

141 FERC 61,192  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Tres Palacios Gas Storage LLC

Docket No. CP12-36-000

ORDER ISSUING CERTIFICATE

(Issued December 5, 2012)

1. On December 21, 2011, Tres Palacios Gas Storage LLC (Tres Palacios) filed an application under section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> for a certificate of public convenience and necessity authorizing the construction and operation of a 19.7-mile extension of its existing Tres Palacios Storage Facility pipeline header system located in Matagorda and Wharton Counties, Texas. The project would connect the existing storage header pipeline system to a new receipt point at the existing Copano Energy L.L.C. (Copano Energy) Houston Central natural gas processing plant (Copano Plant) located in Colorado County, Texas. Tres Palacios also requests reaffirmation of the Commission's previous authorization to charge market-based rates for Tres Palacios' storage, hub, and wheeling service.

2. We grant Tres Palacios' requested authorization, subject to the conditions described below. We also reaffirm Tres Palacios' authority to charge market-based rates for storage, hub, and wheeling services and grant its request for continued waiver of certain requirements.

**I. Background**

3. Tres Palacios, a Delaware limited liability company, is a "natural gas company" as defined in section 2(6) of the NGA<sup>2</sup> and is the owner and operator of the certificated Tres

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

<sup>2</sup> *Id.* § 717a(6).

Palacios Storage Facility.<sup>3</sup> Tres Palacios is a direct wholly-owned subsidiary of Inergy, L.P.

4. The currently operational Tres Palacios Storage Facility consists of three salt caverns, a gas handling facility with six compressor units,<sup>4</sup> a 41.72-mile bi-directional header pipeline system (consisting of the 31-mile North Pipeline Corridor and the 10.72-mile South Pipeline Corridor), and nine receipt/delivery pipeline interconnect meter stations that connect with ten interstate and intrastate pipelines.<sup>5</sup> The ten pipelines that interconnect with the header system are Florida Gas Transmission Company, LLC (Florida Gas), Kinder Morgan Tejas Pipeline, LLC (KM Tejas), Houston Pipe Line Company, LP (Houston Pipeline), Central Texas Gathering System (Central Texas), Natural Gas Pipeline Company of America LLC (Natural), Transcontinental Gas Pipe Line Company, LLC (Transco), Tennessee Gas Pipeline Company, L.L.C. (Tennessee), Valero Natural Gas Pipeline Company (Valero), Channel Pipeline Company (Channel), and Texas Eastern Transmission, LP (Texas Eastern). Three pipelines (Houston Pipeline, Tennessee, and Kinder Morgan Texas Pipeline, LP (KM Texas)) interconnect with the Copano Plant.

5. The Tres Palacios Storage Facility's total storage capacity is 57.26 billion cubic feet (Bcf), consisting of 38.40 Bcf of working gas and 18.86 Bcf cushion gas.<sup>6</sup> The facility has a peak withdrawal rate of 2,500 MMcf per day, a maximum injection rate of 1,000 MMcf per day, and is capable of cycling seven times per year.

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<sup>3</sup> See *Tres Palacios Gas Storage, LLC*, 120 FERC ¶ 61,253 (2007) (2007 Certificate Order).

<sup>4</sup> See *Tres Palacios Gas Storage, LLC*, 136 FERC ¶ 62,127 (2011) (authorizing the replacement of five 4,800-horsepower (hp) natural gas-fueled compressor units with one 15,300-hp electric motor-driven compressor unit).

<sup>5</sup> Tres Palacios was originally authorized to construct twelve interconnect meter stations but did not construct three stations (Crosstex Gulf Coast Transmission Ltd., Kinder Morgan Texas Pipeline, LP, and Gulf South Pipeline Company, LP) because of lack of customer demand. See Application at 5, n. 5.

<sup>6</sup> See *Tres Palacios Gas Storage, LLC*, 133 FERC ¶ 62,244 (2010) (revising the certificated storage capacity from 53.99 Bcf to 57.26 Bcf) (2010 Amendment Order).

