

127 FERC ¶ 61,260  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Suedeem G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Atmos Pipeline and Storage, LLC

Docket No. CP09-22-000

ORDER ISSUING CERTIFICATES

(Issued June 18, 2009)

1. On November 12, 2008, Atmos Pipeline and Storage, LLC (Atmos) filed an application under section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations<sup>2</sup> requesting a certificate of public convenience and necessity authorizing the construction and operation of the Fort Necessity Gas Storage Project near Fort Necessity, Franklin Parish, Louisiana. In addition, Atmos seeks blanket certificates under Part 157, Subpart F and Part 284, Subpart G of the Commission's regulations.<sup>3</sup>
2. As discussed below, the Commission grants Atmos' requested certificate authorizations, subject to conditions described herein. The Commission also grants Atmos' request for market-based rate authority and waiver of certain filing and other requirements.

**I. Background**

3. Atmos is a Delaware limited liability company authorized to do business in Louisiana and is wholly-owned by Atmos Energy Holdings, Inc., a Delaware corporation, which is wholly-owned by Atmos Energy Corporation, a Texas and Virginia corporation. Atmos is currently not a "natural gas company" within the meaning of section 2(6) of the NGA<sup>4</sup> and currently holds no section 7 certificates. Upon completion of the proposed

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

<sup>2</sup> 18 C.F.R. Part 157 (2008).

<sup>3</sup> 18 C.F.R. Part 157, Subpart F and Part 284, Subpart G (2008).

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

construction, however, Atmos will become a natural gas company within the meaning of NGA section 2(6) and be subject to the Commission's jurisdiction.

4. On February 5, 2008, in Docket No. CP08-34-000, the Commission exempted Atmos from the section 7(c) certificate requirements of the NGA in order to enable Atmos to drill a stratigraphic test well, re-enter an existing well, and perform other activities to determine the feasibility of developing the Fort Necessity salt cavern storage project (February 5th Order).<sup>5</sup> The Commission gave Atmos until February 5, 2009, to complete the proposed testing.

5. On November 6, 2008, the Commission amended the February 5th Order so Atmos could conduct a three-dimensional seismic survey and drill two brine disposal test wells to clarify the characteristics of the Fort Necessity salt dome formation and surrounding geologic features and further assess the feasibility of developing the salt caverns as an underground natural gas storage facility (November 6th Order).<sup>6</sup> The Commission gave Atmos until November 6, 2009, to complete the proposed testing. Atmos is continuing with these investigatory activities.

## II. Proposal

### A. New Facilities

6. In the present proceeding, Atmos proposes to construct and operate a new natural gas storage facility which will provide for the injection, storage and withdrawal of natural gas in three underground salt dome caverns located in the Fort Necessity salt dome formation, approximately 12 miles south-southwest of the City of Winnsboro, Franklin Parish, Louisiana (Fort Necessity Gas Storage Project). The project consists of three natural gas storage caverns with a total capacity of nearly 24.75 billion cubic feet (Bcf) of natural gas (15 Bcf of working gas and 9.75 Bcf of cushion gas). Each cavern will have a total capacity of 8.25 Bcf (5.0 Bcf of working gas and 3.25 Bcf of cushion gas). Each cavern will be roughly cylindrical and approximately 1,180 feet tall and 200 feet wide, with a top approximately 4,300 feet below the ground surface and a depth of 5,880 feet below ground surface. Atmos proposes to construct the project in two phases over a five-year period: two caverns would be constructed in the first phase and one in the second phase. Atmos plans to place Cavern 1 into service by December 2011, Cavern 2 by March 2012, and Cavern 3 by August 2013.

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<sup>5</sup> See *Atmos Pipeline and Storage, LLC*, 122 FERC ¶ 61,100 (2008).

<sup>6</sup> See *Atmos Pipeline and Storage, LLC*, 125 FERC ¶ 61,148 (2008).

7. Atmos states that the storage facility will have an average injection rate of 375 million cubic feet (MMcf) per day and a maximum injection rate of approximately 500 MMcf per day. Further, it states that the storage facility will have an average withdrawal rate of 750 MMcf per day and a maximum withdrawal rate of approximately 1,500 MMcf per day.

8. The proposed project includes a 6,400 gallons per minute leaching plant and a 42,300-horsepower (hp) compression facility (composed of nine 4,700-hp natural gas-fired reciprocating compressor units). The cavern wells will be initially configured for solution mining and later reconfigured for gas injection and withdrawal.

9. Atmos proposes to construct four meter stations and appurtenant facilities, one at the tie-in location with each of the four proposed interconnecting pipelines: Tennessee Gas Pipeline Company (Tennessee Gas), Columbia Gulf Transmission (Columbia Gulf), ANR Pipeline Company (ANR), and Regency Energy Partners LP (Regency).

- a. The Tennessee Gas meter station will be located on the west side of the compressor station, at the end of two proposed 0.1-mile long, 36-inch diameter pipelines interconnecting with Tennessee Gas's existing 30-inch diameter mainline.
- b. The Columbia Gulf meter station will be located north-northwest of the compressor station, at the end of two proposed 0.8-mile long, 36-inch diameter pipelines, extending from the proposed Tennessee Gas interconnect pipelines to an interconnection with Columbia Gulf's existing 30- and 36-inch diameter mainlines.
- c. The ANR and Regency meter stations will be located at the end of two proposed 6.5-mile long, 30-inch diameter pipelines, extending from the 36-inch lines interconnecting with Columbia Gulf to ANR's existing 30-inch and 36-inch diameter mainlines and Regency's existing 30-inch diameter mainline.

10. Atmos also proposes to construct and operate nine water supply wells and permanent pads. Each well will be equipped with a 200-hp electric motor-driven submerged pump and appurtenant equipment. The wells will provide raw water to the salt dome caverns through the leaching plant at pressure and flow rates required for solution mining. The brine will then be piped to the nine proposed brine disposal wells. A number of appurtenant leaching facilities will be constructed, including storage tanks for brine, two concrete-walled containment areas, a control system building, truck loading area, a diesel storage tank, and approximately 8.81 miles of associated pipeline.

