

157 FERC ¶ 61,209
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

Total Peaking Services, LLC

Docket No. CP15-557-000

ORDER ISSUING CERTIFICATE, APPROVING ABANDONMENT, AND
REAFFIRMING MARKET-BASED RATE AUTHORITY

(Issued December 15, 2016)

1. On September 23, 2015, Total Peaking Services, LLC (Total Peaking) filed an application under section 7(c) of the Natural Gas Act (NGA)¹ and Parts 157 and 284 of the Commission's regulations² for authorization to make certain modifications to an existing peak-shaving liquefied natural gas (LNG) plant located in Milford, Connecticut. The modifications would increase the plant's send-out capacity from 90 million cubic feet (MMcf) per day to 105 MMcf per day. Total Peaking also requests the Commission reaffirm Total Peaking's authorization to charge market-based rates for its storage and storage-related services.

2. For the reasons discussed below, we grant Total Peaking's requested certificate authorizations, subject to conditions. We also reaffirm Total Peaking's market-based rate authority for storage-related services, as more fully discussed.

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. Pts. 157 and 284 (2016).

I. Background

3. Total Peaking,³ a Delaware limited liability company, is a natural gas company within the meaning of section 2(6) of the NGA.⁴ Total Peaking owns an LNG plant in Milford, Connecticut (Milford Plant),⁵ which currently consists of a 1.2 billion cubic foot capacity LNG storage tank, a natural gas liquefaction facility,⁶ two boil-off gas (BOG) compressor units, and three 30 MMcf per day submerged combustion vaporizers. The Milford Plant's current send-out capacity is 90 MMcf per day.⁷ Total Peaking provides open-access storage service and storage-related service under Part 284 of the Commission's regulations at market-based rates.⁸ The Milford Plant currently liquefies and stores natural gas in the summer for revaporization and delivery during peak periods in the winter heating season to Total Peaking's one customer, CNE Peaking, LLC

³ Total Peaking is a subsidiary of United Resources, Inc., which is a subsidiary of UIL Holdings Corporation (UIL). On February 25, 2015, Iberdrola USA Inc. acquired UIL through a merger, and the new company is now known as Avangrid, Inc.

⁴ 15 U.S.C. § 717a(6) (2012).

⁵ See *Total Peaking Services, L.L.C.*, 81 FERC ¶ 61,246 (1997). Total Peaking has owned the Milford Plant since March 27, 2008, having purchased it from Industrial Leasing Trust No. 3, which is a Bank of America Leasing financial vehicle. See *Connecticut Department of Public Utility Control Decision on the Request of the Southern Connecticut Gas Company for a Declaratory Ruling Requesting Pre-Approval of a Peaking Service Agreement with CNE Peaking LLC Amendment*, Docket No. 06-05-04RE01, at 1-2 (May 20, 2009).

⁶ The Milford Plant receives natural gas for liquefaction and storage through Southern Connecticut Gas Company's facilities that are connected to Iroquois Gas Transmission System. See *Total Peaking Services, L.L.C.*, 115 FERC ¶ 62,065, at 64,421 (2006). The Milford Plant also receives LNG via truck deliveries, which Total Peaking anticipates will not increase as a result of the project. See Resource Report 1 of Total Peaking's Application at 1-1.

⁷ *Total Peaking Services, L.L.C.*, 115 FERC ¶ 62,065 (amending authorized send-out capacity from 72 MMcf per day to 90 MMcf per day).

⁸ *Total Peaking Services, L.L.C.*, 84 FERC ¶ 61,189 (1998) (authorizing market-based rates for the authorized interstate storage services).

(CNE Peaking),⁹ which in turn supplies gas to Southern Connecticut Gas Company (Southern Connecticut).¹⁰

II. Proposal

4. Total Peaking proposes to replace the three 30 MMcf per day combustion vaporizers at its Milford Plant with a single vaporizer¹¹ in order to increase the plant's send-out capacity from 90 MMcf per day to 105 MMcf per day. Total Peaking does not propose to increase the working capacity of the Milford Plant. In addition, Total Peaking proposes to install a second 105 MMcf per day vaporizer at the Milford Plant to provide redundancy. Total Peaking also proposes to install a 150-horsepower BOG electric-motor compressor unit to supplement the two existing compressor units.¹²

5. The proposed project will be constructed on paved or gravel areas within the fence line of the existing 24-acre Milford Plant site. No additional space is anticipated to be required.

6. Total Peaking does not propose to change its services, which currently consist of: (1) firm liquefaction, storage, and vaporization service under Rate Schedule LSV; (2) firm LNG storage service under Rate Schedule LNG; (3) interruptible liquefaction, storage, and vaporization service under Rate Schedule LSV-I; and (4) interruptible LNG storage service under Rate Schedule LNG-I.

⁹ CNE Peaking is a subsidiary of UIL.

¹⁰ See Total Peaking's Application at 4-5. Southern Connecticut operates the Milford Plant pursuant to an Operational Services Agreement with Total Peaking. Southern Connecticut is a natural gas distribution company and, like Total Peaking and CNE Peaking, is also a subsidiary of UIL.

¹¹ Although the application does not request abandonment, we treat Total Peaking's request to replace the three 30 MMcf per day combustion vaporizers, which are facilities under the Commission's jurisdiction, as an abandonment that requires the Commission's permission and approval pursuant to section 7(b) of the NGA, 15 U.S.C. § 717f(b) (2012).

¹² In addition, Total Peaking proposes to perform the following non-jurisdictional electrical upgrades: install three new 400 kilowatt emergency generators to replace the existing transformer and emergency generator, replace the existing 750-kilovolt-ampere (kVA) dry-type transformer with a 1500-kVA liquid-cooled transformer, and install a new 4460-volt electric interconnection line to the Milford Plant.