6. Tres Palacios provides firm and interruptible storage services, firm park and loan services, interruptible hourly balancing service, interruptible park and loan services, and interruptible hub and wheeling services at market-based rates.<sup>7</sup>

## II. Proposal

### A. Proposed Facilities

7. Tres Palacios' North Pipeline Corridor currently ends at the meter station that interconnects with the Valero pipeline at Wharton County, Texas. To accommodate Copano Energy's plans to expand the capacity of its Copano Plant by 400 million cubic feet (MMcf) per day by early 2013, Tres Palacios proposes to construct a 19.7-mile, 24-inch pipeline extending northwest from the Valero meter station to a new receipt point and interconnection at the Copano Plant in Colorado County, Texas. This header extension will offer prospective customers processing gas at the Copano Plant access to storage services at the Tres Palacios Storage Facility as well as access to the interconnecting pipelines on Tres Palacios' system. Prospective shippers could use the Copano Plant receipt as a primary or secondary receipt point under Tres Palacios' Firm Storage Service Rate Schedule.

8. Tres Palacios states that the proposed header extension pipeline would provide its shippers a new source of gas. Tres Palacios states that the gas will flow in one direction on the header extension, from the Copano Plant to Tres Palacios' existing header system at the Valero Meter Station. Tres Palacios does not anticipate flowing gas from the existing header system to the Copano Plant or to any of the three pipelines that currently interconnect with the Copano Plant. To the extent Tres Palacios' shippers wish to deliver gas into any of those pipelines, Tres Palacios states it can accomplish such deliveries, directly or indirectly, through existing pipeline interconnections along its header pipeline system without having to flow gas to the Copano Plant. Tres Palacios states that while it may be possible on occasion to receive gas at the Copano Plant and to redeliver it without having to route the gas through Tres Palacios' storage or central compression facility (for example, for the occasional delivery at Valero or any of the three pipelines between Valero and the Tres Palacios' storage or central compression facility), Tres Palacios states this to be the exception rather than the rule.<sup>8</sup>

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<sup>7</sup> See *Tres Palacios*, 120 FERC ¶ 61,253 at P 31; see also *Tres Palacios*, 133 FERC at 64,253 (delegated order reaffirming Tres Palacios' market-based rate authority).

<sup>8</sup> See August 15, 2012 Data Response No. 1.

9. Tres Palacios states that the design capacity of the new meter station would allow maximum receipts of 300 MMcf per day from the Copano Plant into Tres Palacios' header system. Tres Palacios states that the proposal will not change the certificated capacity, pressures, injection or withdrawal rates previously authorized for the Tres Palacios Storage Facility. Tres Palacios states that, given the complexity of the Tres Palacios header system, the large number of pipeline interconnects available along it, and the variety of pressures prevailing in the various interconnected pipelines, the header extension will rely on Tres Palacios Storage Facility's central compression facilities and storage injection and withdrawal capabilities to transport gas along its system. Tres Palacios Storage Facility's compression and injection-withdrawal capabilities are needed to regulate the pressure differences among all the receiving pipelines. For example, if pressure supplied at the Copano Plant is not adequate to support the necessary pipeline operating pressures, Tres Palacios could use one of the dual pipelines south of the Valero Meter Station to move gas received from the Copano Plant to the gas handling facility for compression and redelivery into the other header pipeline and into a higher pressure pipeline, or injection into storage.

10. Tres Palacios contends that the proposal will provide operational and commercial benefits. First, it will enhance Tres Palacios' system's operational flexibility and reliability by providing an additional source of incremental flowing gas supplies for the Tres Palacios system. Second, the project would offer Tres Palacios an additional base gas supply option to support its storage cavern development and operations. Finally, Tres Palacios could use the Copano Plant interconnect to make occasional purchases of gas for operational reasons.

