

134 FERC ¶ 61,197
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Magnum Gas Storage, LLC
Magnum Solutions, LLC

Docket No. CP10-22-000

ORDER GRANTING AND DENYING CERTIFICATES

(Issued March 17, 2011)

1. On November 17, 2009, Magnum Gas Storage, LLC (Magnum) and Magnum Solutions, LLC (Magnum Solutions) (jointly, Applicants) filed an application under section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations requesting: (1) a certificate of public convenience and necessity authorizing Magnum to construct and operate a natural gas storage facility and connecting header pipeline, known as the Magnum Gas Storage Project, to be located in Millard, Juab, and Utah Counties, Utah; and (2) a limited-jurisdiction certificate of public convenience and necessity authorizing Magnum Solutions to construct, own, and operate cavern leaching facilities to support cavern creation and maintenance and to lease an undivided interest in such facilities to Magnum. In addition, Magnum seeks a blanket transportation certificate to provide open-access firm and interruptible storage and hub services under Part 284, Subpart G of the Commission's regulations and requests authority to charge market-based rates for its proposed services and waiver of certain filing, accounting, and reporting requirements. Magnum and Magnum Solutions also request blanket construction certificates to perform certain routine activities under Part 157, Subpart F.
2. As discussed below, the Commission grants Magnum's requested certificate authorizations, subject to conditions described herein. The Commission also grants Magnum's request for market-based rate authority and waiver of certain filing, accounting, and reporting requirements. However, the Commission denies Magnum Solutions' request for a limited-jurisdiction certificate and blanket construction certificate for the water supply and brine management facilities.

¹ 15 U.S.C. § 717f(c) (2006).

I. Background

3. Magnum and Magnum Solutions are limited liability companies formed under the laws of Delaware, are wholly owned by Magnum Development, LLC, and are authorized to do business in Utah. Neither Magnum nor Magnum Solutions is currently a natural gas company within the meaning of section 2(6) of the NGA² and neither company currently holds a section 7 certificate. Applicants state that Magnum was formed for the purpose of developing, constructing, and operating the project; and Magnum Solutions was formed in order to construct, own, and operate the leaching and brine disposal facilities associated with the project.

II. Proposals

4. The Magnum Gas Storage Project involves the construction of a large scale, high-deliverability, multi-cycle salt cavern natural gas storage facility to be developed in the western Rocky Mountains. Upon completion, the project will offer 42 billion cubic feet (Bcf) of new working gas storage capacity and 54 Bcf of total capacity. Applicants state that there is a growing demand for natural gas storage services in the west, which includes Utah and the markets the project would serve. Specifically, Applicants cite to a study performed for the INGAA Foundation, Inc. entitled “Natural Gas Pipeline and Storage Infrastructure Projections Through 2030” that anticipates a need in the western United States for additional working gas capacity ranging from 41 Bcf to 76 Bcf.³ In addition, Applicants assert that the project will provide greater natural gas transmission reliability and increased operating flexibility to the energy markets in the west and will increase liquidity in natural gas markets in the Northwest and Midwest by accessing existing and proposed interstate pipeline interconnections near the Opal Hub in Wyoming.

A. Magnum’s Request for a Certificate of Public Convenience and Necessity

5. Magnum seeks authorization to construct and operate a high-deliverability, multi-cycle salt cavern natural gas storage facility to be located in Millard, Juab, and Utah Counties, Utah. As proposed, the project would be capable of injecting up to 0.3 Bcf of

² See 15 U.S.C. § 717a(6) (2006).

³ Certificate Application at 25 (citing ICF International, *Natural Gas Pipeline and Storage Infrastructure Projections Through 2030* (Oct. 20, 2009), at 70-73 (report submitted to the INGAA Foundation, Inc.), available at <http://www.ingaa.org/cms/31/7306/7828.aspx>).

natural gas per day and withdrawing up to 0.5 Bcf per day and will be capable of cycling its inventory from nine to twelve times annually.

6. Magnum proposes to develop four salt caverns for the storage of natural gas, each with a working gas capacity of approximately 10.5 Bcf and approximately 3.0 Bcf of base gas, for a total cavern volume of 13.5 Bcf. Together, all four proposed caverns would total 42 Bcf of working gas and 12 Bcf of base gas. In addition Magnum will develop surface facilities to support gas storage activities, including: 18,800 horsepower (hp) of compression, comprised of four 4,700 hp natural gas-driven compressors; two dehydration units; separators and ancillary equipment; pig launchers and receivers for the 36-inch header pipeline; various natural gas piping between the compressors, the caverns and the header pipeline; operations and control facilities; and miscellaneous gas meters and regulators. Magnum states that the storage site is located in a rural, undeveloped area adjacent to an existing coal-fired generating station on private and school trust land that has been subleased by the Applicants.

7. Magnum also proposes to construct a 61.6-mile long, 36-inch diameter, natural gas pipeline header extending from the storage site to points of interconnection with interstate gas transmission facilities owned by Kern River Gas Transmission Company (Kern River) and Questar Pipeline Company (Questar) at the end of the header near Goshen, Utah. The header pipeline system would include block valves located at approximately 15-mile intervals and two meter stations, one located at the storage site and one at the Goshen Interconnect site. The header pipeline would be capable of bi-directional flow and have a transportation capacity of up to 1.2 Bcf of natural gas per day. Magnum proposes to functionalize the header as an integrated part of the storage facility, with no separate rates. Magnum asserts that its treatment of the proposed header system is consistent with Commission precedent.⁴ Magnum states that approximately 67 percent of the area crossed by the header right-of-way is federal land administered by the Bureau of Land Management (BLM), 28 percent is private land and six percent is Utah state land managed by School and Institutional Trust Lands Administration (SITLA).

8. The non-jurisdictional facilities proposed to support construction and operation at the storage site include natural gas-fired electric generators to be used temporarily for on-site power needs, a temporary 9.2-mile, 4-inch diameter natural gas pipeline extending to existing local distribution facilities to supply gas for on-site power generation and other uses, and communication land lines.

⁴ Certificate Application at 33-34 (citing, *e.g.*, *Pine Prairie Energy Ctr., LLC*, 109 FERC ¶ 61,215 (2004), *amended*, 116 FERC ¶ 61,316 (2006), *amended*, 128 FERC ¶ 61,136 (2009)).

9. Magnum proposes to phase construction of the project as follows: the header pipeline is to be completed by May 2014, Cavern 1 is to be completed by July 2014; Cavern 2 is to be completed by August, 2014; Cavern 3 is to be completed by June 2021; and Cavern 4 is to be completed by December 2027.⁵

B. Magnum Solution's Request for an NGA Section 7 Limited-Jurisdiction Certificate

10. To support Magnum's cavern development, Magnum Solutions proposes to construct and operate water supply wells, a centralized pumping facility, and evaporation ponds for the injection of fresh water through Magnum's wells to create the caverns and for the transfer and management of brine from the caverns as leaching progresses. Magnum Solutions proposes to drill four new water supply wells at the storage site and to convert its exploratory well drilled under a temporary exemption granted in Docket No. CP08-478-000⁶ to a water supply well. In addition, Magnum Solutions proposes to construct and operate a central water pumping facility consisting of: electric motor driven booster and high pressure pumps; nitrogen handling equipment; and ancillary equipment such as tanks, filters, water piping and controls. Three lined evaporation ponds, each approximately 160 acres in size, will contain brine produced from cavern creation.

11. Applicants explain that they propose to separate the ownership and operation of natural gas storage and gas handling facilities from the ownership of the water supply, pumping, and brine disposal facilities to enhance their flexibility to finance facilities and to permit Magnum Solutions to provide cavern creation service to third parties. To ensure that Magnum will be able to obtain the necessary cavern leaching services, Applicants state that Magnum Solutions will enter into a lease with Magnum by which it will convey to Magnum an undivided interest in all these facilities.

C. Open Season and Proposed Services

12. Magnum states that it solicited bids for firm storage services in a non-binding open season that closed on July 31, 2009. Magnum indicates that its non-binding open season resulted in twenty-six conforming responses and two non-conforming responses for storage working capacity that exceeded 42 Bcf.⁷ Magnum states that it is currently

⁵ See Environmental Assessment at 11, Table 1.7-1.

⁶ *Magnum Gas Storage, LLC*, 125 FERC ¶ 61,147 (2008).

⁷ See Applicants' May 24, 2010 Data Response, Question No. 4.

negotiating precedent agreements with a number of the respondents who participated in the open season.

13. Magnum proposes to provide firm and interruptible storage and hub services to shippers in the Rocky Mountain and Mid-Continent production regions at market-based rates, in accordance with the terms of its proposed pro forma tariff.

D. Blanket Certificate and Waiver Requests

14. Magnum 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. Because it proposes to charge market-based rates, Magnum requests waiver of certain 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.

15. Magnum and Magnum Solutions also request blanket certificates under Part 157, Subpart F to perform routine activities in connection with the construction, acquisition, maintenance, and operation of the proposed facilities.

III. Notice, Interventions, and Comments

16. Notice of the Magnum and Magnum Solutions application was published in the *Federal Register* on December 9, 2009.⁸ Kern River, Utah County, and the Corporation of the Presiding Bishop of the Church of Latter-day Saints (CPB), and Farmland Reserve, Inc. (Farmland) (jointly) filed timely, unopposed motions to intervene.⁹ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. CPB and Farmland filed comments raising concerns that the project, as proposed, may prevent significant planned use of a 2,500-acre property located in Utah County, owned by CPB, and managed by Farmland. These concerns are addressed in the environmental discussion below.

17. Questar filed a late motion to intervene. The Commission finds that granting the late-filed motion to intervene at this early date will not delay, disrupt, or otherwise prejudice this proceeding, or place an additional burden on existing parties. We will grant the late-filed motion to intervene.¹⁰

⁸ 74 Fed. Reg. 65,109 (2009).

⁹ 18 C.F.R. § 385.214(a)(3) (2010).

¹⁰ See 18 C.F.R. § 385.214(d) (2010).

IV. Discussion

18. Because Magnum and Magnum Solutions propose to construct and operate facilities that will be used to store natural gas in interstate commerce, their proposals are 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

19. The Certificate Policy Statement provides guidance for evaluating proposals for certificating new construction.¹¹ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, the possibility of overbuilding, the subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.¹²

20. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers.¹³ 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.¹⁴ 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

¹¹ *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).

¹² *See* Certificate Policy Statement, 88 FERC at 61,737.

¹³ *See id.* 61,745-46.

¹⁴ *See id.*

adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

21. Magnum's 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, Magnum 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, Magnum 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 Magnum has satisfied the threshold requirement of the Certificate Policy Statement.

22. Since Magnum is a new entrant that has no current customers or services, the proposed project will have no adverse impact on existing customers or services. Further the proposed project should not have any adverse 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 for storage services in this region. The proposal will also enhance storage options available to transportation customers of existing pipelines. Further, no storage provider or customer in Magnum's market area protested the application.

23. In addition, there should be minimal adverse impact on landowners associated with the development of this storage project. The storage site is located on land subleased by Applicants in a rural, undeveloped area adjacent to an existing coal-fired generation plant. For the header pipeline, Magnum received a Right-of-Way Grant from BLM on February 22, 2011 and has entered into a lease agreement associated with the state trust property. Magnum is also negotiating with private land owners to obtain right-of-way easements for the remaining land.

24. The Magnum Gas Storage Project will increase the storage and hub services available to serve the growing markets in the western United States. Thus, 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 communities, the Commission finds, consistent with the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity requires approval of Magnum's proposal, subject to the conditions discussed below. As required by section 157.20(b) of the Commission's regulations and our practice regarding storage facilities, Ordering Paragraph (D)(3) conditions authorization of the project upon Magnum constructing the proposed facilities and making the integrated storage and header facilities available within three and one-half years of the date of this order. As described above, this timeframe covers the proposed plans for Caverns 1 and 2. In order to complete Caverns 3 and 4 under this authorization, Magnum will need to alter their development schedule.