7. Between September 2, 2015 and September 11, 2015, Total Peaking held a binding open season and did not receive any requests for additional firm service commitments under its Rate Schedule LSV. Total Peaking also solicited turn-back capacity and received no offers. In conjunction with the open season, Total Peaking entered into a new firm service agreement with CNE Peaking, under which CNE Peaking will pay a market-based rate for the full capacity and operational capabilities of the Milford Plant. CNE Peaking would then sell 100-percent of the output of the Milford Plant to Southern Connecticut to meet increased load growth in Southern Connecticut's service territory.

III. Notice, Interventions, and Comments

8. Notice of Total Peaking's application was published in the *Federal Register* on October 14, 2015, with interventions, comments, and protests due on or before October 28, 2015.¹³ No interventions, comments, or protests were received.

IV. Discussion

9. Since Total Peaking seeks to construct, operate, and abandon facilities used in the transportation of natural gas in interstate commerce subject to the Commission's jurisdiction, the proposal is subject to the requirements of subsections (b), (c), and (e) of section 7 of the NGA.¹⁴

A. Certificate Policy Statement

10. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁵ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new natural gas 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, subsidization by

¹³ 80 Fed. Reg. 61,797 (2015).

¹⁴ 15 U.S.C. §§ 717f(b), 717f(c) and 717f(e) (2012).

¹⁵ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

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.

11. 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 construction. 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 consider other interests, including environmental impacts.

12. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Total Peaking has entered into a new firm LSV service agreement with its sole existing customer, CNE Peaking, whereby Total Peaking will charge a market-based rate for 100 percent of the capacity and operational capabilities of the Milford Plant. Thus, we find the no-subsidization standard has been satisfied.

13. The proposed project will not adversely affect Total Peaking's existing and only customer, CNE Peaking, which has entered into a new firm service agreement for the increased send-out capacity. The project will not adversely impact existing pipelines and their captive customers because the project is not intended to replace existing customers' service on any other existing pipeline. Further, no pipelines or their captive customers have protested Total Peaking's proposal. Consequently, we find that there will be no adverse impacts on Total Peaking's existing customer or other pipelines or their captive customers.

14. Because Total Peaking proposes to site the facilities within the existing footprint of the Milford Plant, an industrial area which has previously been disturbed, we find that Total Peaking has minimized impacts on landowners and surrounding communities.

15. The proposal will enable Total Peaking to send-out an additional 15 MMcf per day of natural gas to CNE Peaking. Based on the benefits that Total Peaking's proposal will provide, the lack of adverse effects on its existing customer and other pipelines and their captive customers, and the minimal adverse effects on landowners or communities, we find, consistent with the criteria discussed in the Certificate Policy Statement and section 7 of the NGA, Total Peaking's proposal is required by the public convenience and necessity, as conditioned in this order.

16. We also find that abandoning the three 30-MMcf per day vaporizers that are being replaced at the Milford Plant is permitted by the present and future public convenience or necessity.

B. Market-Based Rates

17. Total Peaking is currently authorized to charge market-based rates for LNG storage and storage-related firm and interruptible services from the Milford Plant and requests authorization to continue to charge market-based rates for these services as a result of the additional send-out capacity. Total Peaking contends that it lacks the requisite market power to charge rates greater than those charged by other interstate pipelines and storage providers for similar services.

18. Total Peaking submitted a market power study in Exhibit I of its application to update its original market power study filed in 1998 (1998 Market Power Study).¹⁶ Total Peaking asserts that the updated market power study shows that the additional send-out capacity through the Milford Plant will not affect the Commission's previous determination that Total Peaking lacks significant market power in providing storage services.

19. Generally, the Commission evaluates requests to charge market-based rates for storage under the analytical framework of its Alternative Rate Policy Statement.¹⁷ The Commission's framework for evaluating requests for market-based rates has two

¹⁶ See Total Peaking's Updated and Revised Market Power Study, Docket No. CP96-339-000 (filed May 11, 1998).

¹⁷ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996), *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).

principal purposes: (1) to determine whether the applicant can withhold or restrict services and, as a result, increase prices by a significant amount for a significant period of time; and (2) to determine whether the applicant can discriminate unduly in price or terms and conditions of service.¹⁸ To determine that an applicant cannot withhold or restrict services, significantly increase prices over an extended period, or unduly discriminate, the Commission must find either that there is a lack of market power¹⁹ because customers have good alternatives²⁰ or that the applicant or the Commission can mitigate market power with specified conditions.²¹

20. 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 fully and specifically defined the relevant markets²² in which specific products or services are provided, and identified the suppliers of these products and services who can provide good alternatives to the applicant's ability to exercise market power.²³ As part of the first step, the applicant must also identify the relevant geographic market.²⁴ Second, the Commission measures an applicant's market share and market concentration.²⁵ Third, the Commission evaluates any other relevant factors, such as ease

¹⁸ Alternative Rate Policy Statement, 74 FERC at 61,230.

¹⁹ The Commission defines "market power" as "the ability of a pipeline to profitably maintain prices above competitive levels for a significant period of time." *Id.*

²⁰ A "good alternative" is "an alternative that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative for an applicant's service." *Id.*

²¹ Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 29.

²² Relevant product market consists of the applicant's service and other services that are good alternatives to the applicant's services. *See* Alternative Rate Policy Statement, 74 FERC at 61,231.

²³ *Id.*

²⁴ *Id.* at 61,232-34.