11. The project also includes a 115 kilovolt (kV) electrical substation located immediately northwest of the compressor station. The substation will receive electricity

from Northeast Louisiana Power Cooperative, Inc. (NLPC), the local electricity service provider, via a 0.9-mile long, non-jurisdictional overhead transmission line, and deliver the electricity to the storage facility.<sup>7</sup>

12. The project will impact approximately 248.3 acres. Of this total, 109.1 acres will be temporarily affected and allowed to revert to pre-construction conditions. The remaining 139.2 acres will be permanently affected by facility operation and consists of land within the fencelines of above-ground facilities (20.3 acres), permanent access roads (13.3 acres), and pipeline rights-of-way (105.6 acres) that will be permanently maintained within the permanent rights-of-way.

### **B. Markets and Services**

13. Following a non-binding open season during June and July 2008 and ongoing customer contact, Atmos states that it received serious expression of interest for more than 150 percent of the 10 Bcf of working gas capacity proposed in first phase of the Fort Necessity Storage Project. Atmos further states that although no firm precedent agreements have yet been executed, Atmos is currently negotiating precedent agreements with potential customers and believes that firm precedent agreements for substantially all of the proposed capacity will be executed within a reasonable period following approval of the Fort Necessity Storage Project.

14. Atmos proposes to provide firm and interruptible storage and interruptible hub services on an open-access, non-discriminatory basis, the terms of which are provided in the *pro forma* tariff in Exhibit P of its application. Atmos will provide firm storage service under its proposed Rate Schedule FSS, firm parking service under its proposed Rate Schedule FP, firm loan service under its proposed Rate Schedule FL, and firm hourly balancing service under its proposed Rate Schedule FHBS. Atmos also proposes to provide enhanced interruptible storage service under its proposed Rate Schedule EISS. This interruptible service will have a priority higher than its interruptible storage service under its proposed Rate Schedule ISS and other interruptible hub services but below firm services. EISS service will function in a manner similar to ISS service but will require the payment of capacity charges. Atmos also proposes to provide interruptible parking service under its proposed Rate Schedule IP, interruptible wheeling service under its proposed Rate Schedule IW, interruptible loan service under its proposed Rate Schedule IL, interruptible hourly balancing service under its proposed Rate Schedule IHBS, and

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<sup>7</sup> The impact of construction of the transmission line was identified in the EA to the extent that information was known. The NLPC is under the jurisdiction of the Louisiana Public Service Commission and authorization for construction and operation of the transmission line will be in accordance with its regulations.

interruptible imbalance trading service under its proposed Rate Schedule IITS. Atmos states that these proposed services will support further development of domestic gas production in the Gulf Coast region, as well as new liquefied natural gas projects.

15. Atmos requests market-based rate authority for all of its proposed services. Atmos' market power study, Exhibit I of its application, states that Atmos lacks market power in the provision of storage and hub services because of the project's small size, limited market share, and the presence of numerous competitors in the market. The study also states that, except for wheeling service, the proposed hub services are derivative storage services, or in other words, forms of storage service. Atmos' study therefore concludes that if market-based rate authority is justified for Atmos' storage services, market-based rate authority is also justified for its non-wheeling hub services.

### C. Blanket Certificate and Waiver Requests

16. Atmos requests a Part 284 Subpart G blanket certificate to provide storage and hub services on an open-access, nondiscriminatory basis pursuant to its *pro forma* tariff. Atmos also requests a blanket certificate under Part 157 of Subpart F to perform routine activities in connection with the construction, acquisition, maintenance, and operation of the proposed facilities.

17. Atmos requests waivers of certain filing and other requirements under sections 157.6(b)(8); 157.20(c)(3); 157.14(a)(13), (14), (16), and (17); Part 201; and sections 260.1 and 260.2; 284.7(e) and 284.10 of the Commission's regulations,<sup>8</sup> which Atmos considers inapplicable to its market-based rate proposal. Further, Atmos requests waiver of sections 157.14(a)(10) and 284.7(d)<sup>9</sup> because they are either inapplicable or infeasible for the proposed project. Atmos also requests waiver of the Commission's regulations pertaining to standards of conduct for transmission providers since it does not plan to interconnect with affiliated transmission providers. In addition, Atmos seeks a waiver of the Commission's "shipper must have title" policy for any off-system capacity that Atmos may obtain in the future to provide storage or hub services.

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<sup>8</sup> 18 C.F.R. §§ 157.6(b)(8); 157.20(c)(3); 157.14(a)(13), (14), (16), and (17); Part 201; and 18 C.F.R. §§ 260.1 and 260.2; 284.7(e) and 284.10 (2008).

<sup>9</sup> *Id.* §§ 157.14(a)(10) and 284.7(d).

### **III. Notice and Interventions**

18. Public notice of Atmos' application was published in the *Federal Register* on November 28, 2008 (73 Fed. Reg. 72,468). Louisiana Municipal Gas Authority filed a timely motion to intervene.<sup>10</sup> No protests were filed.

### **IV. Discussion**

19. Because Atmos proposes to construct and operate facilities that will be used to transport natural gas in interstate commerce, Atmos' proposal is subject to the jurisdiction of the Commission and the requirements of subsections (c) and (e) of NGA section 7.

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

20. On September 15, 1999, the Commission issued a policy statement to provide guidance as to how the Commission evaluates proposals for certificating major new construction.<sup>11</sup> The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, possibility of overbuilding, subsidization by existing customers, applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.<sup>12</sup>

21. Under this policy, the threshold requirement in establishing the public convenience and necessity for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers.<sup>13</sup> The next step is to determine whether the applicant has made

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<sup>10</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See id.* § 385.214(a)(3).

<sup>11</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999) (Certificate Policy Statement), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000).

<sup>12</sup> *See* Certificate Policy Statement, *supra* note 11, at 61,737.