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

11. Tres Palacios requests authority to provide firm and interruptible storage services, firm and interruptible hub services, interruptible wheeling service, and enhanced interruptible wheeling service at market-based rates on the extension header. Because Tres Palacios is only adding one receipt point to its North Pipeline Corridor, Tres Palacios argues the proposal would not significantly affect its wheeling market power analysis; thus, the Commission should not require it to file a new market power study.<sup>9</sup>

12. Furthermore, because Tres Palacios is not proposing to change the facility's storage capacity or deliverability, it argues that the proposal would not affect its market power analysis for storage and hub services. Tres Palacios argues that its market power for such services would not change.

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<sup>9</sup> See 18 C.F.R. § 284.502 (2012).

13. For these reasons, Tres Palacios requests that the Commission reaffirm its previous determination that Tres Palacios lacks significant market power and grant its request for authorization to charge market-based rates for its storage, hub, and wheeling services.

14. In view of its intent to charge market-based rates, Tres Palacios requests that the Commission continue to waive certain filing, accounting, and reporting requirements, which Tres Palacios contends are relevant to cost-based rate storage providers but not to market-based rate storage providers.

15. Tres Palacios conducted a non-binding open season for the Copano Plant receipt point on December 6, 2011, which ran through January 5, 2012. Tres Palacios states that the open season indicated that there will be substantial interest in the new Copano Plant receipt point. Also, Tres Palacios states that it and Copano Energy are negotiating to enter into a long-term service agreement for enhanced interruptible wheeling service (EIWS) under Tres Palacios' Rate Schedule EIWS.

### **III. Notice, Comment, and Intervention**

16. Notice of Tres Palacios' application was published in the *Federal Register* on January 6, 2012 (77 Fed. Reg. 789). Copano Energy filed a timely, unopposed motion to intervene. Timely, unopposed motions to intervene are automatically granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>10</sup>

### **IV. Discussion**

17. Since the proposed facilities will be used to provide natural gas services in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

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

18. The Certificate Policy Statement provides guidance for evaluating proposals for certificating new construction.<sup>11</sup> The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, the

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<sup>10</sup> *Id.* § 385.214(c).

<sup>11</sup> *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).

Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, the subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new storage and pipeline construction.

19. 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 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, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

20. As noted, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Here, we are approving Tres Palacios' proposal to continue to charge market-based rates for its firm and interruptible storage, hub, and wheeling services, which would not change under its effective FERC Gas Tariff, and thus Tres Palacios assumes the economic risks associated with the costs of the project's facilities. Accordingly, the Commission finds that Tres Palacios satisfies the threshold requirement of the Certificate Policy Statement.

21. We are also satisfied that there will be no negative impacts on existing storage providers or their captive customers. The proposed project will be located in a competitive market and will enhance storage options available to pipelines and their customers and increase competitive alternatives. Furthermore, no storage company or customer in Tres Palacios' market area has protested the proposal.

22. We find Tres Palacios has taken steps to minimize the adverse impacts to landowners and communities that might be affected by its project. The proposed project will be located in sparsely populated area where oil and gas production already exist, along with agricultural operations. The proposed header extension will be constructed within or parallel to existing rights-of-way. Tres Palacios already owns 30 percent of the right-of-way easements necessary to develop the proposed project and will continue to negotiate for the remaining easements in order to reduce the reliance on eminent domain.

23. Tres Palacios states that it conducted an open season for service utilizing the proposed facility, that it is an active storage provider with approximately 20.5 Bcf of its 38.4 Bcf certificated firm storage capacity under contract,<sup>12</sup> and that it is currently negotiating for a long term wheeling agreement with Copano Energy. Based upon this demonstration of need and in view of the above findings, we conclude that Tres Palacios' proposal is consistent with the Certificate Policy Statement and section 7(c) of the NGA, and that the public convenience and necessity requires approval of Tres Palacios' proposal subject to the conditions set forth in this order.

**B. Market-Based Rates**

24. Tres Palacios requests that the Commission reaffirm our previous determination that Tres Palacios lacks significant market power and grant Tres Palacios' request for authorization to continue to charge market-based rates for its storage, hub, and wheeling services. Tres Palacios did not file a new market-power study because, it contends, the proposed project would not affect its market power. Instead, Tres Palacios relies on the original market-power study that it submitted in support of application to construct and operate the Tres Palacios Storage Facility.

