

133 FERC ¶ 61,073
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

UGI Storage Company	Docket No.	CP10-23-000
UGI Central Penn Gas, Inc.	Docket No.	CP10-24-000

ORDER GRANTING ABANDONMENT AUTHORITY, ISSUING CERTIFICATE,
AND GRANTING MARKET-BASED RATE AUTHORITY

(Issued October 21, 2010)

1. On November 19, 2009, UGI Central Penn Gas, Inc. (CPG), a pipeline regulated by the Pennsylvania Public Utility Commission (Pa PUC), filed in Docket No. CP10-24-000 under section 7(b) of the Natural Gas Act (NGA) for authorization to abandon a storage service provided under its blanket certificate issued under section 284.224 of the Commission's regulations.¹ Concurrently, UGI Storage Company (UGI Storage) filed an application under section 7(c) of the NGA in Docket No. CP10-23-000 for certificate authority to acquire and operate CPG's interests in the Tioga, Meeker, and Wharton storage facilities. UGI Storage also requests that the Commission approve its market-based rate storage proposal.
2. For the reasons set forth below, the Commission will approve UGI Storage's and CPG's (Applicants) proposals, subject to the conditions discussed herein.

I. Background

A. Tioga, Meeker, and Wharton Storage Facilities

3. The Tioga West and Meeker storage fields are located in Tioga County in northern Pennsylvania. The Wharton storage field is located in Potter County and Cameron County, Pennsylvania. CPG owns the Meeker storage facility and has partial interests in

¹ 18 C.F.R. § 284.224 (2010).

the Tioga West and Wharton storage facilities. In the aggregate, CPG's capacity in the storage facilities includes 14.7 Bcf of working storage capacity and 219,000 Mcf/d of maximum daily deliverability.

4. Tioga West is part of the Tioga Storage Complex. While partially owned by CPG, Tioga West is a jurisdictional storage facility certificated under section 7 of the NGA and operated by Dominion Transmission, Inc. (DTI). DTI operates the Tioga West field jointly with its Tioga East field under the terms of an operating agreement approved by the Commission in 1987.² Tioga East and Tioga West, originally separate production reservoirs that were depleted and then converted to gas storage in the late 1930s and early 1940s, were eventually merged into one reservoir due to pressure communication between the two fields. The Tioga Storage Complex was formed in 1987 through a settlement agreement between CPG's predecessor, North Penn Gas Company (North Penn), and DTI's predecessor, CNG Transmission Corporation. CPG's capacity in Tioga West includes 10 Bcf of working gas capacity, 6 Bcf of cushion gas capacity, and 179,000 Mcf/d of peak deliverability.

5. Meeker, which is adjacent to but geologically distinct from the Tioga fields, is owned and operated entirely by CPG. The capacity of the Meeker field is 5.2 Bcf, with 3.7 Bcf of working gas and 1.5 Bcf of base gas. Meeker, also originally a production reservoir, was converted to storage following depletion in 1943. Meeker has three injection/withdrawal wells and no observation wells. Gas injected into Meeker is transported by CPG's Line TL-94, which receives gas from Tennessee Gas Pipeline Company (Tennessee) by free flow,³ or by DTI. Gas withdrawn from Meeker is sent either into DTI's interstate system or into CPG's intrastate system.⁴

6. The Wharton storage facility is jointly owned by Transcontinental Gas Pipe Line Company, LLC (Transco), National Fuel Gas Supply Corporation (National Fuel), and CPG.⁵ National Fuel, which operates the field and Transco are majority owners. CPG's

² *Transcontinental Gas Pipe Line Corp.*, 40 FERC ¶ 61,185 (1987).

³ Line TL-94 is currently unidirectional from Tennessee's pipeline system to the Meeker storage facility. To make the line bidirectional, the addition of compression would be necessary.

⁴ DTI provides injection and withdrawal service by way of the Tioga Storage Complex compressor station upon request by CPG, at rates and volumes in accordance to their operating agreement.

⁵ UGI Storage November 19, 2009 Application at 12.

interest entitles it to 1 Bcf of working storage capacity and an unratcheted daily deliverability of 10,000 Mcf/day. National Fuel and Transco deliver gas entering and leaving Wharton. Gas can also be withdrawn from Wharton and transported into the CPG distribution system.

B. 1992 Stipulation and Agreement

7. From the 1940s until 1992, CPG's interests in the Tioga, Meeker, and Wharton storage facilities were all owned by CPG's predecessor, North Penn, under NGA certificates.⁶ In 1991, North Penn filed an application, seeking: (1) abandonment of its certificate authorizations for its facilities; (2) a declaration that it would qualify as an NGA-exempt Hinshaw pipeline;⁷ and (3) a blanket certificate pursuant to section 284.224 of the Commission's regulations for purposes of providing jurisdictional services as an otherwise non-jurisdictional Hinshaw pipeline.⁸ At that time, North Penn's predominant NGA-jurisdictional service was storage service, which was mostly provided to Transco pursuant to a service agreement dated February 2, 1987 (1987 Service Agreement). Transco uses these storage rights to provide service for its SS-1 storage service customers (SS-1 Customers).⁹ The 1987 Service Agreement provided for service until March 31,

⁶ On December 31, 2004, North Penn was merged into PPL Gas Utilities, and on October 1, 2008, PPL Gas Utilities was acquired by UGI Corporation and became CPG.

⁷ Under section 1(c) of the NGA, known as the Hinshaw amendment, a pipeline that engages in interstate sales or transportation of natural gas is exempt from the provisions of the NGA if it receives all of its gas within or at the boundary of its state, all of the gas is ultimately consumed within that state, and its facilities, rates and services are subject to regulation by a state commission.

⁸ Obtaining a limited-jurisdiction certificate pursuant to section 284.224 of the Commission's regulations allows a Hinshaw pipeline to provide jurisdictional services involving gas that will leave its state under Commission-approved rates and conditions without jeopardizing its otherwise exempt Hinshaw status. When appropriate, the Commission approves the Hinshaw pipeline's state-approved rates for its jurisdictional NGA services under a section 284.224 certificate.

⁹ The SS-1 Customers include The National Grid Gas Delivery Companies, Atlanta Gas Light Company (Atlanta Gas Light), Pivotal Utility Holdings Inc. d/b/a Elizabethtown Gas, PSEG Energy Resources & Trade LLC, and South Jersey Gas Company. The National Grid Gas Delivery Companies include the following: The Brooklyn Union Gas Company d/b/a National Grid NY; Key Span Gas East Corporation d/b/a National Grid; Boston Gas Company, Colonial Gas Company, and Essex Gas

(continued...)

2008.¹⁰ A Stipulation and Agreement (1992 Stipulation and Agreement) filed during the proceeding resolved certain customer concerns. In June 1992, the Commission granted North Penn's Hinshaw declaration request and approved the 1992 Stipulation and Agreement under which North Penn would continue to provide its NGA-jurisdictional transportation and storage services for Transco and others under a limited-jurisdiction section 284.224 blanket certificate at rates approved by the Pa PUC, subject to the Commission's review and acceptance.¹¹

8. The original term of the 1987 Service Agreement in effect at the time of the 1992 Stipulation and Agreement ended on March 31, 2008.¹² CPG's predecessor and Transco extended the term in February 2008 for an additional two-year period. The term would have expired on March 31, 2010, but for a provision in the February 2008 amendment giving Transco a one-time contractual right to further extend the service agreement for at least one more year. A subsequent March 2010 Amendment between CPG and Transco exercises that extension right for only one more year, through and including March 31,

Company, collectively d/b/a National Grid; EnergyNorth Natural Gas Inc. d/b/a National Grid NH; Niagara Mohawk Power Corporation d/b/a National Grid; and The Narragansett Electric Company d/b/a National Grid.

¹⁰ The Commission notes that in North Penn's 1991 application seeking abandonment authorizations from the Commission as a prerequisite to providing service as a Hinshaw company regulated by the Pa PUC, North Penn stated that for the twelve-month period ending May 31, 1991, it would have received less revenue from Transco if it had billed the Pa PUC's base tariff rates, suggesting that North Penn's transition to a state-regulated company would result in a reduction in the rates being paid by Transco and passed through to the SS-1 Customers.

¹¹ *North Penn Gas Co.*, 59 FERC ¶ 61,258 (1992) (*North Penn Order*). The order required North Penn to "file and pursue an application for a Pa PUC determination that its intrastate transportation and storage rates are cost-based" and file a copy of the Pa PUC's order for the Commission's review. *Id.* at 61,945.

¹² The 1987 Service Agreement stated that "[t]his Agreement shall be effective as of the date and year first written above [January 23, 1987] and shall remain in full force and effect until the end of the storage injection-withdrawal cycle that starts twenty (20) years from the date storage services commences hereunder." The first injection-withdrawal period began April 1, 1987 and ended March 31, 1988. Thus, the end of the twenty-year service period under the original agreement was March 31, 2008.

2011.¹³ The March 2010 Amendment specifies that upon the Commission's approval of the Applicants' proposals and UGI Storage's acceptance of new certificate authorizations to acquire the subject storage assets and provide service, the 1987 Service Agreement will automatically terminate and Transco will be required to sign a firm storage service agreement with UGI Storage in accordance with the new tariff approved by the Commission for UGI Storage. The March 2010 Amendment providing for the one-year extension currently in effect specifies that the new service agreement between UGI Storage and Transco "will reflect any and all applicable conditions required by [the Commission's] order regarding the certificate applications in Docket Nos. CP10-24 and CP10-23." The March 2010 Amendment also acknowledges that, it is without prejudice to Transco's reservation of rights to advocate any position with respect to the interpretation of the 1987 Service Agreement.

9. Presently, Transco is CPG's only customer receiving NGA jurisdictional storage service under a firm contract. Under their present service agreement, which relies on storage capacity at the Tioga Storage Complex, Transco is entitled to approximately 9.0 Bcf of CPG's total 14.7 Bcf of working gas storage capacity. As mentioned above, Transco uses these storage rights to provide service for its SS-1 Customers. CPG states that its other contracts for firm storage service under its section 284.224 blanket certificate expired on March 31, 2010.¹⁴

10. Since the *North Penn Order*, North Penn and its successor, CPG, have operated the storage facilities as non-jurisdictional Hinshaw facilities for their local distribution system supplies and to provide jurisdictional services. CPG states that 80 percent of its storage capacity currently is being used to provide storage service for interstate customers under its section 284.224 blanket certificate.¹⁵ None of CPG's transportation and distribution facilities would be included in the transfer to UGI Storage; those facilities would remain non-jurisdictional and under Pa PUC regulation.

11. Transco's system does not directly connect to the Tioga storage facilities. Transco delivers its SS-1 storage customers' gas to DTI, and the SS-1 customers separately contract with DTI, the certificated operator of the Tioga Storage Complex, for transportation to Tioga, where the gas is stored using CPG's capacity reserved by Transco. Transco's service agreements with its SS-1 customers specify the interconnect

¹³ See March 10, 2010 letter from Transco to CPG, attached to SS-1 Customer March 31, 2010 Supplement to Protest of Open Season.

¹⁴ CPG November 19, 2009 Application at 4.

¹⁵ *Id.*

between DTI's and Transco's systems at Leidy, Pennsylvania, as the point for storage injections and withdrawals.

II. Proposal

12. UGI Storage seeks to acquire CPG's storage assets in the Meeker, Tioga, and Wharton storage facilities and CPG's Line TL-94 that connects the Meeker field with Tennessee's pipeline system. Under the Applicants' proposal, these storage assets would become jurisdictional upon certification and acquisition by UGI Storage, and UGI Storage would provide storage services under the blanket certificate requested under section 284.221. UGI Storage also requests a Part 157 construction certificate and authority to charge market-based storage rates.

13. UGI Storage also seeks certificate authority to construct and operate certain minor facilities and equipment at the existing interconnection between Line TL-94 and the distribution facilities of CPG within the fenced Tioga Gate Station that houses the connection of Line TL-94 to DTI's Tioga compressor. UGI Storage would install dehydration, regulation, measurement and automated flow control at an existing manually operated delivery location, which would permit the regular withdrawal of up to 30,000 Mcf/day under design conditions from the storage lines connecting the Meeker field directly through to the TL-40 pipeline and into the CPG distribution system. The construction would take place above ground, would require replacement of certain above-ground piping, the addition of automated valves/regulators, relief valve, an ultrasonic meter, filter, heater, dehydrator and associated isolation valves. In the case of the dehydrator, UGI Storage would place the unit back at a location where a dehydration unit previously existed.

III. Notice and Interventions

14. Public notice of CPG's and UGI Storage's applications was published in the *Federal Register* on December 7, 2009,¹⁶ setting December 21, 2009, as the deadline for intervention.¹⁷

¹⁶ 74 Fed. Reg. 64,062 (2009).

¹⁷ The Commission was closed on December 21, 2009, due to adverse weather conditions. Therefore, pursuant to Rule 2007 of the Commission's Rules of Practice and Procedure, the due date for comments and motions to intervene became December 22, 2009. 18 C.F.R. § 385.2007(a)(2) (2010).

15. The following filed timely unopposed motions to intervene: Transco, the SS-1 Customers, DTI, PSEG Energy Resources & Trade LLC, Conectiv Energy Supply, Inc., and the Pennsylvania Office of Consumer Advocate (Pa Consumer Advocate).¹⁸ The Pa PUC filed a timely notice of intervention.¹⁹

16. Comments or protests were filed by the following: SS-1 Customers, DTI, and Transco.²⁰ On January 6, 2010, Applicants filed an answer to the comments and protests, to which the SS-1 Customers and DTI filed answers on January 21, 2010. Applicants answered the January 21 pleadings and the SS-1 Customers answered that filing. In response to Applicants' February 12, 2010 filing regarding its open season, a matter the Commission addresses below, the SS-1 Customers and Transco jointly filed an additional protest to the open season on February 26, 2010, which the Applicants answered. The SS-1 Customers supplemented their open season protest on two occasions, and the Applicants answered the supplemented open season protests. Additional comment was provided by Applicants on June 14, 2010, and the SS-1 Customers and DTI responded to the additional comment. In order to ensure a complete record upon which to base its decision, the Commission will grant waiver as provided for in Rule 385.213 to accept the additional answers, protests, and comments filed by Applicants, DTI, and the SS-1 Customers. These comments, protests, and answers are addressed below.

17. The following filed motions to intervene out-of-time: New York Public Service Commission, SouthStar Energy Services, LLC (SouthStar), National Fuel Gas Distribution Corporation, and Washington Gas Light Company. Applicants opposed the late intervention of SouthStar, arguing that SouthStar's claim of administrative oversight was not an adequate excuse for late intervention and that SouthStar had not demonstrated sufficient interest in the proceeding to justify late intervention. In response, SouthStar filed an additional pleading in support of its intervention. SouthStar explained that it has

¹⁸ Pursuant to Rule 214(c), 18 C.F.R. § 385.214(c) (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

¹⁹ Pursuant to Rule 214(a)(2), 18 C.F.R. § 385.214(a)(2) (2010), a state commission is a party upon filing a timely notice of intervention.

²⁰ The Pa PUC and Pa Consumer Advocate also filed protests. The Pa PUC and the Pa Consumer Advocate filed to withdraw their protests on April 27, 2010, and October 13, 2010, respectively. A motion to withdraw a pleading becomes effective fifteen days after being filed, pursuant to Rule 385.216(b). 18 C.F.R. § 385.216(b) (2010).

contracts for service by Atlanta Gas Light, one of Transco's SS-1 Customers, and that its rates incorporate increases in costs incurred by Atlanta Gas Light. SouthStar explained that the indirect nature of the manner in which it takes service from CPG explains why it did not timely recognize its interests in these proceedings.

