

138 FERC ¶ 61,180  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Sawgrass Storage, L.L.C.

Docket No. CP11-523-000

ORDER ISSUING CERTIFICATES

(Issued March 15, 2012)

1. On July 27, 2011 Sawgrass Storage, L.L.C. (Sawgrass) filed an application under section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> requesting a certificate of public convenience and necessity authorizing the construction and operation of a new interstate natural gas storage facility in the depleted South Downsville Field in Lincoln and Union Parishes, Louisiana. Sawgrass also requests that the Commission: (i) issue Part 157, Subpart F and Part 284, Subpart G blanket certificates;<sup>2</sup> (ii) authorize it to charge market-based rates for the proposed interstate storage and hub services; (iii) approve its proposed *pro forma* tariff under which Sawgrass will provide open-access interstate storage and hub services; and (iv) grant waiver of certain filing, accounting, and reporting requirements.
2. As discussed below, we grant Sawgrass's requested certificate authorizations, subject to the conditions described herein. We also grant Sawgrass's requests for market-based rate authority and waiver of certain requirements.

**I. Background**

3. Sawgrass is a Delaware limited liability company authorized to do business in Louisiana and is a joint venture between Mill Creek Gas Storage, LLC, a subsidiary of

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

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

Samson Investment Company (Samson),<sup>3</sup> and Cypress Creek Gas Storage, LLC, a subsidiary of Nicor Inc.<sup>4</sup> Sawgrass is not currently a “natural gas company” within the meaning of section 2(6) of the NGA<sup>5</sup> and holds no section 7 certificates.<sup>6</sup> Upon completion of construction and commencement of the operations authorized herein, Sawgrass will be a natural gas company within the meaning of NGA section 2(6) and will be subject to the Commission’s jurisdiction.

## II. Proposal

4. Sawgrass proposes to construct and operate a natural gas storage facility in the depleted South Downsville Field located about 20 miles northwest of Monroe, Louisiana, near the town of Downsville, Louisiana, to serve gas and power markets in Oklahoma, Texas, Arkansas, and Louisiana. The project will convert the Vaughn Sandstone Formation, a depleted natural gas production reservoir, into a natural gas storage facility designed to provide up to 44.5 billion cubic feet (Bcf) of storage capacity, with 30 Bcf of

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<sup>3</sup> Samson is a privately held energy exploration and production company. Through its subsidiaries and affiliates, Samson operates more than 4,000 wells and has interest in more than 11,000 wells and is currently active in multiple producing regions including Louisiana’s Haynesville Shale. Other than the proposed project, Samson currently does not own or operate any natural gas storage facilities.

<sup>4</sup> Other natural gas subsidiaries of Nicor include: (1) Northern Illinois Gas Co., a gas utility which owns approximately 150 Bcf of gas storage capacity in Illinois; (2) Nicor Energy Ventures Co., parent company of various energy subsidiaries including Prairie Point Energy, LLC, a retail gas marketer in Illinois; Nicor Enerchange, LLC, a wholesale and retail gas marketer that conducts business primarily in the Midwest; and Central Valley Gas Storage, LLC, the developer and operator of a non-jurisdictional market-based rate, 11 Bcf underground natural gas storage facility in California; and (3) Nicor Horizon, LLC, which shares a 50-50 ownership interest with Natural Gas Pipeline Company of America in Horizon Pipeline Co., a jurisdictional interstate natural gas pipeline.

<sup>5</sup> 15 U.S.C. § 717a(6) (2006).

<sup>6</sup> On November 18, 2010, the Commission granted Sawgrass an exemption from section 7 certificate requirements that allowed it to drill a test well and obtain geotechnical information for the development of the proposed project. *See Sawgrass Storage, LLC*, 133 FERC ¶ 61,146 (2010).

working gas and 14.5 Bcf of base gas.<sup>7</sup> The project is designed to have a maximum injection and withdrawal capacity of 300 million cubic feet (MMcf) per day and will be completely cycled 1.7 times per year. The project will interconnect, through a 13.9-mile, 30-inch high-pressure header pipeline, with the Midcontinent Express Pipeline (Midcontinent), approximately nine miles southeast of Farmerville, Louisiana.

**A. Proposed Facilities**

5. Sawgrass proposes to construct the following facilities:

- Up to sixteen new horizontal gas storage injection/withdrawal (I/W) wells, drilled to a depth of about 9,100 feet and for a length of about 2,000 to 4,000 feet in the Vaughn Sandstone Formation of the South Downsville Field;<sup>8</sup>
- Five new observation wells;
- Up to five well pads with individual wellheads, wellhead gas piping valves, and check metering along a gathering system that will tie the I/W wells to the central gas handling facility (compressor station). The gathering system will consist of two sections: the North Line (connecting well pads No. 1 through No. 4 to the gas handling facility via approximately 4.6 miles of 24-inch diameter pipeline with an maximum allowable operating pressure (MAOP) of 3,620 pounds per square inch gauge (psig)) and the South Line (connecting well pad No. 5 to the gas handling facility via approximately 0.5 miles of 20-inch diameter pipeline with an MAOP of 3,620 psig);
- A new 13.9-mile, 30-inch bidirectional pipeline that will connect the gas handling facility at the storage facility to the Midcontinent pipeline;
- A new bidirectional metering station that will include a filter/separator, over pressure protection, dual room electronic gas measurement and other associated facilities;

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<sup>7</sup> The base gas will consist of 9 Bcf of injected base gas and 5.5 Bcf of economically non-recoverable native gas remaining in the formation.

<sup>8</sup> The South Downsville storage reservoir comprises of approximately 5,069 acres. In addition, Sawgrass proposes a 3,621-acre protective buffer zone beyond the reservoir.

- A new compressor station comprising up to four natural gas-fired compressor units totaling 19,000 horsepower (hp);
- Flow regulation and metering, a gas dehydration system, gas separation and treatment facilities, an emergency standby generator, storage tanks, and gas after coolers; and
- Ancillary facilities, such as valves, meters, filtration, safety, cleaning and inspection equipment as needed to operate the project, including non-jurisdictional electric power equipment.

6. Sawgrass states that, in addition to the facilities it proposes to construct, the local electricity provider would design, construct, and maintain any new electrical power lines required to provide electric service for Sawgrass's proposed project.

7. The maximum bottom-hole reservoir pressure of the storage facility will be 3,400 pounds per square inch absolute (psia). Additionally, Sawgrass will re-enter and re-plug three previously plugged and abandoned wellbores. Sawgrass proposes a 100-foot buffer zone both above and below the storage reservoir to protect it from potential third-party drilling activity.<sup>9</sup>

#### **B. Market-Based Rates and Proposed Services**

8. Sawgrass requests authority to provide firm and interruptible storage services and interruptible hub services, including parking, loan, and balancing and imbalance trading services, at market-based rates. Sawgrass claims it lacks market power over the provision of such services in the "Gulf Coast Production Region," which includes East Texas, Louisiana, Mississippi, and Alabama, and provided a market power analysis in support of its request for market-based rates in Exhibit I of its application. In view of its intent to charge market-based rates, Sawgrass requests that the Commission waive certain filing, accounting, and reporting requirements which Sawgrass contends are relevant to cost-based-rate storage providers but not to market-based-rate storage providers.

9. Sawgrass states that the project will provide flexible, market-based rate storage services to producers, pipelines, local distribution companies, marketers, and gas-fired generation customers transporting on interstate and intrastate pipeline systems.

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<sup>9</sup> The storage field is enclosed by a cap rock consisting of 30 to 150 feet of shale above the storage formation.

10. Sawgrass conducted a non-binding open season for the project from October 12 through November 16, 2010. During this open season, Sawgrass received fourteen expressions of interest for storage capacity. Sawgrass states that these expressions of interest demonstrate that substantial market demand for the proposed services exist. No precedent agreements, however, have been executed.

**C. Blanket Certificates**

11. Sawgrass requests a Part 284, Subpart G blanket certificate to provide open-access firm and interruptible natural gas storage services pursuant to its *pro forma* tariff. Sawgrass also requests a blanket certificate under Part 157, Subpart F to perform routine activities in connection with the construction, acquisition, maintenance, abandonment, and operation of the proposed facilities.