25. Tres Palacios states that the proposed extension of its header system does not affect Tres Palacios Storage Facility's storage capacity or deliverability; therefore, the proposed project would have no effect on the Commission's previous determination that Tres Palacios lacks market power with regard to storage capacity and deliverability. Tres Palacios also states that the addition of one receipt point to its header pipeline system would have, at most, a *de minimis* impact on its wheeling market power analysis; thus, the Commission's previous determination that Tres Palacios lacks market power in relation to wheeling services should also remain undisturbed.

26. Generally, the Commission evaluates requests to charge market-based rates for storage services under the analytical framework of its Alternative Rate Policy Statement.<sup>13</sup> Under the Alternative Rate Policy Statement, the Commission's framework for evaluating requests for market-based rates has two principal purposes: (1) to determine whether the applicant can withhold or restrict services in a manner that would result in significant price increases over a significant period of time; and (2) to determine whether the applicant can discriminate unduly in price or terms and conditions of

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<sup>12</sup> See August 15, 2012 Data Response No. 6.

<sup>13</sup> See *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, order granting clarification, 74 FERC ¶ 61,194 (1996) (Alternative Rate Policy Statement).

service.<sup>14</sup> To find that an applicant cannot withhold or restrict services, increase prices over an extended period, or discriminate unduly, the Commission must first find that there is a lack of market power<sup>15</sup> because customers have good alternatives<sup>16</sup> or that the applicant or the Commission can mitigate the market power with specific conditions.<sup>17</sup>

27. The Commission's analysis of whether an applicant has the ability to exercise market power consists of three major steps. First, the Commission reviews whether the applicant has specifically and fully defined the relevant markets<sup>18</sup> to determine which specific products or services are identified and the suppliers of those products and services that provide good alternatives to the applicant's ability to exercise market power.<sup>19</sup> Additionally, as part of the first step, the applicant must identify the relevant geographic market.<sup>20</sup> Second, the Commission measures an applicant's market share and market concentration.<sup>21</sup> Third, the Commission evaluates other relevant factors, such as ease of entering the market.

28. The Commission examines concentration in the relevant markets using the Herfindahl-Hirschman Index (HHI). A low HHI (generally less than 1,800) indicates that sellers are less likely to be able to exert market power because customers have

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<sup>14</sup> See Alternative Rate Policy Statement, 74 FERC at 61,231.

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

<sup>16</sup> A "good alternative" is "an alternative to the proposed project that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative for an applicant's service." *Id.*

<sup>17</sup> See *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220, at P 29, *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

<sup>18</sup> See Alternative Rate Policy Statement, 74 FERC at 61,231.

<sup>19</sup> Relevant product market consists of the applicant's service and other services that are good alternatives to the applicant's services. See *id.*

<sup>20</sup> See *id.* at 61,232-34.

<sup>21</sup> See *id.* at 61,234.

sufficiently diverse alternatives in the relevant market.<sup>22</sup> While a low HHI suggests a lack of market power, a high HHI (generally greater than 1,800) requires closer scrutiny to make a determination about a seller's ability to exert market power.<sup>23</sup>

29. The Commission previously determined that the Tres Palacios would lack market power because Tres Palacios' market shares are low, the market concentration is below the threshold for closer scrutiny, and the barriers to entry in the geographic market are low.<sup>24</sup> Accordingly, the Commission granted Tres Palacios' prior request to charge market-based rates for storage, hub, and wheeling services on the Tres Palacios Storage Facility.