B. Magnum Solution's Request for a Limited-Jurisdiction Certificate

25. As explained above, Magnum Solutions requests a limited-jurisdiction certificate to construct and operate cavern leaching facilities associated with the project. Magnum Solutions states that it will not offer any natural gas storage or hub services. Applicants assert that separate ownership of the leaching facilities by Magnum Solutions will facilitate financing of the project, allow Magnum Solutions to perform cavern creation service for third parties in the future, and facilitate the possible separation of ownership of Magnum and Magnum Solutions at some point, if such separation would create more value. Applicants submit that issuance of the requested limited-jurisdiction certificate is consistent with the Commission's holding that such a certificate is appropriate where an otherwise non-jurisdictional company is engaged in comparatively minor jurisdictional activities.¹⁵ Magnum Solutions also requests a general waiver of the Commission's open access, reporting, ratemaking, tariff, and accounting requirements associated with its proposed limited-jurisdictional service.

26. In response to a staff data request,¹⁶ Magnum Solutions explains it does not anticipate any significant benefits from the separation of ownership and operation of the facilities during the initial construction phase of the project. However, once the project commences operations, Magnum Solutions maintains that separating the ownership and operations of the leaching facilities will enable Magnum Solutions to provide cavern creation services to third parties without requiring the attention of Magnum's personnel whose primary responsibilities would be the operation and maintenance of the gas storage facilities. In addition, Applicants state that issuance of a limited-jurisdiction certificate to Magnum Solutions will eliminate potential concerns the lenders might express when Magnum seeks to finance the project. Specifically, Magnum states that it anticipates that, among other things, prospective lenders will insist that Magnum confine its activities to gas storage operations.

27. Based on these representations of the Applicants, we find that issuance of a limited-jurisdiction certificate to Magnum Solutions is inconsistent with the provisions of the NGA. Under NGA section 7(c), a "natural-gas company or person which will be a natural-gas company upon completion of any proposed construction" must obtain a certificate of public convenience and necessity to engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or to construct, acquire, or operate facilities to provide jurisdictional services. A "natural-gas company" is defined as a person engaged in the transportation of natural gas in interstate commerce, or the sale

¹⁵ Certificate Application at 59 (citing *Quicksilver Res. Inc.*, 124 FERC ¶ 61,017, at P 15 (2008)).

¹⁶ See Applicants' December 17, 2010 Data Response, Question No. 2.

in interstate commerce of such gas for resale.¹⁷ Here, it is Magnum, not Magnum Solutions, which proposes to provide the jurisdictional transportation (storage) services.¹⁸ Under these circumstances, the NGA provides for the issuance of a certificate for the construction and operation of the jurisdictional facilities, including the leaching facilities, to Magnum, not Magnum Solutions.

28. We also disagree with Applicants' assertion that issuance of a limited-jurisdiction certificate to Magnum Solutions is consistent with Commission precedent. In the case cited by Applicants, the Commission granted a limited-jurisdiction certificate to an otherwise non-jurisdictional company to provide jurisdictional transportation service. This is distinguishable from Magnum Solutions' request here because, as proposed, Magnum Solutions will not be performing the jurisdictional transportation service.

29. For these reasons, we deny Magnum Solutions' request for a limited-jurisdiction certificate for the construction and operation of the cavern leaching and brine management facilities. Rather, our issuance of a certificate of public convenience and necessity to Magnum in this proceeding will include authorization to construct and operate the entire proposed storage project, including the cavern leaching and brine management facilities. Prior to accepting its certificate, Magnum should revise and refile the applicable corporate exhibits, as appropriate, to reflect that all of the project's jurisdictional facilities will be constructed and operated by Magnum.¹⁹ We also note that while Magnum will be the entity subject to the Commission's jurisdiction and subject to the requirements of this certificate order, our authorization here does not prevent Magnum from contracting with Magnum Solutions or another non-jurisdictional company to perform the actual construction or operation of the leaching and brine management facilities.

C. Market-Based Rates

30. Magnum requests that the Commission authorize it to charge market-based rates for storage and hub services. Specifically, Magnum proposes to charge market-based rates for primary and secondary storage services, as well as interruptible parking, loan, balancing, and wheeling services.

¹⁷ NGA section 2(6).

¹⁸ Section 284.1(a) of the Commission regulations defines transportation as including storage. 18 C.F.R. § 284.1(a) (2010).

¹⁹ It is not necessarily required that Magnum own the leaching facilities as long as it has requisite rights to ensure compliance with the requirements of the certificate.

31. Generally, the Commission evaluates requests to charge market-based rates for storage under the analytical framework of its Alternative Rate Policy Statement.²⁰ Under the Alternative Rate Policy Statement, the Commission's framework for evaluating requests for market-based rates has two principal purposes: (1) to determine whether the applicant can withhold or restrict services and, as a result, increase prices by a significant amount for a significant period of time; and (2) to determine whether the applicant can discriminate unduly in price or terms and conditions of service.²¹ To find that an applicant cannot withhold or restrict services, significantly increase prices over an extended period, or discriminate unduly, the Commission must find that there is a lack of market power²² because customers have good alternatives²³ or that the applicant or Commission can mitigate the market power with specified conditions.

32. The Commission's analysis of whether an applicant has the ability to exercise market power includes three major steps. First the Commission reviews whether the applicant has specifically and fully defined the relevant markets²⁴ to determine which specific products or services are identified, and the suppliers of the products and services, that provide good alternatives to the applicant's ability to exercise market power.²⁵

²⁰ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *petitions for review denied sub nom., Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement). *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).

²¹ *See Blue Sky Gas Storage, LLC*, 129 FERC ¶ 61,210 (2009) (*Blue Sky*); *Orbit Gas Storage, Inc.*, 126 FERC ¶ 61,095 (2009).

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

²³ A good alternative is an alternative to the proposed project that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative for an applicant's service. *See* Alternative Rate Policy Statement, 74 FERC at 61,230.

²⁴ Relevant product market consists of the applicant's service and other services that are good alternatives to the applicant's services. *See* Alternative Rate Policy Statement, 74 FERC at 61,231.

²⁵ Alternative Rate Policy Statement, 74 FERC at 61,231.

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

33. In 2006, the Commission issued Order No. 678 which explicitly adopted a more expansive definition of the relevant product market for storage to include close substitutes for gas storage services, including pipeline capacity, and local production/LNG supply.²⁸ The Commission determined that for a non-storage product to be a good alternative to storage, it must be available soon enough, have a price low enough, and have a quality high enough to permit customers to substitute the alternative for the applicant's services.²⁹

1. Market-Based Rates for Storage Services

34. Magnum provides a market power analysis and market power data in Exhibit I to support its claim that it does not possess market power over storage services offered in the relevant geographic regions. Magnum's market power analysis for storage services defines the relevant product and geographic markets, measures market share and concentration, and evaluates other factors including the ease of entry into the relevant market. Magnum concludes that since it will have a small market share in a large natural gas producing region, it would be extremely difficult for Magnum to exercise market power in its provision of storage and hub services.

a. Market Definitions

35. Magnum has evaluated two separate geographic markets, the Rockies/Plains Region and the Southwest/Southern California Region, for purposes of its market power analysis. Magnum maintains that the evaluation of two separate markets is appropriate given its location and proposed pipeline interconnections. The Rockies/Plains Region includes competitive alternatives that are directly connected to Questar and Kern River, or accessible to those pipelines via market hubs in Utah, Wyoming, Colorado, Nebraska, Kansas, and Oklahoma. The Southwest/Southern California Region is defined using

²⁶ *Id.* at 61,232-34.

²⁷ *Id.* at 61, 234.

²⁸ Order No. 678, FERC Stats. & Regs. ¶ 31,220, *order on clarification and reh'g*, 117 FERC ¶ 61,190.

²⁹ Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 27.

similar criteria and includes competitive alternatives that are directly connected to Kern River and Questar, or accessible to those pipelines via market hubs in Utah, New Mexico, and California. Magnum claims that its definition of the relevant geographic markets (i.e., based on direct and indirect pipeline interconnects) is consistent with the definition previously adopted by the Commission in approving market-based rates.³⁰

36. Magnum has used a definition of product market that includes both competing storage facilities and local gas production. Magnum notes that in Order No. 678 the Commission specifically recognized that local production can be a substitute for gas storage services. Magnum asserts that local production in the relevant geographic markets used in its analysis meets all three of the Commission's criteria for a good alternative to storage, namely availability, quantity, and price.

37. Magnum explains that storage service, including the right to inject gas and later withdraw that gas, provides the right to natural gas in the relevant market during peak periods. Magnum claims that natural gas produced during the winter peak period provides shippers with a source of natural gas just as storage does, and thus local production can be considered readily available and of the same quality as gas withdrawn from storage.

38. Magnum evaluates the price competitiveness of local production relative to storage by comparing the peak supply price premium³¹ for local production with the storage price.³² Magnum explains that if local production is to be considered a reasonable substitute to storage, the price of this alternative should be no greater than the price of storage in the relevant geographic market plus 10 percent, consistent with the Commission's Alternative Rate Policy Statement. Magnum calculates a peak-price

³⁰ See Certificate Application, Exhibit I at 7 (citing *Unocal Windy Hill Gas Storage, LLC*, 115 FERC ¶ 61,218 (2006)).

³¹ The peak-price premium is the amount by which the peak price for local production exceeds the price of off-peak local production.

³² Magnum's analysis is provided in Attachment G to Exhibit I. Magnum explains that the price of local production is equivalent to the off-peak supply price plus the peak-period supply price premium; while the price of natural gas from storage is equivalent to the off-peak supply price plus the price of storage services. Magnum eliminates the common factor of off-peak supply price from both equations (the price of local production and the price of natural gas from storage) which leaves the storage price to be compared to the peak-period supply price premium for local production.

premium for supply in the Rockies/Plains Region of \$1.48 per Mcf³³ and a peak-price premium for supply in the Southwest/Southern California Region of \$1.02 per Mcf.³⁴ Magnum uses the cost of new storage development in the relevant market as a proxy for the market price of storage. Magnum estimates that the price for new storage based on recent indications of storage pricing ranges from \$1.25 per Mcf to \$3.50 per Mcf depending on the specific circumstances of the storage project (i.e. whether it is a reservoir or salt cavern storage).³⁵ Magnum explains that accounting for the price increase threshold of 10 percent would raise this range to approximately \$1.38 per Mcf to \$3.85 per Mcf. On the basis of these figures, Magnum submits that the average peak-period supply price premiums for local production of \$1.48 per Mcf (Rockies/Plains Region) and \$1.02 (Southwest/Southern California Region) are in the range of storage pricing of \$1.38 per Mcf to \$3.85 per Mcf. Therefore, Magnum concludes that local production during peak periods in both relevant geographic markets is a reasonable alternative to storage from a price perspective.

b. Market Concentration, Market Share, and Other Factors

39. The Commission examines concentration in the relevant market using the Herfindahl-Hirschman Index (HHI). The Alternative Rate Policy Statement states that a low HHI, generally less than 1,800, indicates that sellers cannot exert market power because customers have sufficiently diverse alternatives in the relevant market.³⁶ If the HHI is above 1,800, the Commission will give the applicant more scrutiny in order to make a determination about a seller's ability to exercise market power because the market is more concentrated. The Commission also considers an applicant's market share and other factors including ease of entry.

40. For the Rockies/Plains Region, Magnum's market power study includes competing storage facilities that provides storage services to third parties in the states of

³³ See Exhibit I, Attachment G, Table C-2. Magnum states that the peak-period supply price premium for local production in the Rockies/Plain Region was calculated based on the projected summer/winter seasonal spread on natural gas futures prices.

³⁴ See Exhibit I, Attachment G, Table C-3. Magnum states that the peak-period supply price premium for local production in the Southwest/Southern California Region was calculated based on the projected summer/winter seasonal spread on natural gas futures prices.