<sup>13</sup> *See id.* at 61,745-46.

efforts to eliminate or minimize any adverse effect the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline.<sup>14</sup> 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.

22. Atmos' proposal satisfies the threshold requirement that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. As discussed herein, Atmos is a new entrant in the natural gas storage market and has no existing customers. Therefore, there will be no subsidization. The Commission finds that Atmos has satisfied the threshold requirement of the Certificate Policy Statement.

23. The proposed Fort Necessity Gas Storage Project will have no adverse impact on existing customers or services since Atmos has no current customers or services. The Commission is also satisfied that there will be no negative impact on existing storage providers or their captive customers. As discussed below, the proposed project will be located in a competitive market and will serve new demand in a region that is experiencing rapid growth in natural gas use. The proposal will also enhance storage options available to pipelines and their customers and thus will increase competitive alternatives.

24. Atmos has minimized impacts on landowners and communities. The project is located in a sparsely populated area. Atmos has negotiated, or will negotiate, long-term leases or easements with the affected landowners for any project land that it currently does not own. Atmos has already acquired the right to use the salt dome formations for natural gas storage. Moreover, the land within the project disturbance area will consist of 248.3 acres, of which 236.3 acres are agricultural land. Approximately 202.8 of the 236.3 acres disturbed during construction will revert to their agricultural land use while 33.6 acres would undergo permanent conversion to industrial land.

25. Based on the benefits that the project will provide and the minimal adverse effects on other storage providers and their captive customers, and landowners and surrounding

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<sup>14</sup> *See id.*

communities, the Commission finds that the public benefits from the project outweigh any adverse effects and approval of the project is required by the public convenience and necessity.

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

26. Generally, the Commission evaluates requests to charge market-based rates for storage under the analytical framework of its Alternative Rate Policy Statement.<sup>15</sup> Under that policy, the Commission will approve market-based rates for storage providers where the applicant has demonstrated it lacks market power<sup>16</sup> or has adopted conditions that significantly mitigate market power.<sup>17</sup> The Commission has previously approved requests to charge market-based rates for storage services based on a finding that the proposed projects would not be able to exercise market power due to small size, anticipated share of the market and numerous competitors.<sup>18</sup>

27. 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

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<sup>15</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996) (Alternative Rate Policy Statement), *petitions for review denied sub nom. Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998), *criteria modified, Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220 (2006), Order No. 678-A, *order on clarification and reh'g*, 117 FERC ¶ 61,190 (2006).

<sup>16</sup> The Commission defines "market power" as "the ability of a pipeline to profitably maintain prices above competitive levels for a significant period of time." See Alternative Rate Policy Statement, *supra* note 15, at 61,230 (citation omitted).

<sup>17</sup> See *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220 (2006), *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

<sup>18</sup> See, e.g., *Arlington Storage Company, LLC*, 125 FERC ¶ 61,306 (2008); *Tarpon Whitetail Gas Storage, LLC*, 123 FERC ¶ 61,274 (2008); *Tres Palacios Gas Storage, LLC*, 120 FERC ¶ 61,253 (2007).

applicant has specifically and fully defined the relevant markets<sup>19</sup> to determine which specific products or services are identified and the suppliers of those products and services that provide good alternatives to the applicant's ability to exercise market power.<sup>20</sup> Additionally, as part of the first step, the applicant must identify the relevant geographic market.<sup>21</sup> Second, the Commission measures an applicant's market share and market concentration.<sup>22</sup> Third, the Commission evaluates other relevant factors, such as ease of entering the market.

28. The Commission finds that Atmos' market-power analysis satisfies these three factors. First, Atmos identifies the relevant product market as firm and interruptible natural gas storage and hub services. Atmos identifies the relevant geographic market region as East Texas, Louisiana, Mississippi and Alabama (the Gulf Coast Production Region). Atmos identifies twenty-six storage facilities unaffiliated with the Fort Necessity Project that offer similar services in the Gulf Coast Production Region.<sup>23</sup>

29. Second, a company can exercise market power in two ways: (i) it has a large market share so it can raise prices acting alone or (ii) act with others to raise prices.<sup>24</sup> Here, the relatively small market shares, as Exhibit Nos. 4A, 4B, and 6B of Atmos' market-power analysis<sup>25</sup> show, indicates that Atmos will not be able to exert market power in the relevant market area. Exhibit No. 4A lists twenty-six storage facilities that are not affiliated with the Fort Necessity project. Exhibit No. 4B shows that at full capacity, Atmos would control approximately 7.25 percent of the total working gas capacity in the relevant market<sup>26</sup> and Exhibit No. 6B shows that Atmos would control

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<sup>19</sup> 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, *supra* note 15, at 61,231.

<sup>20</sup> *See* Alternative Rate Policy Statement, *supra* note 15, at 61,231.

<sup>21</sup> *See id.* at 61,232-34.

<sup>22</sup> *See id.* at 61,234.

<sup>23</sup> *See* Exhibit Nos. 4A, 4B, and 6A of Exhibit I of Atmos' Application.

<sup>24</sup> *See* Alternative Rate Policy Statement, *supra* note 15, at 61,234.

<sup>25</sup> *See* Exhibit I of Atmos' Application.

<sup>26</sup> Affiliates of Atmos currently operate seven storage facilities in the Gulf Coast Production Region with 41.5 Bcf of working gas capacity.

approximately 9.8 percent of total deliverability. Thus, Atmos is unlikely to exercise market power with its small market share.

30. The Commission uses the Herfindahl-Hirschman Index (HHI) to determine market concentration for gas pipeline and storage markets.<sup>27</sup> 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.<sup>28</sup> 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. Atmos' market power analysis shows Atmos' HHI calculation is 937 for working gas capacity and 851 for peak day deliverability. These measures of market concentration are significantly below the 1,800 HHI level, indicating that Atmos does not have market power in the relevant market area.

31. Lastly, Atmos cannot exercise market power because the relevant market is easy to enter. The Commission has found previously that barriers to entry in the Gulf Coast Production Region are not significant.<sup>29</sup> In addition, the services to be provided by the project are offered by twelve competing hubs and market centers in the region.