**III. Procedural Matters**

**A. Notice and Interventions**

12. Notice of Sawgrass's application was published in the *Federal Register* on August 16, 2011 (76 Fed. Reg. 50,724). Cardinal Gas Storage Partners, LLC; John E. Maxwell, III, Jennifer Maxwell Lind, Clara Hammons Rea, JJP Family Limited Partnership, and Harmon and Greenwald, Inc. (collectively, Maxwell);<sup>10</sup> Midcontinent; and Mollie G. Phelps filed timely motions to intervene. Timely, unopposed motions to intervene are automatically granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>11</sup>

**B. Protests**

13. Two groups of affected landowners filed protests to Sawgrass's application. They are Maxwell, described above, and Leachman, which consist of F. Scott Leachman; Sally Farmer Leachman and Bobby W. Farmer; and Robin Leachman Davison, who filed three

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<sup>10</sup> Maxwell's motion to intervene listed the docket number for Sawgrass's pre-filing proceeding (PF10-20-000) rather than the docket number for this certificate proceeding (CP11-523-000). Based on the timing of its motion within the intervention period for the certificate proceeding and its request to intervene "in these proceedings," we construe Maxwell's filing as a motion to intervene in the certificate proceeding.

<sup>11</sup> 18 C.F.R. § 385.214(c) (2011).

separate but similar comments protesting the application.<sup>12</sup> Sawgrass filed answers to the protests. Although the Commission's Rules of Practice and Procedure do not permit answers to protests,<sup>13</sup> the Commission may waive its procedural rules to accept such answers for good cause.<sup>14</sup> We find good cause to accept the answers because they provide information that assists the Commission in its decision-making; therefore, we accept the answers. We address the protests in the discussion section of this order.

### C. Request for Hearing

14. Without further elaboration, Maxwell requests a "formal hearing" on Sawgrass's application. In response, Sawgrass argues that Maxwell did not allege any issues of material fact that would necessitate a formal hearing.

15. Section 7 of the NGA provides for a hearing when an applicant seeks a certificate of public convenience and necessity but does not require that all such hearings be formal trial-type hearings.<sup>15</sup> An evidentiary trial-type hearing is necessary only where material issues of fact are in dispute and cannot be resolved on the basis of the written record.<sup>16</sup> Maxwell provides no evidence to support its request for a formal hearing. To the extent Maxwell relies on its protest as evidence of facts in dispute, we find, as discussed below, that the written record provides a sufficient basis upon which to resolve the factual issues Maxwell raised in its protest. Therefore, we find no need for an evidentiary trial-type hearing.

## IV. Discussion

16. Since the proposed facilities will be used to provide natural gas services in interstate commerce subject to the jurisdiction of the Commission, the construction and

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<sup>12</sup> None of the Leachmans filed a motion to intervene in this proceeding.

<sup>13</sup> See 18 C.F.R. § 385.213(a)(2) (2011).

<sup>14</sup> See *id.* § 385.101(e).

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

<sup>16</sup> See *Louisiana Ass'n of Indep. Producers and Royalty Owners v. FERC*, 958 F.2d 1101, 1113-15 (D.C. Cir. 1992).

operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.<sup>17</sup>

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

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

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

19. As noted above, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Sawgrass's proposal satisfies the threshold requirement because, as a new entrant in the natural gas storage market, it does not have existing customers. Therefore,

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<sup>17</sup> 15 U.S.C. §§ 717(c) and 717(e) (2006).

<sup>18</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, further *clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

there will be no subsidization. Likewise, Sawgrass's proposed project will have no adverse impact on existing customers and services because Sawgrass has no current customers or services.

20. We are also satisfied that there will be no negative impacts on existing storage providers or their captive customers. The proposed project will be located in a competitive market and will enhance storage options available to pipelines and their customers, increasing competitive alternatives. Furthermore, no storage company or customer in Sawgrass's market area has protested its proposal. However, as stated previously, two groups of property owners filed protests to the application and we address their objections to the project below.

**1. Protests**

**a. Maxwell**

21. In Maxwell's protest and in subsequent scoping comments its attorney filed as part of the Commission's environmental review of the proposed project,<sup>19</sup> Maxwell contends that Sawgrass failed to demonstrate that it is fit to safely construct and operate the project or to respond to an emergency created by a project failure. Maxwell alleges that Sawgrass's owners set it up as a corporate "shell" with no assets to insulate its owners from liability in the event of a catastrophic occurrence. Maxwell argues that the Commission is required to deny the application under the National Environmental Policy Act (NEPA)<sup>20</sup> and other unidentified laws and regulations because, Maxwell maintains, granting Sawgrass's application would threaten the public safety.

22. In its answer to Maxwell's protest and in its response to Maxwell's scoping comments,<sup>21</sup> Sawgrass states that its project will be constructed and operated by its parent companies, Nicor and Samson. Sawgrass demonstrated that, through its parent companies, it has more than ample experience and resources to construct and operate the project safely. Nicor has operated underground storage facilities since 1958 and currently operates seven underground storage fields with 150 Bcf total capacity. Sawgrass asserts that Samson operates over 4,000 wells nationally, operates oil and gas production facilities in Louisiana, and has drilled over 1,450 wells in the last five years

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<sup>19</sup> Michael S. Coyle September 3, 2010 Comments in Docket No. PF10-20-000.

<sup>20</sup> 42 U.S.C. §§ 4321 and 4331-4335 (2006).

<sup>21</sup> Sawgrass September 21, 2010 Response to Issues Raised During Scoping at 2-3.

without loss of surface well control. Sawgrass states that Samson also operates over 2,000 miles of pipeline and 180,000 hp of compression.

23. Resource Report 11 of Sawgrass's application addresses the procedures and design features Sawgrass will implement to avoid undue hazards or effects associated with its project, and what measures, including equipment, training, and emergency notification procedures, it will implement to protect the public from any failure of the project due to accidents or natural catastrophes. Sawgrass states that it will operate and maintain the project in accordance with Department of Transportation safety requirements by personnel qualified to perform both emergency and routine maintenance. In addition to federal regulations, the Louisiana Department of Natural Resources' Office of Conservation and Office of Mineral Resources oversees Louisiana's oil and natural gas resources. Sawgrass will be required to comply with state standards and codes regulating the construction, operation, and safety of underground natural gas storage facilities, including title 43 of the Louisiana Administrative Code part XIX (LAC 43:XIX), Statewide Order 29-B and LAC 43:XVII, Statewide Order 29-M. Finally, Sawgrass states that it will maintain adequate levels of liability and other insurance to ensure protection in the unlikely event of an incident involving its facilities. We find that Sawgrass has adequately responded to Maxwell's concerns and therefore deny Maxwell's protest.

**b. Leachman**

24. Leachman objects to the project primarily because they do not feel they have been treated fairly or respectfully by the company during property negotiations. Although Leachman purportedly entered into an agreement for property rights with Samson Contour Energy, E&P, LLC (Sawgrass's predecessor-in-interest) over three years ago, Leachman states that they felt pressured to do so by the fact that, once authorized, the company would be able to use eminent domain. They feel strongly that private corporations should not be able to take land without justly compensating the landowner. In addition, they state that an addendum to their agreement with Sawgrass specified that the company would not construct "any compressors, pumping stations, or any other related facilities" on their property, but that it now appears Sawgrass is planning to locate a well pad with two I/W wells, an observation well, and associated access roads and power lines on the property owned by Leachman. Leachman believes such facilities would violate the terms of their existing agreement with the company.

25. In response, Sawgrass states that it has negotiated in good faith with all of the landowners, including Leachman, to obtain the necessary property rights for the project,

as evidenced by its acquisition of a majority of the property rights needed for the project (69 percent of the necessary pipeline right-of-way and 89 percent of the necessary subsurface rights for its proposed project).<sup>22</sup> Sawgrass maintains that Leachman voluntarily signed an agreement three years ago giving Sawgrass all of the property rights necessary to undertake the construction and operation activities Sawgrass proposes on Leachman's property. Sawgrass states that it will continue to work diligently to reach a mutually agreeable resolution of the issues raised by Leachman in its comments, but that if necessary, it will seek to proceed under the terms and conditions of the existing agreement. Finally, Sawgrass argues that this contract dispute should be heard in state court and not before the Commission.

