

124 FERC ¶ 61,214  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Floridian Natural Gas Storage Company, LLC

Docket No. CP08-13-000

ORDER ISSUING CERTIFICATE

(Issued August 29, 2008)

1. On October 31, 2007, in Docket No. CP08-13-000, Floridian Natural Gas Storage Company, LLC (FGS) filed an application for a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (NGA) to construct, operate, and maintain new liquefied natural gas (LNG) storage and pipeline facilities in Martin County, Florida. FGS also requests a blanket certificate under Part 284 subpart G of the Commission's regulations to provide open-access storage services and a blanket certificate under Part 157 subpart F of the Commission's regulations that will permit FGS to perform routine activities in connection with the construction, maintenance, and operation of the storage facilities. In addition, FGS requests authority to charge market-based rates for its storage services.

2. As discussed below, the Commission finds that the construction and operation of FGS's new LNG storage and pipeline facilities are required by the public convenience and necessity. Therefore, the Commission grants FGS's requested certificate authorizations, subject to certain conditions. In addition, the Commission approves FGS's request for market-based rate authority and waivers of certain filing and other requirements.

**I. Background**

3. FGS is a newly-created limited liability company organized under the laws of the State of Delaware. Targa Resources, Inc. owns 98 percent of FGS, and the remaining 2 percent is held by individual private investors.

**II. Proposal**

**A. Facilities**

4. FGS proposes to construct and operate a new liquefied natural gas storage facility near the town of Indiantown, Martin County, Florida. FGS's proposed storage facility

will be located on a 145-acre site, which has been designated by the U. S. Environmental Protection Agency (EPA) as a Superfund site due to soil and groundwater contamination. Soil remediation at the site is now complete. EPA-supervised remediation for groundwater contamination is ongoing and nearing completion. The storage facility is designed to provide, upon completion of both phases of construction, up to 8 billion cubic feet (Bcf) of new firm storage capacity with a design sendout capacity of 800 million cubic feet per day (MMcf/d) and design liquefaction rate of 100 MMcf/d. FGS plans to place the two similar storage facilities into service under a phased approach. Upon planned commencement of commercial operation in late May 2011, Phase I of the project would make available 4 Bcf of LNG storage capacity, with a design sendout capacity of 400 MMcf/d and a design liquefaction rate of 50 MMcf/d; Phase II is anticipated to commence operation no later than March 2016. Upon completion of both phases of construction, the LNG storage facility would include: (1) two full-containment LNG storage tanks, each with a working capacity of 4 Bcf. One tank will be constructed during Phase I of the project and another identical tank will be constructed during Phase 2; (2) a liquefaction system with the capacity to process 100 MMcfd; (3) a vaporization system with the capacity to process 800 MMcfd; and (4) a natural gas liquids storage system that could store up to 240,000 gallons of heavy hydrocarbons.

5. To provide access for its storage facilities in southeastern Florida to the interstate pipeline system, FGS proposes to construct and operate pipeline facilities to interconnect with Gulfstream Natural Gas System, L.L.C. (Gulfstream) and Florida Power and Light Company (FPL).<sup>1</sup> These proposed pipeline facilities include: (1) an approximately 4-mile long, 12-inch diameter receiving pipeline to interconnect with and receive natural gas from the Gulfstream and/or FPL lateral pipelines; (2) an approximately 4-mile-long, 24-inch diameter sendout pipeline that would be parallel to the 12-inch diameter pipeline and interconnect with and deliver natural gas from the storage facility to the Gulfstream and the FPL lateral pipelines; (3) interconnection points with the Gulfstream pipeline at milepost (MP) 4.05 and with the FPL lateral at MP 4.18; and (4) a metering and regulating station.

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<sup>1</sup> FPL interconnects with the mainline of Florida Gas Transmission Company (FGT). FGS reports in its April 11, 2008 data response to question 2, page 34, that it anticipates two direct interconnections with FGT's facilities when FGT's planned Phase VIII expansion project (Docket No. PF08-14-000) is placed in service in 2011, approximately the same time Phase I of FGS's storage project is expected to commence service.

**B. Rates and Services**

6. FGS requests a blanket certificate under Part 284 subpart G in order to provide firm and interruptible storage services on an open-access basis. FGS also requests approval of its pro forma tariff at Exhibit P to its application. FGS proposes to provide firm storage service under Rate Schedule FSS and interruptible storage service under Rate Schedule ISS.

7. FGS proposes to offer its firm and interruptible storage services at market-based rates. FGS supports its proposal with a market power analysis in Exhibit I to its application as supplemented on April 11, 2008. FGS's market power analysis concludes that FGS will lack market power with respect to the services that it proposes to provide.

**C. Need for the Project**

8. FGS proposes to construct the LNG storage project in response to the growing demand for natural gas and natural gas infrastructure in the United States and, more specifically, in Florida. FGS asserts that its proposed natural gas storage capacity will provide Florida with additional security in its natural gas supply, increase the reliability of gas deliverability to the marketplace, and provide an emergency source of supply during peak demand and occasions when supply is shut in.