32. Based on these factors, the Commission finds that Atmos' 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 Atmos' analysis properly identifies good alternatives<sup>30</sup> and that Atmos' entry will increase the storage alternatives in the Gulf Coast Production Region. Furthermore, the Commission finds that, within the relevant market, Atmos' prospective market shares are low and that the market concentration is below the threshold which would require closer scrutiny.

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<sup>27</sup> See Alternative Rate Policy Statement, *supra* note 15, at 61,235.

<sup>28</sup> See *Rate Regulation of Certain Natural Gas Storage Facilities*, *supra* note 17, at P 55 (noting that the Commission is not changing the 1,800 HHI threshold level).

<sup>29</sup> 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.*, 116 FERC ¶ 61,052, at P 25 (2006).

<sup>30</sup> 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 it for an applicant's proposed service. See Alternative Rate Policy Statement, *supra* note 15, at 61,231.

Finally, the Commission finds that barriers to entry are likely to be low in the relevant market. Thus, the Commission concludes that Atmos will lack significant market power.

33. Traditionally, in evaluating whether shippers of an applicant seeking market-based rate authority for interruptible wheeling service could obtain the same services from alternative providers, the Commission has used a matrix, referred to as a “bingo-card,” which identifies all possible interconnections for pipelines attached to a hub and indicates whether good alternatives exist.<sup>31</sup> Atmos’ “bingo-card” analysis<sup>32</sup> shows that there are a number of alternative paths available to shippers desiring to wheel natural gas between interstate natural gas pipelines in the Gulf Coast Production Region. In addition, Atmos’ market power study shows that Atmos’ market share for wheeling delivery capacity at alternative hubs and market centers in the Gulf Coast Production Region will be 7.49 percent and its market share for receipt capacity will be 5.66 percent.<sup>33</sup> These percentages are similar to the percentages the Commission has accepted in the past.<sup>34</sup> The HHI for delivery capacity is 929.6 and for receipt capacity 976.7, both of which are well below the 1,800 level set forth in the Alternative Rate Policy Statement. The market power study also shows that Atmos will be unable to exercise market power because ample competitive alternatives exist for Atmos’ proposed interruptible wheeling services and alternative interconnection paths exist for every possible flow of gas among the pipelines with which the Fort Necessity Gas Storage Project will interconnect.

34. For these reasons, the Commission approves Atmos’ request to charge market-based rates for all firm and interruptible storage, hub, and wheeling services. Atmos must notify the Commission if future circumstances significantly affect its present market power status. Thus, the Commission’s approval of market-based rates for the indicated services is subject to re-examination in the event that: (a) Atmos adds storage capacity beyond the capacity authorized in this order; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to Atmos; or (d) Atmos, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to Atmos. Since these circumstances could affect its market power status, Atmos shall notify the Commission within ten days of acquiring knowledge of any such changes. The notification shall

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<sup>31</sup> See, e.g., *Enstor Houston Hub Storage and Transportation, LP*, 123 FERC ¶ 61,019 (2008); *PetroLogistics Natural Gas Storage, LLC*, 122 FERC ¶ 61,193 (2008).

<sup>32</sup> See Exhibit No. 8 of Exhibit I of Atmos’ Application.

<sup>33</sup> See Exhibit Nos. 10 and 11 of Exhibit I of Atmos’ Application.

<sup>34</sup> See, e.g., *Arlington Storage Co., LLC*, 125 FERC ¶ 61,306 (2008).

include a detailed description of the new facilities and their relationship to Atmos.<sup>35</sup> The Commission also reserves the right to require an updated market power analysis at any time.

**C. Waivers of Filing, Reporting, and Accounting Requirements**

35. In light of its request for authority to charge market-based rates and the fact that it has no existing interstate pipeline operations, Atmos requests that the Commission waive section 157.6(b)(8) of the Commission's regulations, which would require Atmos to submit cost and revenue information otherwise necessary for the Commission to make an up-front determination of the rate treatment for the project. Atmos also requests that the Commission waive the filing requirements of section 157.14(a)(13), (14), (16) and (17), which require submission of 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. Atmos requests such additional waivers of the Commission's regulations as necessary to carry out the authorizations requested in its application and as are customarily issued.

36. For the same reasons, Atmos requests waiver of the accounting and annual reporting requirements under Part 201 (accounting and reporting requirements of Uniform System of Accounts) and sections 260.1 and 260.2 (which require natural gas companies to file annual reports in FERC Form Nos. 2 and 2-A) of the Commission's regulations. Atmos also requests waiver of the rate and cost information filing requirements of sections 157.14(a)(10) and 157.20(c)(3) to submit total gas supply data (Exhibit H), as being inapplicable to natural gas storage services.

37. The cost-related information required by the above-described regulations is not relevant in light of the Commission's approval of market-based rates for Atmos' proposed services. Thus, consistent with the Commission's previous orders,<sup>36</sup> the Commission grants Atmos' request for waiver of the regulations requiring cost-based related information for these services. The Commission also grants a waiver of sections 157.14(a)(10) and 157.20(c)(3), which require an applicant to submit gas supply data (Exhibit H), which is inapplicable to storage operations.

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<sup>35</sup> See, e.g., *Port Barre Investments, L.L.C.*, 116 FERC ¶ 61,052 (2006); *Copiah County Storage Co.*, 99 FERC ¶ 61,316 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002).

<sup>36</sup> See, e.g., *Port Barre Investments, L.L.C.*, 116 FERC ¶ 61,052 at P 33; *SG Resources Mississippi, L.L.C.*, 101 FERC ¶ 61,029, at P 26 (2002); *Egan Hub Partners, L.P.*, 99 FERC at 62,142; *Egan Hub Partners, L.P.*, 95 FERC at 62,473.

