

142 FERC ¶ 61,119
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Petal Gas Storage, L.L.C.
Hattiesburg Industrial Gas Sales, L.L.C.

Docket No. CP12-464-000

ORDER ISSUING CERTIFICATE, APPROVING SETTLEMENT SUBJECT TO
MODIFICATION, GRANTING MARKET-BASED RATE AUTHORITY, AND
GRANTING ABANDONMENT AUTHORITY

(Issued February 21, 2013)

1. On May 21, 2012, Petal Gas Storage, L.L.C. (Petal) and Hattiesburg Industrial Gas Sales, L.L.C. (Hattiesburg) (collectively, Applicants) filed a joint application under section 7 of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for a certificate of public convenience and necessity authorizing Petal to acquire through merger and operate the natural gas storage facilities and pipelines owned by Hattiesburg, for authorization to charge market-based rates for storage services provided on the integrated facilities, and for authorization to abandon Hattiesburg's certificate of limited jurisdiction issued under section 284.224 of the Commission's regulations.³ As discussed below, the Commission will grant the proposals of Petal and Hattiesburg, subject to conditions. In addition, the Commission approves the offer of settlement between Applicants and Consolidated Edison Company of New York, Inc. (ConEd) filed in this proceeding on November 8, 2012, as modified.

¹ 15 U.S.C. § 717f (2006).

² 18 C.F.R. Part 157 (2012).

³ 18 C.F.R. § 284.224 (2012).

I. Background and Proposals

A. Background

2. Petal is a natural gas company, as defined in the NGA,⁴ engaged in the business of storing and transporting natural gas in interstate commerce.⁵ Petal's storage facilities are located on the Petal Salt Dome in Forrest County, Mississippi. Petal is currently authorized to charge market-based rates for the storage services it provides.⁶ Additionally, Petal provides certain transportation service pursuant to cost-based rates established by the Commission.⁷ Hattiesburg⁸ is a Hinshaw pipeline⁹ that provides interstate natural gas transportation and storage services pursuant to a limited jurisdiction blanket certificate issued under section 284.224 of the Commission's regulations.¹⁰ Hattiesburg provides services at rates set by the Mississippi Public Service Commission (Mississippi PSC).¹¹

⁴ 15 U.S.C. § 717a(6) (2006).

⁵ Petal is a Delaware limited liability company operating under the legal name of Petal Gas Storage, L.L.C.

⁶ See *Petal Gas Storage, L.L.C.*, 132 FERC ¶ 61,168, *reh'g granted*, 133 FERC ¶ 61,148 (2010).

⁷ See *Petal Gas Storage, L.L.C.*, 135 FERC ¶ 61,152 (2011).

⁸ Hattiesburg is a Delaware limited liability company operating under the legal name of Hattiesburg Industrial Gas Sales, L.L.C.

⁹ A Hinshaw company is defined as a pipeline engaged in the transportation of natural gas which is not subject to the jurisdiction of the Commission under the NGA solely by reason of sec. 1(c) of the NGA. See 18 C.F.R. § 284.224(h)(1) (2012).

¹⁰ See *Hattiesburg Industrial Gas Sales, L.L.C.*, 134 FERC ¶ 61,236, at P 13 (2011).

¹¹ Hattiesburg's firm storage and interruptible transportation rates, which were accepted by the Commission in 1989, are on file with the Mississippi PSC (Docket Nos. U-5425, 90-UA-0302, and 91-UA-0361) and are contained in its current Statement of Operating Conditions (SOC). See *Endevco Industrial Gas Sales Co.*, 49 FERC ¶ 62,301 (1989).

3. Petal and Hattiesburg are subsidiaries of Crystal Holding, L.L.C. (Crystal Holding).¹² On December 1, 2011, Boardwalk HP Storage Company, LLC, a subsidiary of Boardwalk Pipeline Partners, LP (Boardwalk), acquired all of the stock in Crystal Holding.¹³ The storage facilities of both Petal and Hattiesburg are currently operated independently by Gulf South Pipeline Company, LP (Gulf South), an affiliate pipeline, pursuant to separate operating agreements.

4. The Hattiesburg natural gas storage facilities are located on the Petal Salt Dome near Petal in Forrest County, Mississippi. Hattiesburg's facilities consist of two active storage caverns (Hattiesburg Cavern Nos. 1 and 3-A) with a total storage capacity of 3.2 billion cubic feet (Bcf) and working gas capacity of 2.1 Bcf. Hattiesburg owns an inactive cavern (Hattiesburg Cavern No. 2), for which it declared on July 15, 2008, a *force majeure* event as a result of issues with the steel casing.¹⁴ Currently, the cavern contains no natural gas and is filled with brine.

5. In addition to the two active storage caverns, Hattiesburg owns three associated pipelines: its 5.3-mile, 20-inch diameter Eastern Line; its 21.2-mile, 20-inch diameter Western Line; and a 5.6-mile, 8-inch line that provides gas to the City of Hattiesburg, Mississippi. Hattiesburg also has one 9,240 horsepower (hp) compressor station and six pipeline interconnections in Mississippi with the following pipelines: (1) Transcontinental Gas Pipe Line Corporation, LLC (Transco) in Covington County; (2) Tennessee Gas Pipeline Company, L.L.C. (Tennessee) in Forrest County; (3) Gulf South in Forrest County; (4) Southcross Energy – Mississippi (Southcross), an intrastate pipeline in Covington County; and (5) two pipelines owned by Willmut Gas Company (Willmut), a local distribution company in Forrest County.¹⁵

¹² Crystal Holding is the owner of both Petal and First Reserve Gas, L.L.C., which through its subsidiary Hattiesburg owns the Hattiesburg Gas Storage Company and its facilities.

¹³ As discussed below in greater detail, in October 2011, Petal notified the Commission of the acquisition by Boardwalk and submitted an updated market power analysis demonstrating that Petal lacked market power in the relevant geographic and product markets.

¹⁴ Hattiesburg Cavern No. 2 is on “standby” status with the Oil and Gas Board of Mississippi (MSO&GB).

¹⁵ Hattiesburg has an operational interconnection with Petal. Hattiesburg also owns and operates an associated leaching plant, freshwater wells, and saltwater disposal wells.

6. Hattiesburg has firm service contracts with Brooklyn Union Gas Company, Connecticut Natural Gas Corporation, Consolidated Edison Company of New York, Inc. (ConEd), Southcross Energy GP LLC, Pivotal Utility Holdings, Inc., Keyspan Gas East Corporation, PSEG Energy Resources & Trade (PSEG) and Willmut for a total Maximum Daily Withdrawal Quantity (MDWQ) of 280,000 MMBtus, a total Maximum Daily Injection Quantity (MDIQ) of 143,000 MMBtus, and a total Maximum Storage Quantity (MSQ) of 2,800,000 MMBtus.