18. SouthStar and each of the other petitioners filing late motions to intervene has demonstrated an interest in this proceeding that is not adequately represented by other parties and good cause for failing to file within the time prescribed. Their intervention at this early stage of the proceeding will not cause any undue prejudice to other parties, as Rule 385.214(d)(3)(ii) provides that a late intervenor must accept the record as developed prior to its late intervention. Therefore, we will grant the late motions to intervene.

IV. Preliminary Matters

A. Evidentiary Hearing

19. The SS-1 Customers argue that the matters involved in this proceeding should be set for a trial-type evidentiary hearing, requesting that the Commission consider issues related to the 1992 Stipulation and Agreement discussed below, all other issues material to ascertaining the public convenience and necessity, CPG's ongoing contractual obligations to Transco, the justness and reasonableness of UGI Storage's request for authority to charge market-based storage rates, and operational issues related to UGI Storage's proposed service offerings. Applicants oppose the request for additional hearing procedures.

20. Although section 7 of the NGA provides for a hearing when an applicant seeks a certificate of public convenience and necessity, it does not require that all such hearings be formal trial-type hearings. An evidentiary trial-type hearing is necessary only where material issues of fact are in dispute that cannot be resolved on the basis of the written record.²¹ As discussed below, the written record provides a sufficient basis upon which to resolve the factual issues presented in this case. Consequently, the Commission finds no need for further hearing procedures.

B. Further Protests Based on the February 2010 Open Season

21. The Applicants conducted a joint open season, beginning February 10, 2010, through March 1, 2010, a few months after their application was filed with the

²¹ See, e.g., *Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988); *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124, 128-29 (D.C. Cir. 1982); and *Citizens for Allegan County, Inc. v. FPC*, 414 F.2d 1125, 1128 (D.C. Cir. 1969).

Commission and after the close of the comment period established in the Commission's December 7, 2009 Notice of Applications. In their February 26, 2010 joint protest, Transco and the SS-1 Customers request that the Commission issue an order directing CPG to implement the right of first refusal under a February 2008 Amendment in a manner consistent with its contractual obligations.

22. Applicants admit that CPG is contractually obligated to continue service at the cost-based rates approved by the Pa PUC and accepted by the Commission until the Commission issues an order in this case. Transco and the SS-1 Customers argue that it was improper for UGI Storage to conduct an open season, which assumes UGI Storage will be authorized to acquire CPG's storage capacity and charge market-based rates. The SS-1 Customers assert that service must continue in perpetuity at cost-based rates approved by the Pa PUC and the Commission. As Applicants and Transco have extended their service agreement until March 31, 2011, subject to the outcome of these proceedings, including any conditions that the Commission imposes, the Commission finds that the protest to the open season is moot.

V. Discussion

A. CPG's Proposed Abandonment of Storage Service for Transco

23. CPG seeks to abandon the firm storage service that it is providing for Transco under its section 284.224 blanket certificate. This is CPG's only remaining firm storage service that relies on any of the storage capacity that CPG seeks to transfer to its new interstate affiliate, UGI Storage. In anticipation of this reorganization of corporate assets, CPG has declined to enter into any new contracts for firm storage service that would rely on any of its capacity in the Tioga, Meeker, and Wharton storage facilities. Upon approval of CPG's and UGI Storage's proposals, CPG would file to amend its Operating Statement on file with the Commission to cancel its provisions for storage service. CPG would continue to offer transportation service under the section 284.224 blanket certificate.

24. Because CPG's present service storing Transco's interstate supplies is not a qualifying Hinshaw activity, CPG is providing this jurisdictional transportation of gas in interstate commerce under its section 284.224 blanket certificate. The Commission must determine, in accordance with NGA section 7(b), whether CPG's abandonment of service to Transco is permitted by the present or future public convenience or necessity and, if

so, whether any conditions should apply in view of the arguments raised by Transco and the SS-1 Customers in opposition to the abandonment.²²

25. CPG asserts its proposed abandonment is permitted by the present or future public interest and necessity. CPG states that the proposed abandonment would be appropriate and necessary in the event the Commission grants the certificate authority being sought by UGI Storage because under the new arrangement UGI Storage would be able to operate the capacity assets in several facilities on an integrated basis as a jurisdictional interstate gas storage facility providing storage service in interstate commerce. CPG further explains that once the capacity assets are transferred from CPG to UGI Storage, CPG would no longer be able to provide storage services pursuant to the section 284.224 blanket certificate.

1. Protests

26. The SS-1 Customers argue that the Commission should either reject the Applicants' proposals to implement the transfer of CPG's storage assets to UGI Storage or, in the alternative, condition the abandonment on UGI Storage providing service under the terms of the 1987 Service Agreement at cost-based rates determined by the Pa PUC, subject to the Commission's review and acceptance. The SS-1 Customers argue that UGI Storage's request for market-based rate authority would not be consistent with the public convenience or necessity because the market-based rates charged by UGI Storage would likely be well in excess of CPG's current cost-based rates.

27. The SS-1 Customers further argue that the Commission's approval of the proposals would effectively abrogate the 1992 Stipulation and Agreement, and that CPG has not provided any compelling public interest justification for such action by the Commission. The SS-1 Customers state that they have been paying cost-based rates

²² NGA section 7(b), 15 U.S.C. § 717f (2006), provides:

(b) Abandonment of facilities or services; approval of Commission. No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

approved by the Pa PUC since the 1992 Stipulation and Agreement was approved and CPG has an obligation to continue to provide firm storage service as long as its customers are willing to pay its maximum cost-based rates.

2. Applicants' Response

28. Applicants respond by citing a number of alleged operational benefits that will flow from the return of the storage facilities to Commission jurisdiction. Applicants also point out that the approval of market-based rates for UGI Storage, even if those rates are higher than the existing cost-based rates, will provide benefits to the national gas market as a whole in the form of a more efficient allocation of interstate capacity. Applicants explain that maintaining cost-based rates prevents those customers having a greater need for the storage service from having access to the facilities.

29. Regarding the SS-1 Customers' argument that they are entitled to cost-based rates in perpetuity, the Applicants describe the 1992 Stipulation and Agreement as having specified that the rates would "initially" be cost-based and set by the Pa PUC, suggesting that an alternative type of rate would later be permissible. The Applicants also provide some context to the 1992 Stipulation and Agreement, stressing that in 1992 all interstate storage was provided under cost-based rates, that the Commission's policies as to market-based rates have evolved since then, and that a routine rate condition in an order issuing a section 284.224 certificate should not prevent the Commission from granting market-based rate authority in a case where an applicant to become the new service provider lacks significant market power.

30. The Applicants do not dispute that the current one-year extension is for continued service by CPG until March 31, 2011, under the terms of the original agreement specifying cost-based rates as approved by the Pa PUC and accepted by the Commission.²³ However, they seek the Commission's approval for CPG to abandon the service and for UGI Storage to commence service, including continued service for Transco, at market-based rates prior to March 31, 2011.

²³ On August 17, 2010, the Commission issued an unpublished letter order approving, effective August 28, 2009, a revised Statement of Operating Conditions, including rate summaries for CPG in Docket No. PR09-27-000, and reflecting revised rates approved by the Pa PUC. CPG filed the revised Statement of Operating Conditions in compliance with the Commission's June 14, 2010 letter order approving an uncontested settlement. *UGI Central Penn Gas, Inc.*, 131 FERC ¶ 61,234 (2010). The June 14, 2010 order stated that signatory parties' agreement to the settlement in that proceeding did not limit their right to raise issues or arguments in this proceeding.

3. Commission Determination

31. NGA section 7(b) enumerates the standard that the Commission must use in considering CPG's abandonment request. Under section 7(b), the Commission must evaluate whether the present or future public convenience or necessity permit CPG to abandon its firm storage service for Transco under CPG's section 248.224 blanket certificate granted by the Commission's *North Penn Order* that allowed CPG's predecessor to become an otherwise non-jurisdictional Hinshaw pipeline.

32. To satisfy that standard, CPG would have to achieve a significant hurdle to convince the Commission that it was in the public convenience and necessity to authorize CPG's abandonment of its firm service obligation to Transco over the latter's objections prior to the end of the contract term.²⁴ Indeed, the Commission has denied a request to abandon service, even service being provided under interruptible service agreements, where the service provider sought the abandonment in order to position itself to sell the facilities being used to provide the interruptible services.²⁵

²⁴ See, e.g., *Sunoco, Inc. v. Transcontinental Gas Pipe Line Corp.*, 114 FERC ¶ 61,180 (2006) (*Sunoco v. Transco*). *Sunoco v. Transco* involved an abandonment by Transco of certain offshore pipeline facilities by spin-off sale to its non-jurisdictional gathering affiliate. In seeking abandonment authority, Transco failed to inform the Commission that the facilities were necessary to Transco's performance of firm transportation service obligations to Sunoco at reduced rates under the terms of a 1992 settlement agreement approved by the Commission and under Transco's and Sunoco's service agreement implementing the settlement. On voluntary remand, the Commission directed Transco to reimburse Sunoco the additional costs that Sunoco would incur during the remainder of the twenty-year term.

²⁵ The Commission denied a request by Transco to abandon certain facilities in Texas and interruptible services provided over those facilities based on a finding that the facilities were essential to Transco's provision of open-access interstate service and the lack of evidence of benefits sufficient to outweigh the potential impacts of forcing customers to discontinue receiving service from Transco and accept service from an entity providing service under non-NGA authority. *Transcontinental Gas Pipe Line Corp.*, 110 FERC ¶ 61,337 (2005). In contrast to that case, however, the proposals in this proceeding would result in the presently non-jurisdictional facilities being used to provide the jurisdictional storage service at issue becoming NGA jurisdictional. The benefits accruing from the change are discussed below. See *infra* P 52.

33. The Commission does not agree with the SS-1 Customers that the 1992 Stipulation and Agreement creates a right for Transco or any other customer to receive NGA jurisdictional service from North Penn and its successors at cost-based rates or Pa PUC-approved rates in perpetuity. The relevant language of the 1992 Stipulation and Agreement provides as follows:

The Commission may impose the following condition on the approvals described in Section 3.1 herein:

* North Penn's certificate authorization and adjustment is granted provided that North Penn does not use rates greater than the rates approved by the Pennsylvania Public Utility Commission (Pa PUC) for its section 284.224 blanket certificate sales, transportation, and storage of natural gas.

* North Penn shall, within 30 days after the issuance of a final order approving this settlement, file and pursue an application for determination by the Pa PUC that its intrastate transportation and storage rates are cost-based as well as just and reasonable. North Penn shall file with the Commission a copy of the applicable Pa PUC order within 15 days after its issuance.

34. In the *North Penn Order* approving the 1992 Stipulation and Agreement, the Commission described the above provisions as follows:

Section 2 of article III provides that the Commission may impose the following conditions on these approvals: (1) North Penn shall not use rates greater than the rates the Pa PUC approved for its section 284.224 blanket certificate sales, transportation, and storage services; and (2) North Penn shall file and pursue an application for a Pa PUC determination that its intrastate transportation and storage rates are cost-based and just and reasonable. The Commission is requiring North Penn to conform to these requirements, and North Penn shall file with the Commission a copy of the applicable Pa PUC order within 15 days after its issuance, as provided by this article.²⁶

²⁶ *North Penn Order*, 59 FERC ¶ 61,258 at 61,945.

35. The Commission rejects the SS-1 Customers' position that these conditions bind CPG, as North Penn's successor, to providing service at cost-based rates set by the Pa PUC in perpetuity. As the SS-1 Customers recognize,²⁷ there is no time period specified in the 1992 Stipulation and Agreement. Further, the Commission would not have knowingly approved a provision purporting to make the term of the agreement and the Commission's approval of its terms and conditions forever, regardless of possible changes in circumstance or policy.²⁸ Moreover, under its section 284.224 blanket certificate, CPG has pregranted authority to abandon any service upon the expiration of the underlying transportation service agreement.²⁹

36. As discussed above, when North Penn agreed to the 1992 Stipulation and Agreement, its service agreement with Transco for jurisdictional storage service was their existing 1987 Service Agreement, which provided for an initial twenty-year term of service ending on March 31, 2008. As North Penn's successor, CPG assumed North Penn's obligations under that agreement and subsequently agreed to extend Transco's term of service for an additional two years, i.e., until March 31, 2010, and then again for one more year, i.e., until March 31, 2011. Thus, CPG honored its commitment from the February 2008 extension agreement to give Transco a further "one-time right to match" for a "minimum term of one year."

37. Although the SS-1 Customers assert that CPG had a "good-faith" negotiating obligation under the 1987 Service Agreement and under its section 284.224 blanket certificate, contract rights can only extend to the parameters set forth in the written

²⁷ SS-1 Customer December 22, 2009 Protest at 4; SS-1 Customer January 21, 2010 Motion for Leave to Answer and Answer at 3.

²⁸ See *Northern Natural Gas Co.*, 77 FERC ¶ 61,282, at 62,242 (1996) ("A settlement may preclude changes to the agreed upon terms and conditions for a specified time period.").

²⁹ The Commission notes that a Hinshaw pipeline's pregranted abandonment authority under section 284.224(f) is not subject to the same limits with respect to long-term firm service contracts as the pregranted abandonment authority of interstate pipelines under section 284.221(d). Section 284.221(d) provides that such authority does not only apply if the service agreement is for firm service for more than one year *and* the shipper is willing to match the longest term and the highest rate offered by another customer that does not exceed the maximum tariff rate for that type of firm service.

contract.³⁰ Given the above-referenced language of the 2008 amendment to the 1987 Service Agreement and in view of CPG's plans to dispose of its storage assets used for jurisdictional services by transferring them to a new affiliate, the Commission does not accept the SS-1 Customers' argument that CPG's refusal to agree to more than the current one-year extension necessarily demonstrates a lack of good-faith in negotiating.³¹

38. The SS-1 Customers disagree with Applicants regarding the significance of the fact that the 1992 Stipulation and Agreement provided that the Commission "may impose" a requirement that the rates charged by North Penn for its interstate services be the Pa PUC-determined cost-based rates. The Commission believes the use of the permissive words "may impose" merely anticipated, based on Commission policy at the time, what the Commission's rate conditions probably would be with respect to North Penn's rates for its interstate services and that all of the signatory parties were agreeing to live with such conditions. Although there was no guarantee that the Commission would not invoke its own cost-based rate making principles to require some adjustment of a Pa PUC approved cost-based rate, it was fairly safe for Transco and the SS-1 Customers to assume that the Commission would adhere to its policy at the time of requiring Hinshaw pipelines and local distribution companies (LDC) to charge cost-based rates for their NGA jurisdictional interstate services.

39. In any event, the Commission does not see how the 1992 Stipulation and Agreement's use of the words "may impose" makes it credible for the SS-1 Customers to argue now that the guarantee of cost-based rates was an essential element of the agreement and bargain struck in 1992. Indeed, the Commission agrees with the Applicants that it would not be reasonable to interpret the 1992 Stipulation and Agreement as creating either a contractual or Commission guarantee that Transco would be entitled to receive the storage service at issue at cost-based rates approved by the Pa PUC forever, regardless of any intervening changes in Commission policy or circumstances.

40. In view of the above considerations, the Commission finds that CPG's current contractual service obligations to Transco will end on March 31, 2011. Absent a new agreement between CPG and Transco, CPG therefore will have the right to exercise its

³⁰ See, e.g., *A/S Apothekernes Laboratorium for Specialpraeparater v. I.M.C. Chem. Group, Inc.*, 873 F.2d 155, 158 (7th Cir. 1989) ("The full extent of a party's duty to negotiate in good faith can only be determined, however, from the terms of the letter of intent itself.").

³¹ See supra note 29.

pregranted abandonment authority in section 284.224(f) of the regulations to abandon service on March 31, 2011.³² This holding, however, does not preclude UGI Storage and Transco from reaching an agreement, which would permit CPG to abandon its service to Transco prior to March 31, 2011.