³⁵ See Exhibit I, Attachment G at G-5 and G-6.

³⁶ Alternative Rate Policy Statement, 74 FERC at 61,235.

Utah (Chalk Creek and Coalville, and Clay Basin); Wyoming (Clear Creek and Leroy); Colorado (Totem, Latigo, Fort Morgan and Young, and Flank); Nebraska (Huntsman); and Kansas (Boehm).³⁷ Magnum also included local production produced from wells in Utah, Wyoming, Colorado, Nebraska, Kansas and Oklahoma in its analysis. Magnum states that it used total annual production for each state for the year 2007 as published by Energy Information Administration (EIA). Magnum's market power analysis for the Rockies/Plains Region generates a market share of 1.7 percent and a HHI of 891 for working gas capacity and a market share of 2.7 percent and a HHI of 782 for deliverability.³⁸

41. Magnum's market power study for the Southwest/Southern California Region includes competing storage facilities that provide storage services to third parties in the states of New Mexico (Grama Ridge), Utah (Chalk Creek and Coalville, and Clay Basin), and California (Wild Goose, Pleasant Creek, Kirby Hills, Lodi, Los Medanos, McDonald Island, La Goleta, Playa Del Ray, Aliso Canyon, and Honor Rancho).³⁹ Magnum also includes local production produced in the states of Utah, New Mexico and California for the year 2007 as reported by EIA. Magnum's market power analysis generates a market share of 3.3 percent and a HHI of 688 for working gas capacity and a market share of 3.6 percent and a HHI of 1,130 for deliverability.⁴⁰

42. In addition, Magnum notes that existing and new storage providers have recently proposed construction and/or expansion of storage capacity in both of the relevant geographic markets, which it asserts demonstrates the relative ease of entry into those markets.⁴¹

³⁷ See Applicant's March 18, 2010 Data Response, Question No. 3, Attachments 1a and 2.

³⁸ Exhibit I, Attachments A-1 and B-1.

³⁹ See Applicants' March 18, 2010 Data Response, Question No. 3, Attachments 1a and 2.

⁴⁰ Exhibit I, Attachments A-2 and B-2.

⁴¹ Exhibit I at 19-21. Magnum discusses six storage projects in the Rockies/Plains Region and six storage projects in the Southwest/Southern California Region that are in various stages of development.

c. Commission Determination

43. We find that Magnum's use of two separate geographic markets is appropriate given their location and proposed interconnections. Based on the analysis in the record, the Commission's finds there are sufficient underground storage and local production alternatives in the Rockies/Plains and Southwest/Southern California markets to prevent Magnum from increasing prices for a significant period. Magnum's market power study demonstrates that numerous alternatives to Magnum's proposed services exist in the relevant markets that will prevent the exercise of market power. The HHI for working gas capacity and deliverability in both the Rockies/Plains and Southwest/Southern California regions are well below the 1,800 HHI level that the Commission uses to be indicative of a lack of market power. In addition, the prospective market shares (less than 5 percent) are small which further supports a finding that Magnum will lack market power over its proposed storage services. The Commission also notes that Magnum's proposal for market-based rates is unopposed and that barriers to entry are likely to be low in the relevant geographic regions as evidenced by the number of new storage projects being constructed or proposed.

44. In view of the above considerations, we will grant Magnum's request to charge market-based rates for its proposed storage services.

2. Market-Based Rates for Interruptible Wheeling Service

a. Bingo Card Analysis

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

46. Magnum states that the bingo card analysis for the project in Attachments C and D of the application presents the alternative receipt and delivery points available via the pipelines to be directly interconnected (Kern River and Questar) or indirectly interconnected (Questar Overthrust Pipeline) with Magnum. Magnum explains that the bingo card for Magnum is completely filled-in, meaning that the pipelines that are directly and indirectly interconnected to Magnum are also interconnected with each other in various other locations in close proximity to Magnum's interruptible wheeling service. Specifically, Magnum explains that Attachment D shows that there are ten large volume receipt and delivery interconnections between the pipelines that are directly or indirectly interconnected to Magnum that would be capable of providing competing wheeling

services. Finally, Magnum states that an additional aspect of the competitiveness of this market is that there are numerous producers and marketers in the region that hold firm capacity on many pipelines to which Magnum will have access.

b. Market Share and Market Concentration

47. With the addition of its proposed project, Magnum explains there will be at least five competing hubs and market centers in the Rockies/Plains Region and five competing hubs and market centers in the Southwest/Southern California Region. Magnum states that it is a very small participant in the relevant geographic markets with a delivery capacity market share of 3.2 percent in the Rockies/Plains Region and 5.0 percent in the Southwest/Southern California Region.⁴² Magnum's receipt capacity market share is 5.8 percent in the Rockies/Plains Region and 3.3 percent in the Southwest/Southern California Region.⁴³ Magnum's market power study results in an HHI of 2,919 for delivery capacity in the Rockies/Plains Region and a HHI of 3,058 in the Southwest/Southern California Region.⁴⁴ Market concentration for receipt capacity in the Rockies/Plains Region results in an HHI of 2,552 and market concentration for receipt capacity in the Southwest/Southern California Region results in an HHI of 2,794.⁴⁵ Magnum explains that while the HHI levels are above 1,800 and indicative of a concentrated market, the addition of Magnum to both geographic markets reduces the existing market concentrations.⁴⁶ Finally, Magnum asserts that the other potential providers of wheeling services are primarily interstate and intrastate pipelines which are subject to an obligation to provide their services on an open-access basis at cost-based rates.

c. Commission Determination

48. The Commission finds that Magnum's bingo card analysis for its proposed interruptible wheeling service shows that numerous wheeling service alternatives will exist for potential shippers. While the HHIs for total delivery and receipt capacity in both the Rockies/Plains Region and the Southwest/Southern California Region are higher than the 1,800 HHI screen the Commission uses to determine whether the market is

⁴² See Exhibit I, Attachments E-1 and E-2.

⁴³ See Exhibit I, Attachments F-1 and F-2.

⁴⁴ See Exhibit I, Attachments E-1 and E-2.

⁴⁵ See Exhibit I, Attachments F-1 and F-2.

⁴⁶ See Exhibit I, Attachments E-1, E-2, F-1, and F-2.

concentrated, other factors exist that demonstrate that Magnum will not have the ability to exercise market power. First, Magnum's market share for this service represents only about 3.2 percent of the delivery capacity and 5.8 percent of the receipt capacity in the Rockies/Plains Region and 5.0 percent of the delivery capacity and 3.3 percent of the receipt capacity in the Southwest/Southern California Region. Moreover, Magnum is a new independent storage provider in the geographic markets and, as noted by Magnum, the other potential providers of wheeling services are primarily interstate and intrastate pipelines that are subject to cost-based rates. Finally, we note that Magnum's request for market-based rate authority is unopposed. For these reasons, the Commission will approve Magnum's request for authority to charge market-based rates for interruptible wheeling service.

3. Notification of Changed Circumstances

49. As required by section 284.504(b) of the Commission's regulations,⁴⁷ Magnum must notify the Commission if future circumstances significantly affect its present market power status. Thus, the Commission's approval of market-based rates is subject to reexamination in the event that: (a) Magnum 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 Magnum; or (d) Magnum, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to Magnum. Since these circumstances could affect its market power status, Magnum shall notify the Commission within ten days of acquiring knowledge of any such changes. The notification shall include a detailed description of the new facilities and their relationship to Magnum.

4. Requested Waivers

50. Because it proposes to charge market-based rates, Magnum requests waiver of the Commission's cost-based rate regulations, which include: (1) section 157.6(b)(8) (certificate applicants to submit cost and revenue data); (2) sections 157.14(a)(13), (14), (16), and (17) and 157.20(c)(3) (cost based exhibits); (3) the accounting and reporting requirements of Part 201 and 260.1, and 260.2 relating to cost-of-service rate structure (Form 2 and 2A); (4) section 260.300 (quarterly financial report); (5) section 284.7(e) (reservation charge); and (6) section 284.10 and section 284.7(e) (straight fixed-variable rate design methodology). Magnum also requests a waiver of the section 157.14(a)(10) requirement to provide a showing of accessible gas supplies, which it states does not apply to Magnum's natural gas storage operations.

51. The cost-related information required by these regulations is not relevant in light of our approval of market-based rates for Magnum's storage and hub services. Thus,

⁴⁷ 18 C.F.R. § 284.504(b) (2010).

consistent with our findings in previous orders,⁴⁸ the Commission will grant Magnum's request for waivers with one exception. The Commission will grant the requested waiver of section 260.2 (Form No 2-A) of the regulations except for information necessary for the Commission's assessment of annual charges. Magnum is required to file page 520 of Form 2A, reporting the gas volume information which is the basis for imposing an Annual Charge Adjustment (ACA) charge.⁴⁹ Magnum is required to comply with all of the Commission's regulations applicable to interstate pipelines not specifically waived herein including the transactional reporting requirements in section 284.13(b) of the Commission's regulations, and the semi-annual storage reporting required in section 284.13(e).

52. The waivers granted herein are subject to revision in the event the Commission finds cause to review Magnum's market power or market-based rates. In addition, in the event the Commission finds cause to review records and data regarding Magnum's costs, we will require Magnum to maintain records to separately identify the original cost and related depreciation on its facilities, and to maintain accounts and financial information of its facilities consistent with generally accepted accounting principles.

D. Pro Forma Tariff

53. Magnum proposes to offer firm and interruptible storage services, as well as interruptible parking, loan, balancing, and wheeling under various rate schedules.⁵⁰ According to Magnum, these storage services will be provided on an open-access, not unduly discriminatory basis, pursuant to Part 284 of the Commission's regulations. Magnum states that it will provide these storage services pursuant to its pro forma tariff attached as Exhibit P to its application. Magnum states that the General Terms and

⁴⁸ See, e.g., *SG Resources Mississippi, L.L.C.*, 101 FERC ¶ 61,029, at P 26 (2004); *Egan Hub Partners, L.P.*, 95 FERC ¶ 61,395, at 62,473 (2001), *order amending certificate*, 99 FERC ¶ 61,269, at 62,142 (2002). See also *Caledonia Energy Partners, L.L.C.*, 111 FERC ¶ 61,095, at P 20 (2005).

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

⁵⁰ Magnum proposes the following rate schedules: FSS (Firm Storage Service); NNSS (No-Notice Storage Service); FP (Firm Parking Service); FL (Firm Loan Service); FHBS (Firm Hourly Balancing Service); EISS (Enhanced Interruptible Storage Service); EILS (Enhanced Interruptible Loan Service); EIWS (Enhanced Interruptible Wheeling Service); ISS (Interruptible Storage Service); IHBS (Interruptible Hourly Balancing Service); IP (Interruptible Parking Service); IW (Interruptible Wheeling Service); and IL (Interruptible Loan Service).

Conditions (GT&C) of its tariff are structured to conform to the Commission's requirements in Order Nos. 636⁵¹ and 637,⁵² comply with all of the currently applicable North American Energy Standards Board (NAESB) standards Version 1.8, and are modeled on the currently effective tariff of other jurisdictional storage providers.⁵³

54. The Commission directs Magnum to file actual tariff records consistent with the directives in this order at least 60 days prior to commencing service.⁵⁴ As a reminder, Magnum will need to comply with the Commission's electronic filing requirements set forth in Order No. 714⁵⁵ and Part 154 of the Commission's regulations.⁵⁶

1. Creditworthiness

⁵¹ See *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, Regulations Preambles January 1991-June 1996, FERC Stats. & Regs., ¶ 30,939 (1992).

⁵² See *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091 (2000).

⁵³ These are: Tres Palacios Gas Storage, LLC (Tres Palacios); Pine Prairie Energy Center, LLC (Pine Prairie); and Windy Hill Gas Storage, LLC (Windy Hill).