²⁵ *Id.* at 61,234.

of entry into the market. The Commission evaluates requests for market-based rates on a case-by-case basis.²⁶

1. Geographic and Product Markets

21. Similar to the 1998 Market Power Study, Total Peaking's updated market power study identified two product markets: (i) high-deliverability storage, such as LNG, liquid petroleum gas (LPG), and salt storage and (ii) conventional underground storage (both depleted natural gas reservoirs and water aquifers). Total Peaking also provides an analysis of the combined product markets in the updated market power study. Total Peaking used these product markets because they represent good alternatives to the Milford Plant's services.²⁷ Total Peaking identified the relevant geographic markets as the Mid-Atlantic and New England regions (i.e., Connecticut, Maine, Massachusetts, New Hampshire, Vermont, Rhode Island, New Jersey, New York, and Pennsylvania)²⁸ for high-deliverability storage and New York and Pennsylvania for conventional underground storage.

2. Market Share and Market Concentration

22. The Commission uses the Herfindahl-Hirschman Index (HHI) test to determine market concentration in the applicable geographic market. The Alternative Rate Policy Statement states that a low HHI – generally less than 1,800 – indicates that sellers cannot exert market power because customers have sufficiently diverse sources of supply in the

²⁶ Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 47.

²⁷ In the 1998 Market Power Study, Total Peaking explained that its storage services served three functions: (i) to meet short-term peak requirements, (ii) balance pipeline receipts and deliveries, and (iii) arbitrage gas prices. In light of these three functions, Total Peaking grouped its storage services into the high deliverability storage service and conventional underground storage service product markets following the example of the Commission's market power analysis in *Avoca Natural Gas Storage*, 68 FERC ¶ 61,045 (1994), and *New York State Electric and Gas Corporation*, 81 FERC ¶ 61,020 (1997).

²⁸ See Exhibit I to the Application at 7 and n.11; see also Total Peaking's Updated and Revised Market Power Study at 20, Docket No. CP96-339-000 (filed May 11, 1998) (unlike in the instant market power study, the 1998 Market Power Study excludes Vermont).

relevant market.²⁹ 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.³⁰

23. Appendices 1, 2, and 3 of Total Peaking’s updated market power study include Total Peaking’s storage facility as well as those owned by its affiliates in its calculation of market share. Total Peaking groups its analysis into three product markets: (1) maximum deliverability for LNG, LPG, and salt storage (high-deliverability storage service); (2) maximum deliverability for conventional underground storage service; and (3) maximum deliverability for a combined analysis of high-deliverability and underground storage services.

a. High-Deliverability Storage Analysis

24. Total Peaking’s updated study identifies 15 existing and competing LNG, LPG, and salt storage facilities in the Mid-Atlantic and New England regions.³¹ Total Peaking proposes to increase its maximum deliverability from 90 MMcf per day to 105 MMcf per day, resulting in a market share of 3.88 percent with an HHI of 1,309.³² Total Peaking asserts that its share of the high deliverability market in the New England and Mid-Atlantic regions is low and demonstrates that Total Peaking will not be able to exercise market power in providing high-deliverability storage services. Although Total Peaking does not propose to change the Milford Plant’s working gas capacity, the market has changed since 1998. Total Peaking’s updated study provides the HHI for working gas capacity is 1,350 with a market share of 7.44 percent.

b. Conventional Underground Storage Analysis

25. The updated market power study identifies 13 existing and competing underground storage facilities in New York and Pennsylvania.³³ Total Peaking proposal results in a market share of 1.32 percent and an HHI of 4,467. This HHI value is higher

²⁹ See Alternative Rate Policy Statement, 74 FERC at 61,235.

³⁰ See *id.*

³¹ Appendix 1 to Exhibit I of the Application.

³² The updated market study uses dekatherms as a measurement unit instead of MMcf, the measurement unit used in the application.

³³ Appendix 2 to Exhibit I of the Application.

than the threshold 1,800 level cited in the Alternative Rate Policy Statement. As for working gas capacity, which Total Peaking does not propose to change, Total Peaking's updated HHI is 3,781 with a market share of 0.42 percent.

c. Combined Analysis

26. The updated market power study identifies 24 existing and competing LNG, LPG, and underground storage facilities in the Mid-Atlantic, New England, and New York and Pennsylvania regions.³⁴ Total Peaking's proposed maximum deliverability increase to 105 MMcf per day results in a market share of 0.99 percent with an HHI of 2,634. This HHI value is higher than the threshold 1,800 level set forth in the Alternative Rate Policy Statement. Total Peaking's updated HHI for working gas capacity is 3,426 with a market share of 0.40 percent.

3. Ease of Entry and Other Factors

27. Total Peaking asserts that New York and Pennsylvania do not have significant barriers to new entry. As evidence of ease of entry in the market, Total Peaking states that the Commission has approved construction of 6 new underground storage facilities and 5 expansions of underground storage facilities in New York and Pennsylvania since 2000. In addition, Total Peaking also cites recent orders in which the Commission granted market-based rate authority for storage services;³⁵ liquefaction, storage, and vaporization services;³⁶ and parking and lending storage³⁷ in the same concentrated market areas. Furthermore, Total Peaking identified 3 new proposals to increase LNG and LPG capacity in the relevant geographic area.³⁸ Based on these recent additions and proposals, Total Peaking contends that market for storage services in the relevant geographic areas has become more competitive.

³⁴ Appendix 3 to Exhibit I of the Application.

³⁵ See Exhibit I to the Application at 20 (citing *Arlington Storage Co., LLC*, 147 FERC ¶ 61,120 (2014) (*Arlington Storage*)).

³⁶ See *id.* (citing *UGI LNG, Inc.*, 127 FERC ¶ 61,257 (2009)).