7. Petal's natural gas storage facilities are located adjacent to the Hattiesburg storage facilities on the Petal Salt Dome. Petal's authorized storage facilities consist of eight caverns (Cavern Nos. 1, 2, 3, 6, 7, 8, 10, and 12-A)¹⁶ having a total certificated capacity of 60.858 Bcf and a certificated working gas capacity of 36.059 Bcf; three compressor stations providing 50,400 hp of compression; and an integrated 5.6-mile, 20-inch diameter storage header. Applicants state that Petal has three interconnections on the header with Tennessee, Southeast Supply Header, LLC (SESH), and Gulf South. Additionally, Applicants state that Petal's storage customers have access to a 36-inch diameter natural gas transmission pipeline that extends from the storage header 64.2 miles to the north.¹⁷ Petal has three additional interconnections on the 36-inch transmission line, with Transco, Destin Pipeline Company, L.L.C. (Destin), and Southern Natural Gas Company (Southern). Applicants aver that Gulf South is currently constructing a new interconnect on its 42-inch diameter pipeline with Petal's 36-inch diameter transmission pipeline.¹⁸

¹⁶ Petal abandoned construction of Cavern No. 9 due to the cavern's communication with two inactive brine-filled caverns and the resulting inability to be converted to natural gas storage. *See Petal Gas Storage, L.L.C.*, 121 FERC ¶ 62,186 (2007). Applicants estimate that Cavern No. 12-A, authorized in *Petal Gas Storage, L.L.C.*, 132 FERC ¶ 61,168, *reh'g granted*, 133 FERC ¶ 61,148 (2010), with a working gas capacity of 5.0 Bcf, and an associated 16-inch pipeline will be placed in service in the second quarter of 2013. Petal has not begun construction of Cavern Nos. 1 and 2, authorized in *Petal Gas Storage, L.L.C.*, 124 FERC ¶ 61,066 (2008). Petal previously requested and was granted two extensions of time to construct and make available for service Cavern Nos. 1 and 2; the most recent order requires the caverns to be constructed and made available for service by July 18, 2013. *See* July 14, 2011 Letter Order issued in *Petal Gas Storage, L.L.C.* Docket No. CP08-66-000 (July 14, 2011) (delegated letter order).

¹⁷ Petal's Heidelberg Compressor Station provides 9,442 hp to the transmission line.

¹⁸ Applicants stated that, at the time the application was filed, both companies were in the process of constructing the facilities under their blanket construction

(continued...)

8. Petal currently provides natural gas storage service, with receipt and delivery points at interconnections with the interstate pipelines on its 5.6 mile, 20-inch header system at market-based rates, and transportation service on its separate 64.2-mile, 36-inch transmission line, at cost-based rates.¹⁹ Additionally, Petal provides firm and interruptible transportation service on its 64.2 mile, 36-inch transmission line at cost-based rates. Both the storage and transportation services are provided pursuant to Petal's open-access blanket certificate under Part 284 of the Commission's regulations.²⁰ Petal provides storage services under Rate Schedules FSS, FSS-1, and ISS in Petal's FERC NGA Gas Tariff; transportation services under Rate Schedules FTS and ITS; and park and loan-type services under Rate Schedules PKS and AVS.

B. Proposals

9. Applicants state that in order to better serve their customers and respond to market demands, they seek all certificate and abandonment authorizations necessary to merge the facilities and operations currently owned and operated individually by Petal and Hattiesburg into a single, jurisdictional interstate natural gas storage facility to be owned and operated by Petal.²¹ As combined, the authorized facilities would consist of ten natural gas storage caverns in Forrest County, Mississippi with approximately 64.058 Bcf total storage gas capacity and approximately 38.159 Bcf of working gas capacity; approximately 59,640 hp of compression; approximately 37.7 miles of storage headers

certificates and that the interconnection was expected to be complete by the end of May 2012.

¹⁹ See *Petal Gas Storage Co.*, 64 FERC ¶ 61,190 (1993); *Petal Gas Storage Co.*, 86 FERC ¶ 61,224 (1999); *Petal Gas Storage L.L.C.*, 90 FERC ¶ 61,243 (2000), modified by, 96 FERC ¶ 61,177 (2001); *Petal Gas Storage L.L.C.*, 92 FERC ¶ 61,220 (2000); *Petal Gas Storage L.L.C.*, 97 FERC ¶ 61,097 (2001), amended by, 100 FERC ¶ 61,100 (2002); *Petal Gas Storage L.L.C.*, 102 FERC ¶ 61,243 (2003); *Petal Gas Storage L.L.C.*, 110 FERC ¶ 61,260 (2005); *Petal Gas Storage L.L.C.*, 118 FERC ¶ 61,253, *reh'g granted in part and denied in part*, 120 FERC ¶ 61,226 (2007); *Petal Gas Storage L.L.C.*, 119 FERC ¶ 61,227 (2007); *Petal Gas Storage L.L.C.*, 121 FERC ¶ 62,186 (2007).

²⁰ See *Petal Gas Storage, L.L.C.*, 135 FERC ¶ 61,152 (2011).

²¹ The combined facilities would be operated on an integrated basis by Gulf South pursuant to a single operating agreement signed by Petal.

(including all three of Hattiesburg's associated pipelines) having nine pipeline interconnections; and 64.2 miles of transmission pipeline with 9,442 hp of compression and interconnecting with five interstate natural gas pipelines.²²

10. Applicants seek authorization for Petal to acquire Hattiesburg's storage and pipeline facilities by inter-corporate merger²³ and integrate all such facilities²⁴ into Petal's interstate system, and for Hattiesburg to abandon its certificate of limited jurisdiction issued under section 284.224 of the Commission's regulations.²⁵ Applicants state that, upon Commission authorization, Hattiesburg and its subsidiary, Hattiesburg Gas Storage Company, will be merged into First Reserve Gas, L.L.C. (First Reserve), and First Reserve will be merged into Petal.²⁶

11. Applicants state that Petal will negotiate replacement contracts with Hattiesburg's customers in order to provide continued service in a manner that preserves their existing economic components. Applicants state that the negotiations will bring the contracts in line with the existing *pro forma* service agreements found in Petal's tariff.²⁷ Applicants

²² The interconnecting pipelines, Destin, Gulf South, Southern, Transco and Tennessee, all offer access to a total of up to 1,200 MMcf/d of pipeline capacity, subject to availability.

²³ The inter-corporate merger would occur through a series of stock transactions.

²⁴ Including Hattiesburg's Cavern No. 2. However, while Petal is acquiring Hattiesburg Cavern No. 2, we are not issuing Petal a certificate to provide service from that facility. Petal will have to file with the Commission for authority if it desires to repurpose or return this cavern to natural gas storage service in the future.

²⁵ Applicants state that in a meeting with Mississippi PSC officials on March 12, 2012, the individuals present did not express any initial concerns with Applicants' proposal. Hattiesburg is in the process of filing with the Mississippi PSC an application for change in beneficial ownership.

²⁶ Once the mergers have been completed, Applicants will provide the Commission with copies of the merger documents, if requested.

²⁷ Applicants state that to the extent Petal is required in the future to make any filings reflecting negotiated rates or non-conforming terms in the Hattiesburg customer replacement contracts, it will do so in compliance with Commission policy. See 18 C.F.R. § 154.112(b) (2012) ("Contracts for service pursuant to part 284 . . . that deviate in any material aspect from the form of service agreement must be filed.").

assert that Petal will endeavor to keep Hattiesburg's existing customers whole to the extent possible, given its authority to negotiate and provide storage services at market-based rates. They further assert that the new contracts for Hattiesburg's existing customers will duplicate the current levels of firm storage service and access to receipt and delivery points. In addition, they state that existing customers of Hattiesburg will also have the ability to access the points on Petal's 36-inch diameter pipeline by contracting for transportation pursuant to Petal's tariff and at its currently-effective cost-based rates.²⁸

12. Applicants further request that Petal be authorized to continue to provide firm and interruptible storage services at market-based rates using the combined facilities. Applicants state that Petal's merger with Hattiesburg will have little effect on Petal's market power status and that it will continue to qualify for market-based rates under the Commission's standards. In addition, Applicants state that Petal's potential customers have many options for storage service including other storage service providers, from the capacity release market for storage in the Gulf Coast region, and from alternatives to storage such as LNG, seasonal and swing contracts, and pipeline park and loan services. Applicants also state that the ease of entry into the Gulf Coast area market serves to limit the ability to exercise market power in the region.