⁵⁴ The Commission further notes that Magnum's tariff contains a provision, at section 3.1(a) of its GT&C, stating that new storage capacity resulting from an expansion of Magnum's facilities will be sold via either an open season or on a first-come, first-served basis, at Magnum's sole option. While this provision appears in the approved tariffs of a number of independent storage providers, a protest regarding the operation of the provision is currently pending before the Commission in Docket No. CP11-1-000, Pine Prairie Energy Center, LLC. When Magnum files its actual tariff records, the Commission will expect it to comply with all Commission policies and regulations in effect at that time.

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

⁵⁶ 18 C.F.R. § 154.4 (2010)

55. Magnum states that it has included creditworthiness provisions in its tariff that comply with the Commission's Creditworthiness Policy Statement.⁵⁷ Magnum proposes to distinguish not only between "creditworthy" and "non-creditworthy" customers, consistent with most tariffs, but also among those customers found creditworthy. Magnum's pro forma tariff provisions specify the amount of credit Magnum will extend to a creditworthy loan service customer on the basis of the customer's credit rating.⁵⁸ Magnum proposes to extend higher levels of credit to customers with higher credit ratings.

56. Magnum explains that normally a customer that is deemed "creditworthy" is not required to post any security and will be extended credit equal to the value of its service charges and, if applicable, the value of loaned gas. In contrast, a customer deemed "non-creditworthy" is typically required to post security for three months worth of service charges and, if applicable, the value of any gas loaned. Magnum is concerned that, while this "all or nothing" approach to credit support may be appropriate for service charges, it does not provide adequate protection in light of the substantial credit exposure that it may bear due to increases in the value of loaned gas. Magnum states that the value of service charges can be determined with relative certainty and is generally not subject to market volatility. Magnum contends that in contrast, the value of borrowed gas can vary in response to market forces and is often many times greater than the value of service charges.

57. Magnum proposes to determine an "Unsecured Collateral Limit" applicable to each level of Standard and Poor's and Moody's credit ratings, which will be set out in section 30.5 of the GT&C of Magnum's tariff. Magnum states that the higher limits would apply to higher credit ratings and that a customer's Unsecured Collateral Limit would change with changes in the customer's credit rating. Magnum will also determine the "Credit Exposure" for each customer (typically equal to three months worth of service charges plus the value of any gas loaned), which it will recalculate daily to reflect changes in the market value of loaned gas.

58. The Commission finds that Magnum's creditworthiness provisions are consistent with the Commission's Creditworthiness Policy Statement in that they are objective and transparent.⁵⁹ Magnum's creditworthiness provisions are also consistent with other

⁵⁷ *Policy Statement on Creditworthiness Issue for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, 111 FERC ¶ 61,412 (2005) (Policy Statement on Creditworthiness).

⁵⁸ See section 30 of the General Terms and Conditions (GT&C) of Magnum's pro forma tariff.

⁵⁹ See Policy Statement on Creditworthiness, 111 FERC ¶ 61,412 at P 10.

creditworthiness provisions approved by the Commission for storage pipeline providers, such as Tres Palacios and Windy Hill.⁶⁰ The refinement to those provisions that Magnum proposes in this case would determine the amount of credit extended to creditworthy customers based on each customer's credit rating, providing Magnum with additional flexibility to address the potential for Magnum's credit exposure for loaned gas. The Commission will accept the proposed creditworthiness tariff provisions.

2. Electronic Transaction Confirmation Procedure

59. Magnum's pro forma tariff provides a streamlined process to be used in contracting for storage and hub services. Magnum has structured the tariff's pro forma service agreements as "master agreements" that include transaction confirmation forms as exhibits. Magnum and its customers would memorialize their agreement as to specific storage service transactions by filling in blanks provided on the transaction confirmation exhibits. Magnum further proposes to streamline the contracting process as set forth in section 32 of the GT&C of its pro forma tariff by permitting the parties to confirm transactions by electronic means. Magnum states that it has modeled its proposed transaction confirmation procedures on those specified in the NAESB Master Agreement.⁶¹ Magnum states that the Commission has previously allowed natural gas companies to include streamlined electronic contracting procedures in their FERC Gas Tariffs.⁶²

60. The Commission finds that Magnum has modeled its proposed transaction confirmation procedures on those specified in the NAESB Master Agreement.⁶³ Further, as noted by Magnum, the Commission has previously allowed natural gas companies to include streamlined electronic contracting procedures in their FERC Gas Tariffs. Therefore, the Commission will accept the electronic transaction confirmation procedures proposed by Magnum in its pro forma tariff.

⁶⁰ See *Tres Palacios Gas Storage, LLC*, 120 FERC ¶ 61,253, at P 64 (2007); *Windy Hill Gas Storage, LLC*, 119 FERC ¶ 61,291, at P 58-61 (2007).

⁶¹ Certificate Application at 39 (citing to the NAESB Master Agreement at sections 1.2 and 1.3).

⁶² Certificate Application at 39 (citing, e.g., *Egan Hub Storage, LLC*, Docket No. RP07-549-00 (Aug. 23, 2007) (unpublished delegated letter order) and *Algonquin Gas Transmission, LLC*, Docket No. RP07-553-000 (Aug. 23, 2007) (unpublished delegated letter order).

⁶³ See NAESB Master Agreement at sections 1.2 and 1.3.

3. Implementation of NAESB Standards

61. The Commission has adopted in its regulations various standards for conducting business practices and electronic communication with interstate pipelines as promulgated by NAESB. The standards are intended to govern nominations, allocations, balancing measurement, invoicing, capacity release, and mechanism for electronic communication between pipelines and those with whom they do business. In its pro forma tariff sheets, Magnum has proposed to make its tariff comply with Version 1.8 of the NAESB Standards. The Commission will accept Magnum's proposal subject to the following directive. At the time it files its actual tariff records in this proceeding, Magnum is directed to reflect the latest version of the NAESB Standards adopted by the Commission.

4. Segmentation

62. Section 284.7(d) of the Commission's regulations provides that an interstate pipeline must permit a shipper to make use of the firm capacity for which the shipper has contracted by segmenting that capacity into separate parts for the shipper's own use, or for the purpose of releasing that capacity to replacement shippers to the extent that segmentation is operationally feasible. Magnum requests an exemption 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 as a result, there is nothing to segment.

63. In *Clear Creek Gas Storage Company*, the Commission found that the requirements of section 284.7(d) did not apply to pipelines engaged solely in natural gas storage and which did not provide stand-alone transportation services.⁶⁴ Magnum meets the requirements in *Clear Creek*. Thus, the Commission holds that the requirements of section 284.7(d) do not apply to Magnum. The Commission also finds that other tariff provisions related to segmentation, such as the allocation of primary point rights in segmented release and within-the-path scheduling, do not apply to Magnum.

5. Crediting Customers for Retained Gas

64. Magnum explains that section 284.12(b)(2)(v) of the Commission's regulations provides that a pipeline may include transportation penalties in its tariff only to the extent necessary to prevent the impairment of reliable service. Section 31 of the GT&C of Magnum's pro forma tariff includes provisions permitting Magnum to retain customer's gas improperly left in storage in certain circumstances at a purchase price equal to a

⁶⁴ See *Clear Creek Gas Storage Co.*, 96 FERC ¶ 61,071 (2001) (*Clear Creek*).

portion of the proceeds realized in an auction sale. Magnum states that the Commission has found such gas retention penalties to be appropriate and consistent with the mandates of Order No. 637,⁶⁵ but has required that the value of such gas retained, net of costs, be credited to the natural gas company's customers.⁶⁶ Accordingly, Magnum states that section 31 of the GT&C of its pro forma tariff provides for crediting to its customers the net value of retained gas.

65. The Commission finds Magnum's gas retention penalties to be appropriate and consistent with the mandates of Order No. 637. Therefore, the Commission will accept the retained gas penalty procedures proposed by Magnum in its pro forma tariff.

6. Netting and Trading of Imbalances

66. 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. Magnum notes that it proposes to provide a variety of services its customers will be able to use for imbalance management, including no-notice, hourly balancing, parking, loaning, and wheeling. Section 284.12(b)(2)(iii) of the Commission's regulations provides that a pipeline having imbalance penalty provisions in its tariff must provide, to the extent operationally practicable, parking and lending or other services that facilitate the ability of its shippers to manage transportation imbalances. Magnum states that its pro forma tariff does not include imbalance penalties. Therefore, Magnum requests that it be granted an exemption from the imbalance netting and trading requirements.

67. The Commission finds that since Magnum's pro forma tariff does not provide for imbalance penalties, it qualifies for the requested exemption.⁶⁷ Nevertheless, if Magnum seeks to implement imbalance penalty provisions in the future, Magnum must comply with section 284.12(b)(2)(iii) of the Commission's regulations.

7. EDI/EDM and FF/EDM Requirements

⁶⁵ Certificate Application at 42 (citing *Pine Prairie Energy Ctr., LLC*, 109 FERC ¶ 61,215 at 46 *Blue Lake Gas Storage Co.*, 96 FERC ¶ 61,164, at 61,728-29 (2001)).

⁶⁶ *Id.* (citing *Ozark Gas Transmission, L.L.C.*, 96 FERC ¶ 61,160, at 61,702-03 (2001)).

⁶⁷ See *Standards for Business Practices of Interstate Natural Gas Pipelines*, 92 FERC ¶ 61,266 (2000).

68. Section 284.12(a)(1)(iv) of the Commission's regulations requires interstate pipelines to comply with the Electronic Data Interchange (EDI) standards established by NAESB. Magnum requests a limited waiver in the form of an extension of time to comply with the NAESB Standards related to EDI/EDM and FF/EDM requirements so as to allow Magnum to postpone implementation until 90 days following Magnum's receipt of a request to send information via EDI/EDM. Magnum states that it has not received requests to send information via EDI/EDM and FF/EDM and does not expect any such requests in the foreseeable future. Consistent with Commission precedent,⁶⁸ the Commission will grant Magnum's request for an exemption of the EDI/EDM and FF/EDM requirements, but will require Magnum to implement those standards within 90 days following the receipt of such a request.

8. Acquisition of Off-System Capacity and Waiver of Shipper Must Have Title Policy

69. Magnum requests a generic waiver of the "shipper must hold title" policy for any off-system capacity it may need to acquire in order to provide storage services. Section 29 of its pro forma tariff states that Magnum will only provide transportation and storage services for others using such capacity pursuant to its open-access FERC Gas Tariff subject to its rates approved by the Federal Energy Regulatory Commission, and the "shipper must hold title" policy is waived to permit such use.

70. This language implements the Commission's policy with respect to pipelines' acquisition of off-system capacity. In a December 14, 2000 order on remand in *Texas Eastern Transmission Corporation*, the Commission found that pipelines no longer need to obtain prior approval to acquire capacity on another pipeline provided the acquiring pipeline filed tariff language specifying that it would only transport for others on off-system capacity pursuant to its existing tariff and rates.⁶⁹ Magnum's proposed tariff language is consistent with the requirements set forth in *TETCO* and authorizations granted other storage companies authorized to charge market-based rates,⁷⁰ and is accepted with the following clarification. Because Magnum has only proposed to offer firm storage and interruptible hub services and has proposed no rates or tariff provisions relating to any other transportation services, Magnum may only use capacity obtained on other pipelines pursuant to *TETCO* in order to move gas into and out of storage. That is,

⁶⁸ See *Tres Palacios Gas Storage, LLC*, 120 FERC ¶ 61,253 at P 52; *Unocal Windy Hill Gas Storage, LLC*, 115 FERC ¶ 61,218 at P 48.

⁶⁹ See *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273 (2000), *reh'g denied*, 94 FERC ¶ 61,139 (2001) (*TETCO*).

⁷⁰ See, e.g., *SG Resources Mississippi, L.L.C.*, 101 FERC ¶ 61,029 at P 30-33.