26. The ability to exercise the right of eminent domain to obtain the property rights necessary to construct, operate, and maintain pipeline facilities is granted to all certificate holders by section 7(h) of the NGA.<sup>23</sup> If the Commission finds that a proposed project is required by the public convenience and necessity, it cannot withhold the right of eminent domain.

27. However, we note that the right only comes into play when a certificate holder cannot acquire the necessary property rights by contract, or is unable to agree with the property owner to the compensation to be paid for the necessary property rights. But should landowners be dissatisfied with the compensation offered by Sawgrass, by law they are afforded the opportunity to obtain a fair value by presenting their case before a court.<sup>24</sup> In such an event, the court will determine the issue of just compensation, using practices and procedures that conform as nearly as possible to the practice and procedure in similar actions in courts of the state where the property is situated. Similarly, the question of whether Sawgrass's proposal with respect to Leachman's land is a violation of the addendum to the agreement negotiated by the parties is a matter of contract law and not within the jurisdiction of the Commission.<sup>25</sup> Leachman may seek to enforce the rights they claim under the gas storage addendum in an appropriate court.

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<sup>22</sup> Sawgrass states in its January 6, 2012 data response that it has also acquired 83 percent of the storage rights within the 100 foot vertical buffer zones above and below the South Downsville storage reservoir through voluntary agreements.

<sup>23</sup> 15 U.S.C. 717f (h) (2006).

<sup>24</sup> See, e.g., *Transwestern Pipeline Co., LLC* 122 FERC ¶ 61,165, at P 40 (2008).

<sup>25</sup> See, e.g., *Chestnut Ridge*, 128 FERC ¶ 61,210, at P 26, (2009).

28. In reviewing an application, we take into account all aspects of a proposed project, balancing benefits against burdens. Here, for the reasons discussed below, we find that on balance the benefits that the new storage facility will provide outweigh the burdens it will impose.

## 2. Public Convenience and Necessity

29. As discussed above, the Sawgrass project can proceed without relying on subsidization from existing customers. It will have no adverse effects on any existing pipelines in the market and their captive customers. Further, we find Sawgrass has taken steps to minimize the adverse impacts to landowners and communities that might be affected by its project. Only 3.2 percent of the total property rights needed for the project are in dispute. If we accept Leachman's position that their existing agreement with Sawgrass does not give the company all the rights necessary to construct the facilities proposed for Leachman's property, the company has still obtained almost 90 percent of the subsurface rights, and 70 percent of the pipeline right-of-way needed for their project. On the other hand, although it has yet to enter into any precedent agreements for service on the proposed project, Sawgrass did receive expressions of interest in its services from over a dozen parties in response to its open season. Moreover, no one has alleged that there is not sufficient demand in the proposed market to be served to support the project. We find that the proposed project would provide flexible storage services to producers, pipelines, local distribution companies, marketers, and gas-fired generation customers transporting on interstate and intrastate pipeline systems, enabling them to better manage their gas supplies.

30. In view of the above, we conclude that Sawgrass's proposed project should provide substantial public benefits without significant adverse impacts.<sup>26</sup> Accordingly, we find, consistent with the criteria discussed in the Certificate Policy Statement, that the certificate authority requested is required by the public convenience and necessity, subject to the conditions discussed below.

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<sup>26</sup> In *Turtle Bayou Gas Storage Co.*, 135 FERC ¶ 61,233 (2011), the Commission denied Turtle Bayou's request to construct a natural gas storage facility because the applicant had not negotiated and secured any subsurface property rights and had not provided evidence of a specific need for the project. In contrast, Sawgrass has secured nearly ninety percent of the subsurface property rights and has shown need for the project through its open season and the resulting fourteen bids.

**B. Market-Based Rates**

31. Sawgrass requests that the Commission find that Sawgrass will not exercise market power with respect to the storage and hub services once the project facilities are completed and placed in service. Sawgrass further requests that the Commission grant its request to charge market-based rates for such services.

32. Sawgrass requests authority to charge market-based rates<sup>27</sup> for its proposed firm storage service under Rate Schedule FSS and interruptible storage service under Rate Schedule ISS. Sawgrass also proposes to offer enhanced and interruptible hub services, including parking services under Rate Schedules EPS and IPS, and loan services under Rate Schedules EILS and ILS.<sup>28</sup> Further, Sawgrass proposes to offer interruptible hourly balancing service under Rate Schedule IHBS and interruptible imbalance trading service under Rate Schedule IBTS.

33. Generally, the Commission evaluates requests to charge market-based rates for storage services under the analytical framework of its Alternative Rate Policy Statement. Under the Alternative Rate Policy Statement, the Commission's framework for evaluating requests for market-based rates has two principal purposes: (1) to determine whether the applicant can withhold or restrict services in a manner that would result in significant price increases over a significant period of time; and (2) to determine whether the applicant can discriminate unduly in price or terms and conditions of service.<sup>29</sup> To find that an applicant cannot withhold or restrict services, increase prices over an extended period, or discriminate unduly, the Commission must first find that there is a

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<sup>27</sup> Generally an applicant will include in its application an exhibit constituting its market power study in support of its request, as Sawgrass has done in the instant case. *See* Exhibit I of the Application. The market power study usually defines the relevant products and geographic markets; measures market shares and concentrations; and evaluates other factors such as replacement capacity, ease of entry, and non-storage alternatives.

<sup>28</sup> *See* Application at 25 and 26.

<sup>29</sup> *See Alternative to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines, (Alternative Rate Policy Statement)*, 74 FERC ¶ 61,076, at 61,231 (1996).

lack of market power<sup>30</sup> because customers have good alternatives<sup>31</sup> or that the applicant or the Commission can mitigate the market power with specific conditions.<sup>32</sup>

34. The Commission's analysis of whether an applicant has the ability to exercise market power consists of three major steps. First, the Commission reviews whether the applicant has specifically and fully defined the relevant markets<sup>33</sup> to determine which specific products or services are identified and the suppliers of those products and services that provide good alternatives to the applicant's ability to exercise market power.<sup>34</sup> Additionally, as part of the first step, the applicant must identify the relevant geographic market.<sup>35</sup> Second, the Commission measures an applicant's market share and market concentration.<sup>36</sup> Third, the Commission evaluates other relevant factors, such as ease of entering the market.

35. 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.<sup>37</sup> The Commission determined that for a non-storage product to be a good

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<sup>30</sup> The Commission defines "market power" as "the ability of a pipeline to profitably maintain prices above competitive levels for a significant period of time." *See id.* at 61,230 (citation omitted).

<sup>31</sup> A "good alternative" is "an alternative to the proposed project that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative' for an applicant's service." *Id.*

<sup>32</sup> *See Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220, at P 29, *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

<sup>33</sup> *See Alternative Rate Policy Statement*, 74 FERC at 61,231.

<sup>34</sup> Relevant product market consists of the applicant's service and other services that are good alternatives to the applicant's services. *See id.*

<sup>35</sup> *See id.* at 61,232-34.

<sup>36</sup> *See id.* at 61,234.

<sup>37</sup> *See Order No. 678, supra note 32*, at P 25.

alternative to storage, it must be available soon enough, have a price low enough, and have a quality high enough to permit customers to substitute the alternative for the applicant's service.<sup>38</sup>

36. As further discussed below, we find that Sawgrass's market power analysis demonstrates that its proposed storage facilities will be in a highly competitive production area where numerous storage and hub service alternatives exist for potential customers such that Sawgrass lacks market power.

### **1. Geographic Market**

37. Sawgrass identifies the relevant product market as firm and interruptible natural gas storage and hub services. Sawgrass defines the relevant geographic market as the production area including East Texas, Louisiana, Mississippi and Alabama known as the "Gulf Coast Production Area."<sup>39</sup> The geographic market has forty competing natural gas storage facilities not affiliated with the project. In developing its analysis, Sawgrass states that it included only those storage facilities that are available to the market and excluded non-storage alternatives such as local gas supply, LNG supply, and financial instruments promulgated in Order No. 678.<sup>40</sup>

### **2. Market Share, Market Concentration, and Other Factors**

38. The Commission examines concentration in the relevant markets using the Herfindahl-Hirschman Index (HHI). A low HHI (generally less than 1,800) indicates that sellers are less likely to be able to exert market power because customers have sufficiently diverse alternatives in the relevant market.<sup>41</sup> While a low HHI suggests a lack of market power, a high HHI (generally greater than 1,800) requires closer scrutiny in order to make a determination about a seller's ability to exert market power.<sup>42</sup>

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<sup>38</sup> See *id.* P 27.