38. In addition, the Commission grants the requested waiver of the requirement to file an annual report (FERC Form Nos. 2 and 2-A), contained in section 260.2 of the Commission's regulations, except for the information necessary for the Commission's assessment of annual charges.<sup>37</sup> Atmos is required to file page 520 of Form No. 2-A, reporting the gas volume information which is the basis for imposing an Annual Charge Adjustment (ACA) charge.<sup>38</sup>

#### **D. Tariff Provisions**

39. Atmos proposes to offer its firm and interruptible storage, hub, and wheeling services at market-based rates under the terms and conditions set forth in the *pro forma* tariff attached as Exhibit P to the application. As discussed, the Commission finds that Atmos' proposed tariff generally complies with Part 284 of the regulations, with the exceptions noted below.

##### **1. Priority, Interruption of Service, and Operational Balancing Agreements**

40. Section 5.1 of the General Terms and Conditions (GT&C) of the tariff contains Atmos' priorities of service. Section 5.1(d) provides that the priority for extended injections and withdrawals for firm storage service in excess of maximum daily receipt quantity (MDRQ) per 24 hours or the maximum daily delivery quantity per 24 hours is below that of interruptible service, including excess injection or withdrawal gas. This priority is not consistent with the Commission's policy that overrun and interruptible services should have the same priority. In prior cases, the Commission held that pipelines must revise their tariffs so that interruptible and overrun services are accorded the same scheduling priority.<sup>39</sup> Thus, Atmos is required to revise its scheduling priorities or, in the alternative, provide a reason for using a lower priority for extended injections and withdrawals than for interruptible service.

41. Section 5.6(a) of the GT&C provides that Atmos is willing to negotiate an operational balancing agreement (OBA) with any transporter for the purpose of minimizing operational imbalances, or resolving other matters, with respect to the receipt

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<sup>37</sup> Atmos, however, is required to maintain sufficient records of cost and revenue data, consistent with the Uniform System of Accounts, should the Commission require Atmos to produce this report in the future.

<sup>38</sup> See *Wyckoff Gas Storage Co., LLC*, 105 FERC ¶ 61,027, at P 65 (2003).

<sup>39</sup> See, e.g., *Central New York Oil and Gas Co., LLC*, 114 FERC ¶ 61,105 (2006); *CNG Transmission Corp.*, 81 FERC ¶ 61,346, at 62,592 (1997).

of gas into, or delivery of gas from, Atmos' facilities. Section 5.6(b) describes the terms under which Atmos will enter into an OBA. In Order No. 587-G,<sup>40</sup> the Commission adopted section 284.10(c)(2)(i) of the Commission's regulations,<sup>41</sup> which requires every interstate pipeline to enter into OBAs at all points of interconnection between their systems and the systems of other interstate or intrastate pipelines. Atmos is required to comply with section 284.10(c)(2)(i) once the proposed project is in service.

## 2. Minimum Gas Quantity

42. Sections 6.3, 6.4, 7.2, and 7.3 of the GT&C provide that Atmos 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 5,000 dekatherms (Dth) per day.

43. 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. The Commission, however, 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 provide operational and cost justification for the restriction.<sup>42</sup> The Commission, for example, has accepted a proposal by Gulf South Pipeline Company, LP (Gulf South) for a 100 Dth per day threshold for connections of new receipt and delivery points.<sup>43</sup> 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.<sup>44</sup>

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<sup>40</sup> *Standards For Business Practices Of Interstate Natural Gas Pipelines*, Order No. 587-G, 63 Fed. Reg. 20072 (1998), FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000 ¶ 31,062 (1998), *order on reh'g*, Order No. 587-I, 63 Fed. Reg. 53565 (1998), FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000 ¶ 31,067 (1998).

<sup>41</sup> 18 C.F.R. § 284.10(c)(2)(i) (2008).

<sup>42</sup> *See, e.g., Gulf South Pipeline Co., LP*, 103 FERC ¶ 61,105, at P 13 n.7 (2003); *Trailblazer Pipeline Co.*, 39 FERC ¶ 61,103, at 61,336 (1987); *Texas Eastern Transmission Corp.*, 37 FERC ¶ 61,260, at 61,680-81 (1987).

<sup>43</sup> *See Gulf South Pipeline Co., LP*, 103 FERC ¶ 61,105 at P 13.

<sup>44</sup> *See id.*

Also, Gulf South stated that the costs associated with operating small points would be greater than the maximum rate would cover.<sup>45</sup>

44. Unlike in *Gulf South*, where Gulf South provided operational and cost justification for its 100 Dth per day minimum volume condition, Atmos, here, has not provided such justification. Therefore, the Commission finds that Atmos' proposal is unsupported. Thus, Atmos is required to eliminate the proposed minimum volume condition or, in the alternative, provide additional justification that 5,000 Dth per day is too small a gas quantity to be metered.

### 3. Gas Quality

45. Section 10.1(a) of the GT&C provides that Atmos may, from time to time, establish and post on its website an upper Btu limit, a hydrocarbon dewpoint limit, or other gas quality specifications, as necessary, to assure that gas will be accepted into interconnects with any transporter.

46. The Commission recognizes that the gas quality standards in a tariff must provide sufficient flexibility for the pipeline to act in a timely manner to protect its operational integrity and minimize equipment damage, as set forth in the Commission's Natural Gas Interchangeability Policy Statement. This policy statement delineates five principles that the Commission uses in deciding gas quality issues.<sup>46</sup> Under one principle, only natural gas quality and interchangeability specifications contained in a Commission-approved gas tariff can be enforced. The Commission finds that the tariff provisions in section 10.1(a) related to establishing additional gas quality specifications are not adequately defined and provide Atmos too much discretion to vary gas quality specifications without providing adequate notice and explanation to its customers. If Atmos believes it is necessary to limit the maximum Btu content or the dewpoint of gas received into its system, or any other gas quality specification, it must propose to include these specific criteria in its tariff. To the extent it desires flexibility to vary these standards in particular circumstances, it should include in its tariff a specific mechanism for doing so. Therefore, Atmos must modify its tariff accordingly.

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<sup>45</sup> See *id.* P 9 and 12.