30. In the present proceeding, Tres Palacios' proposal to build the extension and one receipt point would only have a negligible effect on the Commission's previous determination on Tres Palacios' market power. Tres Palacios' previous market power analysis identifies the relevant product market as firm and interruptible storage and hub services and interruptible wheeling service. The relevant geographic market region is east Texas, Louisiana, Mississippi, and Alabama (the Gulf States Market).<sup>25</sup> Twenty-five other existing and competing storage facilities in this geographic market are identified.<sup>26</sup> In addition, Tres Palacios original market power analysis showed an HHI of 1,395 for working gas capacity with a 5.0-percent market share and an HHI of 866 for peak day deliverability with a 12-percent market share.<sup>27</sup> Tres Palacios' market shares for wheeling delivery and receipt capacities were 19 percent and 23 percent, respectively, and its HHI values for wheeling at alternate hubs and market centers were 1,315 for delivery capacity and 1,506 for receipt capacity.<sup>28</sup>

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<sup>22</sup> See Order No. 678, FERC Stats. & Regs. ¶ 31,220, at P 55 (noting that the Commission is not changing the 1,800 HHI threshold level).

<sup>23</sup> Alternative Rate Policy Statement, 74 FERC at 61,235.

<sup>24</sup> See *Tres Palacios*, 120 FERC ¶ 61,253 at P 31.

<sup>25</sup> See *id.* P 26.

<sup>26</sup> See *id.*

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

<sup>28</sup> See *id.* P 28.

31. Several months after filing its initial application for the Tres Palacios Storage Facility, Tres Palacios filed an updated market power analysis because it intended to construct two additional meter and regulating stations and two interconnections as part of its yet-to-be-certificated Tres Palacios Storage Facility. The updated market power analysis showed Tres Palacios' market shares for wheeling delivery and receipt capacities were 20 percent and 23 percent, respectively, and the HHI values for wheeling at alternate hubs and market centers were 1,395 for delivery capacity and 1,527 for receipt capacity.<sup>29</sup> These measures of market concentration were below the 1,800 threshold level, which indicated that Tres Palacios did not have market power in the relevant market area.

32. Because the addition of two new interconnects negligibly affected Tres Palacios' market share percentages (i.e., delivery capacity increased by 1 percent and receipt capacity did not increase) and HHI values (i.e., both delivery and receipt capacity values increased by only 1 percent), we find that the addition of one additional receipt point to its North Pipeline Corridor would have at most a *de minimis* impact on Tres Palacios' latest wheeling market power analysis. Further, Tres Palacios' request for reaffirmation of its authorization to charge market based rates is unopposed.

33. For these reasons, we conclude that Tres Palacios will continue to lack market power. Thus, we will approve Tres Palacios' request to continue to charge market-based rates for firm and interruptible storage and hub services and interruptible wheeling service without requiring Tres Palacios to prepare and file a new market-power study. The filing requirements set forth in 18 C.F.R. Part 284, Subpart M for market-power studies are waived accordingly.

34. Nevertheless, Tres Palacios must notify us if future circumstances significantly affect its present market-power status. Thus, our approval of market-based rates for the indicated services is subject to re-examination in the event that: (a) Tres Palacios adds storage capacity beyond the capacity authorized in this order; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to Tres Palacios; or (d) Tres Palacios, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to Tres Palacios. Since these circumstances could affect its market-power status, Tres Palacios shall notify the Commission within 10 days of acquiring knowledge of any such changes. The notification shall include a detailed description of

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<sup>29</sup> See *id.* P 28.

the new facilities and their relationship to Tres Palacios.<sup>30</sup> We also reserve the right to require an updated market-power analysis at any time.<sup>31</sup>

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

35. Because it proposes to continue to charge market-based rates, Tres Palacios requests that it be permitted to continue to waive the following Commission's cost-based regulations: (1) section 157.6(b)(8) (certificate applicants to submit cost and revenue data); (2) sections 157.14(a)(13), (14), (16), and (17) (cost-based exhibits); (3) the accounting and reporting requirements of Part 201 and sections 260.1 and 260.2 relating to cost-of-service rate structure (Form Nos. 2 and 2-A); and (4) sections 284.7(e) and 284.10 (straight fixed-variable rate design methodology). Tres Palacios also requests a waiver of the section 157.14(a)(10) to provide a showing of accessible gas supplies, which does not apply to Tres Palacios' natural gas storage operations.