³⁷ *Rager Mountain Storage Company L.L.C.*, 152 FERC ¶ 61,098 (2015).

³⁸ See Exhibit I to the Application at 14 (listing UGI Energy Services' LNG plant in Wyomissing, Pennsylvania; Philadelphia Gas Works' LNG plant in Port Richmond, Pennsylvania; and Finger Lakes LPG Storage, L.L.C.'s LPG storage facility in Schuler County, New York).

28. Furthermore, Total Peaking argues that while the underground storage analysis and combined analysis indicate that the New York and Pennsylvania storage market is concentrated, the concentration is mainly due to two major storage providers, Dominion Transmission Inc. (Dominion) and National Fuel Gas Supply Corporation (National Fuel). Both Dominion and National Fuel provide storage services at Commission-regulated cost-based rates. In comparison to the market shares of Dominion (65.28 percent market share for underground storage and 49.22 percent for the combined product markets) and National Fuel (11.23 percent market share for underground storage and 8.47 percent for the combined product markets),³⁹ Total Peaking maintains that its market shares are relatively minimal with only 1.32 percent for maximum deliverability for underground storage and 0.99 percent for maximum deliverability for the combined product markets.

29. Total Peaking also claims that its updated market power study is conservative because it excludes other services that are competitive alternatives to LNG storage, such as no-notice service, alternative fuels, park and loan service, and pipeline capacity.

4. Commission Determination

30. We find that Total Peaking's updated market power study demonstrates that its proposal to increase deliverability from the Milford Plant will be provided in a competitive market area where substantial storage service alternatives exist for potential customers. Total Peaking's updated market power study shows that the market concentration for maximum deliverability for high-deliverability storage service in the Mid-Atlantic and New England regions results in HHI levels of 1,309 and a market share of 3.88 percent. The HHI level is below the 1,800 level set forth in the Alternative Policy Statement and the market share is small. Thus, Total Peaking will be unable to exert market power for high-deliverability storage service.

31. In addition, the Commission has found that New York and Pennsylvania are highly competitive markets where numerous storage facilities and service alternatives exist for potential customers.⁴⁰ While the HHI levels for underground storage service and the combined product markets are higher than the 1,800 level, Total Peaking's market share is small, thereby making Total Peaking unlikely to exert market power for conventional underground storage. Moreover, we have found in similar cases that market

³⁹ See Appendices 2 and 3 to Exhibit I of the Application.

⁴⁰ See *Central New York Oil and Gas Co., L.L.C.*, 153 FERC ¶ 61,278, at P 14 (2015).

concentrations in this range are acceptable because the facilities of competitors, such as Dominion and National Fuel, are regulated by the Commission and their Commission-approved rates are cost-based, alleviating the market power potential of relatively small applicants.⁴¹ As noted in the updated market power study, the Commission has determined that companies with Commission-regulated, cost-based rates cannot exercise market power to increase prices above the cost-based rate cap.⁴² Furthermore, in those instances the Commission stated that in order to attract customers seeking interruptible service, companies must offer those customers services that will lower their delivered gas prices.⁴³ The fact that most of the existing interstate storage providers in New York and Pennsylvania have cost-based rates found to be just and reasonable by the Commission provides an incentive for a new entrant in the storage business to market its services at or below the regulated rates in this area.⁴⁴ Accordingly, we agree with the updated market power study's conclusion that the existence of Commission-regulated cost-based rates in a market area acts to prevent companies with market-based rates from exercising market power, even where market concentration is high.⁴⁵

32. For these reasons, and given Total Peaking's request for reaffirmation of its authorization to charge market-based rates is unopposed, we affirm Total Peaking's previously granted authorization to charge market-based rates for firm and interruptible storage services.

33. Nevertheless, Total Peaking must notify the Commission if future circumstances significantly affect its present market power status. Thus, pursuant to section 284.504(b) of the Commission's regulations, our approval of market-based rates for the indicated services is subject to re-examination in the event that: (a) Total Peaking adds storage

⁴¹ See, e.g., *UGI Storage Co.*, 133 FERC ¶ 61,073, at P 80 (2010), *order on reh'g*, 134 FERC ¶ 61,239 (2011); *Avoca Natural Gas Storage*, 68 FERC ¶ 61,045, at 61,151 (1994).

⁴² See *Central New York Oil and Gas Co., LLC*, 94 FERC ¶ 61,194, at 61,706-07 (2001) (*Central New York*).

⁴³ See *id.* at 61,706.

⁴⁴ See *Wyckoff Gas Storage Co., LLC*, 105 FERC ¶ 61,027, at P 60 (2003) (*Wyckoff*).

⁴⁵ See *Central New York*, 94 FERC at 61,706-07; *Wyckoff*, 105 FERC ¶ 61,027 at P 60.

capacity to the project beyond the capacity authorized in this order; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to the project; (d) Total Peaking, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to the project; or (e) other significant changes occurring to its market power status.⁴⁶ These circumstances could affect its market power status, therefore Total Peaking must notify the Commission within 10 days of acquiring knowledge of any such changes. The notification must include a detailed description of the new facilities and their relationship to Total Peaking and the project.⁴⁷ The Commission also reserves the right to require an updated market power analysis at any time.⁴⁸

C. Request for Waivers of Filing, Reporting, and Accounting Requirements

34. In its present application for authorization to increase the Milford Plant's vaporization send-out capacity and to continue to charge market-based rates, Total Peaking requests a continuation of the waivers granted in the previous orders. Specifically, Total Peaking requests that the Commission continue to waive the following sections of the Commission's regulations: (1) section 157.6(b)(8) (applicants to submit cost and revenue data); (2) sections 157.14(a)(13), (14), (16), and (17) (cost-based exhibits); (3) section 157.14(a)(10) (gas supply data); (4) the accounting and reporting requirements of Part 201 and section 260.2 (Form No. 2-A); (5) section 284.7(e) (reservation charge); and (6) section 284.10 (straight fixed-variable rate design methodology).