Magnum 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, Magnum's authorized use of the *TETCO* waiver to provide storage service shall be limited to the geographic area covered by its market power study (i.e., Rockies/Plains and Southwest/Southern California Regions).

71. In order to ensure that Magnum uses acquired off-system capacity in a manner consistent with its market-based rate authority and tariff provisions, and in order to satisfy our responsibility to monitor and prevent the exercise of market power, the Commission will direct Magnum, once it becomes operational, to make an annual informational filing on its provision of service using off-system capacity, as detailed below.

72. Within 30 days after its first full year of operation, and every year thereafter, Magnum is directed to file, for each acquisition of off-system capacity:

- a. the name of the off-system provider;
- b. the type, level, term and rate of service contracted for by Magnum;
- 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 Magnum; and
- f. an identification of total volumes, by Magnum's rate schedule and customer, that Magnum has nominated on each off-system provider during the reporting period.

9. Use of Index Prices in Assessing Penalties

73. Magnum proposes to use the Kern River Opal Plant daily index as published in Gas Daily for calculating action alert and operational flow order penalties.⁷¹ Magnum states that the average daily volume for this index for the 90-day time period June 1, 2009, through August 30, 2009, was more than 296,000 MMBtu per day.⁷² Magnum

⁷¹ See section 5.5(i) of the GT&C of Magnum's *pro forma* tariff.

⁷² Certificate Application at 46 (citing *Platts Gas Daily*, daily price survey, Kern River, Opal (averaged for the 64 business days during the 90-day period June 1, 2009 through August 30, 2009)).

explains that this average daily volume exceeds by a wide margin the minimum threshold of 25,000 MMBtu per day which the Commission has established.⁷³

74. The Commission finds that the Kern River Opal Plant daily index as published in Gas Daily for calculating action alert and operational flow order penalties meets the criteria for indices (i.e., average daily volume traded of at least 25,000 MMBtus) established by the Commission. Therefore, the Commission will accept Magnum's use of the Kern River Opal Plant daily index for the purposes discussed herein.

10. Gas Quality Specifications

75. On June 15, 2006, the Commission issued a Policy Statement on provisions governing natural gas quality and interchangeability in interstate natural gas pipeline company tariffs.⁷⁴ The Commission stated that it expects section 7 applicants to include in the GT&C of its pro forma tariff the relevant information about the gas quality and interchangeability specifications of interconnecting pipelines, and the competing pipelines serving customers to be served directly by the entrant, as well as the relevant information about the gas supplies to be received by the new entrant for transportation or storage. The Commission also stated that the applicants must show how they derived their gas quality and interchangeability specifications stated in their pro forma tariffs.

76. Magnum states that it will interconnect with Kern River and Questar. Magnum explains that it has prepared a comparison of the gas quality specifications set forth in Kern River's tariff and Questar's tariff.⁷⁵ Magnum explains that Kern River's and Questar's quality specifications are generally similar, with the exception of the standards governing oxygen content. Magnum states that it does not believe that Questar's more stringent oxygen standard will present a problem for Magnum or its customers because the historic oxygen content of gas flowing on Kern River is very low and, as a general matter, gas flows freely between the Kern River and Questar systems in the vicinity of the Goshen interconnect. Magnum states that to promote interchangeability, Magnum's pro forma tariff includes provisions that allow Magnum to accept gas if it meets the interconnecting pipeline's quality standards. Specifically, section 9.1 of the GT&C of Magnum's pro forma tariff states that the gas delivered by either party to the other

⁷³ See *Price Discovery in Natural Gas and Electric Markets*, 109 FERC ¶ 61,184 (2004).

⁷⁴ See *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*, 115 FERC ¶ 61,325 (2006).

⁷⁵ See Exhibit Z-2.

hereunder shall meet the quality specifications of the Transporter which receives or delivers such gas at the point of receipt or delivery, as applicable.

77. The Commission finds that the gas quality specifications set forth in section 9.1 of the GT&C of Magnum's pro forma tariff allow Magnum to accept gas if it meets the interconnecting pipeline's quality standards. The Commission finds these gas quality specifications consistent with the criteria established in the Commission's Policy Statement on provisions governing natural gas quality and interchangeability in interstate natural gas pipeline company tariffs. Therefore, the Commission will accept Magnum's use of the gas quality specifications set forth in section 9.1 of the GT&C of its pro forma tariff.

11. Form of Consent and Agreement

78. Magnum proposes to include a form of Consent and Agreement in its pro forma tariff.⁷⁶ Magnum explains that Applicants anticipate that they will seek project financing to construct the project and that project finance lenders typically require that they be granted a collateral security interest in contracts that support the project's financial viability. Magnum further explains that project finance lenders require the customer under each material service agreement to execute a Consent and Agreement to acknowledge the lender's security interest and the lender's rights to step in and cure borrower defaults. Magnum states that since the Consent and Agreement alters the terms of the tariff's pro forma service agreements by granting lenders certain rights in the event of Magnum's default, it qualifies as a "material deviation" under section 154.1 of the Commission's regulations. Magnum explains that to avoid filing numerous non-conforming service agreements with the Commission, it proposes to include a form of Consent and Agreement in its tariff. Magnum further proposes to include tariff provisions in its GT&C and firm storage service agreement that requires execution of a Consent and Agreement if requested by Magnum's lenders.⁷⁷

79. The Commission finds the form of Consent and Agreement in Magnum's pro forma tariff deviates materially from Magnum's pro forma service agreements. Such deviations may present a substantial risk of undue discrimination. Magnum states that the deviations (e.g., granting lenders certain rights in the event Magnum defaults on its loan)⁷⁸ reflect the financing arrangements required by Magnum's lenders. We find that

⁷⁶ See Original Sheet Nos. 259-264.

⁷⁷ See Original Sheet Nos. 152 and 203.

⁷⁸ For example, section 1(a) of the Consent and Agreement (Original Sheet No. 259) provides:

(continued...)

Magnum has not sufficiently supported inclusion of such a provision in its tariff, or adequately explained the impact on shippers and on the operations of Magnum's storage project. Accordingly, Magnum is directed to either remove this provision from its tariff when it files actual tariff sheets or fully support the need for this tariff provision and its impact on shippers' rights and on the operations of the storage project in a compliance filing within 30 days of issuance of this order.

12. Standards of Conduct

80. The Commission's Standards of Conduct in Part 358 of the regulations ensure that transmission providers cannot extend their market power over transmission by giving marketing affiliates undue preferential treatment.⁷⁹ However, section 358.3(k)(3) provides that "[a] transmission provider does not include a natural gas storage provider authorized to charge market-based rates."⁸⁰ For this reason, Magnum requests that the Commission confirm that Magnum is exempt from the Standards of Conduct requirements of Part 358. Since we are approving Magnum's request to charge market-based rates for firm and interruptible storage and interruptible hub services, including

The Consenting Party agrees that, if the Collateral Agent shall notify the Consenting Party that an Event of Default under and as defined in the Credit Agreement has occurred and is continuing and that the Collateral Agent has exercised its rights under the Credit Agreement and the Security Agreement (i) to have itself or its designee substituted for the Borrower under the Assigned Agreement, or (ii) to sell, assign, transfer or otherwise dispose of the Assigned Agreement to a third party, then the Collateral Agent, the Collateral Agent's designee or such third party (each, a "Substitute Owner") shall be substituted for the Borrower under the Assigned Agreement and that, in such event, the Consenting Party shall recognize the Substitute Owner as its counterparty under the Assigned Agreement and continue to perform its obligations under the Assigned Agreement in favor of the Substitute Owner.

⁷⁹ *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, 129 FERC ¶ 61,043, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010).

⁸⁰ *See* 18 C.F.R. § 358.3(k)(3) (2010).

wheeling service, the Commission finds that, under current circumstances, Magnum is exempt from the Standards of Conduct.

E. Engineering Analysis

81. The Commission reviews the design capacity of proposed natural gas facilities to ensure that the design is appropriate and efficient. Commission staff completed a geologic and engineering analysis of the four proposed gas storage caverns. Based on this analysis, we find that the facilities are appropriately designed to store up to 13.5 Bcf of natural gas in each cavern, to withdraw up to 0.5 Bcf of natural gas per day from that storage, and to inject up to 0.3 Bcf of natural gas per day into storage.

82. Based on Commission staff's review, we find that the preliminary geological and engineering parameters for the underground natural salt cavern storage facilities are appropriate. Our analysis also shows that Magnum's proposed cavern locations are within the design criteria and confinement of the salt formation. Additionally, we find that the maximum and minimum operating cavern pressures of 3,600 psi and 800 psi, respectively, corresponding to the maximum allowable pressure gradient of 0.90 psi/ft and the minimum allowable pressure gradient of 0.20 psi/ft, throughout the storage cycle will preserve the structural integrity of the caverns.

F. Environmental Analysis

83. On December 22, 2008, we approved Magnum's request to use our pre-filing process in Docket No. PF09-3-000. On June 18, 2009, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Magnum Project and Request for Comments on Environmental Issues (NOI). The NOI was published in the Federal Register on June 25, 2009⁸¹ and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and all property owners potentially affected by the project. Subsequent to issuance of the NOI, staff conducted two public scoping meetings in communities in the vicinity of the proposed storage site and pipeline.⁸²

84. We received eight comments in response to the NOI from: the Paiute Indian Tribe of Utah, Hopi Tribe, Navajo Nation, Intermountain Power Service Corporation (Intermountain Power), United States Fish and Wildlife Service (USFWS), Millard

⁸¹ 74 Fed. Reg. 30,285 (2009).

⁸² The public scoping meetings were held in Nephi and Adelphi, Utah on July 7, 2009, and July 8, 2009, respectively.

County, Utah, the Farmland Reserve, Inc. (Farmland), and the Corporation of Presiding Bishop of the Church of Jesus Christ of Latter Day Saints (CPB). We received three comments during the scoping meetings. The majority of the comments expressed concerns about impacts on: cultural resources, including tribal lands in the project area; seismic and geological hazards; groundwater contamination; air quality, including fugitive dust; and public safety in the event of an emergency. In addition, concerns were raised about an alternative pipeline route. All substantive comments received in response to the NOI and scoping meetings were addressed in the environmental assessment (EA), as described in further detail below.

85. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), staff prepared an EA for Magnum's proposal. The EA was prepared with the cooperation of BLM, the State of Utah Governor's Public Lands Policy Coordination Office (PLPCO), and Millard County. The EA addresses project impacts related to geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, and alternatives.

86. In response to the NOI, the Paiute Indian Tribe of Utah commented that the project area was historically occupied by various Indian tribes including the Paiute. Similarly, the Hopi Tribe commented that the proposed project area is within their area of prehistoric cultural affiliation and requested copies of the cultural resources reports and treatment plans. The Paiute Indian Tribe of Utah asked that any cultural resource sites affected by the proposed project be mitigated and the artifacts repatriated. Section 2.5.4 of the EA states that both tribes have received copies of all reports produced to date and will receive any treatment plans produced. Magnum will provide for the curation of the artifacts consistent with state and federal laws or will return the artifacts to the landowners on whose land they were found.

87. The Navajo Nation commented that they had no concerns at that time, but requested that they be notified if the project inadvertently discovers any habitation sites, plant gathering areas, human remains or objects of cultural patrimony. As discussed in section 2.5 of the EA, Magnum prepared an acceptable Unanticipated Discoveries Plan that provides for the notification of interested parties, including the Navajo Nation, in the event of any inadvertent discoveries.