<sup>39</sup> See Exhibit 4 to Exhibit I of the Application.

<sup>40</sup> See Order No. 678, *supra* note 32, at P 26.

<sup>41</sup> See *id.* P 55 (noting that the Commission is not changing the 1,800 HHI threshold level).

<sup>42</sup> Alternative Rate Policy Statement, 74 FERC at 61,235.

39. The forty competing gas storage facilities identified in Sawgrass's geographic market are currently operational and possess a total working gas capacity of 975.7 Bcf.<sup>43</sup> The Sawgrass Storage Project will add 30 Bcf of working gas, increasing the total working gas capacity to 1,005.7 Bcf in the geographic market.<sup>44</sup>

40. The market share for the Sawgrass Storage Project and affiliated facilities, including Golden Triangle Storage, Inc. (Golden Triangle) and Jefferson Island Storage & Hub, L.L.C. (Jefferson Island), would be 8.51 percent and an HHI of 729 for the total working gas capacity. In addition, the combined delivery capacity for the Sawgrass Storage Project and affiliated facilities is 1,620 MMcf/d and would have a market share of 4.74 percent and an HHI of 810.<sup>45</sup>

41. Sawgrass asserts that it will be unable to exert market power, contending that: (i) its analysis shows a small market share for total working gas capacity and maximum daily withdrawal, including the affiliated natural gas storage capacity; (ii) it is a new entrant in the relevant geographic market which is located within a large production area; and (iii) storage service alternatives, such as production, were not considered in its analysis.<sup>46</sup>

### 3. Hub Services

42. Sawgrass contends that the Commission has held that if an applicant can show that two or more types of services are substitutes for one another, then the applicant need not

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<sup>43</sup> See Exhibit I of the Application at 15-16. In its market power study, Sawgrass assumes the full certificated working gas capacity for Golden Triangle Storage, Inc., a 10-Bcf storage project not yet constructed in Beaumont County, Texas, and Jefferson Island Storage & Hub, L.L.C., a 7 Bcf interstate natural gas storage facility located in Erath, Louisiana that is currently in operation. Both Golden Triangle and Jefferson Island have proposed expansions of working gas capacity (16.6 Bcf and 16 Bcf), respectively). These storage companies became Sawgrass affiliates as a result of the merger-acquisition between Nicor, an owner of Sawgrass, and AGL Resources, an owner of Golden Triangle and Jefferson Island.

<sup>44</sup> See Exhibit No. 3B of Exhibit I of the Application.

<sup>45</sup> See Exhibit Nos. 3B and 5B of Exhibit I of the Application.

<sup>46</sup> See Exhibit I of the Application at 19-21.

provide separate market power and concentration analyses for each service.<sup>47</sup> As discussed above, Sawgrass proposes to offer hub services in the form of enhanced and interruptible parking, loan, imbalance trading, and imbalance management services. Sawgrass contends that its hub services are all variations of traditional firm and interruptible natural gas storage services, and thus they represent substitutes for firm and interruptible storage services. Sawgrass indicates that it is relying on the market share and market concentration analyses discussed above as demonstrating that it lacks market power for hub services generally. Sawgrass contends that its analysis is consistent with Commission policy in the granting of market-based rate authority for the proposed hub services.<sup>48</sup> We agree, and find that Sawgrass will not be able to exercise market power in connection with the provision of its hub services.

#### 4. Commission Determination

43. We find that Sawgrass's market power study demonstrates that its proposed storage facilities will be in a highly competitive production area where numerous storage and hub service alternatives exist for potential customers as shown by the relatively small market share and low HHI for working gas capacity and daily deliverability. We also recognize that the barriers to entry are low in the Gulf Coast Production Area, which limits the potential for natural gas companies operating in the area to exercise market power. The Gulf Coast Production Area is highly competitive and offers numerous storage service alternatives to shippers.<sup>49</sup> Further, we note Sawgrass's proposal for market-based rates is unopposed.

44. Based on all of the above, we find that Sawgrass will lack market power and approve Sawgrass's request to charge market-based rates for firm and interruptible storage and hub services.

45. Nevertheless, Sawgrass must notify the Commission if future circumstances significantly affect its present market power status. Thus, our approval of market-based rates for the indicated services is subject to re-examination in the event that: (a) Sawgrass adds storage capacity beyond the capacity authorized in this order; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to Sawgrass; or

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<sup>47</sup> See Exhibit I of the Application at 13, citing *Golden Triangle Storage, Inc.*, 121 FERC ¶ 61,313, at P 32 (2007).

<sup>48</sup> See Exhibit I of the Application at 13.

<sup>49</sup> See Exhibit I of the Application at 22.

(d) Sawgrass, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to Sawgrass. Since these circumstances could affect its market power status, Sawgrass 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 Sawgrass.<sup>50</sup> The Commission also reserves the right to require an updated market power analysis at any intervening time.<sup>51</sup>

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

46. In light of its request for authority to charge market-based rates and the fact that Sawgrass has no pre-existing facilities, Sawgrass requests that the Commission waive sections 157.6(b)(8) and 157.20(c)(3) of the Commission's regulations. These sections require the submission of information necessary for the Commission to make an up-front determination of the appropriate rate treatment for Sawgrass's Storage Project, and require the filing of updated cost data after new facilities are placed into service. Sawgrass also requests that the Commission waive the filing requirements of sections 157.14(a)(13), (14), (16), and (17), which require pipelines to submit Exhibit K (Cost of Facilities), Exhibit L (Financing), Exhibit N (Revenues, Expenses, and Income), and Exhibit O (Depreciation and Depletion) since Sawgrass is seeking authority to charge market-based rates and these exhibits are required for cost-based-rate authority.

47. For the same reasons, Sawgrass requests waiver of the accounting and annual reporting requirements set forth in sections 260.1, 260.2 and 260.300 (filing of annual reports in FERC Form Nos. 2 and 2-A) as well as Part 201 (adherence to Uniform System of Accounts) of the Commission's regulations. Similarly, Sawgrass requests waiver of the requirements pertaining to straight fixed-variable rate design set forth in sections

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<sup>50</sup> See, e.g., *Port Barre Investments, L.L.C.*, 116 FERC ¶ 61,052 (2006); *Copiah County Storage Co.*, 99 FERC ¶ 61,316 (2002).

<sup>51</sup> We note that in Order Nos. 678 and 678-A, the Commission chose not to impose a generic requirement on storage providers that are granted market-based rate authority on the basis of a market power analysis to file an updated market power analysis every five years, or at other periodic intervals. See Order No. 678, *supra* note 32, at P 6; Order No. 678-A, *supra* note 32, at PP 12-15 (affirming the Commission's decision). The Commission, however, has previously reserved the right to require an updated market power analysis. See, e.g., *Ryckman Creek Resources, LLC*, 136 FERC ¶ 61,061, at P 43 (2011); *Liberty Gas Storage, Inc.*, 113 FERC ¶ 61,247, at P 51; *Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141, at P 40 (2005).

284.7(d), (e), and 284.10 of the Commission's regulations, also as being inapplicable to market-based rates. Finally, Sawgrass requests waiver of the filing requirement contained in section 157.14(a)(10) to submit total gas supply data (Exhibit H) as being inapplicable to natural gas storage services.

48. The cost-related information required by the above-described regulations is not relevant in light of our approval of market-based rates for Sawgrass's storage and hub services. Thus, consistent with previous Commission orders,<sup>52</sup> we grant Sawgrass's request for waiver of the regulations requiring cost-based rate related information for these services with one exception. We grant the requested waiver of section 260.2 (Form No. 2-A) of the Commission's regulations except for information necessary for the Commission's assessment of annual charges. Sawgrass is required to file page 520 of Form No. 2A, reporting the gas volume information which is the basis for imposing an Annual Charge Adjustment (ACA) charge.<sup>53</sup> We require Sawgrass to maintain sufficient records consistent with the Uniform System of Accounts should the Commission require Sawgrass to produce these cost-based reports in the future. In addition, we grant a waiver of section 157.14(a)(10) requiring an applicant to submit total gas supply data since the filing requirement is inapplicable to natural gas storage services.