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

#### 4. Segmentation

47. Section 284.7(d) of the Commission's regulation provides that an interstate pipeline must permit a shipper to make use of the firm capacity for which the shipper has contracted by segmenting that capacity into separate parts for the shipper's own use or for the purpose of releasing that capacity to replacement shippers to the extent segmentation is operationally feasible. Atmos requests a waiver from the segmentation requirement in section 284.7(d), contending that it will not be offering stand-alone transportation service, but rather, all transportation service will be provided as part of the storage services offered.

48. In *Clear Creek Gas Storage Co. (Clear Creek)*,<sup>47</sup> the Commission found that the requirements of section 284.7(d) do not apply to pipelines engaged solely in natural gas storage and which do not provide stand-alone transportation service.<sup>48</sup> Atmos meets the requirements in *Clear Creek*. Thus, the Commission finds that the requirements of section 284.7(d) do not apply to Atmos. 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 Atmos.

#### 5. Acquisition of Off-System Capacity and Waiver of Shipper-Must-Hold-Title Policy

49. Atmos requests a generic waiver of the "shipper-must-hold-title" policy for any off-system capacity it may need to obtain in order to provide storage services to enable it to use that capacity to transport natural gas owned by other parties. Section 31 of the GT&C includes an affirmative statement that Atmos will only transport gas for others using off-system capacity under its open-access tariff and subject to Commission-approved rates.

50. The Commission has imposed conditions on the use of off-system capacity by independent storage companies authorized to charge market-based rates.<sup>49</sup> In *Texas Eastern Transmission Corp. (Texas Eastern)*,<sup>50</sup> the Commission found that pipelines no

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<sup>47</sup> 96 FERC ¶ 61,071 (2001).

<sup>48</sup> See *id.* at 61,318; *Pine Prairie Energy Center, LLC*, 109 FERC ¶ 61,215, at P 44 (2004).

<sup>49</sup> See, e.g., *Freebird Gas Storage, LLC*, 111 FERC ¶ 61,054 (2005); *Caledonia Energy Partners, L.L.C.* 111 FERC ¶ 61,095 (2005).

<sup>50</sup> *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273 (2000), *reh'g denied*, 94 FERC ¶ 61,139 (2001).

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 under its tariff provisions and rates. Atmos' proposed tariff language is consistent with the requirements set forth in *Texas Eastern*.

51. Thus, the Commission accepts Atmos' tariff language and grants waiver of "the shipper-must-hold-title" policy, with the following clarification. Atmos may only use capacity obtained on other pipelines in order to render services set forth in its tariff. That is, Atmos may not use capacity on other pipelines to transport gas which will not physically or contractually enter its storage facility unless and until it has received Commission authorization to provide such transportation services. Furthermore, Atmos' authorized use of the *Texas Eastern* waiver to provide storage services shall be limited to the geographic area covered by Atmos' market-power study.

52. Within thirty days after its first full year of operation, and every year thereafter, Atmos is required to file for each acquisition of off-system capacity:

- (1) the name of the off-system provider;
- (2) the type, level, term and rate of service contracted for by Atmos;
- (3) a description of the geographic location – boundaries, receipt and delivery points, and segments comprising the capacity;
- (4) the operational purpose(s) for which the capacity is used;
- (5) a description of how the capacity is associated with specific transactions involving customers of Atmos; and
- (6) an identification of total volumes, by Atmos' rate schedule and customer, that Atmos has nominated on each off-system provider during the reporting period.

**E. Blanket Certificates**

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

certificate is based on the fact that Atmos' storage facility is a salt cavern in the initial stages of development for which future expansion will require reevaluation by the Commission of historical data and new engineering and geological data.<sup>51</sup>

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

#### **F. Engineering Analysis**

55. Commission staff completed a geologic and engineering analysis of the three proposed gas storage caverns. Based on this analysis, the Commission finds that the facilities are appropriately designed to store up to 8.25 Bcf of natural gas in each cavern, withdraw up to 1.5 Bcf of natural gas per day from that storage, and inject up to 500 MMcf of natural gas per day into storage.

56. Based on Commission staff's review, the Commission also finds that the preliminary geological and engineering parameters for the underground natural salt cavern storage facilities are well-defined and appropriate. Commission staff's analysis also shows that Atmos' proposed cavern locations are within the design criteria and confinement of the salt formation. Additionally, the maximum and minimum operating cavern pressures, with the maximum allowable pressure gradient of 0.85 psi/ft and the minimum allowable pressure gradient of 0.25 psi/ft throughout the storage cycle, will preserve the structural integrity of the caverns.

#### **G. Environmental Analysis**

57. On May 14, 2008, Commission staff issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Fort Necessity Gas Storage Project and Request for Comments on Environmental Issues (NOI). Commission staff received responses to the NOI from the U.S. Fish and Wildlife Service (USFWS), Louisiana Department of Wildlife and Fisheries (LDWF) Office of Wildlife, Louisiana Department of Environmental Quality (LDEQ), two landowners, and two congressional representatives who forwarded one landowner's comment letter. Comments received were related to impacts on wildlife, vegetation, wetlands, groundwater, and noise; pipeline safety, and evaluation of route alternatives. These comments were addressed in the environmental assessment (EA).

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<sup>51</sup> See, e.g., *Unocal Windy Hill Gas Storage*, 115 FERC ¶ 61,218 (2006).

58. The EA addresses geology, soils, water resources, wetlands, fisheries, wildlife, vegetation, land use, cultural resources, air quality, noise, safety, and alternatives. The EA was issued on March 4, 2009, for public comment and placed into the public record. The Commission received two comments on the EA from the USFWS and the LDWF.

59. In its comment on the EA, the USFWS stated that no federally listed threatened or endangered species are known to occur in the project area. Further it stated that since Atmos has indicated it will provide appropriate compensatory mitigation for all unavoidable wetland impacts through appropriate federal and state wetland permitting processes, it has no additional comments on the EA.