88. Intermountain Power's scoping comments indicated that the project is located in a seismically active zone.⁸³ Section 2.1 of the EA addressed geological hazards including

⁸³ Intermountain Power operates the Intermountain Power Project, an electric generation facility located next to the proposed Magnum Storage project. The Intermountain Power Project is located 1.5 miles from the Magnum project.

seismicity. In recognition of the area's seismic activity, Magnum provided a Subsidence and Seismic Monitoring Plan (SSMP) that identifies procedures to evaluate the subsidence and seismic impacts of the creation of the gas storage caverns and the operation of the gas storage facilities on the immediate area of the caverns and nearby operations. The EA concluded that with the implementation of the measures described in the current SSMP, the seismic concerns will be minimized; however, the plan includes no details on seismic monitoring. Therefore, to ensure that the SSMP includes sufficient monitoring provisions, the EA requires that Magnum file a revised SSMP that includes a more detailed description of the "seismic monitoring" aspects, and details on the proposed seismic recording instrumentation, targeted sensitivity (i.e., minimum magnitude detection), and how and by whom the data will be analyzed.

89. The Intermountain Power, USFWS, and Millard County filed comments regarding water rights, draw down, groundwater contamination, and water quantity and quality. Groundwater impacts were discussed in great detail in sections 2.2 and 2.3 of the EA. The EA concluded that, with the implementation of the recommended mitigation, construction and operation of the project will not have a significant impact on groundwater resources.⁸⁴

90. The CPB and Farmland responded to the NOI indicating that the proposed pipeline should be routed with consideration for the existing and future operations of CPB. Section 3.3 of the EA (Major Pipeline Routes) discussed the consultations between CPB, Farmland, and Magnum during the pre-filing process and the efforts Magnum made to address CPB's concerns. In the final routing, Magnum made a change to locate the permanent right-of-way for the header pipeline immediately adjacent to Kern River's right-of-way and to reduce the width of the permanent right-of-way to 30 feet. The EA concluded that this change in the alignment and decrease in permanent right-of-way reduces the impact on the CPB property to the greatest degree possible.

91. The CPB, Farmland, Intermountain Power, and Millard County each raised similar concerns during scoping regarding impacts on air quality from the dust generated from the project and the brine evaporation ponds. In particular, the Intermountain Power stated that the dust can lead to flash-over and damage the electrical equipment at the Intermountain Power Project. Section 2.7 of the EA indicated that Magnum developed a Fugitive Dust Control Plan that includes covering exposed spoil piles on the ground and in trucks, regular watering, and the application of a chemical palliative as a dust suppressant where water alone is insufficient to control the dust. The EA concluded that the implementation of the mitigation measures described in the dust control plan will

⁸⁴ These recommendations are discussed in more detail below in the section addressing BLM's comments.

reduce windblown particulate emissions during construction and operation activities and that impacts on nearby facilities, visibility, and human health will be minimized.

92. Millard County also expressed concern that the noise generated during the construction and operational phases of the project would have a negative impact on adjacent landowners. As stated in section 2.7 of the EA, there are nine noise sensitive areas (NSA) within 6 miles of the project facilities. The nearest NSA is located approximately 1 mile away from the pipeline. Noise impacts during construction activities will be intermittent, as equipment will be operated on an as-needed basis, primarily during daylight hours. Due to the large distances to the nearest NSAs, the impact from construction activities are anticipated to be negligible. During operation, noise impacts would primarily be associated with the operation of the compressor station. The nearest NSA to the station is 3 miles away. The EA stated that at the compressor station site boundary, noise levels would be at or below 55 decibels on the A-weighted scale. Consequently, at a distance of 3 miles, noise levels would be significantly less than the Commission's standard of 55 decibels. However, the EA recommended that Magnum confirm the noise levels associated with the operation of the compressor station with a post-construction noise survey.

93. The safety of storage facilities and the need for an Emergency Response Plan in the event of an emergency were issues raised during the Nephi, Utah scoping meeting. As stated in section 2.8 of the EA, the U.S. Department of Transportation (USDOT) regulates the safety of the project. The storage facility will be constructed in compliance with current state and federal regulatory requirements and currently accepted industry practices. Magnum will work with local emergency response agencies to coordinate effective emergency responses efforts pursuant to USDOT requirements. Magnum developed a draft Emergency Response Plan and Emergency Health and Safety Plan in consultation with representatives of the U.S. Department of Homeland Security, the Utah Department of Public Safety, the Millard County Sheriff's Office, the Delta Fire Chief, and the Millard County Planning and Zoning Administrator. Magnum has committed to finalize these documents prior to construction of the proposed project. Considering the safety measures that Magnum has agreed to and those required by federal, state, and local agencies for this project, the EA concluded the project can be operated in a safe manner and the risk to the public will be minimal.

94. On November 23, 2010, the EA was issued for a 30-day comment period and placed into the public record. The Commission received comments on the EA from the National Park Service (NPS), USFWS, and BLM. NPS indicated that it reviewed the EA and that no national parks will be crossed or affected by the proposed project. The comments of USFWS and BLM are addressed below.

USFWS Comments on the EA

95. USFWS submitted specific comments regarding impacts on seeps and springs, the use of horizontal directional drills (HDD) to protect surface waters and riparian areas; the project's impacts on migratory birds and other sensitive species; and Magnum's project-specific Wildlife Management and Brine Evaporation Pond Management Plans. In addition, USFWS asked that biological soil crusts be preserved during construction and requested changes in seed mixes for restoration.

96. No seeps were identified during the environmental surveys that were conducted for the project. Section 2.2 of the EA indicated that the proposed header pipeline would be within 150 feet of one spring currently used for livestock and wildlife. In addition, Magnum agreed to file with the Secretary the location of all additional wells and springs encountered during construction, and report what protective measures it implemented to protect and restore these resources.

97. USFWS expressed concern that the EA did not adequately address dewatering of seeps, springs, streams, and wetlands that support aquatic and terrestrial wildlife that may result from a project-related water drawdown. Section 2.2.1 of the EA stated that the groundwater information developed thus far is sufficient to demonstrate that the required freshwater production can likely be achieved without substantial drawdown. Short-term aquifer pumping results suggest minimal adverse effects; however long-term tests and monitoring are necessary to obtain more definitive results. The EA determined that a monitoring and mitigation plan that includes adaptive management strategies is appropriate for this type of a project. The EA concluded that construction and operation of the proposed project facilities will not significantly impact these resources. Additional discussion of the adaptive management strategies developed for this project, as well as our conditions to minimize potential impacts, is discussed below. (*See BLM Comments on the EA*).

98. USFWS commented that waterbodies that support riparian vegetation should be crossed using HDDs unless substantial upland impacts would be incurred through the use of a drill. Table 2.2-1 of the EA listed a total of 88 waterbodies crossed by the project, and identified that the largest waterbody crossed is about 9 feet in width (Furner Creek). The table identified the characteristics of these drainages, and identified many of them as "severely habitat-limited waters." Given the size of the waterbodies crossed by the pipeline, we believe the use of the open-cut waterbody crossing method is appropriate. Section V.B.7.a of Magnum's Wetland and Waterbody Construction and Mitigation Procedures (Procedures) requires that instream construction activities on those minor waterbodies be completed within 24 hours, which would minimize the impact. In addition, Section V.C.6 of the Procedures require that all disturbed riparian areas be revegetated with conservation grasses and legumes or native plant species, preferably woody species. We support the EA's conclusion that surface water resources will not be

significantly affected and believe that the identified impact minimization and restoration measures will ensure that the adjacent riparian areas are restored to pre-existing conditions, to the extent practicable.

99. USFWS recommended that Magnum observe raptor avoidance and minimization measures outlined in the State of Utah Raptor Guidelines. Raptors are addressed in section 2.3.2 of the EA and Magnum's Wildlife Management Plan. Magnum agreed to observe the raptor avoidance and minimization measures that are identified in Table 1 of the Wildlife Management Plan. The seasonal time windows incorporated into the project are consistent with the state of Utah's Raptor Guidelines. We believe that the potential impacts on sensitive raptors will be similar to those described for non-sensitive raptors.

100. USFWS also recommended that surveys for nesting migratory birds start at least two weeks prior to vegetation treatments during operation. They further stated that if nesting birds are found, appropriate spatial buffers should be established in coordination with USFWS and BLM. We do not believe surveys are required because routine vegetation maintenance activities would be limited to clearing and mowing of vegetation every three years, and would be conducted outside of the nesting period (between April 15th and August 1). These measures are outlined in Magnum's Upland Erosion Control, Revegetation and Maintenance Plan (Plan) and its Wildlife Management Plan. The time window is consistent with Commission's requirements and would ensure that impacts on ground and tree nesting bird species are minimized.

101. USFWS also indicated the EA was not clear on how it was determined that only one acre of long-billed curlew habitat would be permanently lost. Table 2.3-5 of the EA states that the proposed header pipeline would cross suitable curlew habitat at mileposts 12, 23, 30, and 54, but much of this impact would be considered temporary because the temporary workspace associated with the construction right-of-way would be allowed to revert to its former characteristics after construction. The habitat within the permanent right-of-way that would be affected equals less than one acre.

102. USFWS stated that the EA should have included a more detailed discussion of the least chub, a federal candidate species. We disagree. Section 2.3.3 of the EA assessed impacts on 12 federally-listed species and three candidate species, including the least chub. The EA concluded that based on the occurrence and known locations of these species, the species' habitat requirements, and absence of species found during the required field surveys, construction and operation of the project will result in no effect on federally-listed species under section 7 of the Endangered Species Act. The USFWS did not disagree with this conclusion. We believe no further consultation is necessary.

103. USFWS recommended that Magnum provide a record of its commitment and guidance for implementation of wildlife minimization measures. Magnum's Wildlife Management Plan was prepared in consultation with the BLM and Utah resource

agencies, and was included as Appendix I of the EA. This plan specifically identifies several measures that Magnum will implement, including: enforcing seasonal timing restrictions; the use of specialized construction methods and workspace limitations; construction wildlife awareness training for contract personnel; daily inspections of activities for use of wildlife; and the installation of wildlife escape ramps over the pipeline trench. Magnum has agreed to implement these measures and Environmental Condition No. 1 of this order requires that Magnum construct and operate its project in accordance with the procedures and measures included in its application, and outlined in the EA and this order.

104. Regarding the installation of wildlife escape ramps, USFWS recommended that Magnum backfill the pipeline trench within a specific time period. While we agree that backfilling the trench should occur within a reasonable timeframe to reduce the likelihood of wildlife getting trapped in the pipeline trench, we disagree that it is necessary to impose a specific time frame upfront in this order. If there is evidence of wildlife entrapment during construction, we will consider at that time imposing a specific time frame for backfilling the trench based on the specific circumstances. We also note that Magnum has committed to install wildlife escape ramps every 0.25 mile in open trenches and to inspect open trenches daily for wildlife needing assistance. We believe this strategy will adequately minimize impacts on wildlife due to the pipeline trenches during construction.

105. USFWS commented on Magnum's Brine Evaporation Pond Management Plan (Brine Pond Plan), and recommended that Magnum develop additional mitigation to deter the birds and other wildlife from using or becoming trapped in the brine ponds. The EA discussed the measures contained in the Brine Pond Plan that would avoid or reduce impact on birds and wildlife including the installation of floats to deter birds. The use of an adaptive management approach to identify additional measures will be used because of the long-term operation of the ponds. Environmental Condition No. 17 requires Magnum to summarize its consultations with the appropriate federal and state agencies regarding adaptive management strategies. Further discussion and planning is necessary to address this issue, and we expect the ongoing consultation to result in the development of additional measures and monitoring to address wildlife usage of the ponds.

106. USFWS also commented that biological soil crusts should be preserved during construction because this will help reduce wind erosion and weed growth, mitigating long-term effects of the project on soils and vegetation. Based on our review of the issue, we agree that certain measures are warranted to protect biological soil crusts. We have included a new environmental condition in this order that requires Magnum to determine the location of biological crust that could be affected by the pipeline, and to develop a plan (in consultation with BLM and the Natural Resources Conservation Service) describing how these resources will be treated during construction and restoration of the pipeline (Environmental Condition No. 20).

107. Lastly, USFWS recommended changes to Magnum's approved seed mixes. Because Magnum has committed to revegetate affected lands according to BLM standards or landowner specifications, including the state of Utah's preferences, we believe a requirement that Magnum modify these seed mixes is not warranted. If Magnum determines that changes to seed mixes are needed in the future, those changes will be subject to approval by the Director of the Office of Energy Projects (OEP).