36. The cost-related information required by these regulations is not relevant in light of our continued approval of market-based rates for Tres Palacios' storage, hub, and wheeling services. Thus, consistent with previous Commission orders,<sup>32</sup> we grant Tres Palacios' request for continued waivers of the regulations requiring cost-based rate related information for these services, which was originally granted in the 2007 Certificate Order and reaffirmed by Commission staff in the 2010 Amendment Order. However, as discussed in the 2007 Certificate Order and 2010 Amendment Order, we require Tres Palacios to file pages 520 and 520a of Form No. 2-A, reporting the gas volume information which is the basis for imposing an Annual Charge Adjustment (ACA) charge.<sup>33</sup> We also require Tres Palacios to maintain sufficient records of cost and revenue data consistent with the Uniform System of Accounts should we require Tres Palacios to produce these cost-based reports in the future.

### **D. Environmental Analysis**

37. On January 30, 2012, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Copano Plant Interconnect Project and Request for Comments on Environmental Issues (NOI). The NOI was mailed to

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<sup>30</sup> See, e.g., *Copiah County Storage Co.*, 99 FERC ¶ 61,316 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002).

<sup>31</sup> See *Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141, at P 40 (2005).

<sup>32</sup> 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).

<sup>33</sup> See *Wyckoff Gas Storage Co., LLC*, 105 FERC ¶ 61,027, at P 65 (2003).

interested parties including federal, state, and local officials; agency representatives; Native American tribes; local libraries and newspapers; and affected property owners. We received one comment in response to the NOI questioning the use of eminent domain.

38. To satisfy the requirements of the National Environmental Policy Act, our staff prepared an environmental assessment (EA) for Tres Palacios' proposal. The analysis in the EA addresses eminent domain and the potential impact on geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. The EA was placed into the public record on October 9, 2012.

39. Don Vinklerek, a landowner, comments that he opposes the use of eminent domain to condemn property without fair compensation but does not oppose the project. As we noted in the EA,<sup>34</sup> in the event Tres Palacios fails to reach agreement with landowners, such as Mr. Vinklerek, on the proper amount of compensation to be paid for the use of their property, Tres Palacios may only exercise the right of eminent domain through a United States district court (if the condemned property is alleged exceeds \$3,000) or a state court.<sup>35</sup> The court will determine the proper amount of compensation.<sup>36</sup>

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

41. 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 and replacement of facilities approved by this Commission.<sup>37</sup>

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<sup>34</sup> See EA at 3.

<sup>35</sup> See 15 U.S.C. § 717f(h) (2006).

<sup>36</sup> See, e.g., *American Energy Corp. v. Rockies Express Pipeline, LLC*, 622 F.3d 602 (6th Cir. 2010).

<sup>37</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois*

42. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Tres Palacios under section 7(c) of the NGA, authorizing the construction of the proposed extension of the Tres Palacios' header pipeline system, as described more fully in this order and in the application.

(B) The certificate issued herein is conditioned on Tres Palacios' compliance with all of the applicable regulations under the NGA, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and the applicable requirements of section 157.20 of the Commission's regulations.

(C) Tres Palacios' request for continued authority to charge market-based rates for its firm and interruptible storage and hub services and interruptible wheeling service is approved, as described in this order.

(D) Tres Palacios' request for continued waiver of the Commission's cost-based regulations is granted, as discussed in the body of the order.

(E) Tres Palacios must comply with the environmental conditions set forth in the appendix to this order.

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

(G) Tres Palacios shall notify the Commission within 10 days of acquiring knowledge of: (a) Tres Palacios adding storage capacity beyond the capacity authorized in this order; (b) an affiliate's increasing storage capacity; (c) an affiliate's linking storage capacity to Tres Palacios; (d) Tres Palacios or an affiliate's acquisition of an interest in, or being acquired by, and interstate pipeline connected to Tres Palacios. The notification shall include a detailed description of the new facilities and their relationship to Tres Palacios. Tres Palacios is also directed to file an updated market power analysis within five years of the date of this order and every five years thereafter. The Commission reserves the right to require such an analysis at any intervening time.