41. Specifically, the Commission is issuing this case-specific authorization in this proceeding for CPG to abandon its service to Transco conditioned upon UGI Storage and Transco executing an agreement for storage service commencing prior to April 1, 2011. Such an agreement might be reached if UGI Storage offers to continue Transco's storage service at the currently effective rate approved by the Pa PUC and accepted by the Commission until at least March 31, 2011. This authorization will potentially expedite the Applicants' ability to proceed with their corporate reorganization, while ensuring that Transco will receive the full benefit of its current service agreement with CPG.

42. If UGI Storage and Transco cannot reach and execute such an agreement before April 1, 2011, CPG's need for the case-specific abandonment authority granted by this order will be moot, as CPG will be able to rely at that point on the pregranted abandonment authority provided by its Part 284.224 blanket certificate.³³ In that event, UGI Storage's certificate authority to acquire CPG's storage assets and UGI Storage's other certificate authorizations and market-based rate authority will become effective as of April 1, 2011.

43. As discussed further below, the Commission believes that issuing a certificate to UGI Storage to acquire and operate the subject storage assets as jurisdictional facilities providing open-access service under section 284.221 of our regulations³⁴ will provide a

³² In the proceedings culminating in the *North Penn Order*, Transco expressed concern that North Penn would henceforth be providing service under a section 284.224 certificate of limited jurisdiction that included pregranted authority for North Penn to abandon services at the ends of the contract terms. *See* Transco September 9, 1991 filing, Docket No. CP91-2649-000 at 5. Transco first asked the Commission to include a condition to prevent North Penn from relying on the certificate's pregranted abandonment authority. However, Transco subsequently withdrew its protest containing that request, explaining that it believed it had reached an agreement in principle with North Penn regarding a right of first refusal. Transco May 14, 1992 filing, Docket No. CP91-2649 at 2. Therefore, the Commission did not address any issues related to pregranted abandonment authority in that proceeding.

³³ 18 C.F.R. § 284.224(f) (2010).

³⁴ *See* Applicants January 6, 2010 Answer to Protests at 16-17.

number of significant benefits. Under this regime, shippers will have regulatory capacity release rights, intra-day nomination rights, and certain rights of first refusal. In addition, UGI Storage will be bound by the transparency requirements regarding capacity information and posting and adherence to North American Energy Standards Board (NAESB) requirements.

44. The Commission does not agree with the SS-1 Customers' argument that, even if CPG's pregranted authority allows it to abandon its storage service to Transco under the current contract on March 31, 2011, CPG's refusal to agree to a new service agreement is an unduly-discriminatory withholding of capacity, constituting a violation of the Commission's open-access policies.³⁵ CPG's objective is to transfer its non-jurisdictional storage assets presently being used for jurisdictional storage services to a new affiliate, UGI Storage, that will be fully FERC jurisdictional and will make the storage capacity available on an open-access basis. CPG is not treating Transco any differently than any other customer. The authorities cited by the SS-1 Customers³⁶ that

³⁵ SS-1 Customers argue that *Michigan Consolidated Gas Co. v. FPC*, 283 F.2d 204 (D. C. Cir. 1960) (*Michigan*), cert. denied, 364 U.S. 913 (1960), supports their position that the Commission should not allow CPG to exercise its certificate's pregranted abandonment authority because CPG has "an obligation, deeply embedded in the law, to continue service." *Michigan* at 214. However, when the Commission adopted section 284.224 in an order issued on January 3, 1980, the Commission was explicit when it said that such authority "frees the holder of the blanket certificate from any service obligation after each underlying transportation contract expires." *Certain Transportation, Sales and Assignments by Pipeline Companies not Subject to Commission Jurisdiction Under Section 1(c) of the Natural Gas Act*, Order No. 63, FERC Stats. & Regs. ¶ 30,118, at 30,829 (1980).

³⁶ See *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220, ("The Commission's existing Part 284 open access regulations require interstate pipelines to provide service on a non-discriminatory basis to the extent capacity is available and a qualified shipper is willing to pay the maximum tariff rate."), *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006); *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 114 FERC ¶ 61,042, at P 10 (2006) ("First, Part 284 of the Commission's regulations and its policies provide that pipelines must sell capacity to maximum rate bidders."); *Tennessee Gas Pipeline Co.*, 91 FERC 61,053, at 61,190 (2000) ("In addition, Part 284 of the Commission's regulations requires Tennessee to sell all available capacity to shippers willing to pay Tennessee's maximum rates."), *order on reh'g*, 94 FERC ¶ 61,097 (2001), *aff'd*, *Process Gas Consumers Group v. FERC*, 292 F.3d 831 (D.C. Cir. 2002); Order No. 636 FERC Stats. & Regs. at 30,625 ("Withholding capacity violates the pipeline's

(continued...)

discuss the obligation of gas companies providing service under Part 284 open-access certificates are not relevant under the circumstances in this case, where CPG is seeking to divest itself of the facilities underlying the service at issue. There is no need for the Commission to address here the question of whether the general prohibition against interstate pipelines withholding available capacity might apply in a situation where an otherwise non-jurisdictional company like CPG refuses to enter into new firm service agreements utilizing facilities that it plans to keep.³⁷

45. The Commission finds CPG's decision to create a new affiliate to acquire its storage capacity assets and operate them as NGA jurisdictional facilities to be a reasonable one. Most of this storage capacity has been used for many years to provide jurisdictional interstate services.

46. Further, assuming the market power analysis supports a finding that market-based rates are appropriate -- a matter the Commission addresses below -- granting UGI Storage's request for market-based rates should serve to achieve the most efficient

obligation to provide transportation as embodied in section 284.8(b) of the Commission's regulations, which requires pipelines offering transportation on a firm basis to provide service 'without undue discrimination, or preference, including undue discrimination or preference in the quality of service provided, the duration of service, the categories, prices, or volumes of natural gas to be transported, customer classification, or undue discrimination or preference of any kind.'").

³⁷ However, the Commission notes that a Hinshaw or LDC may make a choice, at least in the first instance, to offer interstate service only on an interruptible basis. Section 284.224 provides that services provided pursuant to a certificate issued under that section are subject to the same conditions as service by an intrastate pipeline under section 311 of the Natural Gas Policy Act and Subpart C of the Commission's regulations. Section 284.122(a) of Subpart C states that an intrastate pipeline offering service under Subpart C is also subject to the provisions of subpart A that apply to intrastate pipelines. Section 284.7(a)(2) of subpart A provides that an intrastate pipeline "may" offer firm service. Thus, unlike an interstate pipeline providing service under a Part 284 blanket certificate, a Hinshaw pipeline or LDC providing service under a section 284.224 certificate may decide to offer only interruptible service or limit, in their Operating Statements on file with the Commission, the amount of firm service they will provide in order to avoid being obligated to undertake long-term firm services that could, in effect, progressively turn them into interstate pipelines against their will. *See Oasis Pipeline, LP*, 127 FERC ¶ 61,263, at P 16 (2006).

allocation of the subject storage resources. As the Applicants point out,³⁸ the Commission recognizes that market-based rates can be just and reasonable.³⁹ While any increase in cost to the SS-1 Customers is clearly not a benefit to them, it does not necessarily follow that a shift to market-based rates is not in the public interest, even if it results, perhaps, in a different allocation of capacity.⁴⁰ To the extent that cost-based pricing of the subject storage capacity is preventing customers who would place a higher value on the capacity from obtaining it, permitting prices to rise to market clearing levels will achieve a more efficient allocation of the capacity. The SS-1 Customers argue that the NGA does not require the Commission to approve rates that promote allocative efficiency to the detriment of other goals, such as consumer protection.⁴¹ However, the Commission believes the promotion of such efficiencies, while perhaps unfavorable to some consumers that have historically benefited from below-market, regulated prices, yields net benefits for the natural gas storage market and is therefore an appropriate consideration and not inconsistent with consumer protection.

47. Consistent with the above discussion, the Commission finds that CPG's abandonment of its storage service used by Transco for its SS-1 Customers is permitted by the present and future public convenience and necessity. The Commission, therefore, grants CPG's abandonment proposal, conditioned upon UGI Storage and Transco executing an agreement for storage service commencing prior to April 1, 2011.

B. Certificate of Public Convenience and Necessity

48. The Commission issued its Certificate Policy Statement in 1999 to provide guidance as to how the Commission evaluates proposals for certificating major new

³⁸ Applicants January 6, 2010 Answer to Protests at 23-24.

³⁹ See, e.g. *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076 at 61,229 (1996) ("Where a company can show a lack of market power, then competition in the market would ensure that the company's rates will be just and reasonable. In either case, the goals and purposes of the NGA are met in that any rates that would be charged would be just and reasonable, either under a cost-based or a market-based analysis.").

⁴⁰ *Missouri Interstate Gas, LLC*, 119 FERC ¶ 61,074, at P 28 (2007) (stating that the Commission "takes a broader view of the public interest because it focuses on the national market . . .").

⁴¹ SS-1 Customer January 21, 2010 Answer at 9.

construction.⁴² 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. While UGI Storage's proposal does not contemplate significant construction of new facilities, the Commission has found it appropriate to apply its Certificate Policy Statement in cases where a company seeks to acquire significant existing facilities.⁴³

49. As explained in the Certificate Policy Statement, in deciding whether to authorize new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, possibility of overbuilding, subsidization by existing customers, applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.⁴⁴

50. Under this policy, the threshold requirement in establishing the public convenience and necessity for pipelines proposing a new project is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers.⁴⁵ The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effect 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.⁴⁶ 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.

⁴² *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

⁴³ *See, e.g., Trunkline Gas Co., LLC*, 132 FERC ¶ 61,069 (2010); *BGS Kimball Gas Storage, LLC*, 117 FERC ¶ 61,122, at P 19-23 (2006).

⁴⁴ Certificate Policy Statement, 88 FERC at 61,737.

⁴⁵ *Id.* at 61,745-46.

⁴⁶ *Id.*

51. Because UGI Storage is a new company and therefore has no existing customers, the threshold requirement of the Certificate Policy Statement is satisfied. Moreover, since UGI Storage will be providing its service at market-based rates, none of its customers will be subsidizing any of the others.

52. The Commission finds there are significant benefits to granting NGA certificate authority to UGI Storage. The record shows that 80 percent of the relevant facilities are already being used to provide interstate service, albeit under CPG's section 284.224 blanket certificate. As a fully-jurisdictional natural gas company, UGI Storage will be required to provide its customers with capacity release rights, intra-day nomination rights, long-term contract rights, and rights of first refusal. UGI Storage will also have to adhere to the transparency requirements regarding capacity information and posting and the NAESB requirements. Although the SS-1 Customers are customers of Transco and only indirect customers of CPG,⁴⁷ they will benefit from Transco's increased rights as customer receiving service under UGI Storage's section 284.221 open-access certificate.

53. The Commission also finds that the benefits of the Applicants' proposals outweigh any impacts on competing existing pipelines and their captive customers. As the Commission explains below in connection with the analysis of the market-based rate request, the New York and Pennsylvania region is highly competitive. Granting the application will only add to the competition and provide more alternative facilities to meet natural gas demand. No other pipelines or their customers have raised any opposition to the Applicants' proposals in this proceeding.

54. As stated above, among the factors considered under the Certificate Policy Statement are impacts on landowners and communities to be affected by the proposed facilities. An important element of the consideration is how much of the necessary right-of-way the applicant has been able to obtain through negotiation with landowners and the extent to which the applicant may need to rely on the exercise of eminent domain.

55. UGI Storage provided maps depicting the location of the Tioga, Meeker, and Wharton storage fields in its application for certificate authority to acquire CPG's interests in these storage facilities. As discussed above, Tioga and Wharton are operated by other jurisdictional companies that own interests in those storage facilities. Thus, the certificated boundaries and operating conditions of the Tioga and Wharton storage facilities have already been established.

⁴⁷ The Commission notes that UGI Storage has stated it is willing to contract directly with the SS-1 Customers rather than indirectly through Transco. *See* UGI Storage November 19, 2009 Application at 18.

56. However, UGI Storage also seeks to acquire the entire Meeker storage facility, which is not currently certificated. Meeker is situated in the Oriskany formation, a Lower Devonian-aged sandstone, and is part of the Sabinsville Anticline. It is at a depth of 4,153 feet, and is a structural trap. The active storage boundary encompasses 1,216 acres, with an additional 2,980 acres of proposed buffer.⁴⁸ A fault separates the Meeker field from the Tioga Storage Complex, and there is no evidence of pressure communication between the Meeker field and the Tioga fields. UGI Storage's application states that the active storage boundary of the Meeker facility encompasses 1,216 acres, and UGI Storage proposes that the certificated facility include an additional 2,980 acres of proposed buffer.⁴⁹ Although the map of Meeker provided by UGI Storage identified a proposed buffer zone around the field, the application provided no other information on the buffer. While CPG has operated the Meeker storage facility for many years, UGI Storage indicates in its February 16, 2010 response to a data request that CPG does not own the necessary property rights to all of the buffer zone.⁵⁰ UGI Storage did not provide any information regarding any negotiations to acquire the rights to the rest of the proposed buffer area. In addition, UGI Storage did not comply with the

⁴⁸ In its February 16, 2010 data request response, UGI Storage stated that CPG holds storage rights (through deed or lease) to some, but not all of the proposed buffer acreage for the Meeker field. As there was no landowner notification provided as part of the Applicants' applications, the certificates granted herein only cover the active storage boundary. In order to obtain a certificate for a buffer zone for the Meeker storage facility, UGI Storage will have to file a further application with the Commission and comply with the Commission's landowner notification requirements in section 157.6(d) of the regulations. 18 C.F.R. § 157.6(d) (2010).

⁴⁹ Underground gas storage facilities include two different boundaries: the reservoir boundary and a protective boundary. The area located between the reservoir boundary and the protective boundary provides a buffer zone. A primary purpose of the protective boundary and buffer zone is to protect the storage operation from gas losses due to migration. If gas does migrate from the storage area into the buffer zone, the storage operator's control of the buffer area allows it to undertake operations to recover and reinject the gas into the storage area. On occasion, the Commission has issued certificate authority for a storage operator to expand a facility's certificated storage area and/or certificated buffer zone to address concerns regarding migrating gas. *See, e.g., Northern Natural Gas Company*, 125 FERC ¶ 61,127 (2008); *Southern Star Central Gas Pipeline, Inc.*, 124 FERC ¶ 61,042 (2008).

⁵⁰ Applicants' February 16, 2010 Data Request Response, Engineering Data Request No. 3.

Commission's landowner notification requirements in section 157.6(d) of the Commission's regulations.

57. UGI Storage has provided no evidence that it has contacted the owners of the properties in the proposed buffer zone for which CPG does not already have the necessary property rights or any information regarding what efforts, if any, have been made to acquire those property rights. Therefore, the Commission finds, with respect only to those areas of the proposed buffer zone for the Meeker facility for which CPG or UGI Storage does not already own sufficient property rights, that UGI Storage's proposal does not satisfy the Certificate Policy Statement. Therefore, this order will certificate only those portions of the 2,980 acres of the proposed buffer zone for the Meeker facility for which UGI Storage has already acquired the necessary property rights or will be able to acquire such rights from CPG.⁵¹ Within 30 days of the issuance of this order, UGI Storage is ordered to file with the Commission detailed information indicating what property rights CPG owned and what property rights, if any, UGI Storage separately acquired prior to the date of this order. The filing must (1) include maps that indentify the perimeter of the buffer zone and the perimeter of the actual storage zone, and any areas within those zones where Applicants may not have property rights; (2) identify the cap rock and the depth of the storage zone; and (3) include any additional information necessary to identify clearly the existing boundaries.

58. In view of the above discussion, the Commission finds that UGI Storage's application to acquire CPG's Tioga, Wharton and Meeker storage assets, excluding certain portions of the proposed buffer zone around the Meeker field, as discussed above, and to construct certain interconnection facilities satisfies the Certificate Policy Statement and is required by the public convenience and necessity.