II. Notice and Interventions

13. Notice of the application was published in the *Federal Register* on June 8, 2012 (77 Fed. Reg. 34,031). Atlanta Gas Light Company, Cardinal Gas Storage Partners LLC, Chevron U.S.A., City of Vicksburg, Mobil Gas Service Corporation, PSEG, and Willmut filed timely unopposed motions to intervene. Timely unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations.²⁹

14. Southern Company Services, Inc. and National Grid Gas Delivery Companies filed late motions to intervene. We will grant these unopposed, untimely motions to intervene because they will not unduly delay, disrupt, or otherwise prejudice this proceeding or other parties.³⁰

²⁸ Petal's current Rate Schedule FTS Reservation Rate is \$2.0196 per dekatherm (Dth) with a Usage Rate of \$0.00 and an Overrun Transportation Rate of \$0.0664. The rate for interruptible service is \$0.0664 per Dth. Petal Gas Storage, L.L.C., FERC NGA Gas Tariff, Tariffs, [Section 4.5, Currently Effective Rates--FTS and ITS, 0.0.0.](#)

²⁹ 18 C.F.R. § 385.214(c) (2012).

³⁰ 18 C.F.R. § 385.214(d) (2012).

15. Additionally, BP America Production Company and BP Energy Company (collectively, BP) and ConEd filed timely motions to intervene and protests to the application. Applicants filed on July 9, 2012, a motion for leave to answer the protests. Although the Commission's Rules of Practice and Procedure³¹ do not permit answers to protests, the Commission finds good cause to waive its rules and admit Applicants' answer, because it clarifies the concerns raised by the protestors in their initial filings and provides information that has assisted in our decision making. Moreover, its admission will not cause undue delay or unfairly prejudice other parties.

16. In its protest, ConEd, an existing firm service customer of Hattiesburg, asserted that any replacement contract must comply with requirements contained in Hattiesburg's revised Statement of Operating Conditions (SOC), as approved in 2011 by the Commission.³² On November 8, 2012, Applicants and ConEd filed an offer of settlement to resolve the issues raised in ConEd's protest.

17. In its protest, BP, which is not an existing customer of Hattiesburg or Petal, protests Applicants' proposal to classify Hattiesburg's Eastern and Western Lines as storage facilities and requests clarification regarding future fuel charges. BP further requests that the Commission re-affirm Petal's obligation to report the occurrence of matters affecting Petal's market power and asserts that additional tariff protections are needed to ensure that the use of off-system capacity does not alter Petal's market power and to clarify secondary point rights.

18. We will address BP's protest and request for clarification and the settlement offer with ConEd below.

III. Discussion

19. Petal seeks to acquire the storage facilities of Hattiesburg for use in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission; therefore the proposal is subject to the requirements of subsections (c) and (e) of NGA section 7.³³ As discussed below, we grant the application for certificate authorization for Petal to acquire and consolidate into its existing interstate natural gas storage operations the non-jurisdictional storage facilities owned and operated by

³¹ 18 C.F.R. § 385.213(a)(2) (2012).

³² See *Hattiesburg Industrial Gas Sales, L.L.C.*, 134 FERC ¶ 61,236 (2011).

³³ 15 U.S.C. §§ 717f(c) and (e), respectively (2006).

Hattiesburg. Pursuant to section 385.602 of the Commission's regulations,³⁴ we also approve the settlement offer between Applicants and ConEd, subject to modification. In addition, we grant authorization for Petal to continue to charge market-based rates for storage services to be provided in interstate commerce, subject to the conditions discussed below.

20. Hattiesburg seeks to abandon its certificate of limited jurisdiction issued under section 284.224 of the Commission's regulations; therefore, its proposal is subject to the requirements of subsection (b) of NGA section 7.³⁵ As discussed below, we approve Hattiesburg's proposed abandonment of its certificate of limited jurisdiction, subject to conditions.

A. Certificate of Public Convenience and Necessity

21. The Certificate Policy Statement³⁶ provides guidance as to how the Commission will evaluate proposals for certificating new construction by establishing criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. While Applicants do not contemplate any construction of new facilities, the Commission has found it appropriate to apply its Certificate Policy Statement in cases where a company seeks to acquire significant existing facilities.³⁷

22. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, we balance the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding and of subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

³⁴ 18 C.F.R. § 385.602 (2012).

³⁵ 15 U.S.C. § 717f(b) (2006).

³⁶ *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).

³⁷ *See, e.g., UGI Storage Co.*, 133 FERC ¶ 61,073 (2010). *See also Trunkline Gas Co., LLC*, 132 FERC ¶ 61,069 (2010); *BGS Kimball Gas Storage, LLC*, 117 FERC ¶ 61,122, at PP 19-23 (2006).

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

24. A proposal to acquire facilities with no related construction of facilities, such as in this proceeding, generally does not invoke the Certificate Policy Statement's concerns related to disruptions of the environment, landowner rights, and the exercise of eminent domain. The acquisition of existing facilities by an existing company can present issues regarding subsidization from existing customers and whether an applicant has made efforts to eliminate or minimize any adverse effects on its own existing customers, and on existing pipelines in the market and their captive customers.³⁸

25. Petal is an existing company authorized to charge market-based rates for storage service and cost-based rates for transportation on its jurisdictional pipeline. Applicants propose no changes to Petal's existing market-based rates or the terms of its storage contracts. Additionally, Petal is not proposing to change its existing transportation rates on its jurisdictional pipeline. There is no indication that Applicants' proposal will adversely affect the quality of Petal's existing services.

26. As discussed above, Applicants' proposals do not involve new or additional costs for facilities. Petal's request to continue charging market-based rates for storage services will protect Petal's existing customers from being required to subsidize any costs associated with operation of the acquired facilities. As discussed below in the section of this order concerning market-based rates, Applicants' storage facilities are located in a competitive market area, and their proposal does not involve the displacement of any other market-area storage capacity. Thus, approval of Applicants' proposals will have no adverse impact on existing pipelines in the market or their customers.

27. With acquisition of the Hattiesburg facilities, Petal's authorized facilities will consist of ten natural gas storage caverns, having approximately 64.058 Bcf of total

³⁸ See, e.g., *Trunkline Gas Co., LLC*, 132 FERC ¶ 61,069 at P 8.

storage capacity and approximately 38.159 Bcf of working gas capacity. Petal's storage customers will also have the use of approximately 37.7 miles of storage headers, with nine interconnections to pipelines. Petal will also operate 64.2 miles of interstate transmission facilities with interconnections to five pipelines. As storage customers of Petal, Hattiesburg's existing storage customers will have the benefits of enhanced receipt and delivery point options with third-party pipelines, should they contract for separate transportation on Petal's jurisdictional pipeline. In addition, access to Petal's system offers Hattiesburg's existing customers alternatives to replace the loss of capacity due to the *force majeure* event involving Hattiesburg's Cavern No. 2.

28. The Commission notes that Hattiesburg's Cavern No. 2 is currently not in service and Petal has no near-term plans for placing it into interstate natural gas service. While Petal may acquire Hattiesburg's Cavern No. 2, the Commission is not issuing a certificate to operate or provide service from that cavern as there is no showing that it is required by the public convenience and necessity. Petal will have to file with the Commission an application for certificate authority if Petal intends to repurpose or return this cavern to interstate natural gas storage service. For accounting purposes, Hattiesburg's Cavern No. 2 is to be classified in Account 121, Nonutility Property, because it is not currently used to provide storage service and Petal has not indicated that it has a definite plan to use these facilities in the future.

