring that the noise attributable to the Whitetail Compressor Station would not exceed 55 dBA L_{dn} at Mr. Evans' living quarters or any other NSA. Although Mr. Evans is understandably concerned about the noise from existing sources (such as overflights from the U.S. Air Force training jets) the Commission does not have authority to regulate these existing sources.

79. Based on the discussion in the EA, we conclude that if constructed in accordance with Whitetail's application and supplemental data, as well as the environmental mitigation measures in the appendix to this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

80. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this authorization. The Commission encourages cooperation between natural gas companies 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, replacement, or operation of facilities approved by this Commission.³⁸

G. Blanket Certificates

81. Whitetail has applied for a Part 157, Subpart F blanket certificate. The Subpart F blanket certificate gives a natural gas company section 7 authority to perform automatically, or after prior notice, certain activities related to the construction, acquisition, abandonment, and replacement and operation of pipeline facilities. Because Whitetail will become an interstate pipeline with the issuance of a certificate to construct and operate the proposed facilities, we will issue the requested Part 157, Subpart F blanket certificate. However, Whitetail's blanket certificate shall not include automatic authorization to increase storage capacity. This restriction on Whitetail's Part 157 blanket certificate is based on the fact that Whitetail's storage facility is in the initial

³⁸See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC **&61,091** (1990) and 59 FERC **&61,094** (1992).

stages of development for which future expansion will require reevaluation by the Commission of historical data and new engineering and geological data.³⁹

82. Whitetail requests a Part 284, Subpart G blanket certificate in order to provide open-access storage services. Under a Part 284 blanket certificate, Whitetail will not require individual authorizations to provide storage services to particular customers. Whitetail filed a pro forma Part 284 tariff to provide open-access storage services. Since a Part 284 blanket certificate is required for Whitetail to offer these services, we will grant Whitetail a Part 284 blanket certificate, subject to the conditions imposed herein.

H. Conclusion

83. For the reasons discussed above, the Commission finds that the Whitetail's 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 and listed in Appendices A and B.

84. At a hearing held on June 19, 2008, the Commission, on its own motion, received and made part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Whitetail in Docket No. CP08-46-000, authorizing the ownership, construction and operation of the described storage facilities, as described more fully in this order and in the application.

(B) A blanket construction certificate is issued to Whitetail under Subpart F of Part 157 of the Commission's regulations, as discussed and limited in the body of this order.

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

(D) The certificate issued in Ordering Paragraph (A) is conditioned on Whitetail's compliance with all applicable Commission regulations under the Natural Gas

³⁹See, e.g., *Unocal Windy Hill Gas Storage*, 115 FERC ¶ 61,218 (2006).

Act, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c) (1) and (2), (e), and (f) of section 157.20 of the regulations.

(E) The facilities authorized in this order shall be constructed and made available for service by one year from the date of this order's issuance, in accordance with section 157.20(b) of the Commission's regulations.

(F) The certificate issued in Ordering Paragraph (A) is conditioned upon Whitetail's compliance with the engineering and environmental conditions set forth in Appendices A and B to this order.

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

(H) Whitetail's request to charge market-based storage rates for firm and interruptible storage and hub services is approved, as discussed and subject to the conditions in this order. Whitetail's request to charge market-based rates for wheeling service is denied, as discussed in the body of this order.

(I) Whitetail shall notify the Commission within 10 days of acquiring knowledge of: (a) Whitetail 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 Whitetail; (d) Whitetail or an affiliate's acquisition of an interest in, or being acquired by, an interstate pipeline connected to Whitetail. The notification shall include a detailed description of the new facilities and their relationship to Whitetail. Whitetail is also directed to file an updated market power analysis within five years of the date of this order and every five years thereafter. The Commission reserves the right to require such an analysis at any intervening time.

(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 30 days after its first full year of operation, and every year thereafter, Whitetail shall file an annual informational filing on its provision of service using off-system capacity, as detailed in this order.

(M) Whitetail must submit actual tariff sheets that comply with the requirements contained in the body of this order no more than 60 days and no less than 30 days prior to the date of service.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Engineering Conditions for Whitetail's Proposed Project

1. Maximum inventory of natural gas stored in the Whitetail storage facility shall not exceed the certificated levels of 20.8 Bcf at 14.73 psia and 60 degrees Fahrenheit, and the maximum shut-in bottom hole storage pressure shall not exceed 2,417 psi without prior authorization of the Commission.
2. The Whitetail Project shall be operated in such manner as to prevent/minimize gas loss or migration.
3. Whitetail shall conduct an annual inventory verification study on the storage field, and file results with the Commission.
4. Whitetail shall submit semiannual reports (to coincide with the termination of the injection and withdrawal cycles) containing the following information (volumes shall be stated at 14.73 psia and 60 degrees Fahrenheit and pressures shall be stated in psia):
 - (1) The daily volumes of natural gas injected into and withdrawn from the storage reservoir.
 - (2) The volume of natural gas in the reservoirs 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 and inventory verification studies conducted during the reporting period.
 - (6) The latest revised structure contour maps showing location of the wells and the location of the gas-water contact if one exists. These maps need not be filed if there is no material change from the maps previously filed.

(7) For the reporting period, a summary that includes the below ground surface depth and casing settings of wells drilled, worked over, or recompleted. Additionally, summarize results of reservoir characteristics from any logs or cores taken in each well.

(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.

Whitetail shall continue to file these reports semiannually until the storage inventory volume and pressure have reached or closely approximate the maximum permitted in this order. Thereafter, the reports shall continue on a semiannual basis for a period of one year.

Appendix B

Environmental Conditions for Whitetail's Proposed Project

1. Whitetail 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 this Order. Whitetail 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 delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during activities associated with construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Commission 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 construction.
3. **Prior to any construction**, Whitetail shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets and data responses. **As soon as they are available, and before the start of construction**, Whitetail 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 the facility approved by the Commission 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.

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

5. Whitetail 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 minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of this certificate and before construction begins**, Whitetail shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Whitetail will

implement the mitigation measures required by this Order. Whitetail must file revisions to the plan as schedules change. The plan shall identify:

- a. how Whitetail 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;
 - b. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - d. the training and instructions Whitetail will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - e. the company personnel (if known) and specific portion of Whitetail's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) Whitetail will follow if noncompliance occurs; and
 - g. 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 mitigation training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Whitetail shall employ EI(s) for the project who are qualified as agricultural specialists (*i.e.*, knowledgeable about Mississippi farming practices).
8. Whitetail shall file updated status reports prepared by the head EI with the Secretary on a **bi-weekly basis until all construction-related activities, including restoration and initial permanent seeding, 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. the current 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;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the EI 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);
- c. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Commission's Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Whitetail from other federal, state or local permitting agencies concerning instances of noncompliance, and Whitetail's response.
9. Whitetail must receive written authorization from the Director of OEP **before commencing service** of the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas of project-related disturbance are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Whitetail 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 Whitetail 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. Whitetail shall file a noise survey **no later than 60 days after placing the Whitetail Compressor Station in service**. If the noise attributable to the operation of the compressor station at full load exceeds a day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at any nearby noise sensitive area. Whitetail must install additional noise controls to meet that level **within 1 year of the in-service date**. Whitetail shall confirm compliance with the L_{dn} of 55 dBA requirement by filing a second noise survey **no later than 60 days** after it installs the additional noise controls.