35. In light of the prior approval and confirmation in this order of market-based rate authority for Total Peaking's storage service, the cost-related information required by the above-described regulations is not relevant. Consistent with previous Commission orders,⁴⁹ we will grant Total Peaking's request for continued waiver of the regulations requiring the filing of cost-based rate-related information, reservation charge, and straight fixed-variable rate design. We also will grant a waiver of section 157.14(a)(10),

⁴⁶ 18 C.F.R. § 284.504(b) (2016).

⁴⁷ *Id.*

⁴⁸ See, e.g., *Arlington Storage*, 147 FERC ¶ 61,120 at P 39; *Cadeville Gas Storage*, 132 FERC ¶ 61,115, at P 35 (2010).

⁴⁹ See, e.g., *Tricor Ten Section Hub, LLC*, 136 FERC ¶ 61,242, at PP 40-41 (2011); *Black Bayou Storage, LLC*, 123 FERC ¶ 61,277, at P 35 (2008).

requiring an applicant to submit gas supply data, because it does not pertain to natural gas storage service. We note that our grant of waivers does not extend to the annual charge assessment.⁵⁰ Total Peaking must file page 520 of Form No. 2-A, reporting gas volume information, in order to permit the Commission to accurately calculate the annual

charge.⁵¹ In addition, Total Peaking must maintain records of cost and revenue data consistent with the Commission's Uniform System of Accounts and stand ready to present these records if requested.

D. Environmental Analysis

36. On November 9, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was published in the *Federal Register*⁵² and was mailed to federal, state, and local government agencies; elected officials; Native American Tribes; environmental and public interest groups; other interested parties; local libraries and newspapers; and landowners who own homes within 0.5 mile of the proposed project. The Commission did not receive any comments in response to the NOI.

37. To satisfy the requirements of the National Environmental Policy Act of 1969,⁵³ our staff prepared an Environmental Assessment (EA) for Total Peaking's proposal. The EA was prepared with the cooperation of the U.S. Department of Transportation. 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, socioeconomics, cumulative impacts, and alternatives. The EA was placed into the public record on October 14, 2016.

⁵⁰ See, e.g., *Ryckman Creek Resources*, 136 FERC ¶ 61,061, at P 47 (2011); *BGS Kimball Gas Storage, LLC*, 117 FERC ¶ 61,122, at P 49 (2006).

⁵¹ See, e.g., *Unocal Windy Hill Gas Storage, LLC*, 115 FERC ¶ 61,218, at P 38 (2006).

⁵² 80 Fed. Reg. 70,775 (2016).

⁵³ 42 U.S.C. §§ 4321-4347 (2012).

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

39. 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 local laws, may prohibit or unreasonably delay the construction/installation or operation of facilities approved by this Commission.⁵⁴

40. At a hearing held on December 15, 2016, the Commission on its own motion received and made part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, and all comments submitted herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity under section 7(c) of the NGA is issued to Total Peaking, authorizing it to construct and operate the proposed project, as described and conditioned herein, and as more fully described in this order and in the application and supplements.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on:

- (1) Total Peaking's proposed project being constructed and made available for service within 3 years of the date of this order, pursuant to section 157.20(b) of the Commission's regulations;

⁵⁴ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

- (2) Total Peaking's compliance with all applicable Commission regulations under the NGA including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and
- (3) Total Peaking's compliance with the environmental conditions listed in the appendix to this order.

(C) Total Peaking is authorized to abandon the three 30-MMcf per day vaporizers, as more fully described in the application and this order.

(D) Total Peaking must notify the Commission within 10 days of the abandonment of the three 30-MMcf per day vaporizers.

(E) Total Peaking is authorized to continue to charge market-based rates for its storage services as described and conditioned herein.

(F) Pursuant to section 284.504(b) of the Commission's regulations, Total Peaking shall notify the Commission within ten days of acquiring knowledge of:

- (1) Total Peaking adding storage capacity;
- (2) an affiliate's increased storage capacity;
- (3) an affiliate's linking storage facilities to Total Peaking;
- (4) Total Peaking or an affiliate's acquisition or an interest in, or being acquired by, an interstate pipeline connected to Total Peaking; or
- (5) other significant changes to its market power status. The notification shall include a detailed description of the new facilities and their relationship to Total Peaking. The Commission also reserves the right to require an updated market power analysis at any intervening time.

(G) Total Peaking is granted a waiver of the Commission's regulations that have been deemed inapplicable to storage providers with market-based rates, as discussed in this order.

(H) Total Peaking 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 Total Peaking. Total Peaking shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Environmental Conditions

As recommended in the Environmental Assessment (EA) this authorization includes the following conditions:

1. Total Peaking shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests and as identified in the EA unless modified by the order. Total Peaking 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 all steps necessary to ensure the protection of life, health, property and the environment during construction and operation of the project. This authority shall include:
 - a. stop-work authority and authority to cease operation; and
 - b. the design and implementation of any additional measures deemed necessary to assure continued compliance with the intent of the conditions of the order.
3. **Prior to any construction**, Total Peaking shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed maps, figures, and diagrams. **As soon as they are available, and before the start of construction**, Total Peaking shall file with the Secretary any revised detailed survey maps/figures 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 maps/figures.