29. In view of the above discussion, the Commission finds that Applicants' proposal to merge the facilities and operations currently owned and operated individually by Petal and Hattiesburg into Petal as a single, jurisdictional interstate natural gas storage facility satisfies the criteria of the Certificate Policy Statement and is required by the public convenience and necessity. The Commission also authorizes Petal to meet its contractual service obligations on an integrated basis. However, in operating its storage caverns on an integrated basis, it may not exceed the individual cavern operating parameters contained in the Appendix below.

B. BP's Protest

30. BP protests Applicants' proposal to classify Hattiesburg's Eastern and Western Lines as storage headers.³⁹ The Eastern Line is 5.3 miles long and the Western Line is 21.2 miles long. BP asserts that Hattiesburg uses these lines to provide a transportation service and that reclassifying them as storage facilities would result in Petal providing a bundled storage and transportation service.

³⁹ BP states that it has no objection to Hattiesburg's third line – its 5.6-mile, 8-inch line – being integrated with other storage facilities as a storage header line. See BP's June 21, 2012 Protest, Request for Clarification and Motion to Intervene at 3.

31. In their July 9, 2012 answer, Applicants assert that Hattiesburg's Eastern and Western Lines have always primarily operated as storage headers integrated into Hattiesburg's storage service. Applicants maintain that, while Hattiesburg has authority to provide interruptible stand-alone transportation service on the pipelines, such pipelines have primarily supported Hattiesburg's storage services.⁴⁰ In addition, Applicants state that Hattiesburg's existing firm storage customers would be adversely impacted if the Eastern and Western Lines were considered to be separate transportation facilities, as Hattiesburg's existing storage customers would be required to contract for both storage and transportation capacity in order to receive the same level of service they currently receive.

32. Further, Applicants state that reclassifying the Eastern and Western Lines as separate transportation facilities creates the risk of stranding existing customers' storage gas. Applicants assert that if non-storage customers contract for firm capacity on the pipelines or use the pipelines' capacity on a non-primary basis, the capacity needed to support existing storage service could be taken off the market. Applicants further state that the Commission has certificated other storage header systems that support storage services provided at market-based rate service.

33. Hattiesburg's current storage service includes moving natural gas over its header system between its storage caverns and its receipt and delivery points located at interconnections with other pipelines.⁴¹ Therefore, Applicants' proposal to continue classifying all of Hattiesburg's pipeline facilities as storage facilities is consistent with Hattiesburg's existing practice. The Commission agrees with Applicants' assertion that if Hattiesburg's Eastern and Western lines were to be reclassified as transmission facilities, Hattiesburg's existing customers could be required to separately contract for both storage and transportation service to access certain interconnecting pipelines. As such, Hattiesburg's existing storage customers would not receive the same level of service at the rates they currently pay for that service.

34. In the past, the Commission has certificated storage header systems similar to those of Hattiesburg. For example, in *Leaf River Energy Center, LLC*,⁴² the Commission

⁴⁰ Applicants state that since Hattiesburg was acquired by its new parent company in late 2011, it has not provided any stand-alone transportation service. See Applicants' Motion to File an Answer to Protests and Answer, filed July 9, 2012, at 4.

⁴¹ See Hattiesburg Industrial Gas Sales, L.L.C., FERC NGPA Gas Tariff, Tariffs, [Section 1, Statement of Operating Conditions, 1.0.0](#), FIRM GAS STORAGE CONTRACT, APPENDIX "B".

⁴² 125 FERC ¶ 61,131 (2008).

certificated a 43.84-mile long storage header system interconnecting with five interstate pipelines. Similarly, in *Liberty Gas Storage LLC*,⁴³ we certificated a 23.3-mile storage header system interconnecting with seven natural gas pipelines. Hattiesburg's header system is of similar or less length, and also has multiple interconnects.

35. Accordingly, the Commission finds that all of Hattiesburg's existing pipeline facilities will be classified as storage headers, subject to the terms and conditions of Petal's tariff.⁴⁴

C. BP's Request for Clarification

36. BP requests that Petal clarify that the fuel rates for storage and transportation service on Hattiesburg's facilities will not increase as a result of the consolidation of Petal and Hattiesburg and that Petal provide workpapers to all parties showing the separate calculation of Petal's transportation fuel on its 36-inch pipeline and Hattiesburg's Eastern and Western Lines, as well as the proposed impact of consolidation on storage fuel costs.

37. Commission Staff requested additional information regarding Petal's proposed treatment of its fuel charge. Petal clarified in its August 1, 2012 data response that, following the merger, fuel charges for each customer will be calculated based on their pro rata injections as compared to the sum of total injections across all of its storage caverns. Petal's data response stated that the merger would not cause material changes to fuel charges for either Petal or Hattiesburg existing customers. Petal stated that Hattiesburg customers are currently charged fuel based on their pro rata share of total gas injected and withdrawn, whereas Petal customers are assessed fuel charges based on pro rata shares of injections. Petal states that all fuel charges are based on actual fuel usage, which is not anticipated to materially change after consolidation.

38. The Commission rejects BP's requested conditions and finds that the fuel charges which will be assessed by Petal following the merger are not likely to cause material changes to the fuel rates currently charged to the existing Hattiesburg customers. First, Petal proposes to assess market-based rates for storage services provided on the acquired facilities. Petal has committed to use its market-based rate authority to allow the existing Hattiesburg customers to continue their existing rates for the remaining term of their contracts, which limits the possibility of fuel rate increases. Further, BP has not provided

⁴³ 113 FERC ¶ 61,247 (2005).

⁴⁴ Petal is reminded that if it wishes to provide transportation service over these header facilities in the future, it must file for the appropriate certificate authority.

any evidence that would indicate that fuel rates are likely to increase for service on Hattiesburg's facilities. Moreover, the fact that all fuel charges are based on actual fuel usage on both systems further limits the likelihood of material changes to the fuel rates of existing Hattiesburg customers.

39. In addition, there is no proposal to change any transportation facility or transportation service in this NGA section 7 proceeding. Also, Petal currently accounts for storage and transportation separately on its FERC Form 2 report filed with the Commission. Thus, BP's request that Petal provide additional information concerning its transportation fuel costs or the allocation of fuel costs to transportation customers is unnecessary and beyond the scope of this proceeding.

40. Finally, BP is neither a customer of Hattiesburg nor Petal. Should it choose to become a Petal customer, BP would be protected by the terms of Petal's tariff and BP's rights under NGA section 5 if it believes Petal's rates or terms and conditions of service are not just and reasonable.

41. BP also requests that Petal be required to file annual reports on the use of off-system capacity similar to the reporting requirements required in Commission orders approving the use of off-system capacity by other market-based rate storage companies.⁴⁵ BP states it is concerned that, without more specific tariff protections, Petal could acquire off-system transportation capacity that it would combine with storage service to create a bundled transportation/storage service at market-based rates. Applicants' July 9, 2012 answer states that BP's request is beyond the scope of this proceeding, because the current application is made under section 7 of the NGA and no tariff revisions are being proposed.

42. BP has failed to show that Petal is currently acquiring off-system capacity to bundle with its storage service and Petal has proposed no changes to its current tariff. Therefore, the Commission will not impose additional reporting requirements on Petal as a result of its acquisition of the Hattiesburg storage facilities.