**D. Requests for Waivers**

9. In light of its request for authority to charge market-based rates and the fact that it has no pre-existing facilities, FGS requests that the Commission waive certain regulations that relate to the filing of cost-based data and exhibits to support cost-based rate authority, accounting and reporting requirements, and rate design. Since FGS will not provide stand-alone transportation service but may need to acquire off-system capacity to transport gas for its storage customers, FGS also requests other waivers of certain Commission policies and regulations.

**III. Notice, Interventions, Comments and Protests**

10. Notice of FGS's application in Docket No. CP08-13-000 was published in the *Federal Register* on November 16, 2007 (72 Fed. Reg. 64,596). Motions to intervene were due on or before November 29, 2007. Timely, unopposed motions to intervene were filed by Calypso LNG, LLC; Florida Cities; Florida Gas Transmission Company, LLC; Florida Power & Light Company; Peoples Gas System, a Division of Tampa

Electric Company and Tampa Electric Company; SG Resources Mississippi, L.L.C.; and Tampa Farm Service, Inc.<sup>2</sup>

11. FPL filed comments with its motion to intervene. FPL notes that it does not oppose FGS's certificate application; however, FPL would like to inform the Commission that it has not consented to an interconnection to its 20-inch lateral pipeline, has not received a proposal from FGS to interconnect, and has no current plans to enter into an agreement for storage service using FGS's proposed facility. FPL requests that its assertions be taken into account by the Commission in making its determination whether FGS's proposed storage facility is required by the public convenience and necessity.

12. The Palm Beach County Environmental Coalition (Palm Beach Coalition) filed an intervention and adverse comments on environmental grounds in response to the FGS Draft Environmental Impact Statement (EIS) within the time frame set forth in the draft EIS.<sup>3</sup> We will further address in the environmental analysis section of this order the Palm Beach Coalition's comments regarding the completeness of the EIS.

13. On May 13, 2008, FGS filed an answer to the Palm Beach Coalition's adverse comments on the draft EIS. Although the Commission's Rules of Practice and Procedure do not permit answers to comments, we may for good cause waive this provision. We find good cause to accept these answers because they provide information that has assisted us in our decision making and drafting of the final EIS.<sup>4</sup>

#### **IV. Discussion**

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

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<sup>2</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2008).

<sup>3</sup> Interventions on environmental grounds are considered timely as long as they are filed within the draft EIS's specified comment period. 18 C.F.R. §§ 157.10(a)(2) and 380.10(1)(i) (2008).

<sup>4</sup> 18 C.F.R. § 385.213(a)(2) (2008).

### A. The Certificate Policy Statement

15. The Certificate Policy Statement provides guidance as to how the Commission will evaluate proposals for certificating new construction of interstate gas facilities.<sup>5</sup> The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, and the avoidance of the unnecessary exercise of eminent domain or other disruptions of the environment.

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

17. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Since FGS is a new pipeline company and has no existing customers, there is no potential for subsidization by existing customers. Likewise, there are no existing shippers that could be adversely affected. Moreover, under its market-based rate proposal, FGS assumes the economic risks associated with the costs of the project's facilities, to the extent that any capacity is unsubscribed. Thus, the Commission finds that FGS has satisfied the threshold requirement of the Certificate Policy Statement.

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<sup>5</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, at 61,748 (1999); *order on clarification*, 90 FERC ¶ 61,128 (2000); and *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

18. FGS's storage project should not have any adverse impact on existing pipelines or their customers. Rather, it should enhance competition in the region by providing additional storage service in Florida serving, among other markets, the electricity generators that have experienced steady growth in gas use. Having gas stored at the FGS facility will enable these electric generator customers to better manage their fuel supplies because they will have an at-the-ready source of natural gas when needed for peaking supplies or when the market or weather conditions, such as hurricanes, necessitate access to an additional supply source.

19. There should be minimal adverse impact on landowners and communities associated with the project. Given the historical use of the site for industrial purposes, the presence of other industrial facilities in the area, the current industrial zoning and planned future industrial use of the property by Martin County, development of the project at the proposed site would be compatible with existing and proposed land use in the project area. Storage facility construction and operation should have no adverse effect on existing land use or planned development in the area.

20. The project is located in an industrial and agricultural area with few residents. The site is bounded by 710 Beeline Highway and two existing industrial neighbors: the Cogentrix 330 megawatt coal-fired generating plant and the Louis Dreyfus juicing facility. FGS is engaged in advanced negotiations with the three owners of the land needed for the proposed project.

21. The proposed 145-acre LNG storage site is located on a former Florida Steel manufacturing facility site, which has been inactive for almost 25 years. FGS has an exclusive option to purchase the former Florida Steel site. As stated above, EPA has designated the site as a Superfund site and is nearing completion of soil and groundwater remediation. The soil remediation has involved the removal, treatment, and placement of the contaminated soils in a double-lined landfill (referred to as the "vault") constructed at the site. FGS would not acquire the vault, and the vault would not be included in the project site. However, Gerdau Ameristeel, the owner of the landfill vault, will retain rights of access through the LNG storage facility to inspect and maintain the vault. The groundwater remedial system involved the extraction, treatment, and disposal of the treated groundwater via an on-site spray irrigation system. According to the EPA, in 2006, groundwater contaminant concentrations have decreased and are nearing cleanup standards.