5. Total Peaking shall file with the Secretary detailed maps/figures and aerial photographs at a scale not smaller than 1:6,000 identifying all facility relocations, and staging areas, 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.**

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

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the authorization and before construction begins,** Total Peaking shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Total Peaking must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Total Peaking 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 Total Peaking 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 Total Peaking will give to all personnel involved with construction and restoration, and refresher training as the project progresses and personnel change, with the opportunity for OEP staff to participate in the training sessions;
 - f. the company personnel (if known) and specific portion of Total Peaking's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Total Peaking 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. Total Peaking shall employ at least one EI during construction of the project. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the order, and any other authorizing document;
 - d. responsible for documenting compliance with the environmental conditions of the order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - e. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Total Peaking shall file updated status reports with the Secretary on a **monthly** basis until all construction and restoration activities are complete. Problems of a significant magnitude shall be reported to the FERC **within 24 hours**. 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 Total Peaking's efforts to obtain the necessary federal authorizations;
 - b. project schedule, including current construction status of the project and work planned for the following reporting period;
 - c. a listing of all problems encountered, contractor nonconformance/deficiency logs, and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective and remedial actions implemented in response to all instances of noncompliance, nonconformance, or deficiency, and their cost;
 - e. the effectiveness of all corrective and remedial 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 Total Peaking from other federal, state, or local permitting agencies concerning instances of noncompliance, and Total Peaking's response.
9. Total Peaking shall employ a special inspector during construction, and a copy of the special inspector's reports shall be included in the **monthly** status reports filed with the Secretary (see condition 8 above). The special inspector shall be responsible for:
- a. observing the construction of the project facilities to be certain it conforms to the design drawings and specifications;
 - b. furnishing inspection reports to the engineer- or architect- of-record and other designated persons. All discrepancies shall be brought to the immediate attention of the contractor for correction, and then if uncorrected, to the engineer- or architect- of-record; and
 - c. submitting a final signed report stating whether the work requiring special inspection was, to the best of his/her knowledge, in conformance with the approved plans and specifications and the applicable workmanship provisions.
10. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Total Peaking shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).

11. Total Peaking must receive written authorization from the Director of OEP **prior to introducing hazardous fluids into the project facilities**. Instrumentation and controls, hazard detection, hazard control, and security components/systems necessary for the safe introduction of such fluids shall be installed and functional.
12. **Prior to construction of final design**, Total Peaking shall file with the Secretary the following information, stamped and sealed by the professional engineer-of-record, registered in Connecticut:
 - a. site preparation drawing and specifications prior to construction;
 - b. structures and foundation design drawings and calculations (including prefabricated and field-constructed structures) prior to their construction;
 - c. seismic specifications for procured equipment prior to the issuing of requests for quotations; and
 - d. quality control procedures to be used for civil/structural design and construction early in the design phase.
13. Total Peaking 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 the facilities have been constructed in accordance with the Commission's orders and applicable standards, can be expected to operate safely as designed, and the rehabilitation and restoration of areas affected by the project are proceeding satisfactorily.
14. **Within 30 days of placing the authorized facilities in service**, Total Peaking shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed and installed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the order conditions Total Peaking 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.
15. Total Peaking shall file a noise survey with the Secretary **no later than 60 days** after placing the modified project in service. If the noise attributable to the operation of the project at full load exceeds a day-night sound level of 55 decibels on the A-weighted scale at any nearby noise sensitive area, Total Peaking shall file a report on what changes are needed and should install the additional noise controls to meet the level **within 1 year** of the in-service date. Total Peaking shall

confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

Information pertaining to these specific recommendations shall be filed with the Secretary for review and written approval by the Director of OEP either: **prior to initial site preparation; prior to construction of final design; prior to commissioning; prior to introduction of hazardous fluid; or prior to commencement of service**, as indicated by each specific recommendation.

Specific engineering, vulnerability, or detailed design information meeting the criteria specified in Order No. 683 (Docket No. RM06-24-000), including security information, shall be submitted as critical energy infrastructure information (CEII) pursuant to 18 C.F.R. § 388.112. *See* CEII, Order No. 683, 71 Fed. Reg. 58,273 (Oct. 3, 2006), FERC Statutes and Regulations ¶ 31,228 (2006). Information pertaining to items such as: off-site emergency response; procedures for public notification and evacuation; and construction and operating reporting requirements, would be subject to public disclosure. All information shall be filed **a minimum of 30 days** before approval to proceed is requested.

16. **Prior to initial site preparation**, Total Peaking shall demonstrate that the sizing spill for the new impoundment sump would not back up into the curbed area containing the vaporization equipment, considering the greatest flow from a guillotine failure of the liquefied natural gas (LNG) supply line with all installed pumps running, unless mechanically interlocked, at pump run out rates for 10 minutes.
17. **Prior to initial site preparation**, Total Peaking shall model radiant heat flux from the impoundment surface areas for the project, as defined by the impoundment sizing spills including that from the LNG supply line into the existing earthen berm, to determine if cascading events would occur. A 2-hour fire duration shall be considered, unless that depth of LNG would burn in less time. At least 3 years of hourly temperature, humidity, and wind speed data shall be considered in the selection of conditions that occur 5% or more of the time at the site location. The radiant heat flux impacts from these scenarios onto occupied buildings, any pressure vessels, the LNG storage tank, and necessary emergency equipment shall be identified and mitigated where significant.
18. **Prior to initial site preparation**, Total Peaking shall indicate the firewater protection philosophy for the vaporizer area and provide detailed calculations to confirm that the final fire water volumes will be prevented from entering or accounted for when evaluating the capacity of the impoundment system during a spill and fire scenario if applicable.