#### **D. Standards of Conduct**

49. The Commission's Standards of Conduct in Part 358 of our regulations ensure that transmission providers cannot extend their market power over transmission by giving marketing affiliates undue preferential treatment.<sup>54</sup> However, section 358.3(k)(3) provides that "[a] transmission provider does not include a natural gas storage provider

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<sup>52</sup> See, e.g., *Tricor Ten Section Hub, LLC*, 136 FERC ¶ 61,242, at P 40-41 (2011); *Black Bayou Storage, LLC*, 123 FERC ¶ 61,277, at P 35 (2008); *Port Barre*, 116 FERC ¶ 61,052, at P 33.

<sup>53</sup> See *Chestnut Ridge*, 128 FERC ¶ 61,210 at P 45; *Arlington Storage Co.*, 125 FERC ¶ 61,306, at P 71 (2008).

<sup>54</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

authorized to charge market-based rates.”<sup>55</sup> Since we are approving Sawgrass’s request to charge market-based rates for firm and interruptible storage and interruptible hub services, we find that, under current circumstances, Sawgrass is exempt from the Standards of Conduct.

### **E. Pro Forma Tariff**

50. Sawgrass proposes to offer firm and interruptible storage and hub services on an open-access basis, pursuant to Part 284 of the Commission’s regulations, under the terms and conditions set forth in the pro forma tariff attached as Exhibit P to the application. As a reminder, Sawgrass will need to comply with the Commission’s electronic filing requirements set forth in Order No. 714<sup>56</sup> and Part 154 of the Commission’s regulations.<sup>57</sup> Sawgrass is directed to file actual tariff records consistent with the directives in this order at least sixty days prior to the commencement of service. Certain proposed tariff provisions are discussed further below.

#### **1. NAESB Standards**

51. The Commission has adopted in its regulations various standards for conducting business practices and electronic communication with interstate pipelines as promulgated by the North American Energy Standards Board (NAESB) Wholesale Gas Quadrant (WGQ).<sup>58</sup> The standards are intended to govern nominations, allocations, balancing measurement, invoicing, capacity release, and mechanisms for electronic communication between pipelines and those with whom they do business. In its pro forma tariff records, Sawgrass proposes to comply with Version 1.9 of the NAESB WGQ Standards. The Commission accepts Sawgrass’s proposal but directs Sawgrass, at the time it files actual tariff records in this proceeding, to: (1) reflect the latest version of the NAESB Standards

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<sup>55</sup> See 18 C.F.R. § 358.3(k)(3) (2011).

<sup>56</sup> *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, (2008).

<sup>57</sup> 18 C.F.R. § 154.4 (2011).

<sup>58</sup> See *Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-U, FERC Stats. & Regs. ¶ 31,307, (2010).

adopted by the Commission; and (2) remove the incorporation by reference of NAESB WGQ Standards 1.3.2 and 5.3.2 which are required to be stated in its tariff.<sup>59</sup>

## 2. System Map

52. Sawgrass's tariff does not include a system map as required by 18 C.F.R. § 154.106.<sup>60</sup> We direct Sawgrass, at the time it files actual tariff records, to include a map that complies with Commission regulations.

## 3. Penalty Revenue Crediting

53. In Order No. 637 the Commission found that penalties are not required, but to the extent that a pipeline assesses penalties, they must be limited to only those transportation situations that are necessary and appropriate to protect against system reliability problems.<sup>61</sup> Further section 284.12(b)(2)(v) of the Commission's regulations state that "[p]ipelines may not retain net penalty revenues, but must credit them to shippers in a manner to be prescribed in the pipeline's tariff."<sup>62</sup> Sawgrass's tariff does not contain a methodology for disposition of penalty revenue.<sup>63</sup> For this reason, Sawgrass is directed, at the time it files actual tariff records, to develop and specify in its tariff a penalty revenue crediting mechanism.

## 4. Interruptible Imbalance Trading Service

54. The netting and trading of imbalance is a requirement as part of providing open access transportation service under Part 284 of the Commission's regulations.<sup>64</sup> Imbalance trading regulations are necessary to reduce the business and financial risks of

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<sup>59</sup> See Order No. 587-U, FERC Stats. & Regs. ¶ 31,307, at P 39 (2010).

<sup>60</sup> See 18 C.F.R. § 154.106 (2011).

<sup>61</sup> See *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,314 (2000).

<sup>62</sup> See 18 C.F.R. § 284.12(b)(2)(v) (2011).

<sup>63</sup> See Exhibit P of the Application, *Pro Forma* Sheet No. 118.

<sup>64</sup> See 18 C.F.R. § 284.12 (2011).

imbalances and the associated penalties.<sup>65</sup> The NAESB WGQ business practice standards, as incorporated into the Commission's regulations, require among other things, that pipelines: (1) define the largest possible areas on their systems in which imbalances have similar operational effect; (2) explain why imbalances crossing those lines are not sufficiently similar in operational effect; (3) notify shippers of their imbalances and post imbalances automatically without charging a fee; and (4) process, without charging a separate fee, imbalance trades submitted by shippers or third parties acting to facilitate imbalance trading.<sup>66</sup>

55. Sawgrass proposes to offer its shippers the ability to trade imbalance quantities at mutually agreed upon receipt and delivery points. To facilitate this service, Sawgrass proposes to assess an imbalance trading charge for each Dth scheduled and confirmed with Sawgrass as an imbalance trade, including imbalance quantities traded between customers.<sup>67</sup> The Commission has encouraged the use of third party providers offering imbalance management services.<sup>68</sup> Pursuant to the Commission's regulations incorporating the NAESB WGQ Standards, Sawgrass, however, may not charge its shippers to process or facilitate imbalance trades resulting from imbalances occurring on its system or under its proposed rate schedules. For this reason, Sawgrass is directed, at the time it files actual tariff records, to revise Rate Schedule IBTS to exclude the assessment of imbalance trading charges for shippers trading imbalances occurring on the Sawgrass system.

## 5. Open Season

56. General Terms and Conditions (GT&C) section 2.1(a) of Sawgrass's *pro forma* tariff appears to provide Sawgrass the option to sell capacity created as a result of an expansion either through an open season or on a first-come, first-served basis.<sup>69</sup> The

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<sup>65</sup> See *Standards for Business Practices for Interstate Natural Gas Pipelines*, Order No. 587-G, FERC Stats. & Regs. ¶ 31,062, at 30,644 (1998).

<sup>66</sup> See *id.* at 30,678-79.

<sup>67</sup> See Exhibit P of the Application, *Pro Forma* Sheet No. 60.

<sup>68</sup> See, e.g., *Cadeville Gas Storage LLC*, 132 FERC ¶ 61,115 (2010); *Perryville Gas Storage LLC*, 130 FERC ¶ 61,065 (2010); *Freebird Gas Storage, LLC*, 124 FERC ¶ 61,313 (2008).

<sup>69</sup> See Exhibit P of the Application, *Pro Forma* Sheet No. 109.

Commission, however, has clarified that it will apply its open season policies (which generally require that an open season be conducted prior to the filing of an application) to all new construction projects, including storage projects with market-based rates, to ensure non-discriminatory access and the proper sizing of new facilities.<sup>70</sup> Therefore, we direct Sawgrass, at the time it files actual tariff records, to remove from its tariff the discretionary language to hold an open season and comply with all Commission policies and regulations.

## 6. Requested Waiver of Tariff Requirements

### a. Segmentation

57. Section 284.7(d) of the Commission's regulations provides that, to the extent it is operationally feasible, an interstate pipeline must permit a shipper to make use of the firm capacity for which the shipper has contracted by segmenting that capacity into separate parts for the shipper's own use or for the purpose of releasing that capacity to replacement shippers.<sup>71</sup> Sawgrass requests waiver of the segmentation requirements in section 284.7(d), contending that segmentation is not feasible because its system will consist of a stand-alone storage facility with no separate transportation services.

58. The Commission has found in several proceedings that the requirements of section 284.7(d) do not apply to pipelines engaged solely in natural gas storage and not providing stand-alone transportation services.<sup>72</sup> Since Sawgrass is such a storage provider, the requirements of section 284.7(d) do not apply to it. Other tariff provisions related to segmentation, such as the allocation of primary point rights in segmented releases and within-the-path scheduling, also do not apply to Sawgrass.