BLM's Comments on the EA

108. As stated in its comments, BLM participated as a cooperating agency in the preparation of the Magnum Gas Storage Project EA because approximately 41 miles of the header pipeline will cross federal lands managed by BLM.⁸⁵ Many of BLM's comments on the EA are specific to the conclusions regarding groundwater impacts resulting from cavern creation, and the long-term impacts of the brine storage ponds located on the 2,050-acre storage site, which is owned and managed by the SITLA. No BLM-managed land will be affected by the development of the storage caverns or brine evaporation ponds.

109. BLM contends that certain of its comments submitted during drafting of the EA were not adopted in the final version of the EA issued by the Commission. Among other things, BLM states that it has reached different conclusions regarding the mitigation of impact on groundwater quality.

110. The Commission staff has been working on the EA with BLM since June 2009 when BLM agreed to participate as a cooperating agency. The BLM, Fillmore Field Office, provided a technical and interdisciplinary team analysis during both the pre-filing and application review periods. During preparation of the environmental document, the Commission staff provided BLM and other cooperating agencies with a copy of the draft EA and gave them the opportunity to provide input to the document.

111. As the lead federal agency under NEPA, the staff's role in reviewing Magnum's proposal is to ensure that the environmental impacts of the proposed action are described and made available to the Commission, other public officials, and citizens before decisions are made. As the lead agency, the Commission works diligently to produce a single document that other agencies rely upon in their permitting decisions. In our coordination efforts, we considered the input of BLM and the other cooperating agencies and adopted those proposals to the maximum extent possible consistent with our

⁸⁵ BLM filed an initial set of comments on the EA on January 3, 2011. BLM filed supplemental comments from the U.S. Geological Survey, BLM's National Operation Center, Senior Hydrologist, and U.S. Geological Survey Review on Age-Dating analysis on January 3, and January 4, 2011.

responsibilities as lead agency.⁸⁶ For the reasons set forth below, we did not adopt certain BLM proposals because we disagreed with their conclusions, or we did not find the information to be relevant.

112. In determining that a proposed project would “not constitute a major federal action significantly affecting the quality of the human environment,” the EA must demonstrate that approval of the proposed action would result in no significant impacts or that potentially significant impacts would be mitigated to less than significant levels through commitments by the applicant, the Commission’s conditioning authority, or by way of other federal or state permitting processes. We believe the implementation of the environmental conditions attached to the Order support a finding of no significant impact (FONSI).

113. Prior to issuance of the EA, the Utah State Engineer and the PLPCO each filed comments indicating that they agreed with the analysis and mitigation in the draft EA. Further, the State Engineer requested that the Commission and BLM defer issues regarding water use and impacts on groundwater resources to the State Engineer because the majority of the facilities are on Utah State land and the Utah agencies would consider the concerns before issuing the necessary permits. As stated in section 4 of the EA, the other permitting agencies can require additional mitigation measures to further minimize impacts on the environment under its jurisdiction, in their decision documents. If a cooperating agency does not agree with certain analysis or conclusions in the Commission’s EA, that agency can adopt the EA in whole, in part, or not at all when issuing its own findings and conclusions in its decision document.⁸⁷ We note that BLM issued its FONSI, Decision Record, and the Right-of-Way Grant on February 22, 2011. BLM’s FONSI states that “after conducting an independent review of FERC’s EA, BLM has determined that the analysis document meets all Departmental [Department of Interior] and BLM requirements or standards and specifically addresses the proposed Magnum Right-of-Way grant and amendment of the 1990 Pony Express Resource Management Plan. Therefore, BLM has decided to adopt the environmental analysis.”

114. In its comments on the EA, BLM disagreed with the EA’s definitions of long-term and permanent impacts and states that our determination of significance is not consistent with BLM’s NEPA criteria. Section 2.0 of the EA defined long-term impacts as impacts that would take three to 50 years to return to preconstruction conditions. Permanent

⁸⁶ See Council of Environmental Quality (CEQ) Regulations Implementing NEPA, 40 C.F.R. § 1501.6 (2010).

⁸⁷ After filing its initial comments on the EA, BLM subsequently filed a letter addressed to Magnum that provided clarification to its comments on the EA, which does not change or revise any of its technical comments.

impacts would occur as a result of activities that modify resources to the extent that they would not return to preconstruction conditions within 50 years. Additionally, an impact was considered to be significant if it would result in a substantial adverse change in the physical environment or natural condition and could not be mitigated to less-than-significant level.

115. The CEQ regulations state that “significantly,” as used in NEPA, requires considerations of both context and intensity, which varies with the setting of each proposed action.⁸⁸ While the regulations do not define “long-term impacts,” they do state that such impacts are relevant in determining significance.⁸⁹ We believe that the definitions which BLM disputes are consistent with the CEQ regulations as well as with other Commission environmental documents prepared for similar natural gas projects. Accordingly, we believe that the definitions set forth in the EA are appropriate. Moreover, staff reviewed BLM’s NEPA Handbook, as well as other published BLM-environmental documents in Utah, and did not identify any meaningful inconsistencies between our respective agencies’ definitions of significance.

116. BLM also asserted that the EA does not adequately define or analyze the proposed action, and that the implementation of the EA’s recommendations would result in changes to the proposed action. We disagree. The proposed action described in the EA is as described in Magnum’s application and supplements (e.g., to provide high-deliverability, multi cycle underground natural gas storage capacity throughout Utah and the western United States that can be accessed through Kern River and Questar). The EA does present recommendations to avoid, minimize, and/or further mitigate potential adverse environmental impacts that require Magnum to file certain material for the review and approval by the Director of OEP prior to the commencement of construction activities. However, none of these measures will change the nature of the proposed action; rather, they will ensure that the proposed action will not significantly affect the environment.

117. BLM indicated that the Commission staff appears to lack technical expertise regarding the groundwater analysis in the EA. The Commission’s environmental staff consists of professionals with a variety of education, training, and expertise related to groundwater resources and analysis, and is overseen by technically competent management personnel with graduate level training in hydrogeology. As can be expected with any analysis conducted by a multi-agency team with differing missions, expertise and experience, there are aspects of the technical review where qualified reviewers might legitimately disagree. We believe the level of technical analysis is appropriate. Further,

⁸⁸ 40 C.F.R. § 1508.27 (2010).

⁸⁹ 40 C.F.R. § 1508.27(a).

as noted previously, we also relied on the expertise of the relevant state agencies that are responsible for issuing water withdrawal permits on state lands.

118. BLM disagrees with the use of an adaptive management strategy that relies upon monitoring plans to mitigate unknown impacts. Section 2.2 of the EA describes the adaptive management strategies for Magnum's groundwater withdrawal and brine evaporation ponds. These strategies were developed, in part, based on consultations with BLM staff. The EA acknowledges the long-term nature of the project, and sets forth adaptive management strategies as appropriate for allowing the project to move forward. This approach comports with the CEQ's January 14, 2011, guidance on mitigation and monitoring, which states that agencies can use mitigation to support a FONSI, and use adaptive strategies to ensure that mitigation commitments are implemented.⁹⁰ Furthermore, NEPA does not require a complete plan be actually formulated at the onset, but only that the proper procedures are followed for ensuring that the environmental consequences have been fairly evaluated.⁹¹ In the EA, the Commission has made extensive efforts to ensure that environmental issues were thoroughly evaluated. Issues identified by staff and raised by the public and relevant agencies were studied and analyzed in the EA.

119. BLM stated that the EA's analysis of the groundwater withdrawal plans are based on creating both salt storage caverns simultaneously rather than one at a time. BLM is referring to a project change Magnum filed on October 29, 2010, indicating that Magnum proposes to construct its cavern solution mining operations sequentially, rather than mining two caverns simultaneously, as it had originally proposed. To be conservative, the analysis in the EA was based on constructing both salt storage caverns simultaneously, which could result in greater groundwater impacts. We clarify that the project authorized by this Order includes the creation of each cavern sequentially, requiring the withdrawal of approximately 5,000 acre-feet per year of water.

120. BLM also asserted that Magnum's BEPMP does not provide adequate monitoring for leakage from the brine ponds. Magnum's BEPMP and the Ground Water Monitoring, Mitigation, and Protection Plan (GWMMP) describe how the ponds would be managed and monitored to minimize or mitigate adverse impacts that could occur over the life of the project. BLM stated that detection of brine pond leakage by the monitoring wells installed in the shallow water-table aquifer would be too late to avoid groundwater quality degradation. BLM believes that given the large size of each pond, a leak in the

⁹⁰ *Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact*, 76 Fed. Reg. 3843 (2011).

⁹¹ *See Robinson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989).

center of the pond could possibly go undetected by monitoring systems located at the edge of the pond.

121. As described in section 2.2 of the EA, Magnum's GWMMPP states that leakage from the brine ponds will be monitored through use of monitoring wells. One baseline monitoring well will be installed up-gradient of each pond. In the case where two ponds share a single separating embankment, a single well up-gradient of both ponds will be installed. Monitoring wells will also be installed immediately adjacent to the pond embankment and down-gradient from each sump.

122. During the operational life of the facility we believe a properly designed shallow water table monitoring well system will be able to detect any brine leakage outside the pond area. Further, the State Engineer will consider if and when to release Magnum from site monitoring responsibilities once the project is fully developed. We reiterate that the State Engineer has the authority to impose conditions to minimize effects upon nearby water users, which includes the construction of the monitoring wells, any further connectivity tests, and development of the brine management ponds.

123. We believe the proposed approach to monitoring for leakage is an acceptable method provided that a sufficient number of monitoring wells are installed and properly spaced based on site-specific aquifer properties. If the monitoring wells are spaced too far apart it is possible that contaminated groundwater beneath the liner could migrate off the site without being detected. Because Magnum has not indicated how many down-gradient monitoring wells will be installed, we have modified Environmental Condition No. 14 to require that Magnum document the appropriate number of monitoring wells it will install to ensure detection of any groundwater contamination before it migrates off the project property (see Environmental Condition No. 14m).

124. Finally, BLM stated that a long-term salt storage plan is needed. We agree with BLM that the waste salt could pose a long-term hazard to groundwater and surface water in the project area if the integrity of the seal around the salt is compromised in any way. However, we believe that implementation of the GWMMPP; with the additional measures required by this order, will adequately protect groundwater during the life of the project. Over the long-term (e.g., 50, 100, 200+ years from now) climatic conditions could change substantially causing changes in the depth to groundwater and the adequacy of the 4-foot-thick vegetated soil cover proposed to stabilize the surface. Erosion due to wind and rain, or desiccation due to drought could adversely affect the soil cover, and potential ground failures due to subsidence, fissuring, or faulting could cause a breach in the plastic liner/cover and expose the salt to dissolution and dispersion. As the affected landowner and regulatory authority for water use and protection measures, the State of Utah is responsible for the long-term impacts of the project if and when it releases Magnum from its monitoring and mitigation responsibilities.

125. In addition, Environmental Condition No. 16 requires that Magnum file the final site-specific geotechnical investigations of the plant site development identifying all pond design measures recommended by its geotechnical engineer, including a statement committing to implementing recommendations or alternate measures, for our staff review, prior to the construction of the ponds.

Alternative Storage Site Facilities Plan

126. Section 3.4.1 of the EA discussed an Alternative Storage Site Facilities Plan suggested by Magnum to reduce impacts to cultural resources and reduce permanent impacts to soils, vegetation, wildlife, and potential habitat for sensitive species. The EA stated that the alternative would result in fewer impacts on the resources but did not recommend that Magnum modify its proposal to incorporate the alternative. We believe that the alternative is environmentally preferable to the proposed Storage Site Facilities Plan. Therefore, we have included a new Environmental Condition No. 21 in this Order that requires Magnum to incorporate the Alternative Storage Site Facilities Plan described in section 3.4.1 of the EA into the project.