60. In its comment on the EA, the LDWF, Office of Wildlife stated that its previous comments and recommendations have been satisfactorily addressed in the EA except for compensatory mitigation. It states that Atmos should develop a compensatory mitigation plan to off-set impacts to fish and wildlife resources. The EA notes that the LDEQ may stipulate additional measures in its state permitting authority under sections 401 and 402 of the Clean Water Act<sup>52</sup> if the State of Louisiana has additional concerns in permitting the project. This may include the development of a compensatory mitigation plan.

61. In addition, as discussed in the EA, most of the lands affected by the project, about 95.2 percent, is agricultural land and is regularly disturbed by farming activities. Regarding impacts on fisheries, the EA concludes that adherence to Atmos' Upland Erosion Control and Maintenance Plan and Atmos' Wetland and Waterbody Construction and Mitigation Procedures would minimize impacts to the greatest extent practicable and would result in only minor, short-term impacts on fisheries.

62. To ensure impacts on colonial birds are avoided, the Commission includes environmental condition number 12 that prohibits construction between February 15 and September 1 until a USFWS-approved biologist conducts an inspection to identify colonial bird nests so they may be avoided. Atmos must file the resulting survey report with the Secretary of the Commission.

63. In conclusion, because the project would mostly affect agricultural land and would not affect federal or state-listed threatened or endangered species, and Atmos intends to utilize its Plan and Procedures to minimize and mitigate potential impacts to wildlife and habitat through appropriate federal and state permitting processes, the Commission believes the LDWF Office of Wildlife's comment regarding developing a compensatory mitigation plan has been addressed adequately.

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<sup>52</sup> 33 U.S.C. §§ 1341, 1342 (2006).

64. Based on the discussion in the EA, the Commission concludes that if constructed and operated in accordance with Atmos' application and supplement filed December 10, 2008 and the environmental conditions in Appendix B to this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

65. 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. This does not mean, however, that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>53</sup>

## V. Conclusion

66. For the reasons discussed above, the Commission finds that Atmos' storage 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.

67. At the hearing held on June 18, 2009, 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. Upon consideration of the record,

### The Commission orders:

(A) In Docket No. CP09-22-000, a certificate of public convenience and necessity is issued to Atmos under NGA section 7(c) authorizing the ownership, construction and operation of the described storage facilities, as described more fully in this order and in the application.

(B) In Docket No. CP09-22-000, a blanket construction certificate is issued to Atmos under Subpart F of Part 157 of the Commission's regulations.

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<sup>53</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(C) In Docket No. CP09-22-000, a blanket transportation certificate is issued to Atmos under Subpart G of Part 284 of the Commission's regulations.

(D) The certificate authority granted in Ordering Paragraph (A) is conditioned upon:

(1) Atmos' compliance with all applicable Commission regulations under the NGA, including, but not limited to, 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.

(2) Atmos' compliance with the engineering and environmental conditions set forth in Appendices A and B to this order.

(3) Atmos' completion of the authorized construction of the proposed facilities and making them available for service by June 1, 2014 pursuant to section 157.20(b) of the Commission's regulations.

(E) Atmos' request to charge market-based storage rates for firm and interruptible storage service and interruptible hub and wheeling services is approved, as discussed in this order. Atmos' market power and market-based storage rates authority shall be subject to re-examination in the event that:

(1) Atmos expands its storage capacity beyond the amount authorized in this proceeding;

(2) An affiliate increases storage capacity;

(3) An affiliate provides storage or transportation services in the same market area or acquires an interest in another storage field that can link Atmos' facilities to the market area; or

(4) Atmos or its affiliate acquires an interest in or is acquired by an interstate pipeline connected to Atmos.

(F) Atmos is granted a waiver of section 157.14 of the Commission's regulations requiring submission of Exhibits H (total gas supply data), K (cost of facilities), L (financing), N (revenue-expenses-income), and O (depreciation and depletion); sections 284.7(e) and 284.10 requiring reservation charges and the use of a straight fixed variable rate design; and the accounting and reporting requirements under Part 201 and section 260.2 of the Commission's regulations, which presume cost-based rates are being charged and collected, except for the information necessary for the Commission's assessment of annual charges. This waiver is subject to Atmos

maintaining accounts and financial information of its storage facility consistent with generally accepted accounting principles. Atmos is required to file page 520 of FERC Form No. 2-A, reporting the gas volume information which is the basis for imposing an Annual Charge Adjustment charge.

(G) Atmos is granted a waiver of the Commission's "shipper-must-have-title" policy as discussed in the body of this order, and subject to the conditions set forth herein.

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

(I) Atmos shall file, not less than thirty days nor more than sixty days, prior to its proposed effective date, actual tariff sheets that comply with the requirements contained in the body of this order, including the cross-reference to reflect the location of each NAESB standard in its tariff, and are otherwise consistent with its *pro forma* tariff in accordance with the NGA and Part 154 of the Commission's regulations.

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

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

## Appendix A

### Engineering Conditions for the Fort Necessity Gas Storage Project

1. The maximum inventory of natural gas stored in the Fort Necessity Storage Field shall not exceed the certificated levels of 24,750 MMcf at 14.73 psia and 60 degrees Fahrenheit, and the shut-in bottom hole pressure as calculated at the casing shoe depth shall not exceed **2,975 psig** and the shut-in bottom hole pressure shall not fall below **875 psig**, without prior authorization of the Commission.
2. The final gas storage operating capacity of each cavern, working gas capacity, cushion gas capacity and the minimum pressure should be determined after the caverns' operating parameters are determined (including data work papers to support the actual operating capacity determination).
3. Before commencing natural gas storage operations in the proposed caverns, Atmos shall:
  - (a) conduct a Mechanical Integrity Test (MIT) on Cavern Nos. 1, 2 and 3 after leaching of the caverns for natural gas storage, and file with the Commission the results of the MIT;
  - (b) remove core samples from the new wells drilled in Cavern Nos. 1, 2 and 3 and conduct tests to determine the chemical, lithological, and geomechanical properties of the formation immediately above the salt, at the salt section of the cavern roof, and at the depth of the natural gas storage cavern interval, if possible, and file the results of these tests with the Commission;
  - (c) establish and maintain a subsidence monitoring network over the proposed caverns' storage area;
  - (d) assemble, test and maintain an emergency shutdown system;
  - (e) file with the Secretary of the Commission copies of well logs including Neutron logs, Gamma Ray logs, Cement Bond and Caliper logs for any wells drilled or used in conjunction with this project;
  - (f) file with the Secretary of the Commission a casing inspection base log or an equivalent survey or test obtained over the entire cased interval for the innermost string in any wells drilled or used in conjunction with this project to verify the integrity of the casing;