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<sup>70</sup> See *Pine Prairie Energy Center, LLC*, 135 FERC ¶ 61,168, at P 36, *order on reh'g*, 137 FERC ¶ 61,060, at P 19 (2011) (stating that the Commission will apply its "open season policies to all new construction projects, including market-based rate storage projects, that create capacity").

<sup>71</sup> See 18 C.F.R. § 284.7(d) (2011).

<sup>72</sup> See, e.g., *Tricor*, 136 FERC ¶ 61,242, at P 44-45; *Port Barre*, 116 FERC ¶ 61,052, at P 37; *Clear Creek Gas Storage Co.*, 96 FERC ¶ 61,071, at 61,318 (2001).

b. **Acquisition of Off-System Capacity and Waiver of “Shipper Must Have Title” Policy**

59. Sawgrass requests a generic waiver of the “shipper must hold title” policy for any off-system capacity it may acquire in the future to enable it to use that capacity to transport natural gas owned by other parties in connection with its storage or hub services. GT&C section 26 of Sawgrass’s *pro forma* tariff<sup>73</sup> states that Sawgrass will only provide transportation and storage services for others using such capacity pursuant to its open access tariff.

60. Sawgrass’s off-system capacity statement implements the Commission’s policy with respect to pipelines’ acquisition of off-system capacity. In *Texas Eastern Transmission Corp. (TETCO)*,<sup>74</sup> the Commission found that pipelines no longer need to obtain prior approval to acquire capacity on another pipeline, provided the acquiring pipeline has filed tariff language specifying that it will only transport for others on off-system capacity pursuant to its existing tariff provisions and rates.<sup>75</sup> The proposed tariff language is consistent with the requirements set forth in *TETCO*. Therefore, we accept the proposed language and grant waiver of the “shipper must have title” policy, with the following clarification.

61. Because Sawgrass has proposed only to offer firm and interruptible storage and interruptible hub services, and does not propose to offer any other transportation services, Sawgrass may only use capacity obtained on other pipelines in order to render the services set forth in its tariff. That is, Sawgrass may not use capacity on other pipelines to transport gas which will not physically or contractually enter its storage facility unless and until it has received Commission authorization to provide such transportation services. Further, Sawgrass is authorized to use the *TETCO* waiver to provide storage service only in the geographic area covered by its market power study.

62. To ensure that Sawgrass uses acquired off-system capacity in a manner consistent with its market-based rate authority and tariff provisions, and to satisfy our responsibility to monitor and prevent the exercise of market power, Sawgrass is directed to make, once

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<sup>73</sup> See Exhibit P of the Application, *Pro Forma* Sheet No. 184.

<sup>74</sup> *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273 (2000), *reh’g denied*, 94 FERC ¶ 61,139 (2001).

<sup>75</sup> See *Texas Eastern*, 93 FERC at 61,885-86.

it becomes operational, an annual informational filing on its provisions of service using off-system capacity, as detailed below.

63. Within thirty days after its first full year of operation, and every year thereafter, Sawgrass 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 Sawgrass;
- c. 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. description of how the capacity is associated with specific transactions involving customers of Sawgrass; and
- f. identification of total volumes, by Sawgrass's rate schedule and customer, that Sawgrass has nominated on each off-system provider during the reporting period.

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

64. Sawgrass applied for a blanket construction certificate under Part 157, Subpart F of the Commission's regulations for authority. A Subpart F blanket certificate gives a natural gas company section 7 authority to automatically, or after prior notice, perform certain routine activities related to the construction, acquisition, abandonment, and replacement and operation of pipeline facilities. Because Sawgrass will become a natural gas company upon its acceptance of an NGA section 7 certificate to construct and operate the proposed facilities, we issue the requested Part 157, Subpart F blanket construction certificate.

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

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

**V. Engineering Analysis**

66. Commission staff completed an engineering analysis of Sawgrass's proposal to develop a 44.5 Bcf storage reservoir in the depleted South Downsville Field. Data submitted by Sawgrass supports the proposed parameters and thus we conclude that Sawgrass would be capable of providing the proposed storage service. Additionally, staff

analyzed Sawgrass's request to establish a buffer zone 100 feet above and below the storage reservoir. Staff agrees that the 100-foot buffer zone above the field is warranted to protect the storage reservoir from any future well completion activities that could potentially compromise the integrity of the storage field. Moreover, while no drilling activity has occurred within 100 feet below the Vaughn Sandstone Formation within the footprint of the storage field, shale formations that lie below the Vaughn Sandstone Formation may at some future time be the target of third-party producers. Therefore, staff supports the certification of a 100-foot buffer beneath the storage field.

67. CenterPoint Energy-Mississippi River Transmission (CenterPoint) owns the Commission-certificated East Unionville Field, which is adjacent to Sawgrass's proposed storage project. Although there is no clear evidence that the two storage fields could be communication with each other, to limit the potential of gas migration between the two fields, the parties have agreed to share observation well data taken from wells in and near the buffer zone area between the two fields to monitor the potential effects of the operation of the adjacent fields on one another.

68. We, however, conclude that additional measures should be taken in the event that any storage gas migrates, from either party, between Sawgrass's proposed facility and CenterPoint's adjacent East Unionville Field. Should evidence of the presence of storage gas in the buffer zone between their adjacent boundaries be confirmed by either company, Sawgrass shall file a report with the Commission providing, at a minimum: (1) data indicating the presence of storage gas; (2) data indicating gas loss from either field; (3) ownership of the gas (from a comparative geochemical analysis); (4) the gas migration mechanism; and (5) a detailed plan to prevent future migration and/or recover lost storage gas. The report shall be filed no later than six months after data first indicates that storage gas has migrated from either field.

## **VI. Environmental Analysis**

69. The Commission's staff began its environmental review of the Sawgrass Storage Project following approval for Sawgrass to use the pre-filing process on June 15, 2010 in Docket No. PF10-20-000. As part of the pre-filing review, staff issued a Notice of Intent to Prepare an Environmental Assessment for the Planned Sawgrass Storage Project and Request for Comments on Environmental Issues (NOI) on August 6, 2010. On May 6, 2011, the Commission issued a supplemental NOI identifying revisions to the project that eliminated certain pipeline facilities from the original project design. Both NOIs were 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 affected property owners.

70. We received comments in response to the NOI from the U.S. Fish and Wildlife Service (FWS), U.S. Department of Agriculture's Natural Resources Conservation Service (Department of Agriculture), Louisiana Department of Wildlife and Fisheries

(Louisiana DWF), CenterPoint, and several affected landowners.<sup>76</sup> The primary issues raised by agencies concerned the project's impacts on migratory birds, red-cockaded woodpeckers, and wetlands. CenterPoint described hazards to its facility. The landowners in the project area stated concerns regarding: safety of storage facilities and demonstration that Sawgrass has the personnel, assets, equipment and experience to operate the gas storage facility (Maxwell); land ownership (Anderson); property specific impacts (Washburne); noise (Hinton); moving the well locations and concerns with compressor station (Phelps); and lease agreements and easement negotiations (Leachman).

71. To satisfy the requirements of the NEPA, staff prepared an environmental assessment (EA) for Sawgrass's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. All substantive comments received in response to the NOI were addressed in the EA.

72. Specifically, in response to the FWS's scoping comments related to potential impacts on migratory birds, the EA described how construction of the project could affect bird habitat and how the project design for construction and operation will substantially reduce these effects. The EA concluded that project-related impacts on migratory birds would be less than significant.<sup>77</sup>

73. The FWS commented that the red-cockaded woodpecker could occur in the project area. Field surveys, however, revealed that no suitable nesting or foraging habitat is present. Therefore, the EA determined that the project would have no effect on the red-cockaded woodpecker.<sup>78</sup>

74. Both the FWS and Louisiana DWF commented that Sawgrass should limit the construction right-of-way width to 75 feet through wetlands and minimize the amount of wetland disturbance. As stated in the EA, Sawgrass agreed to reduce the right-of-way width to 75 feet, to minimize wetland impacts by implementing its Wetland and

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<sup>76</sup> The National Oceanic and Atmospheric Administration's National Marine Fisheries Service and the National Park Service responded to the NOI stating that they had no comments on the proposed action.

<sup>77</sup> See EA section B.3.3.

<sup>78</sup> See EA section B.3.4.