C. Market-Based Rate Analysis

59. UGI Storage proposes to offer: (1) firm storage service (FSS); (2) firm no-notice storage service (NNSS); and (3) interruptible storage service (ISS). UGI Storage requests authorization to charge market-based rates under its FERC pro forma tariff for all of its services. UGI Storage contends that it will operate in a competitive market and that it lacks market power with respect to the storage services it proposes.

60. Upon Commission approval of UGI Storage's application to acquire CPG's storage assets, UGI Storage states that then-existing storage customers would be assigned

⁵¹ UGI Storage may file a further application to include the other areas within the certificated buffer zone at a later date, complying with the Commission's landowner notification requirements.

from CPG to UGI Storage and required to sign new contracts with UGI Storage in the form set forth in UGI Storage's FERC Gas Tariff. Service under those contracts would be provided at market-based rates, including applicable fuel retention percentages and other customary terms and conditions, on the effective date of its FERC certificate. UGI Storage states that if the Commission rejects its request for market-based rate authority and UGI Storage nevertheless elects to accept a certificate to acquire and operate CPG's storage assets, UGI Storage would provide its services at the rates established by the Commission.

61. For the reasons discussed below, the Commission finds that UGI Storage's application for market-based rate authority meets the criteria set forth in the Commission's Alternative Rate Policy Statement⁵² and therefore will grant UGI Storage's request for market-based rate authority.

62. The Commission has approved market-based rates for storage services where applicants have demonstrated, under the criteria in the Alternative Rate Policy Statement, that they lack significant market power or have adopted conditions that significantly mitigate market power. The Commission's framework for evaluating requests for market-based rates has two principal purposes: (1) to determine whether the applicant can withhold or restrict services and, as a result, increase prices by a significant amount for a significant period of time; and (2) to determine whether the applicant can discriminate unduly in price or terms and conditions of service.⁵³ To find 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

⁵² *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines* (Alternative Rate Policy Statement), 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *petitions for review denied sub nom.*, *Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998); *criteria modified*, *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs., ¶ 31,220, Order No. 678-A, *order on clarification and reh'g*, 117 FERC ¶ 61,190 (2006).

⁵³ *See, e.g., Orbit Gas Storage, Inc.*, 126 FERC ¶ 61,095 (2009); *Leaf River Energy Center, LLC*, 125 FERC ¶ 61,131 (2008).

lack of market power⁵⁴ because customers have good alternatives⁵⁵ or that the applicant or the Commission can mitigate the market power with specified conditions.⁵⁶

63. 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 markets⁵⁷ to determine which specific products or services are identified and to identify the suppliers of those products and services that provide good alternatives to the applicant's ability to exercise market power.⁵⁸ Additionally, as part of the first step, the applicant must identify the relevant geographic market.⁵⁹ Second, the Commission measures an applicant's market share and market concentration.⁶⁰ Third, the Commission evaluates other relevant factors, such as

⁵⁴ Market power is defined as the ability to profitably maintain prices above competitive levels for a significant period of time. *See* Alternative Rate Policy Statement, 74 FERC at 61,230.

⁵⁵ 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. *See* Alternative Rate Policy Statement, 74 FERC at 61,231.

⁵⁶ Generally, an applicant will include in its application a market power study in support of its request, as UGI Storage has done in this case. *See* Application, Exhibit I. A market power study usually defines the relevant products and geographic markets, measures market shares and concentrations, and evaluates other factors such as replacement capacity, ease of entry, and non-storage alternatives.

⁵⁷ 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.

⁵⁸ *See* Alternative Rate Policy Statement, 74 FERC at 61,231.

⁵⁹ *Id.* at 61,232-34.

⁶⁰ *Id.* at 61,234. The Commission uses the Herfindahl-Hirschman Index (HHI) test to determine market concentration for natural gas storage markets 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 relevant market. While a low HHI suggests a lack of market power, a high HHI – generally greater than 1,800 –

(continued...)

ease of entering the market. The Commission evaluates requests for market-based rates for storage on a case-by-case basis.⁶¹

64. In support of its request for market-based rate authority, UGI Storage provides testimony⁶² that includes a market power study based on the criteria set forth in the Alternative Rate Policy Statement. UGI Storage's market power analysis defines the relevant geographic market as New York and Pennsylvania, and the product market as firm and interruptible natural gas storage service. UGI Storage's analysis of good alternatives includes thirteen companies, including its affiliate UGI LNG, that own competing natural gas storage facilities with a total working gas capacity of 503,066 MMcf. The Tioga, Meeker, and Wharton storage facilities make up 14,700 MMcf of the working gas capacity of the total while the affiliate UGI LNG provides an additional 1,250 MMcf of working gas capacity. The market power study demonstrates that numerous alternatives to the proposed services exist, given the number and size of existing storage facilities in the relevant market and demonstrates that no barriers to entry in the market exist.

1. Defining Relevant Markets

a. Protests

65. The SS-1 Customers raise general concerns about UGI Storage's request for market-based rate authority. In its December 22, 2009 Protest, the SS-1 Customers allege that UGI Storage has not met its burden under the Alternative Rate Policy Statement of establishing that: (1) good alternatives of products and services will be available soon enough; (2) the price is low enough; and (3) alternatives are of a quality high enough to permit customers to substitute the alternative.

66. The SS-1 Customers claim that UGI Storage would wield significant market power in the New York and Pennsylvania markets. The SS-1 Customers state that the majority of the entities providing storage services in the market region provide such services under cost-based rates pursuant to long-term service agreements and that capacity on those facilities is fully subscribed and not available to the SS-1 Customers as

requires closer scrutiny in order to make a determination about a seller's ability to exert market power. *See* Alternative Rate Policy Statement, 74 FERC at 61,235.

⁶¹ Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 47.

⁶² *See* UGI Storage Application, the Prepared Statement of Tobias Bishop, Statement I, Exhibit Nos. UGI Storage-1, 2, & 3.

an alternative.⁶³ Accordingly, the SS-1 Customers contend that existing storage capacity presently reserved by storage suppliers' customers under long-term contracts should be excluded from the UGI Storage market power analysis.

67. In support of their position, the SS-1 Customers provide the testimony by Dr. John Morris, who states that UGI Storage's market power study presents no evidence on availability. Dr. Morris concludes that when contracting parties have long-term storage contracts and utilize the capacity for their own accounts, then it is proper to conclude that that the capacity subject to those contracts is not available.

68. Dr. Morris relies on three principal arguments to support his conclusion that UGI Storage's proposal should be rejected. First, Dr. Morris contends that the Commission should only include cost-based rate storage providers in a market-based rate analysis. Dr. Morris argues that by eliminating all storage providers with market-based rates⁶⁴ and eliminating UGI Storage's affiliates from the market power analysis, working gas storage capacity is reduced by 78,619 MMcf, from 503,066 MMcf to 424,447 MMcf, a 15.6 percent reduction. Second, Dr. Morris argues that the Alternative Rate Policy Statement requires that a good alternative be priced within 10 percent of CPG's current cost-based rate approved by the Commission.⁶⁵ Third, Dr. Morris concludes the currently available capacity in the New York and Pennsylvania market area represents only 13 percent of the storage capacity currently under contract by the SS-1 Customers.⁶⁶

69. The SS-1 Customers contend that the Commission should ignore the market availability of all other storage that would be available at a competitive market price, because that price nevertheless is significantly higher than the current embedded cost

⁶³ SS-1 Customer December 22, 2009 Protest at 11.

⁶⁴ Dr. Morris in his Affidavit at P 28 filed January 21, 2010, eliminates the following market-based gas storage providers in the New York and Pennsylvania geographic market from UGI Storage's market power study: Energy East (Iberdrola USA), Inergy, L.P. (Steuben Gas, Thomas Corners, and Bath storage facilities), and Sem Gas, L.P. (Cohocton Valley storage facility). Dr. Morris contends that market-based storage providers do not provide good alternatives to the SS-1 Customers. Dr. Morris further eliminated UGI LNG, Inc., a Commission-regulated storage provider, because it is authorized to charge market-based rates. *See UGI LNG, Inc*, 127 FERC ¶ 61,257 (2009).

⁶⁵ Alternative Rate Policy Statement, 74 FERC at 61,231-32.

⁶⁶ *See* Morris January 21, 2010 Affidavit at P 29.

underlying CPG's current rates. Dr. Morris concludes that the only storage capacity that could provide a substitute would be capacity currently connected to Leidy, Pennsylvania where CPG's storage facilities are directly tied to the Transco system via transmission facilities owned and operated by DTI.

70. The SS-1 Customers state that UGI Storage's evidence presented in the market analysis includes numerous alternatives that are priced well in excess of CPG's current cost-of-service rate of approximately \$0.50 per MMBtu.⁶⁷ Dr. Morris states that allowing for a 10 percent higher price to capture competitive alternatives per the guidance from the Commission's Alternative Rate Policy Statement, any good alternatives would have annual rates of \$0.56 per MMBtu or even lower. The SS-1 Customers contend that excluding the higher cost alternatives would increase UGI Storage's share of the relevant market. Dr. Morris contends that a correct analysis would compare the cost of gas via the current storage alternative utilized by the SS-1 Customers with the cost of gas via acquiring pipeline capacity and using it during the comparable deliverability period to replicate the storage delivery service.⁶⁸ Dr. Morris states the market power study does not provide such an analysis.

71. Dr. Morris claims that UGI Storage's basic argument is that unregulated market-based rates are around \$2.00 per MMBtu, and therefore the competitive price benchmark for evaluating good alternatives is \$2.00 per MMBtu. Dr. Morris states that his analysis shows that only 20 percent of the initial services are supplied in this market-based segment at a price of \$2.00 per MMBtu and concludes that prices would be \$1.33 per MMBtu at a competitive market level if the market was deregulated. Therefore, Dr. Morris concludes that the competitive price benchmark for evaluating good alternatives should be no more than \$1.33, not the \$2.00 advocated in UGI Storage's analysis.

b. UGI Storage Answer

72. In its answer, UGI Storage contends it met the Commission's standards for a market power analysis by providing evidence that the analysis satisfies the market share and market concentration data required by the Alternative Rate Policy Statement and Order No. 678 which promulgated the Commission's regulations in Subpart M of Part 284 establishing criteria for obtaining market-based rates under Part 284 of the Commission's Regulations.⁶⁹ UGI Storage asserts that Order No. 678 established the

⁶⁷ See *id.* P 30-33.

⁶⁸ See *id.* P 38.

⁶⁹ See also 18 C.F.R. § 284.501 *et seq.* (2010).

requirement that data on availability, cost, and other factors must be provided by applicants relying upon the competitive impact of non-storage services. UGI Storage contends that in contrast it relies principally on the availability of storage alternatives in the New York and Pennsylvania market in its market-based rate application.

73. UGI Storage states that nothing in Order Nos. 678 or 678-A require the applicant to provide a showing beyond the facts provided in the Primary Analysis of its application which includes the market concentration data and the related facts regarding other factors that are relevant to an evaluation of the potential to exercise market power. With respect to the standards for demonstrating a lack of market power, UGI Storage contends that the purpose of Order Nos. 678 and 678-A was not to change the standards long used to evaluate competitive storage alternatives, but rather to expand the scope of the market-power investigation beyond the traditional inquiry to encompass non-storage services that may serve as “close substitutes” for storage service.⁷⁰ UGI Storage maintains that the Commission did not find or suggest that applicants relying upon competition from other storage providers in the relevant market must provide the available capacity data requested by the SS-1 Customers. UGI Storage avers that a review of market-based rate applications approved since Order No. 678 shows that none of the applicants provided the kind of data that the SS-1 Customers contend is an essential element of UGI Storage’s burden of proof.⁷¹

74. UGI Storage states that the SS-1 Customers provide no evidence that they are unable to find any alternatives for the current CPG or proposed UGI Storage services. UGI Storage claims that the SS-1 Customers are large, sophisticated LDCs, most of which are also served by affiliated marketing companies with large portfolios of transportation rights in the portions of the New York and Pennsylvania market traversed by DTI and Transco. UGI Storage states that the Leidy pipeline interconnection is a large hub with access to numerous new local production supplies and storage assets. UGI Storage asserts that customers on DTI, such as the SS-1 Customers, have access to firm supplies at DTI’s North and South Point liquid markets.⁷²

75. UGI Storage addresses what it claims are misstatements of the appropriate market definition and related market power concepts that lead Dr. Morris to conclude incorrectly

⁷⁰ Order No. 678-A, 117 FERC ¶ 61,190 at P 2.

⁷¹ See e.g., *Mississippi Hub, LLC*, 128 FERC ¶ 61,254 (2009); *UGI LNG, Inc.*, 127 FERC ¶ 61,257; *Atmos Pipeline & Storage, LLC*, 127 FERC ¶ 61,260 (2009).

⁷² See UGI Storage Application, Application for Market-Based Rates, Exhibit No. UGI Storage-4, Prepared Direct Testimony of Kelly Beaver at 8-12.

that the “market” in which UGI Storage would operate consists solely of the current CPG storage facilities and a small quantity of unsubscribed capacity of another storage provider, which would leave the proposed UGI Storage system as a virtual monopolist, with a 93 percent market share. UGI Storage emphasizes that the Commission has expressly rejected a challenge to its policy of using storage capacity that is under contract.⁷³

76. UGI Storage claims that the Commission’s market-power policy considers the market structure in light of the total size and number of market participants, without a secondary inquiry into the contract status of each of the sellers at each moment in time. UGI Storage explains that there are a number of both storage and non-storage alternatives that while contractually subscribed are nonetheless available in the market to compete with physical storage.⁷⁴ UGI Storage concludes that Dr. Morris’s approach fails to account for this capacity, severely understating the actual scope of the product market.

77. UGI Storage contends that it is long-standing Commission precedent that the working gas capacity and peak day deliverability installed in the New York and Pennsylvania market are considered good alternatives. For example, UGI Storage notes, in approving market-based rates for Arlington Storage Company’s Thomas Corners facility (Arlington) located in upstate New York, the Commission stated “[w]e find that Arlington’s market power analysis demonstrates that its proposed storage facilities will be in a highly competitive area where numerous storage service alternatives exist for potential customers.”⁷⁵

78. UGI Storage states that CPG’s embedded cost-based rates for its services, as well as the cost-based rates for other storage service providers in the market, are not reflective of the rates in the workably competitive New York and Pennsylvania storage market.⁷⁶ Rather, UGI Storage points out, the embedded cost-based rates of such older storage facilities reflect the cost of those facilities when they were developed and also reflect the fact that the facilities have depreciated since they were put into service. UGI Storage states that the Commission has not and should not require that applicants for market-

⁷³ *Wyckoff Gas Storage Co., LLC*, 105 FERC ¶ 61,027, at P 51-52 (2003) (*Wyckoff*).

⁷⁴ See Prepared Answering Statement of Tobias Bishop, filed February 5, 2010, at 6-13.

⁷⁵ *Arlington Storage Co., LLC*, 125 FERC ¶ 61,306, at P 67 (2008).

⁷⁶ Applicants February 5, 2010 Answer at 8-9.

based rates demonstrate the availability of alternatives at cost-based rates currently being paid by particular customers. Rather, UGI Storage asserts, a market power analysis should be an evaluation of an applicant's ability to charge rates in excess of rates for alternative services in a workably competitive market.

79. UGI Storage states that the U. S. Court of Appeals for the District of Columbia Circuit has rejected the concept that the market-based rate should be set by reference to the cost of service.⁷⁷ Further, UGI Storage emphasizes that in the Alternative Rate Policy Statement, the Commission defined market power as follows: “[m]arket power is defined as the ability of a pipeline to profitably maintain prices above competitive levels for a significant period of time.”⁷⁸

c. Commission Determination

80. UGI Storage has demonstrated in both its application and the answers to the protests that it has met the Commission’s standards for granting market-based storage rates. In its market power study, UGI Storage presented data supporting a finding that its HHI for working gas capacity is 2,251 with a market share of 3.2 percent and an HHI for peak day deliverability of 2,144 with a market share of 4.2 percent. While these HHI values are higher than the HHI threshold of 1,800, which the Commission stated in the Alternative Rate Policy Statement would trigger the need for consideration of other factors, further examination shows that both the HHIs and UGI Storage’s market shares are lower than or consistent with those in other proceedings in which the Commission approved market-based rates for storage providers in the New York and Pennsylvania geographic market.⁷⁹ Further, as discussed herein, the two largest storage providers in

⁷⁷ *Citing Elizabethtown Gas Co. v. FERC*, 10 F.3d 866 at 870 (D.C. Cir. 1993).