127. Based on the analysis in the EA, we conclude that if the project is constructed and operated in accordance with Magnum's application and supplemental filings, and in compliance with the environmental conditions in Appendix B to this Order, our approval of this proposal will not constitute a major federal action significantly affecting the quality of the human environment.

128. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate.⁹² The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction/replacement or operation of facilities approved by this Commission.

G. Blanket Certificates

129. Magnum requests a Part 284, Subpart G blanket certificate in order to provide open-access storage services. Under a Part 284 blanket certificate, Magnum will not require individual authorizations to provide storage services to particular customers. Magnum filed a pro forma Part 284 tariff to provide open-access storage services. Since

⁹² 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), *order on reh'g*, 59 FERC ¶ 61,094 (1992).

a Part 284 blanket certificate is required for Magnum to offer these services, we will grant Magnum a Part 284 blanket certificate, subject to the conditions imposed herein.

130. Both Magnum and Magnum Solutions have applied for a Part 157, Subpart F blanket certificate. The Subpart F blanket certificate gives an interstate pipeline 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. Magnum Solutions requests a waiver of the requirements of section 157.204(a) of the Commission's regulations which limits the issuance of such blanket certificates to interstate pipelines who have been issued certificates other than limited jurisdiction certificates and had rates accepted by the Commission.

131. Because Magnum will become an interstate pipeline with the issuance of a certificate to construct and operate the proposed facilities, we will issue to Magnum the requested Part 157, Subpart F blanket certificate. Since we are rejecting Magnum Solutions' request for a limited-jurisdiction certificate, we find its request for a construction certificate is moot and is therefore dismissed.

V. Conclusion

132. For the reasons discussed above, the Commission finds that the Magnum Gas 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 to Magnum, subject to the conditions included herein.

133. At a hearing held on March 17, 2011, 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 Magnum under NGA section 7(c) authorizing the construction and operation of the Magnum Gas Storage Project, as described more fully in this order and in the application.

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

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

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

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

(3) Magnum's completion of the authorized construction of the proposed facilities and making the integrated storage and header facilities available for service within three and one-half years of the date of this order pursuant to section 157.20(b) of the Commission's regulations.

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

(F) Magnum's request to charge market-based rates for firm and interruptible storage and interruptible hub and wheeling services is approved, as discussed and subject to the condition of this order.

(G) 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.

(H) Waiver is granted of the Commission's "shipper-must-have-title" policy, subject to the conditions discussed in the body of this order.

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

(J) Magnum must submit actual tariff sheets that comply with the requirements contained in the body of this order at least 60 days prior to commencing service. If Magnum elects to retain the form of Consent and Agreement in its tariff it must file supporting documentation within 30 days of the issuance of this order.

(K) Magnum shall file revised copies of the relevant corporate exhibits, including but not necessarily limited to Exhibits A, B, C, D, and M, to reflect the fact that the facilities detailed in this order will be constructed and operated by Magnum.

(L) Magnum Solutions' request for a limited-jurisdiction certificate is denied.

(M) Magnum Solutions' request for a blanket construction certificate under Subpart F of Part 157 of the Commission's regulations is dismissed.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

- (1) The maximum inventory of natural gas stored in the Magnum Storage Field shall not exceed the certificated levels of 54,000 MMcf, comprised of 10,500 MMcf of working gas and 3,000 MMcf of base gas in each of the four caverns, 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 **3,600 psig** and the shut-in bottom hole pressure shall not fall below **800 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 these 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, Magnum shall:
 - (a) conduct a Mechanical Integrity Test (MIT) on each of the four caverns 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 each of the caverns 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; and

- (h) file with the Secretary of the Commission an earthquake contingency and assessment plan that ensures the integrity of the caverns and surface facilities is maintained in the event of an earthquake.
- (4) Twice annually, Magnum shall conduct a leak detection test during storage operations to determine the integrity of each cavern/wellbore, casing, and wellhead. In addition, Magnum 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 storage caverns has reached the maximum.
 - (5) Magnum must periodically log each cavern's wells to check the cavern roof and status of each casing. Additionally, every five years Magnum must conduct sonar surveys of the caverns to monitor their dimensions and shape, and to estimate pillar thickness between openings throughout the storage operations. In the alternative, no less than 30 days before placing the caverns into service, Magnum may file with the Commission, for prior approval of the methodology, a detailed cavern integrity monitoring plan that is consistent with the intent of the sonar survey.
 - (6) Magnum must conduct an annual inventory verification study on each cavern.
 - (7) The Magnum Gas Storage field shall be operated in such manner as to prevent/minimize gas loss.
 - (8) Magnum 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; and
 - (f) other data or reports which may aid the Commission in the evaluation of the storage project.
- (9) Magnum 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

1. Magnum Gas Storage, LLC (Magnum) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in this EA unless modified by this Order. Magnum must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of 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 impact resulting from project construction and operation.
3. **Prior to any construction**, Magnum 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 EIs authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Magnum 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. Magnum's exercise of eminent domain authority granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate

future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Magnum 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 will 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 will 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 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:

- 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 the Certificate and before construction begins**, Magnum shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Magnum must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Magnum 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 Magnum will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection

- personnel;
 - c. the number of EIs assigned per spread, and how Magnum will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the locations and dates of the environmental compliance training and instructions Magnum will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - f. the company personnel (if known) and specific portion of Magnum's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Magnum 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, Magnum shall file updated status reports prepared by the EI 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 Magnum's effort to obtain the necessary federal authorizations;
 - b. the construction status of the project work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any Environmental Conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate

- to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
- g. copies of any correspondence received by Magnum from other federal, state or local permitting agencies concerning instances of noncompliance, and Magnum's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Magnum shall file documentation that it has received all authorizations required under federal law (or evidence of waiver thereof).
9. Magnum must receive written authorization from the Director of OEP **before commencing service for 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**, Magnum 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; and
- b. identifying which of the certificate conditions Magnum 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. **Prior to construction**, Magnum shall revise section V.A of its Upland Erosion Control, Revegetation and Maintenance Plan (Plan) so that the construction right-of-way may only be expanded up to 25 feet without prior approval of the Director of OEP. The revised Plan shall be filed with the Secretary for review and written approval by the Director of OEP.
12. **Prior to construction** of the header pipeline, Magnum shall file with the Secretary, for review and written approval by the Director of OEP, reports of the detailed investigations of all potentially active faults that will be crossed by the proposed pipeline and include site-specific design measures that will be implemented to minimize the potential for pipeline rupture in the event of a fault movement.
13. **Prior to construction**, Magnum shall file with the Secretary, a revised Subsidence

and Seismic Monitoring Plan that includes a more detailed description of the “seismic monitoring” aspects of its plan include details on the proposed seismic recording instrumentation, targeted sensitivity (i.e., minimum magnitude detection), and how and by whom the data will be analyzed. Include measures Magnum will implement if the project induces seismicity.

14. **Prior to construction**, Magnum shall file with the Secretary for review and written approval by the Director of OEP, a revised Ground Water Monitoring, Mitigation, and Protection Plan to include the following data and additional requirements:
 - a. the results of all aquifer pump tests (water supply wells MH-2 through MH-5), and drawdown calculations for all nearby wells (including interference effects between Magnum’s own water supply wells) assuming the maximum proposed pumping rate (Section 1.1);
 - b. the measured/calculated aquifer parameters for each water supply well (hydraulic conductivity, transmissivity, storage coefficient, etc.) (Section 1.1);
 - c. the details on each well completion (depth, diameter, screened intervals), and electric logs annotated with Magnum’s stratigraphic and hydrogeologic interpretations (Section 1.1);
 - d. all data obtained that substantiates the isolated nature of the “Basement Aquifer” (Section 1.1);
 - e. to install an additional “slim-line” monitoring well at a location somewhere between the Delta Egg Farm well and the Magnum fresh water well field, completed and instrumented to measure and sample each aquifer (Section 2.4);
 - f. to monitor water levels in the slim-line wells daily instead of monthly (Section 3.1);
 - g. to file with the Secretary a copy of the annual “Water Rights and Water Usage Summary and Analysis” that Magnum will submit to the State Engineer (Section 4.1);
 - h. to verify the accuracy of water level transducers quarterly instead of annually (Section 5.0);
 - i. to file with the Secretary monthly Hydrogeologic Reviews of the Basement Aquifer instead of quarterly for at least the first year of project construction, after which time Magnum may request approval to provide quarterly reports if the data demonstrates minimal impact on the aquifer (Section 6.1);
 - j. to file with the Secretary a copy of all correspondence with the State Engineer regarding “corrective actions” Magnum will implement if declining water level trends are observed in the off-site wells (Section 7.0);
 - k. to identify the “Action Leakage Rate” to be used to determine if action is

- required to repair the pond liner (Section 9.5);
 - l. to identify the “base water quality conditions for the [pond] site” to be used for determining leakage from the evaporation ponds (Section 10.2);
 - m. an appropriate number of down-gradient wells, based on actual determined aquifer parameters, to ensure that any ground water contamination is detected before it migrates off the project property;
 - n. well completion data (well logs, casing depth, diameter, screen interval, etc.) for each evaporation pond monitoring well; and
 - o. during operation, file with the Secretary, a report on the presence of leaks and provide a copy to the Utah Division of Water Quality and the Utah Division of Wildlife Resources. File with the Secretary, a follow up report on the specific measures approved by the State regulatory agency to investigate and repair the leak.
15. Magnum shall monitor on a monthly basis the ponds and adjacent areas for development of any fissures or other ground failures that could adversely affect the pond operation and brine containment. Magnum shall file with the Secretary, a report of any such occurrences and corrective actions and provide a copy of the report to the appropriate State regulatory agencies.
16. **Prior to construction of the brine evaporation ponds**, Magnum shall file with the Secretary a copy of the report on the final site-specific geotechnical investigations of the plant site development identifying all pond design measures recommended by the geotechnical engineer. Include a statement committing to implementing those recommendations or provide alternative measures with supportable justification.
17. **Prior to implementing any adaptive management strategies in response to wildlife use of the brine evaporation ponds**, Magnum shall file with the Secretary, a summary of its consultations with the appropriate federal and state agencies regarding adaptive management strategies and the measures Magnum will implement to minimize adverse impacts on wildlife.
18. Magnum shall **not begin construction** of facilities and/or use of any staging, storage, or temporary work areas and new or to-be-improved access roads; until:
- a. Magnum files with the Secretary cultural resource survey reports, any necessary treatment plans, and the School and Institutional Trust Lands Administration, the Bureau of Land Management (BLM) and the State Historic Preservation Office comments on the reports;
 - b. The Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties will be adversely affected; and
 - c. The Federal Energy Regulatory Commission staff reviews and the Director

of OEP approves the cultural resources survey reports and plans, and notifies Magnum in writing that treatment plans/ mitigation measures may be implemented (including archaeological data recovery) and/or construction may proceed.

All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: “CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE.”

19. Magnum shall file a noise survey with the Secretary **no later than 60 days** after placing the proposed compressor station in service. If the noise attributable to the operation of all of the equipment at the proposed compressor station at full load exceeds an Ldn of 55 decibels on the A-weighted scale at any nearby NSAs, Magnum shall install additional noise controls to meet the level **within 1 year** of the in-service date. Magnum 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.
20. **Prior to construction of the header pipeline**, Magnum shall file with the Secretary the locations, by milepost any biological soil crusts that would be affected by construction of the pipeline. Magnum shall develop a plan in consultation with the BLM and Natural Resources Conservation Service that identifies measures Magnum will implement to avoid, preserve and/or restore affected biological soil crusts. This plan shall be submitted to the BLM for their review and written approval for any locations on BLM-managed lands; and filed with the Secretary for the review and written approval by the Director of OEP.
21. Magnum shall incorporate the Alternate Storage Site Facilities Plan as described in the EA into its proposed project.