Waterbody Construction and Mitigation Procedures,<sup>79</sup> to eliminate impact on about 1,000 feet of a cypress wetland complex by using the horizontal directional drill (HDD) method, and to purchase compensatory wetland mitigation credits from an U.S. Army Corps of Engineers approved wetland mitigation bank.<sup>80</sup>

75. The Louisiana DWF commented that Sawgrass must obtain authorization from the Louisiana DWF's Scenic Rivers Program prior to initiating any activities within or adjacent to Bayou D'Arbonne, a Louisiana designated Natural and Scenic River. The EA described Sawgrass's commitment to install its pipeline using HDD under Bayou D'Arbonne to eliminate impacts on the bed or banks of this waterbody.<sup>81</sup> The EA also discussed permitting and stated that Sawgrass would obtain all necessary permits prior to construction of the project.

76. As discussed above, CenterPoint's scoping comments expressed concern about the integrity of its storage field given its location adjacent to Sawgrass's proposed storage field. Sawgrass and CenterPoint subsequently agreed to measures which were incorporated into Sawgrass's application which resolved CenterPoint's concerns.<sup>82</sup> However, as discussed in the engineering section to this order, the Commission is placing additional requirements on Sawgrass with respect to this issue.

77. Maxwell provided scoping comments requesting that Sawgrass demonstrate that it has the personnel, assets, equipment, and experience to operate the gas storage facility. Maxwell's protest, discussed above, includes essentially the same concerns. The EA discussed reliability and safety of the project and described how Sawgrass would

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<sup>79</sup> Some examples of wetland minimization methods from Sawgrass's Wetland and Waterbody Construction and Mitigation Procedures include minimizing the time of wetland disturbance, segregating topsoil over the ditch-line in unsaturated wetlands, limiting the clearing of vegetation, stabilizing the wetland to avoid rutting, and not conducting vegetation maintenance across the entire width of the right-of-way. Additionally, Sawgrass must monitor and record the success of wetland revegetation annually for the first 3 years or until wetland revegetation is successful. If revegetation is not successful within the first 3 years, Sawgrass must develop and implement a remedial revegetation plan in consultation with a professional wetland ecologist.

<sup>80</sup> See EA section B.2.3.

<sup>81</sup> See EA section A.6.2.2 and B.2.2.

<sup>82</sup> See EA section B.1.1.

construct its project in accordance with U.S. Department of Transportation safety regulations and by personnel qualified to perform both emergency and routine maintenance. As stated above, we find that Sawgrass has demonstrated that it has the ability to operate the proposed storage facility in a safe manner and will be adequately insured in the event of an incident.

78. In scoping comments, Gwen Anderson and Frances Washburne objected to granting a private company eminent domain. Sawgrass has stated that it would continue to make a good faith effort to negotiate with landowners to obtain the necessary property rights. In the event negotiations are unfruitful, section 7(h) of the NGA grants the certificate holder the opportunity to exercise the right of eminent domain in either federal district court or state court.<sup>83</sup> As explained in the EA, the court would determine the amount that the certificate holder must pay the property owner for the right-of-way and any damages incurred during construction.<sup>84</sup> Property owners may seek redress in court.

79. Frances Washburne also provided general comments on the project's adverse impacts on visual resources, fish and wildlife, pollution of water and soils, the local timber industry, and recreation use. As discussed elsewhere in this order, the EA concluded that the project would not significantly impact these resources.<sup>85</sup> Regarding visual resources, the EA concluded that the project's visual impact would be minimal and temporary, and permanent project structures would be screened by vegetation.<sup>86</sup> Fish and wildlife would only experience a minimal impact and largely on a temporary basis.<sup>87</sup> In addition, Sawgrass proposes to use a HDD to cross Lick Creek and Bayou D'Arbonne, which would avoid or minimize the impact on the biota within these waterbodies. To minimize surface water contamination, Sawgrass will implement its Spill Prevention, Containment, and Countermeasure Plan, which includes measures for handling hazardous materials and procedures for handling a spill. The project's effect on the timber industry would be mitigated through negotiated compensation by Sawgrass.<sup>88</sup> Lastly, there are no

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<sup>83</sup> 15 U.S.C. § 717f(h) (2006).

<sup>84</sup> See EA section B.4.6

<sup>85</sup> See EA section B.

<sup>86</sup> See EA section B.4.5.

<sup>87</sup> See EA sections B.3.0-3.4; see P 73 of this order for discussion about the red-cockaded woodpecker.

<sup>88</sup> See EA section B.4.0.

known available recreational opportunities in the project area other than kayaking and fishing at Bayou D'Arbonne but the impact would be minimal because Sawgrass proposes to use HDD to cross the bayou.<sup>89</sup>

80. Mr. Hinton's scoping comments included concerns about the noise on his property that would be caused by the neighboring compressor station, located approximately 1,800 feet from his property. As stated in section B.6.2 of the EA, noise levels attributable to the compressor station at the nearest noise sensitive area (NSA), which is located on Mr. Hinton's property, is anticipated to be at an acceptable level and below the Commission's threshold of a day-night sound level of 55 decibels on the A-weighted scale (dBA). Further, environmental condition 15, which requires a subsequent noise survey based on final installation and full operation, will ensure that the noise generated by the compressor station will not exceed a day-night sound level of 55 dBA at the nearest NSA.

81. Mollie Phelps objected to the location of a gas well and associated traffic adjacent to her property. Sawgrass modified the location of the well, and Ms. Phelps subsequently stated that she has no objections to the new location.

82. The EA was issued for a 30-day comment period and placed into the public record on November 23, 2011. The Commission received comments on the EA from the Louisiana DWF and the FWS. The Louisiana DWF stated that based on the EA, they had no further concerns at this time. Neither Maxwell or Leachman filed comments on the EA.

83. The FWS states that the EA adequately addressed endangered species and wetlands impacts. The FWS, however, suggests that the applicant monitor and record the success of forested wetlands for the first ten years to ensure Chinese tallow trees (an invasive species) do not revegetate the project area. If Chinese tallow trees become established, then the FWS states that further remediation or compensatory mitigation would be needed.

84. The EA evaluated Sawgrass's proposed measures designed to help prevent Chinese tallow trees from becoming established in the project area.<sup>90</sup> Specifically, Sawgrass has committed to: (i) installing erosion control devices across the construction rights-of-way at the base of slopes leading into wetlands to minimize spoil and seed

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<sup>89</sup> See EA sections B.2.2, B.3.2, and B.4.2.

<sup>90</sup> See EA section B.3.1.

migration; (ii) expediting construction in and around wetlands and limit equipment and construction activities within wetlands to reduce the amount and duration of disturbances; (iii) encouraging wetland revegetation by stripping topsoil over the trench to preserve the native seed bank; and (iv) monitoring the rights-of-way for the first three years following restoration, allowing early detection of the establishment of nuisance species, with an emphasis on the spread of exotic species where significant populations did not exist prior to construction; and mitigating where exotic or invasive species are greater than adjacent, undisturbed areas. The EA concluded that these measures would minimize the likelihood of the establishment of Chinese tallow trees to the extent practicable. We agree and are not requiring extended monitoring in forested wetlands affected by the project.

85. Additionally, the FWS stated that the Commission should defer issuing a notice to proceed with construction until the FWS and Sawgrass can reach an agreement on the amount of compensatory mitigation needed to offset unavoidable impacts on upland migratory bird nesting habitat. We believe Sawgrass's commitments to minimizing impacts on migratory birds described in the EA are sufficient, which include conducting all clearing activities outside of the bird nesting season, siting 48 percent of the pipeline route along existing utility easements, and limiting vegetation maintenance.<sup>91</sup> We believe the FWS's concerns do not warrant a delay in issuance of a certificate. While Sawgrass has voluntarily agreed to offset losses of upland forested habitat through monetary compensation, the determination of the level of this compensation is properly made between the FWS and Sawgrass. Nothing in this order prevents the FWS from seeking compensation under its permitting or oversight authority regarding migratory bird habitat.

86. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Sawgrass's application and supplements, and in compliance with the environmental conditions in Appendix B to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

87. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or

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<sup>91</sup> See EA section B.3.3.

local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>92</sup>

## **VII. Conclusion**

88. For the reasons discussed above, we find that the project is required by the public convenience and necessity and that a certificate authorizing the construction and operation of the facilities described in this order and in the application should be issued, subject to the conditions discussed herein.