- (g) file with the Secretary of the Commission copies of the latest interferences, tracer surveys, or other testing or analysis on the caverns, to verify the lack of communication between the caverns.
  - (h) file with the Secretary of the Commission an earthquake contingency and assessment plan that ensures that cavern integrity is maintained in the event of an earthquake.
- 4. Twice annually, Atmos shall conduct a leak detection test during storage operations to determine the integrity of each cavern/wellbore, casing, and wellhead. In addition, Atmos shall file a report, with the Secretary of the Commission summarizing the results of these tests until one year after the operating capacity of the Fort Necessity storage facility has reached the maximum.
- 5. Atmos must periodically log each cavern's wells to check the cavern roof and status of each casing. Additionally, every five years Atmos must conduct sonar surveys of the caverns to monitor their dimensions and shape, and to estimate pillar thickness between openings throughout the storage operations.
- 6. Atmos must conduct an annual inventory verification study on each cavern.
- 7. The Fort Necessity field shall be operated in such manner as to prevent/minimize gas loss.
- 8. Atmos shall file with the Secretary semi-annual reports (to coincide with the termination of the injection and withdrawal cycles) 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 60 degrees Fahrenheit, and pressures shall be stated in psia):
  - (a) the daily volumes of natural gas injected into and withdrawn from the storage caverns;
  - (b) the volume of natural gas and the shut-in wellhead pressures for each cavern at the end of the reporting period.
  - (c) the maximum daily injection and withdrawal rates experienced for the entire storage field during the reporting period, including the average working pressure on such maximum days taken at a central measuring point where the total volume injected or withdrawn is measured.
  - (d) the results of any tests performed to determine the actual size, configuration, or dimensions of the storage caverns.

- (e) a discussion of current operating problems and conclusions.
  - (f) other data or reports which may aid the Commission in the evaluation of the storage project.
9. Atmos shall continue to file the above semi-annual reports in accordance with section 157.214(c) of the Commission's regulations until one year after the storage inventory volume has reached or closely approximates the maximum level defined in item no. 1 above.

## Appendix B

### Environmental Conditions for the Fort Necessity Gas Storage Project

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

1. Atmos 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. Atmos must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the 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 Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the Project. This authority shall include:
  - a. The modification of conditions of this 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 impacts resulting from project construction and operation.
3. **Prior to any construction**, Atmos shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, 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 or plot plans. **As soon as they are available, and before the start of construction**, Atmos 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 this Order. All requests for modifications

of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Atmos' exercise of eminent domain authority granted under NGA section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Atmos' right of eminent domain granted under 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. Atmos shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by Atmos' Upland Erosion Control and Maintenance Plan or minor field realignments per landowner needs and requirements that 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:

- (1) implementation of cultural resources mitigation measures;
  - (2) implementation of endangered, threatened, or special concern species mitigation measures;
  - (3) recommendations by state regulatory authorities; and
  - (4) 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, Atmos shall file an Implementation Plan with the Secretary for review and

written approval by the Director of OEP. Atmos must file revisions to the plan as schedules change. The plan shall identify:

- a. how Atmos 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 this Order;
  - b. how Atmos will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of environmental inspectors assigned per spread, and how Atmos will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
  - e. the training and instructions Atmos will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
  - f. the company personnel (if known) and specific portion of Atmos' organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Atmos will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the mitigation training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Atmos 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 Atmos' efforts to obtain the necessary federal authorizations;
  - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - d. 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 this Order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by Atmos from other federal, state or local permitting agencies concerning instances of noncompliance, and Atmos' response.
8. Atmos shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by this Order and other grants, permits, certificates, or other authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;

- d. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - e. responsible for maintaining status reports.
9. Atmos must receive written authorization from the Director of OEP **before commencing service** from each phase of the Project. 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**, Atmos 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 Atmos 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. **Before construction**, Atmos shall file with the Secretary the location by milepost of all private wells within 150 feet of pipeline construction or blasting activities. Atmos shall conduct, with the well owner's permission, pre- and post-construction monitoring of well yield and water quality for these wells. Within 30 days of placing the facilities in service, Atmos shall file a report with the Secretary addressing whether any complaints were received concerning well yield or water quality and how each was resolved.
12. **No construction** shall occur between February 15 and September 1 **until** a USFWS-approved biologist conducts an inspection to identify colonial bird nests so they may be avoided, and Atmos shall file the resulting survey report with the Secretary.
13. **Before construction** of brine disposal wells #7 and #8, Atmos shall file with the Secretary, for review and written approval by the Director of OEP, a drilling noise mitigation plan to reduce the projected noise level attributable to the proposed drilling operations at noise-sensitive areas (NSAs) with predicted noise levels above 55 decibels on the A-weighted scale (dBA) at any NSA. During drilling operations, Atmos shall monitor noise and make all reasonable efforts to restrict

- the noise attributable to the drilling operations to no more than a day-night sound level ( $L_{dn}$ ) of 55 dBA at any NSAs.
14. Atmos shall file noise surveys with the Secretary **no later than 60 days** after placing the Fort Necessity Compressor Station in service. If the noise attributable to the operation of all of the equipment at the Fort Necessity Compressor Station at full load exceeds an  $L_{dn}$  of 55 dBA at any nearby (NSAs or noise-sensitive areas), Atmos shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the in-service date. Atmos 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.