43. BP requests that Petal clarify the rights of all storage customers to access all new interconnect points that are part of the combined storage facilities on a secondary basis, without additional charges, and similarly clarify that transportation customers will have secondary rights to all interconnection points on transmission lines. In its July 9, 2012 answer, Petal states that storage delivery points are not designated as either primary or secondary in its tariff; however, firm storage customers have access to all delivery points specified in their storage agreements. With respect to transportation, Petal states that its transportation customers are already afforded secondary access to all interconnections on

⁴⁵ See, e.g., *Copiah Storage, LLC*, 121 FERC ¶ 61,272, at P 41 (2007).

its transmission lines. Petal's explanation is sufficient and no further Commission action is required.

44. Finally, BP requests that the Commission re-affirm Petal's obligation to report to the Commission any changes in circumstances that affect Petal's market power. Applicants answer and the Commission confirms that, consistent with prior orders, Petal remains obligated to notify the Commission within 10 days of a change in market power status of the combined facilities. As stated above, Petal is under a continuing obligation to notify the Commission within 10 days of any changes in circumstances that may affect its market power status.

D. ConEd's Protest and Offer of Settlement

45. In its protest, ConEd, an existing firm service customer of Hattiesburg, sought assurance that Hattiesburg's obligations under the SOC are maintained through contract negotiations prior to Hattiesburg's merger of facilities and services with Petal. ConEd asserted that, prior to that date, Applicants had not offered ConEd a replacement contract nor reached agreement regarding the terms of the contract.

46. Applicants' July 9, 2012 answer stated that ConEd's concerns regarding the conditions of Hattiesburg's SOC generally relate to details of the terms and conditions of service that may change for Hattiesburg's customers once they become customers of Petal. Applicants asserted that they will ensure that Hattiesburg customers' service is not materially impacted by the merger of Hattiesburg's and Petal's facilities.

47. On November 8, 2012, Applicants filed an offer of settlement to resolve the issues raised by ConEd in its protest. The offer provides as follows:

- a. Petal will file to modify Section 6.22.10[1] of its tariff and its *pro forma* service agreements to provide customers the opportunity to elect that the law of either the State of Mississippi or the State of Texas will govern the interpretation of the service agreement;
- b. Petal will file to modify Section 6.12 of its tariff to provide for reservation charge credits for its firm storage services;
- c. Petal will add a new Section 6.20[2] to its tariff, which will grandfather the existing contractual right of certain existing Hattiesburg shippers (including ConEd), for the remaining term of their existing agreements, to acquire a proportionate share of future capacity expansions at Hattiesburg under the same terms and conditions being offered to the market. The new tariff provision would require Petal to notify in writing existing Hattiesburg customers in the event Petal decides to increase capacity at the storage facilities being acquired from Hattiesburg. Those customers would have

the right for 90 days following such notice to contract for additional storage rights upon the terms and conditions offered by Petal or otherwise agreed to by Petal and the contracting customer.⁴⁶

- d. Petal will modify its tariff to provide for a higher scheduling priority for authorized overruns nominated by existing Hattiesburg shippers, for the remaining term of their existing contracts, than for other authorized overruns and interruptible services offered by Petal. Applicants and ConEd acknowledge that this provision is inconsistent with Commission policy, but assert that Hattiesburg's customers' overrun service will be degraded if they do not have a higher priority for their overrun service than other interruptible services.⁴⁷

48. On November 28, 2012, BP filed initial comments in partial opposition to the settlement offer. BP did not contest the first two provisions of the settlement offer. However, BP asserted that the offer provides an unduly discriminatory preference for authorized overrun service to existing Hattiesburg customers. In addition, BP claimed that the settlement offer provides a preference for capacity expansion rights to certain existing Hattiesburg shippers.

49. ConEd filed reply comments on December 4, 2012, and Applicants filed reply comments on December 7, 2012. In addition, another existing Hattiesburg customer, PSEG, filed comments in support of the settlement. ConEd and Applicants deny that the settlement offer provides any unduly discriminatory preference for existing Hattiesburg customers. BP filed reply comments on December 10, 2012, disagreeing with ConEd and Applicants.

⁴⁶ According to ConEd, this provision is contained in its existing contract with Hattiesburg. See ConEd's December 4, 2012 Reply Comments at 2. The provision is not included in Hattiesburg's SOC or *pro forma* firm storage service agreement, nor is it apparently included in all contracts between Hattiesburg and its existing customers. See Stipulation and Agreement at 4 ("In certain of the Hattiesburg firm storage agreements, customers were given the right to participate in future capacity expansions at Hattiesburg.").

⁴⁷ See Stipulation and Agreement at 6. As discussed below, unlike Petal, Hattiesburg does not offer interruptible storage service. ConEd's existing contract with Hattiesburg provides for scheduling authorized overruns after firm service nominations on a pro rata basis; it does not address priority of authorized overruns over interruptible storage service, since none is offered.

50. As discussed below, the Commission approves the settlement, as modified below, because it appears to be fair and reasonable and in the public interest. This approval is subject to Applicants modifying the settlement to remove the provisions providing a preferential priority for authorized overrun service to existing Hattiesburg customers and providing preferential rights for former Hattiesburg customers to future capacity expansions on the former Hattiesburg system. As discussed below, the Commission believes that certain of the proposed tariff provisions may be discriminatory.⁴⁸ Moreover, we believe that existing Hattiesburg customers will suffer no significant adverse impacts because the benefits of access to additional storage capacity and enhanced receipt and delivery point options with third-party pipelines outweigh the impacts of any perceived negative changes to their existing service. The Commission's approval is also subject to Petal filing tariff records to implement the settlement, as discussed below.

1. Authorized Overrun Service Priority

51. Petal and ConEd seek to preserve the contractual rights of some existing Hattiesburg customers, including ConEd, to preferential priority for authorized overrun service. The settlement proposes to grant existing Hattiesburg customers a higher scheduling priority for authorized overrun services above the rights of other authorized overrun and interruptible services offered by Petal. The settlement proposes a four-year duration for the higher service priorities to reflect the remaining terms of the currently-effective Hattiesburg contracts. While acknowledging that this provision is inconsistent with Commission policy, Applicants and ConEd maintain that it should nevertheless be approved, given the unique circumstances here.

52. BP opposed the preferential overrun priority right for former Hattiesburg customers on the grounds that it is unduly discriminatory, it inappropriately expands the existing Hattiesburg customers' rights to the larger, post-integration facilities, and it is contrary to stated Commission policy concerning factors that may be considered in determining overrun priorities.⁴⁹ ConEd asserted in its reply comments that the preservation of existing contractual rights and the relatively short four-year duration of the rights are legitimate factors in support of approving the Settlement as filed, including

⁴⁸ Article 2.1 of the settlement states that the settlement's provisions are not severable, but the settlement also provides for procedures to be followed should the Commission approve it subject to modification or condition that "materially and adversely affects any provision" thereof.