89. At a hearing held on March 15, 2012, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Sawgrass under section 7(c) of the NGA, authorizing the construction and operation of the proposed storage facilities, as described more fully in this order and in the application.

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

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

(D) The certificate authority issued in Ordering Paragraph (A) is conditioned upon Sawgrass's compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions in Parts 154, 157, and 284, and the applicable requirements of section 157.20 of the regulations.

(E) Sawgrass must comply with the engineering conditions set forth in Appendix A to this order.

(F) Sawgrass must comply with the environmental conditions set forth in Appendix B to this order.

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<sup>92</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System*, 59 FERC ¶ 61,094 (1992) and 52 FERC ¶ 61,091 (1990).

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

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

(I) Sawgrass shall notify the Commission within ten days of acquiring knowledge of: (a) Sawgrass adding storage capacity beyond the capacity authorized in this order; (b) an affiliate's increasing storage capacity; (c) an affiliate's linking storage facilities to Sawgrass; or (d) Sawgrass or an affiliate's acquisition of an interest in, or being acquired by, an interstate pipeline connected to Sawgrass. The notification shall include a detailed description of the new facilities and their relationship to Sawgrass. The Commission also reserves the right to require an updated market power analysis at any intervening time.

(J) Sawgrass must submit revised tariff records referencing the latest NAESB Standards adopted by the Commission as discussed in the body of this order, at the time it files actual tariff records in this proceeding.

(K) Sawgrass must include a map as required by 18 C.F.R. § 154.106 at the time it files actual tariff records in this proceeding.

(L) 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.

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

(N) Sawgrass must submit revised tariff records developing a penalty revenue crediting mechanism at the time it files actual tariff records.

(O) Sawgrass must submit revised tariff records modifying Rate Schedule IBTS to exclude the assessment of imbalance trading charges for shippers trading imbalances occurring on the Sawgrass system at the time it files actual tariff records.

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

(Q) Sawgrass must submit actual tariff records that comply with the requirements contained in the body of this order no less than sixty days prior to the date the facilities are placed in service.

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

(S) The protests to Sawgrass's proposal and Maxwell's request for a formal hearing under Subpart E of the Commission's Rules of Practice and Procedure are denied.

(T) Sawgrass's Answers to the protests by Leachman and Maxwell are granted.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**APPENDIX A****Engineering Conditions for the Sawgrass Storage Project**

- (A) The maximum inventory of natural gas stored in the Sawgrass Storage Project shall not exceed the certificated levels of 44.5 Bcf, with 30 Bcf of working gas capacity and 14.5 Bcf of cushion gas capacity (9 Bcf of injected cushion gas and 5.5 Bcf of non-recoverable native gas) at 14.73 psia and 60 degrees Fahrenheit, and the maximum bottom hole storage pressure shall not exceed 3,400 psia, without prior authorization by the Commission.
- (B) Sawgrass shall operate the project in such a manner as to prevent/minimize gas loss or migration.
- (C) Sawgrass shall conduct an annual inventory verification study on storage field, and file the results with the Commission.
- (D) Sawgrass, in coordination with CenterPoint, shall monitor for the presence of storage gas in either buffer zone between the adjacent boundaries of their storage fields. Should evidence of the presence of storage gas in either buffer zone between their adjacent boundaries be confirmed by either company, Sawgrass, no later than six months after acquiring such evidence, shall file a report with the Commission providing, at a minimum:
  - (1) data indicating the presence of storage gas;
  - (2) data indicating gas loss from either field;
  - (3) ownership of the gas (from a comparative geochemical analysis);
  - (4) the gas migration mechanism; and
  - (5) a detailed plan to prevent future migration and recover lost storage gas.
- (E) Sawgrass shall submit semiannual reports (to coincide with the termination of the injection and withdrawal cycles) containing the following information with volumes stated at 14.73 psia and 60 degrees Fahrenheit and pressures stated in psia:
  - (1) The daily volumes of natural gas injected into and withdrawn from the storage reservoir;
  - (2) The monthly volumes of water produced from the storage reservoir;
  - (3) The volume of natural gas in the reservoir at the end of the reporting period;

- (4) The maximum daily injection and withdrawal rates experienced during the reporting period;
  - (5) Average working pressure on such maximum days taken at a central measuring point where the total volume injected or withdrawn is measured;
  - (6) Results of any tracer program by which leakage of injected gas may be determined; if leakage of gas exists, the report should show the estimated total volume of gas leakage, the volume of recycled gas, and the estimated remaining inventory of gas in the reservoir at the end of the reporting period;
  - (7) Any surveys of pressures in gas wells, and the results of back-pressure tests conducted during the reporting period;
  - (8) The latest revised structural and isopach maps showing the bottomhole locations of the wells and the location of the gas-water contact; these maps need not be filed if there is no material change from the maps previously filed;
  - (9) For the reporting period, a summary of wells drilled, worked over, or recompleted with subsea depth of formation and casing settings, and copies of any new core analyses, back-pressure tests, or well log analyses;
  - (10) Discussion of current operating problems and conclusions; and
  - (11) Such other data or reports which may aid the Commission in the evaluation of the project.
- (F) Reports shall continue to be filed semiannually until the storage inventory volume and pressure have reached or closely approximate the maximum permitted in the Commission's order certifying the project. Thereafter, the reports shall be filed on a semiannual basis for a period of one year.

## APPENDIX B

### Environmental Conditions for the Sawgrass Project

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

1. Sawgrass Storage LLC (Sawgrass) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the environmental assessment (EA), unless modified by the order. Sawgrass must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of the order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Sawgrass shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Sawgrass shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the order. All requests for modifications of

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

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

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

This requirement does not apply to extra workspace allowed by Sawgrass's *Upland Erosion Control, Revegetation, and Maintenance Plan* and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within sixty days of the acceptance of the Certificate and before construction begins**, Sawgrass shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Sawgrass must file revisions to the plan as schedules change. The plan shall identify:

- a. how Sawgrass will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the order;
  - b. how Sawgrass will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - e. the location and dates of the environmental compliance training and instructions Sawgrass will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
  - f. the company personnel (if known) and specific portion of Sawgrass's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Sawgrass will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the environmental compliance training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Sawgrass shall file updated status reports with the Secretary on a **biweekly** basis **until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Sawgrass's efforts to obtain the necessary federal authorizations;
  - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions

- imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
- d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;
  - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by Sawgrass from other federal, state, or local permitting agencies concerning instances of noncompliance, and Sawgrass's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Sawgrass shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
  9. Sawgrass must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
  10. **Within thirty days of placing the authorized facilities in service**, Sawgrass shall file an affirmative statement with the Secretary, certified by a senior company official:
    - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
    - b. identifying which of the Certificate conditions Sawgrass 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**, Sawgrass shall file with the Secretary its site-specific plan for avoiding impact on the active gas well near Mainline Milepost 2.2.
  12. Sawgrass **shall not begin construction** of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads until:
    - a. Sawgrass files with the Secretary:
      - (1) any remaining cultural resources survey report(s);

- (2) any site evaluation report(s) and avoidance/treatment plan(s), as required; and
  - (3) comments on the cultural resources reports and plans from the Louisiana State Historic Preservation Office.
- b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and,
  - c. the FERC staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies Sawgrass in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.

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

13. **Prior to construction**, Sawgrass shall file with the Secretary, for the review and written approval of the Director of OEP, a plan detailing the additional noise mitigation measures Sawgrass would implement (beyond its current mitigation) to ensure that noise levels attributable to the well drilling activities do not exceed a day-night sound level ( $L_{dn}$ ) of 55 decibels on the A-weighted scale (dBA) at the noise sensitive areas (NSA) near Observation Wells 1 and 3, and Re-Entry Well 1. Sawgrass’s plan shall also describe how it will ensure compliance with the noise-level restriction during the well drilling activities.
14. Sawgrass shall file a noise survey with the Secretary **no later than sixty days** after placing the compressor station in service. If the noise attributable to the operation of the equipment at the compressor station at full load exceeds an  $L_{dn}$  of 55 dBA at any nearby NSA, Sawgrass shall install additional noise controls to meet the level **within one year** of the in-service date. Sawgrass shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than sixty days** after it installs the additional noise controls.