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

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

## Appendix

### Environmental Conditions for the Tres Palacios Storage Facility

As recommended in the EA, this authorization includes the following condition(s):

1. Tres Palacios Gas Storage, LLC (Tres Palacios) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the environmental assessment (EA), unless modified by the order. Tres Palacios must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
  
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of the order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
  
3. **Prior to any construction**, Tres Palacios shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EIs' authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
  
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Tres Palacios shall file with the Secretary any

revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the order. All requests for modifications of environmental conditions of the order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

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

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

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

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and
- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. **Within 60 days of the acceptance of the certificate and before construction** begins, Tres Palacios shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Tres Palacios must file revisions to the plan as schedules change. The plan shall identify:

- a. how Tres Palacios 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 Tres Palacios will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
- c. the number of EIs assigned per spread, and how 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 Tres Palacios will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
- f. the company personnel (if known) and specific portion of Tres Palacios' organization having responsibility for compliance;
- g. the procedures (including use of contract penalties) Tres Palacios will follow if noncompliance occurs; and
- h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
  - (1) the completion of all required surveys and reports;
  - (2) the environmental compliance training of onsite personnel;
  - (3) the start of construction; and
  - (4) the start and completion of restoration.

7. Beginning with the filing of its Implementation Plan, Tres Palacios shall file updated status reports with the Secretary on a **weekly** basis **until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

- a. an update on Tres Palacios' efforts to obtain the necessary federal authorizations;

- b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
- c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
- d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
- e. the effectiveness of all corrective actions implemented;
- f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the order, and the measures taken to satisfy his or her concerns; and
- g. copies of any correspondence received by Tres Palacios from other federal, state, or local permitting agencies concerning instances of noncompliance, and Tres Palacios response.

8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Tres Palacios shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).

9. Tres Palacios must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.

10. **Within 30 days of placing the authorized facilities in service**, Tres Palacios shall file an affirmative statement with the Secretary, certified by a senior company official:

- a. that the facilities have been constructed in compliance with all applicable conditions and that continuing activities will be consistent with all applicable conditions; or
- b. identifying which of the certificate conditions Tres Palacios has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

11. **Prior to construction,** Tres Palacios shall consult with affected landowners and file with the Secretary evidence of landowner consent before leaving timber stacks on the right-of-way.
12. **Prior to hydrostatic testing,** Tres Palacios shall file with the Secretary the volumes and locations for all hydrostatic test water withdrawals and discharges, and documentation of receipt of all permits required for hydrostatic testing activities.
13. **Prior to construction,** Tres Palacios shall file with the Secretary for review and approval by the Director of OEP a sensitive species response plan for directing actions by Tres Palacios in the event of an inadvertent release of drilling fluids within possible Houston toad habitat. The plan shall include: identifying potentially affected Houston toads; contacting the U.S. Fish and Wildlife Service in the event a Houston toad is encountered; ensuring that any handling of a Houston toad is in compliance with the applicable U.S. Fish and Wildlife Service protocols; and inclusion of the response actions in Tres Palacios' environmental compliance training for construction personnel.
14. **Prior to construction of horizontal directional drill (HDD) Crossings #3 and #5,** Tres Palacios shall file with the Secretary a revised HDD noise analysis identifying the existing and projected noise levels at each Noise Sensitive Area (NSA) within 0.5 mile of each HDD entry and exit site. If noise attributable to the HDD is projected to exceed an average day-night ambient sound level ( $L_{dn}$ ) of 55 dBA at any NSA, Tres Palacios shall file with the Secretary a noise analysis mitigation plan to reduce the projected noise levels, for the review and written approval by the Director of OEP. During drilling operations, Tres Palacios shall implement the approved plan, monitor noise levels, and make all reasonable efforts to restrict the noise attributable to the drilling operations to no more than an  $L_{dn}$  of 55 dBA at the NSAs.