19. **Prior to initial site preparation,** Total Peaking shall provide at least 3 years of hourly temperature, humidity and wind speed data, as well as a wind sensitivity analysis to ensure the worst case vapor dispersion scenarios have been modeled or that the wind speeds represent conditions that occur 90 percent of the time or more at the site location.
20. **Prior to initial site preparation,** Total Peaking shall verify the vapor fence heights depicted in the vapor dispersion modeling are consistent with actual vapor fencing to be installed or provide revised vapor dispersion modeling depicting the actual vapor fence heights.
21. **Prior to initial site preparation,** Total Peaking shall provide procedures for controlling access during construction.
22. **Prior to initial site preparation,** Total Peaking shall file an overall project schedule, which includes the proposed stages of the commissioning plan.
23. **Prior to initial site preparation,** Total Peaking shall provide quality assurance and quality control procedures for construction activities.
24. **Prior to construction of final design,** Total Peaking shall provide a plot plan showing all major equipment, structures, buildings, and impoundment systems.
25. **Prior to construction of final design,** Total Peaking shall include change logs that list and explain any changes made from the Front End Engineering Design provided in Total Peaking application and filings. A list of all changes with an explanation for the design alteration shall be provided and all changes shall be clearly indicated on all diagrams and drawings.
26. **Prior to construction of final design,** Total Peaking shall provide an up-to-date complete equipment list, process and mechanical data sheets, and specifications.
27. **Prior to construction of final design,** Total Peaking shall provide up-to-date process flow diagrams with heat and material balances and piping and instrumentation diagrams (P&IDs). The P&IDs shall include the following information:
 - a. equipment tag number, name, size, duty, capacity, and design conditions;
 - b. equipment insulation type and thickness;
 - c. valve high pressure side and internal and external vent locations;
 - d. piping with line number, piping class specification, size, and insulation type and thickness;
 - e. piping specification breaks and insulation limits;
 - f. all control and manual valves numbered;

- g. relief valves with size and set points; and
 - h. drawing revision number and date.
28. **Prior to construction of final design,** Total Peaking shall provide P&IDs, specifications, and procedure that clearly show and specify the tie-in details required to safely connect the project facilities to the existing plant facilities.
29. **Prior to construction of final design,** Total Peaking shall include the sizing basis and capacity for the final design of the pressure relief valves for major process equipment and vessels.
30. **Prior to construction of final design,** Total Peaking shall include a hazard and operability review of the completed design prior to issuing the P&IDs for construction. A copy of the review, a list of recommendations, and actions taken on the recommendations, shall be filed.
31. **Prior to construction of final design,** Total Peaking shall provide final plan drawings of camera and lighting locations.
32. **Prior to construction of final design,** Total Peaking shall provide final plan drawings of the security fencing and access and egress locations.
33. **Prior to construction of final design,** Total Peaking shall provide complete drawings and a list of the hazard detection equipment. Plan drawings shall clearly show the location and elevation of all detection equipment. The list shall include the instrument tag number, type and location, alarm indication locations, and shutdown functions of the hazard detection equipment.
34. **Prior to construction of final design,** Total Peaking shall include a technical review of facility design that:
- a. identifies all combustion/ventilation air intake equipment and the distances to any possible flammable gas release; and
 - b. demonstrates that these areas are adequately covered by hazard detection devices and indicates how these devices would isolate or shut down any combustion or ventilation equipment whose continued operation could add to or sustain an emergency.
35. **Prior to construction of final design,** Total Peaking shall provide complete plan drawings and a list of the fixed and wheeled dry-chemical, hand-held fire extinguishers, and other hazard control equipment. Drawings shall clearly show the location by tag number of all fixed, wheeled, and hand-held extinguishers.

The list shall include the equipment tag number, type, capacity, equipment covered, discharge rate, and automatic and manual remote signals initiating discharge of the units.

36. **Prior to construction of the final design**, Total Peaking shall provide facility plot plan drawings that show the location and area covered by each monitor, hydrant, deluge system, and sprinkler. Also, provide verification that all sides of the project equipment would receive adequate fire water coverage.
37. **Prior to construction of final design**, Total Peaking shall include a drawing showing the location of the emergency shutdown buttons. Emergency shutdown buttons shall be easily accessible, conspicuously labeled, and located in an area which would be accessible during an emergency.
38. **Prior to construction of final design**, Total Peaking shall include the cause-and-effect matrices for the process instrumentation, fire and gas detection system, and emergency shutdown system. The cause-and-effect matrices shall include alarms and shutdown functions, details of the voting and shutdown logic, and set points.
39. **Prior to construction of final design**, Total Peaking shall provide spill containment system drawings with dimensions and slopes of curbing, trenches, impoundments, and capacity calculations considering any foundations and equipment within impoundments.
40. **Prior to construction of final design**, Total Peaking shall include a plan for clean-out, dry-out, purging, and tightness testing. This plan shall address the requirements of the American Gas Association's Purging Principles and Practice required by 49 C.F.R. Part 193 and shall provide justification if not using an inert or non-flammable gas for cleanout, dry-out, purging, and tightness testing.
41. **Prior to construction of final design**, Total Peaking shall provide the procedures for pressure/leak tests which address the requirements of ASME VIII and ASME B31.3, as required by 49 C.F.R. Part 193.
42. **Prior to construction of final design**, Total Peaking shall specify that for hazardous fluids, piping and piping nipples 2 inch or less in diameter are designed to withstand external loads, including vibrational loads in the vicinity of rotating equipment and operator live loads in areas accessible by operators.
43. **Prior to construction of final design**, Total Peaking shall include the details of the vapor fences as well as procedures to maintain and inspect the vapor barriers provided to meet the siting provisions of 49 C.F.R. § 193.2059.