⁷⁸ Alternative Rate Policy Statement, 74 FERC at 61,230.

⁷⁹ *See, e.g., Avoca Natural Gas Storage*, 68 FERC ¶ 61,045, at 61,151 (1994) (*Avoca*) (finding an HHI of 4,900 and market share of 3.0 percent for working gas capacity, and an HHI of 4,100 and market share of 9.6 percent for peak day deliverability); and *Steuben Gas Storage Co. (Steuben)*, 72 FERC ¶ 61,102, at 61,539 (1995) (finding an HHI of 4,401 and market share of 3.5 percent for working gas capacity, and an HHI of 3,600 and market share of 1.66 percent for peak day deliverability). While the Commission has granted market-based rate authority to a number of applicants in the New York and Pennsylvania market after finding that they would have relatively small market shares that would mitigate against their potential to exercise market power, an important additional consideration in the Commission’s analysis was the fact that most of the storage capacity in the New York and Pennsylvania

(continued...)

the relevant market, DTI and National Fuel, offer storage service at cost-based rates and have market shares of 41 and 12 percent, respectively, causing the storage market to be concentrated. As the Commission has stated before, approval of market-based rate authority for an applicant with relatively small shares is acceptable where a significant amount of the working gas capacity and peak day deliverability in the relevant market area is held by companies with cost-based rates that are regulated by the Commission.⁸⁰

81. Since 1994 the Commission has found that the storage market in the New York and Pennsylvania geographic market is competitive for small independent operators and has authorized market-based rates for ten storage facilities in the area.⁸¹ Further, since 1994 the HHI index in the New York and Pennsylvania market area has decreased from

market was owned by one or two companies that were subject to regulated cost-based rates, ensuring that they would not be able to exercise market power. *See Arlington Storage Co., LLC*, 125 FERC ¶ 61,306, at P 65 (2008); *UGI LNG, Inc.*, 127 FERC ¶ 61,257 at P 19; *New York State Electric & Gas Corp.*, 81 FERC ¶ 61,020, at 61,137 (1997); and *Avoca*, 68 FERC at 61,152. In an entirely unregulated market, the dominant storage providers might have been able to exercise market power, creating the potential for other companies to also charge excessive storage rates, notwithstanding their relatively small market shares. As discussed herein, more than half of the working storage gas capacity and deliverability in the New York and Pennsylvania storage market is still held by only two companies -- DTI and National Fuel -- whose rates are cost-based rates approved by the Commission.

⁸⁰ *Arlington Storage Company, LLC*, 132 FERC ¶ 61,171 at P 40 (“As we noted in our review of the Thomas Corner Project, the concentration observed in the New York/Pennsylvania market is the result almost entirely of the presence of a single storage provider, [DTI].”).

⁸¹ *See e.g., Avoca*, 68 FERC ¶ 61,045; *Steuben*, 72 FERC ¶ 61,102 and 74 FERC ¶ 61,060 (1996); *New York State Electric & Gas Corp.*, 81 FERC ¶ 61,020; *Honeoye Storage Corp.*, 91 FERC ¶ 62,165 (2000); *Central New York Oil & Gas Co. (Central New York), LLC*, 94 FERC ¶ 61,194 (2001) and 117 FERC ¶ 62,261 (2006); *Wyckoff*, 105 FERC ¶ 61,027; *UGI LNG, Inc.*, 119 FERC ¶ 61,056; *Steckman Ridge, LP (Steckman Ridge)*, 123 FERC ¶ 61,248 (2008); *Arlington Storage Company, LLC*, 125 FERC ¶ 61,306; and *Chestnut Ridge*, 128 FERC ¶ 61,210.

4,900⁸² to 2,251,⁸³ showing that there is ease of entry to the market place. Thus, the market has shown that it is able to respond efficiently to competitive demand for additional capacity. In addition, as provided for in Order No. 678, the Commission's regulations, and recent Commission orders, the definition of the product market has expanded to include close substitutes for storage, including local production and pipeline capacity.⁸⁴ UGI Storage demonstrates in its Alternative Market-Power Analysis⁸⁵ that when local production is included with storage capacity in the market-power analysis, UGI Storage's HHIs will be low; its HHI for working gas capacity will be 1,167 with a market share of 2.1 percent and its HHI for peak day deliverability will be 1,620 with a market share of 3.6 percent. UGI Storage's market-power study demonstrates that it operates in a competitive geographic market providing sufficient alternatives to its service, that it is unable to exercise market-power, and that it is a small storage provider with a minimal market share in a highly competitive market. In view of these considerations, although the Primary Market-Power Analysis reveals an HHI of the relevant market above 1,800, as discussed above, the New York and Pennsylvania market nevertheless is competitive due to other relevant factors, including ease of entering the market, the relatively low market share of UGI Storage, and the fact that the two largest storage providers' rates are regulated cost-based rates. The subscribed storage capacity is subject to the Commission's capacity release requirements, which ensures that it may be made available to other customers when not needed by current customers. The Commission, therefore, finds that including storage capacity subject to long-term contracts in its determination of market concentration is appropriate.⁸⁶ Finally, the Commission notes that it has approved companies' applications for market-based rates in the New York and Pennsylvania geographic area as well as others, and the Commission

⁸² See *Avoca*, 68 FERC at 61,151 n.28.

⁸³ See UGI Storage Company application, Exhibit No. UGI Storage-3, Attachment A-1.

⁸⁴ See Order No. 678 at P 6; 18 C.F.R. § 284.503(b)(4) (2010); *Steckman Ridge*, 123 FERC ¶ 61,248 at P 31-32; *East Cheyenne Gas Storage, LLC*, 132 FERC ¶ 61,097, at P 43 (2010).

⁸⁵ See UGI Storage application, Statement I, Exhibit No UGI Storage-3, Attachment A-2 and B-2.

⁸⁶ The Commission's open-access regulations require jurisdictional pipeline storage companies allow their customers to release capacity they have reserved under service agreements for firm service. 18 C.F.R. § 284.8 (2010).

has received no complaints that these companies are extracting monopoly rents evidencing that they have market power.

82. In Order No. 678-A, the Commission addressed the issue of a storage facility changing from cost-based to market-based rates and the extent to which customers' cost-based rates should be shielded for the remainder of their contract term or whether the storage operator should be allowed to change the customers' rates to market-based rates during the terms of their contracts pursuant to a filing under section 4 of the NGA.⁸⁷ In addressing this issue, the Commission explained that while the overall regulatory goal in Order No. 678 was to promote additional infrastructure, it is not the Commission's only policy consideration. The Commission concluded that where markets are shown to be competitive, market-based rates are appropriate because they will provide the most efficient allocation of resources.⁸⁸ However, an existing storage company applying for market-based rate authority has the burden of demonstrating that it lacks significant market power or has adequately mitigated such market power over the existing shippers who would be subject to market-based rates.⁸⁹ Based on the record developed in this

⁸⁷ Order No. 678-A, 117 FERC ¶ 61,190 at P 6.

⁸⁸ The Commission noted in Order No. 678-A that the standard *Memphis* clause in interstate pipelines' contracts authorizes them to make unilateral NGA section 4 filings to change the rates, terms, and conditions under which they will continue to provide the services being provided under their existing service agreements:

Therefore, a *Memphis* clause in a contract would permit a pipeline to file to change a customer's existing cost-based rate to a market-based rate. However, in order to support a finding by the Commission that a pipeline's proposal to charge market-based rates is just and reasonable, the pipeline has the burden of demonstrating that it lacks significant market power or has adequately mitigated such market power over the shippers who would be subject to market-based rates. The Commission finds that it is more appropriate to address the specific issues raised by petitioners in individual proceedings based on the facts and circumstances in each proceeding. Based on the record developed, the Commission will ensure that a pipeline's proposal to charge market-based rates is just and reasonable. . . .

Order No. 678-A, 117 FERC ¶ 61,190 at P 7.

⁸⁹ *Id.*

proceeding, we find UGI Storage has demonstrated that its proposal to charge market-based storage rates is just and reasonable because it lacks market power as discussed in more detail below.

83. As discussed above, the Alternative Rate Policy Statement referenced a 10 percent threshold for identifying good alternatives,⁹⁰ meaning that if a company can sustain an increase in its rates in the order of 10 percent or more without losing significant market share, the company may be in a position to exercise its market power to the detriment of the public interest. However, applicants for market-based rate authority are free to argue for a higher threshold and other parties can argue for a lower threshold.⁹¹

84. The Commission has recognized that, “[t]he ability to raise prices does not mean that [the regulated entity] has significant market power; it may simply mean that the current rates for peak period service are below the competitive market price.”⁹² As discussed above, the relevant standard is whether UGI Storage can exercise market power to charge rates in excess of the prevailing competitive level established in the market, and the Commission defines “market power” as “the ability of a pipeline to profitably maintain prices above competitive levels for a significant period of time.”⁹³ Consistent with this definition, the Commission finds that UGI Storage’s application, its market power study, and data provided in its answers to protests demonstrate that UGI Storage would be unable to sustain price levels in excess of the storage prices established in the workably competitive New York and Pennsylvania storage market. The Commission finds that UGI Storage is unable to exercise market power in the competitive New York and Pennsylvania market, and, consistent with our prior findings in this market area, will grant UGI Storage’s request for market-based rate authority.⁹⁴

⁹⁰ Alternative Rate Policy Statement, 74 FERC at 61,234 (“Only sales or capacity figures associated with good alternatives should be used in calculating the HHI.”).

⁹¹ *Id.* at 61,231-32.

⁹² *Explorer Pipeline Co.*, 87 FERC ¶ 61,374, at 62,392 (1999).

⁹³ Alternative Rate Policy Statement, 74 FERC at 61,230.

⁹⁴ As a fully jurisdictional interstate storage provider, UGI Storage will be required to comply with the requirements in section 284.13(b) of the Commission’s regulations, which requires the posting of the rates charged in each storage transaction. Such measures will enable the Commission and shippers to promote competition through price transparency by monitoring market-based transactions for undue discrimination and preference. The requirement that UGI Storage report price information will permit

(continued...)

85. The Commission has found⁹⁵ that: (1) the New York and Pennsylvania market is the relevant geographic market for storage applicants located in this region; (2) existing storage providers in the New York and Pennsylvania market are good alternatives; (3) the New York and Pennsylvania market is workably competitive for small storage providers; and (4) there are various additional factors, including ease of entry, that exist in the New York and Pennsylvania market to mitigate the potential for market power.⁹⁶ As a result of these findings, the Commission concluded that market-based rates for small storage providers are just and reasonable. The Commission finds that these previous findings are equally applicable in these present proceedings, regardless of the fact that UGI Storage will be using existing storage capacity acquired from CPG.

2. Market Concentration

86. UGI Storage's application provides two studies – a Primary Analysis and an Alternative Analysis. The differentiating factor in the two studies is the scope of the product market considered in each, as discussed below. Both UGI Storage studies measure natural gas storage capacity in their analysis of market concentration, working gas capacity and peak day deliverability, and provide HHI calculations reflecting both scenarios.

87. In the Primary Analysis, the product market is defined (more narrowly) to include only traditional firm and interruptible market area natural gas storage services. In the Alternative Analysis, the product market is expanded (defined more broadly) to include not only firm and interruptible market area natural gas storage services, but also local production and pipeline capacity available for release during peak periods. Both local production and pipeline capacity may represent potential substitutes to storage based on availability, quality and price as outlined in Order No. 678.⁹⁷ UGI Storage also submitted the Prepared Direct Testimony of Kelly Beaver that addresses additional

shippers to compare storage costs at various facilities and make informed decisions to determine the most economical means of storage service.

⁹⁵ See *supra* P 81. .

⁹⁶ Applicants February 5, 2010 Answer at 7.

⁹⁷ Order No. 678, FERC Stats. & Regs. ¶ 31,220 at P 6, 12; Order No. 678-A, 117 FERC ¶ 61,190 at P 3.

storage services that may be available from marketers that use their portfolios of transportation, storage and gas supply rights to provide storage alternatives.⁹⁸

a. Protests

88. The SS-1 Customers' expert Dr. Morris states that there is an inconsistency in the HHI calculations presented in the market power study.⁹⁹ Dr. Morris claims that the capacity owned by DTI but contracted to Tennessee, Texas Eastern Transmission, LP (Texas Eastern), and Transco is subtracted in the market power study from DTI and directly attributed to Tennessee, Texas Eastern, and Transco. The SS-1 Customers contend that the market power study does not treat storage capacity contracted by UGI Storage affiliates in the same manner. Dr. Morris contends that accounting for this capacity in a manner similar to that in which Mr. Bishop accounted for the Tennessee, Texas Eastern, and Transco contracts would almost double the UGI Storage market shares.

89. Dr. Morris states that given the lack of good alternatives, the SS-1 shippers are effectively captive to CPG's existing storage services and will be captive to UGI Storage's services if it acquires CPG's storage assets. Dr. Morris contends that UGI Storage's market share would be at least 93 percent and the HHI would be at least 8,666, and UGI Storage's market share may be high as 100 percent with an HHI of 10,000.

90. The SS-1 Customers state that the broadly defined market considered by UGI Storage's Alternative Market Analysis is inappropriate. They argue that pipeline capacity and local production are not good alternatives because they do not allow customers to respond to market changes in commodity prices. Dr. Morris states that what is important for the SS-1 Customers is that they have alternative *storage* services that can receive gas from and deliver gas to the Leidy interconnection to replace the UGI Storage option.

b. UGI Storage Answer

91. UGI Storage addresses the SS-1 Customers' claim that there is a lack of good alternatives in the New York and Pennsylvania market with examples of competitive storage alternatives.¹⁰⁰

⁹⁸ See UGI Storage Application, Application for Market-Based Rates, Exhibit No. UGI Storage-4, Prepared Direct Testimony of Kelly Beaver.

⁹⁹ See Morris January 21, 2010 Affidavit at P 34.

¹⁰⁰ See Bishop February 5, 2010 Affidavit at P 7-12.

92. The first UGI Storage example is the existence of a large and active secondary market for natural gas supply, transportation, and storage capacity in the U.S. Northeast, as demonstrated by the numerous well-established natural gas trading points that cover the New York and Pennsylvania regions.

93. Second, UGI Storage points out that storage capacity throughout the U.S. Northeast is subscribed and/or utilized by a number of different types of customers, and that natural gas marketers contract for a significant amount of storage in this region. UGI Storage emphasizes that the storage capacity held by marketers is not utilized by those entities to meet their own gas consumption requirements, but rather is resold in various forms in the secondary market. For example, UGI Storage states that marketers at just two of the storage facilities (Steckman Ridge, LP and Central New York Oil and Gas Co., LLC) in the New York and Pennsylvania market hold twice the total amount of working gas capacity that would be owned by UGI Storage.

94. Third, UGI Storage notes that in addition to storage capacity directly contracted by marketers, many storage contracts held by LDCs are also managed by marketers through agency or asset management agreements, and those marketers are able to consolidate and optimize larger natural gas portfolios.

95. Fourth, UGI Storage cites a report by the Energy Information Administration that through October 2009, the month at which storage is typically at or near its capacity for the injection season, there was 47.8 Bcf of working gas capacity that was unutilized.