⁴⁹ See BP Initial Comments filed November 28, 2012, and BP Reply Comments filed December 10, 2012.

the priority right for authorized overrun service. ConEd also noted that since Hattiesburg did not offer interruptible storage services, ConEd did not have to compete with interruptible storage customers when it required authorized overrun service.⁵⁰ Applicants stated in their reply comments that the provision would maintain the Hattiesburg customers' existing economic bargain and would be limited in duration.⁵¹

53. The Commission does not agree that existing Hattiesburg customers have an existing contractual right to a scheduling priority for authorized overrun service over interruptible service. ConEd's existing contract with Hattiesburg provides that Hattiesburg has an obligation to use its best efforts to accommodate ConEd's requests for overrun service "at such times as additional capacities are not required for service to other firm, standby customers" and states that available authorized overrun capacity for injection or withdrawal will be pro-rated based upon the contractual maximum daily injection or withdrawal quantity of the requesting customer.⁵² The fact that Hattiesburg does not provide any interruptible natural gas storage services meant that ConEd has not had to compete with interruptible storage customers for available capacity. We acknowledge that, as a result of the acquisition of Hattiesburg's storage facilities by Petal, which does offer interruptible storage services, ConEd, when requesting overrun service, will now have to compete for available capacity with other interruptible customers.⁵³

54. However, assuming that existing Hattiesburg customers do have an existing contractual right to a scheduling priority for authorized overrun service, the continuation of such a right on Petal's system would be inconsistent with Commission policy. The Commission's policy for scheduling overrun priorities for firm interstate service is clear that overrun service must have the same scheduling priority as interruptible service

⁵⁰ See ConEd Reply Comments filed December 4, 2012.

⁵¹ See Applicants' Reply Comments filed December 7, 2012.

⁵² See ConEd Reply Comments filed December 4, 2012, at 2. Hattiesburg's existing tariff contains similar language. See Hattiesburg's FERC NGPA Gas Tariff, Tariffs, [Section 1, Statement of Operating Conditions, 1.0.0](#), FIRM GAS STORAGE CONTRACT, ARTICLE I, GAS TO BE INJECTED, STORED AND DELIVERED, section 1.5.

⁵³ Petal's currently effective tariff is consistent with Commission policy treating all requests for interruptible and overrun service similarly for scheduling purposes. See Petal Gas Storage, L.L.C., FERC NGA Gas Tariff, Tariffs, [Section 6.12, Noms/Confirmations/Scheduling/Priority & Interruption of Ser, 2.0.0](#).

because firm shippers are not paying a reservation charge for that capacity.⁵⁴ Therefore, inclusion of a tariff provision providing ConEd and other existing Hattiesburg customers with a priority right to overrun service would be unduly discriminatory by providing the Hattiesburg customers with a quality of service not available to other shippers on Petal's system.

55. The Commission is not persuaded that according Hattiesburg customers a scheduling priority for authorized overrun service over other authorized overrun service and interruptible service on Petal's system is justified. Applicants' and ConEd's claim that the settlement continues Hattiesburg's existing customers' contractual right is unfounded and insufficient to justify ignoring Commission policy, creating an exception to Petal's tariff, and providing a preference to Hattiesburg's existing customers over other customers on Petal's system. Moreover, the benefits associated with Applicants' proposal of providing access to additional storage capacity and enhanced receipt and delivery point options with third-party pipelines, should Hattiesburg's existing shippers contract for transportation on Petal's jurisdictional pipeline, as discussed above, outweigh the impacts of any perceived changes to Hattiesburg's existing service. Accordingly, Section 1.5 of the Settlement and revised *pro forma* GT&C Section 6.1 are rejected.

2. Option for Capacity Rights to Future Capacity Expansions on the Hattiesburg Storage Facilities

56. Petal proposes to provide existing Hattiesburg customers the option to acquire a proportionate share of the new capacity from future capacity expansions under the same terms and conditions being offered to the market. Revised *pro forma* GT&C Section 6.20(2) provides such customers the option to contract for a pro rata portion of the future expansion capacity for a 90-day period following notice that Petal has determined to increase any capacity at the Hattiesburg Storage Facilities.

57. BP filed comments opposing the preferential expansion rights as unduly discriminatory and inconsistent with Commission policies regarding the use of open season procedures to allocate expansion capacity and associated rights.⁵⁵ ConEd filed reply comments in support of the future capacity priority, stating that it has been afforded the right for over twenty years and that it is not being offered preferential rates, but rather the same terms and conditions upon which Petal will contract with other parties for such

⁵⁴ See *MoBay Storage Hub LLC*, 126 FERC ¶ 61,241, at P 19 (2009); *Central New York Oil & Gas Co., LLC*, 114 FERC ¶ 61,105, at P 9 (2006).

⁵⁵ See BP Initial Comments filed November 28, 2012, and BP Reply Comments filed December 10, 2012.

capacity.⁵⁶ In their reply comments, Applicants assert similarly that the expansion rights are not unduly discriminatory and are not inconsistent with Commission policy.⁵⁷

58. The Commission finds that the proposal would provide existing Hattiesburg shippers preferential rights over other shippers on Petal's system to future capacity expansions at the Hattiesburg Storage Facilities. It appears that under the proposal, existing Hattiesburg customers would not simply have the right to "participate" in future capacity expansions at the Hattiesburg Storage Facilities, as claimed in the settlement;⁵⁸ they would have the right, unlike other potential bidders, to acquire a proportionate share of the new capacity within 90 days of notification that Petal has made the determination to increase any capacity at the Hattiesburg Storage Facilities, without even having to participate in an open season. In addition, the proposal is inconsistent with Petal's certificate proposal to operate and provide service to Petal's storage customers on a system-wide basis, not on the basis of assignment of customer service to a particular storage cavern.

59. Applicants' and ConEd's rationale for this preferential treatment is the continuation of ConEd's existing contractual rights, which appear to deviate from Hattiesburg's existing SOC, as well as Petal's existing tariff. However, this rationale does not outweigh the significant potential for undue discrimination created by the provision.⁵⁹ In addition, the benefits of Applicants' proposal of providing access to additional storage capacity and enhanced receipt and delivery point options with third-party pipelines, should Hattiesburg's existing shippers contract for transportation on Petal's jurisdictional pipeline, as discussed above, outweigh the impacts of this change to ConEd's existing contract rights. Accordingly, we find that Section 1.4 of the Settlement and revised *pro forma* GT&C Section 6.20 contain an impermissible negotiated term and condition of service that would give the former Hattiesburg customers an unfair advantage over other potential shippers in future capacity expansions. Therefore, we reject Section 1.4 of the Settlement and revised *pro forma* GT&C Section 6.20.

⁵⁶ See ConEd Reply Comments filed December 4, 2012.

⁵⁷ See Applicants Reply Comments filed December 7, 2012.

⁵⁸ See Stipulation and Agreement at 4.

⁵⁹ See *Missouri Interstate Gas, LLC*, 119 FERC ¶ 61,074, at P 78 (2007) (to the extent a new, integrated pipeline wishes to grandfather any provision in its existing intrastate contracts, it must explain the basis for any deviations from the standard *pro forma* service agreement and demonstrate that that the deviations are not unduly discriminatory).

60. The Commission finds that the proposed settlement, as modified herein, appears to be fair and reasonable and in the public interest. It is hereby approved, subject to removal of the provisions regarding priority of authorized overrun services for Hattiesburg customers and preferential rights of existing Hattiesburg customers in future capacity expansions. In addition, the Commission directs Petal to file, at least thirty days prior to the effective date of the merger, in eTariff format, actual tariff records identical to the settlement offer's *pro forma* tariff records, modified as directed above.⁶⁰

E. Market-Based Rates

61. Petal requests authority to continue charging market-based rates for its storage services following its merger with Hattiesburg. The Commission originally granted Petal authority to charge market-based rates for storage services in 1993 and has reaffirmed that authority several times as Petal's operations have evolved. In the most recent order approving Petal's request to charge market-based rates for its storage services, the Commission expressly conditioned its approval upon re-examination of Petal's market-based rate authorization if the circumstances under which the authority was granted significantly changed.⁶¹ Accordingly, in its application in this proceeding, Petal submitted a market power study designed to show that expansion of its storage facilities through the merger with Hattiesburg will not affect the Commission's previous determination that Petal lacks significant market power in providing storage services. Applicants state that Petal's merger with Hattiesburg will have little effect on Petal's market power status and that it will continue to qualify for market-based rates under the Commission's standards.