44. **Prior to construction of final design**, Total Peaking shall certify that the design is consistent with the information provided to U.S. Department of Transportation (DOT) as described in the design spill determination letter dated June 14, 2016 (Accession Number 20160617-4003). In the event that any modifications to the design alters the candidate design spills on which the 49 C.F.R. Part 193 siting analysis was based, Total Peaking shall consult with DOT on any actions necessary to comply with Part 193.
45. **Prior to construction of final design**, Total Peaking shall specify the closure time for emergency shutdown valve, ECV-173.
46. **Prior to construction of final design**, Total Peaking shall specify valve, ECV-173, as a fire-safe valve.
47. **Prior to commissioning**, Total Peaking shall tag all equipment, instrumentation, and valves in the field, including drain valves, vent valves, main valves, and car-sealed or locked valves.
48. **Prior to commissioning**, Total Peaking shall file plans and detailed procedures for testing the integrity of onsite mechanical installation, functional tests, introduction of hazardous fluids, operational tests, and placing the equipment into service.
49. **Prior to commissioning**, Total Peaking shall file a tabulated list and drawings of the proposed hand-held fire extinguishers. The list shall include the equipment tag number, extinguishing agent type, capacity, number, and location. The drawings shall show the extinguishing agent type, capacity, and tag number of all hand-held fire extinguishers.
50. **Prior to commissioning**, Total Peaking shall file an updated Emergency Response Plan for the facility to address the additional facilities of the project.
51. **Prior to commissioning**, Total Peaking shall file updates to the facility's operation and maintenance procedures and manuals as well as safety procedures to include the facilities of the project.
52. **Prior to introduction of hazardous fluids**, Total Peaking shall complete a firewater monitor and hydrant coverage test. The actual coverage area from each monitor and hydrant shall be shown on facility plot plan(s).
53. **Prior to introduction of hazardous fluids**, Total Peaking shall file documentation demonstrating the facility operations staff has completed its training for the updated procedures.
54. **Prior to introduction of hazardous fluids**, Total Peaking shall notify FERC staff of any proposed revisions to the security plan and physical security of the facility.

55. **Prior to introduction of hazardous fluids**, Total Peaking shall update the facility's maintenance plans and procedures to include snow removal from any impoundment systems.
56. **Prior to introduction of hazardous fluids**, Total Peaking shall complete all pertinent tests (Factory Acceptance Tests, Site Acceptance Tests, Site Integration Tests) associated with the Distributed Control System and Safety Instrumented System that demonstrates full functionality and operability of the system.
57. **Prior to commencement of service**, Total Peaking shall label piping with fluid service and direction of flow in the field in addition to the pipe labeling requirements of NFPA 59A.

In addition, we are recommending that the following measures shall apply **throughout the life of the project**:

58. The facilities installed as part of the project shall be subject to the regular FERC staff technical reviews and site inspections on at least a **biennial basis**.
59. Total Peaking shall report any design modifications and operating problems for the facilities at the project in the **semi-annual** operational reports filed with the Secretary for the facility.
60. The plant's incident reporting requirements shall be updated to the following: significant non-scheduled events, including safety-related incidents (e.g., LNG, condensate, refrigerant, or natural gas releases, fires, explosions, mechanical failures, unusual over pressurization, and major injuries) and security-related incidents (e.g., attempts to enter site, suspicious activities) shall be reported to FERC staff. In the event an abnormality is of significant magnitude to threaten public or employee safety, cause significant property damage, or interrupt service, notification shall be made immediately, without unduly interfering with any necessary or appropriate emergency repair, alarm, or other emergency procedure. In all instances, notification shall be made to FERC staff **within 24 hours**. This notification practice shall be incorporated into the LNG facility's emergency plan. Examples of reportable hazardous fluids related incidents include:
 - a. fire;
 - b. explosion;
 - c. estimated property damage of \$50,000 or more;
 - d. death or personal injury necessitating in-patient hospitalization;
 - e. release of hazardous fluids for five minutes or more;
 - f. unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide, or flood, that impairs the serviceability,

- structural integrity, or reliability of an LNG facility that contains, controls, or processes hazardous fluids;
- g. any crack or other material defect that impairs the structural integrity or reliability of an LNG facility that contains, controls, or processes hazardous fluids;
 - h. any malfunction or operating error that causes the pressure of a pipeline or LNG facility that contains or processes hazardous fluids to rise above its maximum allowable operating pressure (or working pressure for LNG facilities) plus the build-up allowed for operation of pressure limiting or control devices;
 - i. a leak in an LNG facility that contains or processes hazardous fluids that constitutes an emergency;
 - j. inner tank leakage, ineffective insulation, or frost heave that impairs the structural integrity of an LNG storage tank;
 - k. any safety-related condition that could lead to an imminent hazard and cause (either directly or indirectly by remedial action of the operator), for purposes other than abandonment, a 20 percent reduction in operating pressure or shutdown of operation of a pipeline or an LNG facility that contains or processes hazardous fluids;
 - l. safety-related incidents to hazardous fluids transportation occurring at or en route to and from the LNG facility; or
 - m. an event that is significant in the judgment of the operator and/or management even though it did not meet the above criteria or the guidelines set forth in an LNG facility's incident management plan.

In the event of an incident, the Director of OEP has delegated authority to take whatever steps are necessary to ensure operational reliability and to protect human life, health, property or the environment, including authority to direct the LNG facility to cease operations. Following the initial company notification, FERC staff would determine the need for a separate follow-up report or follow-up in the upcoming semi-annual operational report. All company follow-up reports shall include investigation results and recommendations to minimize a reoccurrence of the incident.