96. Fifth, UGI Storage explains that multi-cycle storage facilities present in the New York and Pennsylvania market area provide storage customers the opportunity to cycle and thus sell their storage capacity for more than one annual cycle. As a result, these facilities provide additional flexibility for capacity releases and bundled sales to compete in the market with UGI Storage's capacity.

c. Commission Determination

97. UGI Storage's Primary Analysis market power study, which considers only traditional storage services, shows an HHI for working gas capacity of 2,251 and market share of 3.2 percent, and an HHI for peak day deliverability of 2,144 and market share of 4.2 percent. As acknowledged above, these values are higher than the threshold 1,800 level cited in the Alternative Rate Policy Statement. However, UGI Storage's Alternative Market Analysis study shows an HHI for working gas capacity of 1,167 with a market share of 2.1 percent, and an HHI for peak day deliverability of 1,620 with a market share of 3.6 percent. These values are lower than the 1,800 level cited in the Alternative Rate Policy Statement. UGI Storage's Alternative Market Analysis considering a more broadly defined market that also takes into account pipeline capacity and production demonstrates that the market is less concentrated.

98. Further, while the Primary Analysis would indicate that the New York and Pennsylvania storage market is concentrated, the concentration results from two storage providers, DTI and National Fuel. Further, although the Primary Analysis indicates relatively high values of 2,251 for working gas capacity and 2,144 for peak day deliverability, the Primary Analysis study shows that UGI Storage's market shares nevertheless as relatively small: only 3.2 percent for working gas capacity and 4.2 percent for peak day deliverability.

99. In the Primary Analysis, the New York and Pennsylvania storage market is concentrated because DTI and National Fuel hold over 41 and 12 percent, respectively, of the market share for both working gas capacity and peak day deliverability. The Commission has found in similar cases that this market concentration was acceptable because DTI's and National Fuel's facilities are regulated by the Commission and their Commission-approved rates are cost-based, alleviating the market power potential of relatively small applicants.¹⁰¹ 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.¹⁰² Further, the Commission has stated that in order to attract customers seeking interruptible services, companies must offer those customers services that will lower their delivered gas prices.¹⁰³ As explained by the Commission when it approved market-based rates for Wyckoff,¹⁰⁴ 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 this 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. Accordingly, 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.¹⁰⁵

¹⁰¹ See *UGI LNG, Inc.*, 127 FERC ¶ 61,257 at P 18-19; *Central New York*, 116 FERC ¶ 61,277 at P 33 (2006) and 94 FERC ¶ 61,194 at 61,706; *NE Hub Partners, L.P.*, 83 FERC ¶ 61,043, at 61,176 & n.82 (1998); *New York State Electric and Gas Corp.*, 81 FERC ¶ 61,020 at 61,136-137.

¹⁰² *Central New York*, 94 FERC ¶ 61,194 at 61,706-07.

¹⁰³ *Id.*

¹⁰⁴ See *Wyckoff*, 105 FERC ¶ 61,027 at P 60.

¹⁰⁵ See also *Central New York*, 94 FERC at 61,206-07; *Wyckoff*, 105 FERC ¶ 61,027 at P 60.

100. The Commission finds that UGI Storage has demonstrated that its proposed storage services will be provided in a competitive market area where substantial storage service alternatives exist for potential customers. The Commission also finds that both UGI Storage's Primary and Alternative market power studies properly identify good alternatives in the New York and Pennsylvania market area. The Commission finds that, within the relevant market, UGI Storage's prospective market shares are low, and that the barriers to entry are low as demonstrated by the numerous recent storage projects developed in the New York and Pennsylvania market. For all these reasons, the Commission concludes that UGI Storage will lack significant market power, and the Commission will approve UGI Storage's request to charge market-based rates for firm and interruptible storage services.

3. Other Relevant Factors Mitigating Potential Market Power

101. Other factors, in addition to market share and concentration, support the conclusion that UGI Storage will not be able to exercise market power in the New York and Pennsylvania market area, including ease of entry. Ease of entry into a market inhibits the potential for any given participant to exercise market power.¹⁰⁶ There are no significant barriers to entry in the New York and Pennsylvania market area for storage services, as demonstrated by the numerous recent storage projects that have been developed in this market, as well as the proposed development of over 65 Bcf of additional working gas capacity over the next few years.¹⁰⁷ The lack of any significant barriers to entry in the New York and Pennsylvania market area means that UGI Storage will not have the ability to unilaterally raise prices above competitive levels.

102. Nevertheless, the Commission will require UGI Storage to notify the Commission if future changes in circumstances significantly affect its present market power status. Thus, our approval of market-based rates for the indicated services is subject to reexamination in the event that: (a) UGI Storage seeks to add storage capacity beyond the capacity authorized in this proceeding; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to UGI Storage; or (d) UGI Storage, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to UGI Storage. Since these circumstances could affect its market power status, UGI Storage shall notify the Commission within 10 days of acquiring knowledge of any such changes. The notification shall include a detailed description of the new facilities and their relationship

¹⁰⁶ See Alternative Rate Policy Statement, 74 FERC at 61,234.

¹⁰⁷ See UGI Storage Application, Statement I.

to UGI Storage.¹⁰⁸ The Commission also reserves the right to require an updated market power analysis at any time.¹⁰⁹

D. Requested Waiver of Filing and Reporting Requirements

103. UGI Storage requests waiver of the Commission's cost-based regulations since it will not be a transmission provider and it proposes to charge market-based rates for its storage services under the jurisdiction of the Commission in place of the currently effective cost-based rates under regulation by the Pa PUC. The Commission's relevant cost-based regulations are: (1) section 157.6(b)(8)¹¹⁰ (certificate applicants to submit cost and revenue data); (2) section 157.14(a)(13), (14), (16), and (17)¹¹¹ (cost based exhibits); (3) section 157.14(a)(10)¹¹² (showing of accessible gas supplies); (4) section 157.20(c)(3)¹¹³ (construction cost statement); (5) the accounting and reporting requirements of Part 201¹¹⁴ and section 260.2¹¹⁵ relating to cost-of-service rate structure (Form 2A); (6) sections 284.7(e)¹¹⁶ (firm reservation charge) and 284.10¹¹⁷ (charging storage rates based on the straight fixed variable (SFV) rate design methodology).

104. The cost-related information required by the above-described regulations is not relevant in light of our approval of market-based rates for UGI Storage's proposed

¹⁰⁸ See, e.g., *Port Barre Investments, L.L.C. d/b/a Bobcat Gas Storage*, 116 FERC ¶ 61,052 (2006) (*Bobcat*); *Copiah County Storage Co.*, 99 FERC ¶ 61,316 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002).

¹⁰⁹ See, e.g., *Floridian Natural Gas Storage Co.*, 124 FERC ¶ 61,214, at P 33 (2008).

¹¹⁰ 18 C.F.R. § 157.6(b)(8) (2010).

¹¹¹ 18 C.F.R. § 157.14(a)(13), (14), (16), and (17) (2010).

¹¹² 18 C.F.R. § 157.14(a)(10) (2010).

¹¹³ 18 C.F.R. § 157.20(c)(3) (2010).

¹¹⁴ 18 C.F.R. Part 201 (2010).

¹¹⁵ 18 C.F.R. § 260.2 (2010).

¹¹⁶ 18 C.F.R. § 284.7(e) (2010).

¹¹⁷ 18 C.F.R. § 284.10 (2010).

services, except for the information necessary for the Commission's assessment of annual charges. UGI Storage will be required to file page 520 of Form 2-A to report the gas volume information which is the basis for imposing an Annual Charge Adjustment charge. Thus, consistent with our findings in previous orders,¹¹⁸ the Commission will grant UGI Storage's request for waivers of the regulations requiring the filing of cost-based information, reservation charges, and the use of a SFV rate design. The Commission will also grant a waiver of section 157.14(a)(10) requiring an applicant to submit gas supply data, which does not pertain to natural gas storage. In addition, the Commission will require UGI Storage to maintain records of cost and revenue data consistent with the Uniform System of Accounts should the Commission require UGI Storage to produce these reports in the future.

E. Standards of Conduct

105. UGI Storage seeks a determination that it will not be a "transmission provider" within the meaning of 18 C.F.R. § 358.3(k)(2)¹¹⁹ for the purposes of the standards of conduct in Part 358 of the Commission's regulations.¹²⁰ UGI Storage states that it does not fit within the definition of "transmission provider" because, assuming that the Commission grants UGI Storage's request for market-based rate authority, it will meet the criteria under section 358.3(k)(3) for exemption as a natural gas storage provider authorized to charge market-based rates.¹²¹ UGI Storage also emphasizes that it will not be connected with any affiliated interstate pipeline, it will be physically housed in a separate location from its affiliates and will maintain its own employees and computer

¹¹⁸ See, e.g., *Bobcat*, 116 FERC ¶ 61,052 at P 33; *SG Resources Mississippi, L.L.C.*, 101 FERC ¶ 61,029, at P 26 (2002) (*SG Resources*); *Egan Hub Partners, L.P.*, 95 FERC ¶ 61,395, at 62,473 (2001) and 99 FERC at 62,142.

¹¹⁹ 18 C.F.R. § 358.3(k)(2) (2010).

¹²⁰ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs., ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C FERC Stats. & Regs. ¶ 31,172 (2004), *order of reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated in part, sub. nom. National Fuel Gas Supply Corporation v. FERC*, 468 F.3d 831 (D.C. Cir. 2006). See also *Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237 (2007) (Interim Rule); *Standards of Conduct for Transmission Providers*, FERC Stats. & Regs. ¶ 32,611 (2007).

¹²¹ UGI Storage Application at 41-42.

information systems, including a NAESB compliant internet web site. As such, UGI Storage asserts that it should be allowed to share employees that are required for the operation of the Tioga and Meeker facilities.

106. Part 358 of the Commission's regulations was adopted to establish standards of conduct to ensure that transmission providers cannot extend their market power over transmission by giving energy affiliates undue preferential treatment. Section 358.3(k)(3) provides that a transmission provider "does not include a natural gas storage provider authorized to charge market-based rates."¹²²

1. Protests

107. The SS-1 Customers contend that a record should be developed covering UGI Storage's stated intentions to (i) physically separate its employees from its affiliates; (ii) completely separate its transmission function from any potential marketing function of its affiliates; and (iii) ensure that any information received from third-party storage operators is treated confidentially. The SS-1 Customers state that while UGI Storage is offering these commitments, it is not clear how they will be implemented or enforced in an environment where UGI Storage also proposes to share a common SCADA system and gas control facilities functions with CPG, an entity that also may be one of UGI Storage's largest customers. DTI requests that the Commission condition UGI Storage's certificate on both UGI Storage and CPG maintaining strict confidentiality of all Tioga Storage Pool information, including DTI's proprietary information, and asks the Commission to consider any further conditions that are necessary to ensure that UGI Storage complies with the NGA's prohibition against undue discrimination.

2. UGI Storage's Response

108. In its January 6, 2010 answer, UGI Storage states that, while it requested that the Commission confirm that it will be exempt from the Standards of Conduct in Part 358 of the Commission's regulations,¹²³ UGI Storage states that it will ensure full compliance with the NGA and Part 284 of the Commission's regulations by pursuing a complete separation of its transmission function from the marketing functions of its affiliates and from any potential marketing function it may undertake itself in the future. UGI Storage

¹²² 18 C.F.R. § 358.3(k)(3) (2010).

¹²³ *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297 (2009), *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009) (Order No. 717).

states that it will be physically housed in a separate location from its affiliates and maintain its own employees and computer information systems, including a NAESB compliant internet web site. UGI Storage notes that a recent Commission order granted UGI LNG, Inc.,¹²⁴ a subsidiary of UGI Energy Services, an exemption from the Standards of Conduct. UGI Storage requests the same treatment regarding the Standards of Conduct and affiliate matters that have been previously granted by the Commission for other companies.

3. Commission Determination

109. As discussed above, the Commission has confirmed that UGI Storage will be exempt from the Part 358 Standards of Conduct pursuant to section 358.3(k)(3) which provides that a “transmission provider does not include a natural gas storage provider authorized to charge market-based rates.” However, as UGI Storage acknowledges, it must operate in full compliance with other applicable provisions of the Commission’s Part 284 open-access regulations, which impose conditions to ensure that the Commission and customers have access to the necessary information to monitor whether a jurisdictional company is engaging in unduly discriminatory practices or providing unfair preferences to some customers. In particular, section 284.12 includes the Commission’s requirements regarding jurisdictional companies’ maintenance of electronic bulletin boards and the information that they must make public regarding available capacity and transactions. In addition, section 284.13 makes companies subject to extensive reporting requirements regarding the terms of their service agreements with their customers.

F. Accounting Requirements

110. Consistent with our requirement in other proceedings,¹²⁵ the Commission will also require UGI Storage as a NGA-regulated company, to maintain separate books and records with applicable cross references as required by section 154.309 of the regulations. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 proceeding. This will potentially allow customers and/or other regulators to have the opportunity during an NGA section 4 or section 5 proceeding to examine UGI Storage’s books to confirm that its costs of service have been properly allocated, notwithstanding this order’s grant of market-based rate authority, among UGI Storage’s own customers and between UGI Storage and its

¹²⁴ *UGI LNG, Inc.*, 127 FERC ¶ 61,257.

¹²⁵ *See, e.g., Texas Gas Transmission, LLC*, 122 FERC ¶ 61,190, at P 25 (2008).

affiliates to protect all customer groups from subsidization.¹²⁶ The Commission notes that recordkeeping required by section 154.309 may also result in beneficial information for the remaining customers of CPG.¹²⁷

G. Proposed Tariff

111. UGI Storage proposes to offer market-based rate storage services including firm service (Rate Schedule FSS), no-notice service (Rate Schedule NNSS), and interruptible service (Rate Schedule ISS), on an open-access basis, under the terms and conditions set forth in its pro forma tariff.¹²⁸ In response to the Commission staff's January 26, 2010 data request, UGI Storage filed a revised pro forma tariff.¹²⁹ DTI and the SS-1 Customers filed comments on UGI Storage's initial pro forma tariff, which are discussed below. None of the parties filed opposition to UGI Storage's revised pro forma tariff. The Commission finds UGI Storage's revised pro forma tariff complies with the

¹²⁶ The Commission notes that CPG filed on June 18, 2010, with the Pa PUC in Docket No. P-2009-2145774, a Stipulation and Agreement to address the rate impact of the proposed transfer of assets to UGI Storage. CPG, the Office of Trial Staff of the Pa PUC, the Pa Consumer Advocate and the Office of Small Business Advocate filed to resolve all outstanding issues concerning CPG's request with the Pa PUC to reduce its base rates upon Commission approval of the transfer of CPG's storage facilities to UGI Storage in this proceeding. On September 28, 2010, the Pa PUC issued an Opinion and Order, finding the Stipulation and Agreement generally to be in the public interest subject to four modifications not relevant for these proceedings. The Opinion and Order found that "CPG customers will be held harmless or will benefit from the transfer of the Storage Facilities for the balance of the [purchased gas cost] year when the transfer of the Storage Facilities occurs and UGI Storage begins to provide storage at market-based rates. In addition, customers will be protected for a three year period thereafter." Pa PUC September 28, 2010 Opinion and Order (attached to Applicants' October 8, 2010 supplemental data request) at 13. The Pa PUC also noted that the Pa Consumer Advocate agreed, as part of the Stipulation and Agreement, to withdraw any protests filed in these proceedings. *Id.* at 8. As the Commission notes above, the Pa Consumer Advocate filed to withdraw its protest on October 13, 2010.

¹²⁷ *Id.*

¹²⁸ See UGI Storage Co. application at Exhibit P in which UGI Storage filed its initial pro forma tariff.

¹²⁹ See UGI Storage Co. March 8, 2010 Supplemental Response to the January 26, 2010 Data Request in which UGI Storage filed its revised pro forma tariff.