62. Generally, the Commission evaluates requests to charge market-based rates for storage under the analytical framework of the Alternative Rate Policy Statement.⁶² This framework has two principle purposes: (1) to determine whether the applicant can

⁶⁰ The two *pro forma* tariff sections requiring modifications due to rejected provisions are: Section 6.12, Noms/Confirmations/Scheduling/Priority & Interruption of Ser, *Pro Forma* Version 3.0.0 and Section 6.20, GT&C – Construction of New Facilities, *Pro Forma* Version 1.0.0.

⁶¹ *Petal Gas Storage L.L.C.*, 132 FERC ¶ 61,168 (2010).

⁶² *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076, *reh'g denied*, 75 FERC ¶ 61,024 (1996) (*Alternative Rate Policy Statement*). See also *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220, *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

withhold or restrict services and, as a result, increase prices by a significant amount for a significant period of time; and (2) to determine whether the applicant can discriminate unduly in price or terms and conditions of service.⁶³ In order to find that an applicant cannot withhold or restrict services, significantly increase prices over an extended period, or discriminate unduly, the Commission must find that there is a lack of market power,⁶⁴ The Commission's analysis of whether an applicant has the ability to exercise market power consists of three major steps: 1) review of the applicant's relevant product and geographic markets; 2) measurement of the applicant's market share and concentration; and 3) evaluation of other relevant factors.⁶⁵

63. In support of its request, Applicants filed as Exhibit Z-1 to their application an updated market power study based on the criteria established in the Alternative Rate Policy Statement. The updated market power study defines the relevant product and geographic markets, measures market share and concentration, evaluates ease of entry into the market, and addresses other relevant factors. Applicants assert that the data used in their market power analysis was gathered from the Energy Information Administration's 2010 Form EIA-191A (published in August 2011) and from company websites.

1. Relevant Market

64. Applicants identify the relevant product market as firm and interruptible natural gas storage services. They identify the relevant geographic market as the Gulf States production area, which includes the states of Alabama, Louisiana, Mississippi, and eastern Texas. Both the Petal and Hattiesburg storage facilities are located in Forrest County, Mississippi. Applicants assert that the Gulf States production area contains seventy underground natural gas storage fields, including Petal, Hattiesburg, and their affiliates in the Boardwalk/Gulf South family, which have been combined for the purposes of assessing Petal's potential to exercise market power. Applicants assert that they used the Gulf States production area as Petal's relevant geographic market, consistent with past applications for market-based rate authority.

⁶³ *Orbit Gas Storage, Inc.*, 126 FERC ¶ 61,095, at P 19 (2009).

⁶⁴ The Commission defines "market power" as "the ability of a pipeline to profitably maintain prices above competitive levels for a significant period of time." See *Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 at 61,230.

⁶⁵ See *Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 at 61,230-35.

2. Market Share and Concentration

65. The market power study filed by Applicants states that Petal's current certificated working gas capacity is 36,059 MMcf with daily deliverability of 3,665 MMcf per day.⁶⁶ It states that Petal's actual working gas capacity and daily deliverability are both less than half of its certificated capacity for the reasons described in its application. However, it states that Petal utilized its total certificated levels of working gas capacity and daily deliverability to make the calculations contained in its market power study. Hattiesburg's current working gas capacity is 2,100 MMcf with maximum daily deliverability capability of 765 MMcf per day. When the storage capacities of Petal and Hattiesburg are combined with those of Petal's affiliates in the Boardwalk/Gulf South group, the total working gas capacity of the combined affiliates is 131,629 MMcf and daily deliverability is 6,550 MMcf.

66. Applicants state that on October 27, 2011, Petal notified the Commission that Boardwalk HP Storage Company, LLC acquired the assets of Crystal Holding, L.L.C., the parent company of Petal and Hattiesburg, and submitted a new market power analysis. Applicants state that the analysis was based on data available at that time and demonstrated that in the relevant geographic and product markets, the market shares for the combined facilities of Gulf South, Petal and Hattiesburg were 9.09 percent for working gas capacity and 10.88 percent for daily deliverability; the HHI values were 546 and 572, respectively.

67. Applicants' updated market power study shows that the Gulf States production area contains 1,460,856 MMcf of certificated working gas capacity and 55,708 MMcf of daily deliverability. Against these certificated levels, Petal's market share (including its affiliates) for total working gas capacity is 9.01 percent and its market share for daily deliverability is 11.76 percent. The HHI values Applicants provide for the Gulf States production area are 561 for total working gas capacity and 628 for daily deliverability.

3. Ease of Entry and Other Factors

68. Applicants generally assert that the Gulf States production area does not have significant barriers to new entrants to the marketplace. Applicants' market power study shows that, of the thirty-one corporate entities which own the seventy Gulf States storage fields, only two possess market shares greater than ten percent. Applicants state that this shows that the size and scale of the market do not pose a barrier to entry. Applicants

⁶⁶ The figures used by applicants in their market share calculations include capacity that is currently in service and capacity that has been approved but not yet constructed.

further state that ease of entry into the storage market in the Gulf States production area is reflected by the fact that the Commission has approved fifty-five storage facilities in the Gulf States production area since the year 2000. Applicants also provide an exhibit which shows that nine additional storage projects have been authorized by the Commission but not yet built, demonstrating that continued ease of entry into the marketplace is likely.

69. Applicants state that their market power study is conservative in that it does not include potential competition from non-storage alternatives. Specifically, Applicants assert that they could have included in their market power study, non-storage competitors such as local natural gas production, liquefied natural gas peaking and import facilities, pipeline capacity, park and loan services, and financial market instruments.

70. Applicants' use of the Gulf States production area as Petal's relevant geographic and product market is consistent with the Commission's analysis and findings in prior orders granting Petal market-based rate authority.⁶⁷ The Commission has found in previous orders that the Gulf States production area is a highly competitive market where numerous storage facilities and service alternatives exist for potential customers.⁶⁸ Applicants' updated market power study again shows the high number of corporate entities providing natural gas storage services at an ever-increasing amount of certificated storage facilities.

71. The HHI values provided by Applicants are well below the Commission's threshold number of 1800 regarding market concentration. Those numbers are lower than the HHI numbers provided in Petal's most recent certificate application showing a trend of decreasing market concentration.⁶⁹ Although Petal's market shares for working gas and deliverability, including its affiliates, make it one of the largest storage providers in the Gulf States production area, the low HHI numbers for the geographic market tend

⁶⁷ See, e.g., *Petal Gas Storage, L.L.C.*, 118 FERC ¶ 61,253, at P 26 (2007) (identifying the Gulf States production area as the relevant geographic market in Petal's application for a certificate of public convenience and necessity to convert, operate, and maintain an existing salt-brine production cavern to natural gas storage).

⁶⁸ *Id.* P 37.

⁶⁹ See *Petal Gas Storage, L.L.C.*, 132 FERC ¶ 61,168, at P 30 (2010). However, as stated in the application, the HHI numbers included in the instant filing are slightly higher than those provided by Petal to the Commission in its October 27, 2011 report on change to its market power status reflecting Boardwalk's acquisition of Crystal Holdings, L.L.C., the owner of Hattiesburg and Petal. See Application at 18.

to show that the market is highly diluted with many smaller storage providers offering competing natural gas storage services.