Commission's regulations and policies, with the exceptions noted below. The Commission directs UGI Storage to file actual tariff records consistent with the directives in this order at least 60 days prior to commencing service. As a reminder, UGI Storage will need to comply with the Commission's electronic filing requirements set forth in Order No. 714¹³⁰ and Part 154 of the Commission's regulations.¹³¹

1. Ratchets

112. DTI stated in its comments on UGI Storage's initial pro forma tariff that it failed to reflect ratchet values setting limitations for injections or withdrawals of natural gas into or from storage.¹³² DTI requested that UGI Storage reflect ratchet values in its tariff and that UGI Storage not negotiate ratchets.

113. In section 9 of Rate Schedule FSS in its revised pro forma tariff, UGI Storage proposes to offer both ratcheted and unratcheted storage service. In section 9, UGI Storage includes ratchet values for firm storage service. Also, UGI Storage's Firm Storage Agreement in its revised pro forma tariff includes options for ratcheted and unratcheted service. The Commission has previously allowed storage service providers to offer customers the option of receiving either ratcheted or unratcheted storage service as long as generally applicable ratchet percentages are stated in the tariff.¹³³ UGI Storage has satisfied this requirement in its revised pro forma tariff; however, the Commission directs UGI Storage to modify its Form of Service Request to reflect ratcheted and unratcheted options.¹³⁴

¹³⁰ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

¹³¹ 18 C.F.R. Part 154.4 (2010).

¹³² Ratchets are tariff provisions that change the rights to inject or withdraw storage gas depending on the inventory in the storage account.

¹³³ *Southeast Gas Storage, LLC*, 125 FERC ¶ 61,307, at P 49 (2008); *Tres Palacios Gas Storage, LLC*, 120 FERC ¶ 61,253, at P 53-54 (2007) (*Tres Palacios*); *Windy Hill Gas Storage, LLC*, 119 FERC ¶ 61,291, at P 43-44 (2007).

¹³⁴ Section 32 of the General Terms and Conditions in UGI Storage's revised pro forma tariff contains its Form of Service Request.

2. Seasonal Limitations on Injections and Withdrawals

114. In its comments, DTI expressed concern that UGI Storage's initial pro forma tariff failed to address any seasonal limitations on the timing of natural gas storage injections or withdrawals. DTI stated that UGI Storage might be envisioning offering multi-turn flexible services to customers. If so, DTI was concerned that UGI Storage failed to recognize the operational limitations of the facilities in question.

115. UGI Storage asserts that DTI has made injections into storage in winter months and withdrawals from storage in summer months in the Tioga Storage Complex.¹³⁵ In its answer, UGI Storage provided a privileged and confidential Exhibit B which supports this assertion. UGI Storage also asserts that under the 1987 Operating Agreement originally entered into by DTI's and CPG's predecessors, UGI Storage will have the express right to inject or withdrawal gas at any time of the year, at any rate, and in any amount that UGI Storage desires, subject only to the operational limitations of the storage field and the injectivity and deliverability limits related to each party's proportionate share of the Tioga storage capacity. UGI Storage states that certain segmentation and displacement techniques could allow the field to offer counter-seasonal injections and withdraws.

116. DTI responds that it is possible for UGI Storage to design complementary service offerings that would provide injection and withdrawal flexibility while recognizing the single turn nature of the pool. However, DTI reiterates its concern that UGI Storage seeks unfettered discretion to negotiate with customers a variety of individually-tailored services that will not work within the operational limitations of the field.

117. The Commission recognizes the following persuasive evidence of the necessity of seasonal injection and withdrawal limitations on the services proposed by UGI Storage. First, CPG's currently effective intrastate tariff defines seasonal injection and withdrawal periods.¹³⁶ UGI Storage's Third Revised Page No. 33 states that customers may *inject* gas into storage only during the period from April 1 through October 31 inclusive, unless otherwise permitted by the company.¹³⁷ UGI Storage's Third Revised Page No. 33 states

¹³⁵ Applicants January 6, 2010 Answer at 38-39.

¹³⁶ UGI Central Penn Gas, Inc., Supplement No. 22 to Gas – PA P.U.C. No. 3, Third Revised Page 33 (Third Revised Page 33).

¹³⁷ *See id.* at section 2.1.

that customers may *withdraw* gas from storage only during the period from November 31 to March 31 inclusive, unless otherwise permitted by the company.¹³⁸

118. Second, Transco's Rate Schedule SS-1, which provides for tracking of CPG's Pa PUC approved rates paid by Transco, defines both the injection period and the withdrawal period for storage service.¹³⁹ The injection period and withdrawal period definitions match the dates set forth in CPG's Pa PUC-approved tariff.¹⁴⁰

119. While scenarios may exist in which UGI Storage could provide services allowing for out-of-season injections into or withdrawals from storage, there are also scenarios where out-of-season injections or withdrawals are operationally impossible. UGI Storage has not placed any limitations on out-of-season injections or withdrawals of natural gas in its revised pro forma tariff. This absence of limitation allows for operational uncertainty and exposes UGI Storage's customers to the risk of being denied contractually agreed upon service due to operational constraints. The Commission directs UGI Storage to revise its tariff to reflect seasonal limitations on injections and withdrawals of natural gas into and from storage in order to ensure the services offered work within the operational limitations of the facilities and to ensure that open-access customers have accurate information about the nature of the service for which they are contracting.

3. Transportation Capacity Requirement for No-Notice Storage Service

120. DTI raises concerns about how UGI Storage's proposed NNSS would work. DTI states that UGI Storage requires in section 1(e) of Rate Schedule NNSS that customers be responsible for arranging transportation services required for utilization of no-notice storage service. Section 1(e) of Rate Schedule NNSS also states that any such transportation arrangements must be acceptable to the company in its reasonable judgment.

¹³⁸ *See id.* at section 3.1.

¹³⁹ *See* Transco FERC Gas Tariff, Fourth Revised Volume No. 1, Original Sheet No. 152. Rate Schedule SS-1 is a firm storage service offered to customers who purchased bundled service from Transco prior to the unbundling of sales, transportation, storage, and other services.

¹⁴⁰ UGI Central Penn Gas Co., Supplement No. 22 to Gas – PA P.U.C. No. 3, Third Revised Page 33.

121. UGI Storage has not provided a blank space for the customer to enter its transportation arrangement relating to no-notice service in its Form of Service Request contained in its revised pro forma tariff. Further, UGI Storage does not provide any explanation of the parameters used to evaluate the adequacy of a customer's transportation service. The Commission directs UGI Storage to update its Form of Service Request to allow customers a mechanism to identify their transportation arrangements for UGI Storage, when applicable. The Commission also directs UGI Storage to update its tariff to provide details about how it will evaluate the adequacy of customers' transportation arrangements.

4. Operational Flow Orders Directed to Point Operators

122. DTI states that UGI Storage's initial pro forma tariff at General Terms and Conditions (GT&C) section 6.4 improperly references point operators as the target of operational flow orders (OFO). DTI states that OFOs are meant to target shippers. DTI states that when the service provider cannot ascertain which of its customers is responsible for a given activity and a point operator agrees to step into the process it may be appropriate for an OFO to target a point operator. However, DTI states that no such situation exists here and requests the term point operator be removed from the pro forma tariff.

123. In its revised pro forma tariff, UGI Storage complied with DTI's request and removed the term point operator from its section 6.4 of the GT&C, which discusses OFOs. Therefore, no further revisions are required.

5. Sale of Capacity

124. In section 3.1 of the GT&C of UGI Storage's revised pro forma tariff, UGI Storage proposes to sell capacity via either an open season or on a first-come, first-served basis. The SS-1 Customers comment that the first-come, first-served option seems to permit UGI Storage to discriminate and states that it is not clear why a first-come, first-served option is necessary or reasonable.

125. In its January 26, 2010 data request, the Commission's staff asked UGI Storage to describe the process it will use to select between open season procedures and first-come, first-served procedures when selling available capacity. UGI Storage responded that it will select the method for selling storage capacity based on the amount of storage capacity available for sale and the time available in which to complete the sale of capacity. UGI Storage states that capacity packages which are too small to warrant prorating, or capacity which must be allocated quickly to meet seasonal storage requirements, will be allocated on a first-come, first-served basis.

126. Upon review, the Commission finds that UGI Storage's proposed first-come, first-served provision regarding the sale of capacity is reasonable and consistent with

approved tariffs for other storage providers.¹⁴¹ Therefore, no further changes are required concerning the sale of storage capacity.

6. Gas Quality

127. In the Commission's Gas Quality Policy Statement,¹⁴² the Commission stated that new companies that do not have historical information on which to base their gas quality standards are expected to include in their tariffs the relevant information from interconnecting pipelines and competing pipelines serving the customers expected to be served by the new entrant.¹⁴³ The Gas Quality Policy Statement also states that only natural gas quality and interchangeability specifications contained in a Commission-approved gas tariff may be enforced.¹⁴⁴

128. The SS-1 Customer Group states in its comments that although UGI Storage included some gas quality specifications in its pro forma tariff, it did not include Wobbe levels, maximum Btu levels, or other important levels that are relevant in the modern natural gas marketplace. In its revised pro forma tariff, UGI Storage does include some specifications for natural gas quality. However, UGI Storage attempts to incorporate by reference the gas quality standards of the transporters who either deliver or receive gas into or from UGI Storage.

129. Because only gas quality specifications that are contained in a Commission-approved gas tariff may be enforced, UGI Storage must incorporate into its tariff, explicitly, not by reference, any and all gas quality standards that it seeks to enforce. UGI Storage must revise its tariff accordingly.

¹⁴¹ See Arlington Storage Company, LLC, FERC Gas Tariff, First Revised Volume No. 1, Original Sheet Nos. 105-06; Steckman Ridge, LP, FERC Gas Tariff, Original Sheet No. 220.

¹⁴² *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*, 115 FERC ¶ 61,325 (2006) (Gas Quality Policy Statement).

¹⁴³ *Id.* P 45.

¹⁴⁴ *Id.* P 2.

7. Creditworthiness

130. In its December 22, 2009 protest, the SS-1 Customers stated concern that UGI Storage's proposed tariff did not make clear how it would determine creditworthiness. The SS-1 Customers stated that it might supplement its protest to further address this and other tariff issues; however, the SS-1 Customer Group never revisited the issue of UGI Storage's method of determining creditworthiness.

131. The Commission issued a Creditworthiness Policy Statement setting forth its approach to credit issues relating to transportation on natural gas pipelines.¹⁴⁵ In the Creditworthiness Policy Statement, the Commission stated that pipelines must establish and use objective criteria for determining creditworthiness.¹⁴⁶

132. Upon review of UGI Storage's proposed creditworthiness provisions and without receiving further comment from the SS-1 Customers, the Commission finds that UGI Storage's creditworthiness provisions are consistent with the Creditworthiness Policy Statement.

8. Maximum Customer Entitlements

133. The SS-1 Customers state that the difference between the definitions of the terms Maximum Daily Withdrawal Quantity (MDWQ) and Maximum Daily Delivery Quantity (MDDQ) in UGI Storage's pro forma tariff also are unclear. They question whether the difference between the terms may relate to the extraction and retention of fuel.

134. The Commission agrees that the definitions of MDWQ and MDDQ provided in UGI Storage's revised pro forma tariff are ambiguous. UGI Storage is directed to clarify the definitions of MDWQ and MDDQ in its tariff.

9. Title and Risk of Loss

135. The SS-1 Customers state that Article 11.2 of the GT&C of UGI Storage's pro forma tariff provides that any losses of gas are to be shared between Rate Schedule FSS and ISS customers. The SS-1 Customers request that UGI Storage explain why Rate Schedule NNSS customers should not also share in the losses.

¹⁴⁵ See *Creditworthiness Standards for Interstate Natural Gas Pipelines*, 111 FERC ¶ 61,412 (2005) (Creditworthiness Policy Statement).

¹⁴⁶ *Id.* P 10.

136. The Commission finds this request is reasonable and directs UGI Storage to either include Rate Schedule NNSS customers in the list of types of customers that share in gas losses or explain why Rate Schedule NNSS customers should not share in such losses.

10. Fuel Retention

137. The SS-1 Customers express concern that UGI Storage does not clarify in its pro forma tariff when fuel would be retained during the injection/withdrawal cycle. Because the timing of fuel retention could have an effect on the business strategies of UGI Storage's customers UGI Storage is directed to state in its tariff when in the injection/withdrawal cycle fuel will be retained.

138. The SS-1 Customers state that UGI Storage gives no indication of how customers would be protected from degradation of service if UGI Storage's fuel recoveries are insufficient. The SS-1 Customers request that the Commission require UGI Storage to develop a proposal detailing how it would operate if it failed to recover sufficient fuel.

139. The Commission has previously allowed a natural gas storage company providing services at market-based rates to negotiate fuel retention rates.¹⁴⁷ As a storage provider authorized to charge market-based rates, UGI Storage is not required to offer cost support for its rates and is thus not obligated to justify its imposition of a fuel charge, service by service. Furthermore, UGI Storage's proposal to reserve flexibility to set fuel rates is fully consistent with its market-based rate authority and is consistent with the fuel retention mechanisms the Commission has authorized for other independent market-based storage service providers.¹⁴⁸

140. The Commission recognizes that UGI Storage will risk not recovering sufficient fuel when fuel retention rates are market-based. However, UGI Storage presumably understands the risks of using market-based rates. If UGI Storage's fuel retention degrades the quality of a contracted service it provides to any of its customers, the affected customer has the right to file a complaint under rule 206 of the Commission's regulations.¹⁴⁹

¹⁴⁷ See *Columbia Gas Transmission Corp.*, 126 FERC ¶ 61,237, at P 51 (2009); *Tres Palacios*, 120 FERC ¶ 61,253 at P 77.

¹⁴⁸ *Id.*

¹⁴⁹ 18 C.F.R. § 385.206 (2010).

11. Segmentation

141. Section 284.7(d) of the Commission's regulations¹⁵⁰ provides that an interstate pipeline must permit a shipper to make use of the firm capacity for which the shipper has contracted by segmenting that capacity into separate parts for the shipper's own use, or for the purpose of releasing that capacity to replacement shippers, to the extent that segmentation is operationally feasible. UGI Storage requests an exemption from the segmentation requirement in section 284.7(d), contending that its system consists of storage facilities with no separate transportation services, and therefore, segmentation is not feasible.

142. In *Clear Creek*¹⁵¹ the Commission found that the requirements of section 284.7(d) did not apply to pipelines that are engaged solely in natural gas storage and do not provide stand-alone transportation services. UGI Storage meets the requirements set forth in *Clear Creek*. Thus, the Commission finds that the requirements of section 284.7(d) do not apply to UGI Storage. The Commission also finds that other tariff provisions related to segmentation, such as the allocation of primary point rights in segmented releases and within-the-path scheduling, do not apply to UGI Storage.

12. Acquisition of Off-System Capacity and Waiver of Shipper Must Have Title Rule

143. UGI Storage requests a waiver of the "shipper must hold title" policy for any off-system capacity it may need to acquire in order to provide storage services. Section 21 of its pro forma tariff states that UGI Storage will only provide transportation and storage services for others using such off-system capacity pursuant to its open-access FERC Gas Tariff subject to its rates approved by the Commission.

144. This language implements the Commission's policy with respect to pipelines' acquisition of off-system capacity. In *Texas Eastern*,¹⁵² the Commission found that pipelines no longer need to obtain prior approval to acquire capacity on another pipeline provided the acquiring pipeline filed tariff language specifying that it would only transport for others on off-system capacity pursuant to its existing tariff and rates.¹⁵³

¹⁵⁰ 18 C.F.R. § 284.7(d) (2010).

¹⁵¹ *Clear Creek Gas Storage Co.*, 96 FERC ¶ 61,071 (2001) (*Clear Creek*).

¹⁵² *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273 (2000) (*Texas Eastern*), *reh'g. denied*, 94 FERC ¶ 61,139 (2001).