72. Applicants' market power study also shows that there are no significant barriers to entry regarding providing storage services in the Gulf States production area. Applicants show that a large number of storage projects have been authorized since 2000. Further, the exhibit showing storage projects that have been authorized, but not yet built, indicates that the trend of increased construction of storage capacity will continue into the foreseeable future.

73. In view of these considerations, the Commission finds that Petal may continue to charge market-based rates for its storage services. However, consistent with the Commission's previous findings in Petal's applications for market-based rate authority, we will condition this finding on a requirement that Petal notify the Commission of future circumstances that may significantly affect its market power status.⁷⁰ Thus, the Commission's approval of continued market-based rate authority is subject to re-examination if: (1) Petal expands its storage capacity beyond the level authorized in this proceeding; (2) an affiliate increases storage capacity; (3) an affiliate links storage facilities to Petal; or (4) Petal, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to Petal. Accordingly, Petal shall notify the Commission within 10 days of any such change in circumstances that may alter Petal's market power status. The notification shall include a detailed description of the new facilities and their relationship to Petal's operations.

F. Abandonment of Blanket Transportation Certificate

74. Hattiesburg's storage service is provided under its section 284.224 blanket certificate. The Commission must determine, in accordance with section 7(b) of the NGA, whether Hattiesburg's abandonment of service is permitted by the present or future public convenience or necessity.⁷¹ Applicants assert that they will ensure that the service

⁷⁰ *Petal Gas Storage, L.L.C.*, 124 FERC ¶ 61,066, at P 24 (2008); *Petal Gas Storage, L.L.C.*, 132 FERC ¶ 61,168, at P 32 (2010). See also *Copiah County Storage Company*, 99 FERC ¶ 61,316 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002).

⁷¹ NGA section 7(b), 15 U.S.C. § 717f (2006), provides:

(b) Abandonment of facilities or services; approval of Commission. No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first

of existing Hattiesburg customers is not materially impacted by the merger. Petal has stated its intention to preserve the rates of Hattiesburg customers for the remaining terms of their existing contracts; therefore, there should be no adverse rate impact on existing Hattiesburg customers. Further, Applicants state that service reliability would increase due to the consolidation.

75. The potential for additional capacity availability offers Hattiesburg's customers new alternatives to replace the loss of capacity due to the *force majeure* event involving Hattiesburg Cavern No. 2. Moreover, Hattiesburg's existing storage customers will have the ability to take advantage of enhanced receipt and delivery point options with third-party pipelines, should they contract for separate transportation on Petal's jurisdictional pipeline. Finally, there are no environmental impacts associated with the proposed abandonment of Hattiesburg's section 284.224 service. Accordingly, we find that any perceived loss of rights by Hattiesburg customers are outweighed by the benefits being gained as a result of the integration of Hattiesburg and Petal into a single, jurisdictional company.

76. For the above reasons, the Commission finds that the abandonment of Hattiesburg's certificate of limited jurisdiction issued under section 284.224 of the Commission's regulations is in the public convenience or necessity and is hereby granted. Hattiesburg is required to file to cancel its SOC, including its Tariff ID number, thirty days before the proposed effective date of the transfer to Petal.⁷²

IV. Engineering Analysis

77. Commission staff conducted an engineering evaluation of Applicants' proposal. Based on this analysis, we conclude that Hattiesburg's existing salt dome natural gas storage caverns are properly designed to store 3.2 Bcf of natural gas (2.1 Bcf working gas and 1.1 Bcf base gas). Once merged with Hattiesburg, Petal's facilities will consist of ten natural gas storage caverns having approximately 64.058 Bcf total storage gas capacity and approximately 38.159 Bcf of working gas capacity. Engineering Condition 1 in the Appendix specifies the certificated parameters for each cavern of Petal's combined

had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

⁷² Hattiesburg's cancellation filing should use the Type of Filing Code 800.

facilities. Petal is directed to comply with the engineering conditions presented in the Appendix of this order, and all other applicable engineering conditions of the previous Commission orders.

V. Environmental Analysis

78. Commission staff conducted an environmental review of the proposals and found that no environmental impact would be involved.⁷³

79. At a hearing held on February 21, 2013, the Commission on its own motion, received and made a part of the record all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Petal authorizing it to acquire and operate in interstate commerce the natural gas storage and related pipeline facilities currently owned by Hattiesburg, in Forrest County, Mississippi.

(B) The settlement between Applicants and ConEd, as modified herein, is approved. Petal shall file, at least 30 days prior to the proposed effective date of the merger, as actual tariff records in eTariff, the *pro forma* tariff records implementing the terms of the settlement and reflecting the modifications discussed above.

(C) Petal shall comply with the engineering conditions contained in the Appendix.

(D) Petal's request to charge market-based rates for storage services provided by the combined Petal and Hattiesburg facilities is approved, subject to the conditions discussed in this order, including the condition to re-examine Petal's market power and market-based storage rate authority in the event that: (1) Petal Gas expands its storage capacity beyond the amount authorized in this proceeding; (2) an affiliate increases storage capacity; (3) an affiliate links storage facilities to Petal Gas; or (4) Petal Gas, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to Petal Gas. Petal Gas shall notify the Commission within 10 days of any such change in circumstances that may alter Petal's market-power status.

⁷³ 18 C.F.R. § 380.4(a) (2012).

(E) Hattiesburg is permitted to abandon its certificate of limited jurisdiction issued under section 284.224 of the Commission's regulations.

(F) Hattiesburg is required to file to cancel its SOC, including its Tariff ID number, to be effective the date Petal acquires the Hattiesburg facilities. The tariff cancellation filing should be made at least 30 days prior to the proposed effective date of the cancellation.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix
Engineering Conditions

1. The following parameters apply to the entire Petal Gas Storage facility and shall not be altered without prior Commission authorization:

	Total Cavern Capacity, Bcf	Working Gas Capacity, Bcf	Cushion (base) Gas Capacity, Bcf	Maximum pressure at casing shoe, psia	Minimum Pressure at casing shoe, psia
Petal #3	4.75	3.0	1.75	1960	650
Petal #6	8.0	5.0	3.0	3200	1000
Petal #7	8.0	5.0	3.0	3200	1000
Petal #8	9.058	5.859	3.199	3200	1100
Petal #10	3.45	2.2	1.25	1640	580
Petal #1	9.7	5.0	4.7	3200	1100
Petal #2	9.7	5.0	4.7	3200	1100
Petal #12-A	8.2	5.0	3.2	3200	1100
Hat. #1	2.0	1.3	0.7	1625	665
Hat. #3-A	1.2	0.8	0.4	1496	640
Total	64.058	38.159	25.899		

2. Petal shall determine and report to the Secretary of the Commission the final gas storage capacity of each cavern and the location of the casing shoe for each cavern (including data and work papers to support the actual operating capacity determination) upon placing each cavern in-service.
3. Petal shall establish and maintain a subsidence monitoring network over the Hattiesburg cavern storage area.
4. Petal shall assemble, test and maintain an emergency shutdown system.
5. Petal shall conduct sonar surveys of the caverns every five years to:
(a) monitor their dimensions and shape, including the cavern roof, (b) estimate pillar thickness between caverns throughout the storage operations, and (c) file the results with the Commission.

In the alternative, Petal may utilize its Well and Cavern Integrity monitoring program previously authorized, as it has been found to be consistent with the intent of the sonar survey.

6. All other engineering conditions established in the previous orders, unless altered above, are still applicable.