¹⁵³ *See id.*

UGI Storage's proposed tariff language is consistent with the requirements set forth in *Texas Eastern* and authorizations granted other storage companies authorized to charge market-based rates,¹⁵⁴ and is accepted with the following clarification.

145. Because UGI Storage has only proposed to offer storage services and has proposed no rates or tariff provisions relating to any transportation services, UGI Storage may only use capacity obtained on other pipelines pursuant to *Texas Eastern* in order to move gas into and out of storage. UGI Storage may not use capacity on other pipelines to transport gas which will not physically or contractually enter its storage facility unless and until it has received Commission authorization to provide such transportation services. Furthermore, UGI Storage's authorized use of the *Texas Eastern* waiver to provide storage service shall be limited to the geographic area covered by the Commission's market power study.

146. In order to ensure that UGI Storage uses acquired off-system capacity in a manner consistent with its market-based rate authority and tariff provisions, and further to satisfy the Commission's responsibility to monitor and prevent the exercise of market power, when UGI Storage becomes operational, it must make an annual informational filing concerning its off-system capacity, as detailed below.

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

- a. the name of the off-system provider;
- b. the type, level, term and rate of service contracted for by UGI Storage;
- c. a description of the geographic location - boundaries, receipt and delivery points and segments comprising the capacity;
- d. the operational purpose(s) for which the capacity is utilized;
- e. a description of how the capacity is associated with specific transactions involving customers of UGI Storage; and

¹⁵⁴ See, e.g., *SG Resources*, 101 FERC ¶ 61,029 at P 30-33.

- f. an identification of total volumes, by UGI Storage's rate schedule and customer, that UGI Storage has nominated on each off-system provider during the reporting period.

13. Implementation of NAESB Standards

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

14. Transactional Postings

149. UGI Storage is required to comply with the posting requirements in sections 284.13(b)(1)(iii-iv), (b)(2)(ii-iii), (c)(2)(vii), and (e)(5) of the Commission's regulations.¹⁵⁵ The Commission explained in Order No. 637 that the transactional posting requirements are "necessary to provide shippers with the price transparency they need to make informed decisions, and the ability to monitor transactions for undue discrimination and preference. Shippers need to know the price paid for capacity over a particular path to enable them to decide, for instance, how much to offer for the specific capacity they seek."¹⁵⁶ Further, the Commission made clear in *SG Resources* that the Commission's section 284.13¹⁵⁷ reporting requirements apply to storage providers

¹⁵⁵ 18 C.F.R. § 284.13(b)(1)(iii-iv), (b)(2)(ii-iii), (c)(2)(vii), and (e)(5) (2010).

¹⁵⁶ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,324, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005). See also *SG Resources*, 125 FERC ¶ 61,191 at P 20.

¹⁵⁷ 18 C.F.R. § 284.13 (2010).

granted market-based rates.¹⁵⁸ UGI Storage's transactional postings are required to include all rate elements including fuel retention.

H. Engineering Analysis and Operational Issues

1. DTI Comments

150. DTI filed comments expressing its concerns that the services UGI Storage plans to offer using the capacity it seeks to acquire in the Tioga storage field can only be provided by adversely affected the facility's operations. DTI's initial comments and follow-up response comments indicate that their primary concern is rooted in the deliverability of the field. The deliverability of a field is a function of the number and location of the injection/withdrawal (I/W) wells, how many are active at a given time and their condition, the inventory level, how the inventory is turned and the extent of the turn, and the effect of coning due to the rate of the drawdown. It cannot be determined by just summing the individual deliverabilities of each well. DTI expresses concern based on its experience with CPG and its predecessor regarding UGI Storage's commitment to ensuring proper maintenance of the facility. DTI requested that any order approving the Applicants' proposals be conditioned to ensure appropriate maintenance consistent with the terms of the 1987 Operating Agreement and the basic standards expected of a jurisdictional storage provider.

151. DTI's concern regarding CPG's maintenance practices arises from the deliverability guarantee in their 1987 Operating Agreement. The 1987 Operating Agreement limits CPG's total storage withdrawal capability from Tioga and Meeker through the Tioga Compressor station to a maximum of 179 MMcf/d and imposes specific withdrawal rates based on the total inventory, total top gas inventory, and CPG's Tioga top gas inventory.¹⁵⁹ DTI states it will end up subsidizing UGI Storage's services in order to meet that guaranteed deliverability if UGI Storage does not cooperate in the adequate maintenance and/or replace of facilities when needed. DTI also believes that authorization for UGI Storage to charge market-based rates might undermine UGI Storage's incentive to incur costs as needed for adequate maintenance.

¹⁵⁸ *SG Resources*, 125 FERC ¶ 61,191 at P 26, (citing Order No. 678 FERC Stats. & Regs. ¶ 31,091 at P 78).

¹⁵⁹ For example, if the total inventory is 18 Bcf, the total top gas inventory is 6 Bcf, and CPG's top gas inventory is 2 Bcf, CPG is guaranteed a deliverability rate of 141 MMcf/d. If it is 18 Bcf, 6 Bcf, and 2.1 Bcf, CPG is guaranteed a rate of 155 MMcf/d.

152. DTI provides two examples of what it calls CPG's lack of cooperation in ensuring inadequate maintenance practices. In particular, DTI points out that due to lack of documentation of compliance with requirements of the United States Department of Transportation (DOT), and a consequent settlement with DOT, CPG had to develop a work plan for facility testing, improved record keeping, and replacement of facilities. DTI also states that two I/W wells that were abandoned have not been replaced even though CPG agreed to their replacement.¹⁶⁰

2. Applicants' Response

153. UGI Storage responded that DTI agreed at the time that the loss of the two wells would have no adverse consequences. UGI Storage further states that the DOT issue was resolved to DOT's satisfaction and no fine was ever levied. While UGI Storage states that it will work with DTI to ensure the safe and reliable operation of Tioga, this certificate proceeding is not the appropriate forum to interject contractual disputes like the one involving the replacement of the two wells. UGI Storage also points out that the 1987 Operating Agreement has an established dispute resolution procedure.

3. Commission Determination

154. The Commission agrees with UGI Storage that the issue of the replacement of the two wells is a contract dispute. However, because DTI's concerns relate to the operational integrity of Tioga, especially the deliverability of the field, staff issued a data request to UGI Storage asking how its planned services using the capacity that it seeks to acquire would affect operations at Tioga. UGI Storage responded that its services will interfere with operations at the facility in a manner consistent the terms of the 1987 Operating Agreement. However, while UGI Storage emphasizes that there is nothing in the 1987 Operating Agreement that limits CPG to a "single turn" or prohibits injections in winter or withdrawal in summer,¹⁶¹ the Applicants consented in a supplemental data

¹⁶⁰ In Docket No. CP08-3-000, DTI, as holder of the certificate for the Tioga Storage Complex, on behalf of CPG, filed to abandon two wells in Tioga West. DTI did not object to the abandonment because under the current operating conditions, the abandonment would "have no immediate impact on customers" and would "not significantly affect the operational capabilities" of the Tioga Storage Complex. The application does state that if operational conditions changed, the applicants "might seek authorization to replace the wells in the future."

¹⁶¹ UGI Storage points out that DTI has performed counter seasonal operations, but DTI states those were not multi-turn operations but injections/withdrawals in November/April due to operating conditions and need for late season deliverabilities.

response filed on March 19, 2010, to a condition to the issuance of a certificate that UGI Storage will cooperate in obtaining the necessary regulatory authorizations for two new I/W wells in Tioga West and in ensuring the completion of such wells.

155. The Commission declines to interpret the parties' respective contractual obligations under the 1987 Operating Agreement for maintenance and replacement of facilities at Tioga. Further, DTI is the certificated operator of the Tioga Storage Complex. However, the Commission emphasizes that as CPG's successor as owner of a portion of the storage capacity at the Tioga facility, UGI Storage will have, aside from any contractual obligations under the 1987 Operating Agreement, a certificate obligation to ensure operation of these facilities in such a manner as to prevent/minimize gas loss or migration and to cooperate in the maintenance and replacement, as necessary, of facilities at Tioga in order to ensure the level and reliability of the services that the storage field provides. The record in this proceeding does not provide a sufficient basis for the Commission to require replacement of the two I/W wells at Tioga based on the Commission's own concerns regarding the reliable maintenance of operations at Tioga. Further, any necessary application for certificate authority for the undertaking of such a project would have to be filed by DTI, the certificated operator of Tioga. However, UGI Storage and CPG have committed in their March 19, 2010 data response in this proceeding to a certificate condition ensuring replacement of the wells, and the wells should be replaced, if needed to ensure the reliability of DTI's and UGI Storage's storage services relying on Tioga. In the event UGI Storage and DTI cannot reach an agreement resolving the issues regarding the replacement of the two wells, either party can initiate a new proceeding with the Commission and the Commission will resolve any issues within its purview.

I. Environment

156. CPG's transfer of its ownership interests in the subject storage assets to UGI Storage will not, in itself, involve any ground disturbance. The Commission therefore finds that its grant of the necessary authorizations for UGI Storage to acquire these property interests does not require an environmental assessment under the National Environment Policy Act. The only construction contemplated in the applications, the minor construction of upgrade facilities between the Meeker field and CPG's existing system, falls within the categorical exclusion of section 380.4(a)(24).¹⁶²

¹⁶² The Commission's regulations provide:

(a) General rule. Except as stated in paragraph (b) of this section, neither an environmental assessment nor an

J. Blanket Certificates**1. Part 284, Subpart F**

157. UGI Storage also requests a Part 157, Subpart F blanket certificate. The Subpart F blanket certificate gives a natural gas company section 7 authority to automatically, or after prior notice, perform certain activities related to the construction, acquisition, abandonment, and replacement and operation of pipeline facilities. Because UGI Storage will become an interstate pipeline with the granting of a certificate of public convenience and necessity herein, the Commission will issue the requested Part 157, Subpart F blanket certificate.

2. Part 284, Subpart G

158. UGI Storage also requests a Part 284, Subpart G blanket certificate in order to provide open-access storage services. Under a Part 284 blanket certificate, UGI Storage will not need individual authorizations to provide storage services to particular customers. UGI Storage has filed a pro forma Part 284 tariff to provide open-access storage services. Since a Part 284 blanket certificate is required for UGI Storage to offer these services, the Commission grants UGI Storage a Part 284 blanket certificate, subject to the conditions and tariff revisions imposed required herein.

159. At a hearing held on October 21, 2010, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the

environmental impact statement will be prepared for the following projects or actions:

...

(24) Approval under section 7 of the Natural Gas Act of taps, meters, and regulating facilities located completely within an existing natural gas pipeline right-of-way or compressor station if company records show the land use of the vicinity has not changed since the original facilities were installed, and no significant nonjurisdictional facilities would be constructed in association with construction of the interconnection facilities;

18 C.F.R. § 380.4 (2010).

application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) CPG is authorized to abandon its storage service being provided for Transco under its blanket certificate issued under section 284.224 of the Commission's regulations. This authorization will become effective upon the execution of an agreement between UGI Storage and Transco for storage service to be provided prior to April 1, 2011.

(B) A certificate of public convenience and necessity is issued to UGI Storage under NGA section 7(c) authorizing its acquisition and operation of storage assets from CPG, as described more fully in this order and in the application.

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

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

(E) The certificate authority granted in Ordering Paragraphs (A), (B), and (C) above shall be effective the earlier of 1) the date UGI Storage and Transco of execution of an agreement between UGI Storage and Transco for storage service to be provided prior to April 1, 2011, or 2) April 1, 2011.

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

1. UGI Storage's compliance with all applicable Commission regulations under the NGA, including, but not limited to, the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c)(1) and (2), (e), and (f) of section 157.20 of the regulations.
2. UGI Storage's compliance with the engineering conditions set forth in the Appendix to this order.

(G) UGI Storage must file the information regarding the Meeker field storage zone and buffer zone as discussed herein within 30 days of issuance of this order.

(H) UGI Storage must file tariff records consistent with the directives in this order at least 60 days prior to commencing service.

(I) Based on UGI Storage's assertions in its application, UGI Storage will not be a Transmission Provider under 18 C.F.R. § 358.3(k)(3). If at any time UGI Storage no longer fits the criteria in section 358.3(k)(3), it will be considered a Transmission Provider under Part 358 and must comply with the standard of conduct requirements.

(J) UGI Storage is granted waiver of the Commission's cost-based regulations, as discussed in the body of this order with respect to services using the existing natural gas storage facilities. UGI Storage is required to file page 520 of Form No. 2-A to report gas volume information as the basis for imposition of ACA charges. This waiver is subject to reexamination in the event that UGI Storage's market power or market-based rates need to be re-examined. UGI Storage shall maintain records consistent with the Uniform System of Accounts.

(K) UGI Storage shall notify the Commission within 10 days of acquiring knowledge of: (a) UGI Storage adding storage capacity beyond the capacity authorized in this order; (b) an affiliate's increasing storage capacity; (c) an affiliate's linking storage facilities to UGI Storage; (d) UGI Storage or an affiliate's acquisition of an interest in, or being acquired by, an interstate pipeline connected to UGI Storage. The notification shall include a detailed description of the new facilities and their relationship to UGI Storage. UGI Storage 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.

(L) UGI Storage's request to charge market-based rates for firm and interruptible storage services under Rate Schedule FSS, NNSS and ISS is approved, as discussed and subject to the conditions in this order.

(M) UGI Storage must maintain separate and identifiable accounts for the storage service in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 proceeding.

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

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

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

(Q) Limited waiver is granted of the Commission's regulations which requires interstate pipelines to comply with Electronic Data Interchange/Electronic Delivery

Mechanism (EDI/EDM) related standards so as to allow UGI Storage to postpone implementation of such standards until 90 days following receipt by UGI Storage of a request to send information via EDI/EDM.

(R) The untimely motions to intervene are granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix
Engineering Conditions

(A) The maximum inventory of natural gas stored in the Meeker field shall not exceed the certificated levels of 5,200 MMcf at 14.73 psia and 60 degrees Fahrenheit, and the maximum bottom hole storage pressure shall not exceed 1,680 psia, without prior authorization of the Commission.

(B) UGI Storage shall operate the Meeker Field in such a manner as to prevent/minimize gas loss or migration.

(C) UGI Storage shall maintain, and replace when necessary, all of its facilities to provide the level and reliability of its proposed services.

(D) UGI Storage shall submit semiannual reports (to coincide with the termination of the injection and withdrawal cycles) containing the following information (volumes shall be stated at 14.73 psia and 60 degrees Fahrenheit, and pressures shall be stated in psia):

(1) The daily volumes of natural gas injected into and withdrawn from the Meeker storage reservoir. The monthly volumes of oil and water produced from the storage reservoir.

(2) The volume of natural gas in the reservoir at the end of the reporting period.

(3) The maximum daily injection and withdrawal rates experienced during the reporting period. Average working pressure on such maximum days taken at a central measuring point where the total volume injected or withdrawn is measured.

(4) Results of any tracer program by which the leakage of injected gas may be determined. If leakage of gas exists, the report should show the estimated total volume of gas leakage, the volume of recycled gas, and the estimated remaining inventory of gas in the reservoir at the end of the reporting period.

(5) Any surveys of pressures in gas wells, and the results of back-pressure tests conducted during the reporting period.

(6) The latest revised structural and isopach maps showing the surface and bottomhole locations of the wells and the location of the gas-water contact. These maps need not be filed if there is no material change from the maps previously filed.

(7) For the reporting period, a summary of wells drilled, worked over, or recompleted with subsea depth of formation and casing settings. Copies of any new core analyses, back-pressure tests, or well log analyses.

(8) Discussion of current operating problems and conclusions.

(9) Such other data or reports, which may aid the Commission in the evaluation of the storage project.

(10) Reports shall continue to be filed semiannually until the storage inventory volume and pressure have reached or closely approximate the maximum permitted in the Commission's Order. Thereafter, the reports shall continue on a semiannual basis for a period of one year.