22. EPA completed two five-year reviews of the site in 2001 and 2006. Both reviews determined that the remedial actions taken remain protective of human health and the environment. Subsequent reviews are required to be conducted every five years. In a letter to FGS, EPA stated that, based upon presently known facts, it is of the opinion that

FGS' proposed use of the property does not pose significant incompatibility with potential future cleanup activities.<sup>6</sup> The project would be consistent with certain deed restrictions; however, FGS would be responsible for ensuring that the proposed use does not interfere with or impede the cleanup at the site. In view of these considerations, we find the project would not affect, or be affected by, any hazardous waste or other contamination at the site.

23. Based on the benefits the FGS project will provide and the lack of any identified adverse effect on existing customers, other pipelines, landowners, or communities, the Commission finds, consistent with the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity requires approval of FGS's LNG storage project.

#### **B. Market-Based Rate Authority**

24. FGS proposes to offer its firm and interruptible storage services at market-based rates. FGS supports its proposal with a market power analysis, which concludes that FGS will lack market power with respect to the services that it provides.

25. The Commission has approved market-based rates for storage services where applicants have demonstrated, under the criteria in the Commission's Alternative Rate Policy Statement, that they lack significant market power or have adopted conditions that significantly mitigate market power.<sup>7</sup> 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 price 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. 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 lack of market

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<sup>6</sup> See Comments on the DEIS and Responses to the DEIS Recommendations filed by EPA on May 5, 2008 at pp. 4-49.

<sup>7</sup> *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; *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996); *petitions denied and dismissed, 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 (2006), *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

power<sup>8</sup> because customers have good alternatives,<sup>9</sup> or that the applicant or the Commission can mitigate the market power with specified conditions. The Commission's analysis of whether an applicant has the ability to exercise market power includes three major steps: (1) definition of the relevant markets; (2) measurement of a firm's market share and market concentration; and (3) evaluation of other relevant factors.

26. In support of its request for market-based rate authority FGS included, as Exhibit I to its application, as supplemented on April 11, 2008, a market power study based on the criteria set forth in the Alternative Rate Policy Statement.<sup>10</sup> FGS's market power analysis for the storage market defines the relevant product and geographic markets, measures market share and concentration, and evaluates other factors. The market power study defines the relevant geographic market as consisting of the Gulf Coast region of east Texas, Louisiana, Mississippi, and storage facilities in Alabama and Georgia, which include fourteen competing natural gas storage facilities located in the geographic market area.

27. The Commission uses the Herfindahl Hirschman Index (HHI) test to determine market concentration for gas pipeline and storage markets. 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 – requires closer scrutiny in order to make a determination about a seller's ability to exert market power.<sup>11</sup>

28. FGS utilizes two measures of natural gas storage capacity in its analysis of market concentration: working gas capacity and peak day deliverability. FGS's market power

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<sup>8</sup> Market power is defined as the ability to profitably maintain prices above competitive levels for a significant period of time. Alternative Rate Policy Statement at 61,230.

<sup>9</sup> A good alternative is an alternative that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative for an applicant's service. *Id.* at 61,231.

<sup>10</sup> FGS commissioned Theodore K. Breton of Pace Global Energy Services, LLC to prepare its market power study.

<sup>11</sup> Alternative Rate Policy Statement at 61,235.

analysis shows an HHI<sup>12</sup> for working gas capacity of 1,641, with FGS's market share being 1.6 percent, and an HHI for peak day deliverability of 1,489, with FGS's market share being 1.4 percent.<sup>13</sup> These values are well below the 1,800 level cited in the Alternative Rate Policy Statement. The market power study demonstrates relatively low HHIs and relatively small market shares, which indicates that FGS will not be able to exert market power. However, the Commission has two concerns that require further examination. First, the FGS market area is broad, extending to the Gulf Coast region of East Texas, Louisiana and Mississippi, states which are not contiguous to Florida, as well as encompassing storage facilities in Alabama and Georgia. The second concern is whether sufficient transportation capacity exists to access gas storage fields in these non-contiguous states.

29. FGS addressed the Commission's concerns regarding its large market area in its April 11, 2008 data response to a staff data request. First, FGS explained that although it has not yet reached an agreement for a direct interconnection with FPL, it anticipates at least two interconnections with FGT, which has interconnections with FPL. Thus, customers in southern Florida will be able to access firm capacity in FGS's storage facility. FGS also provided an additional explanation to justify its large market area, which is larger than the Commission generally approves.<sup>14</sup> FGS states that transportation capacity exists to access the Gulf Coast region storage fields, and that, despite the associated transportation costs, those storage fields serve as good alternatives. FGS's proposed above ground LNG storage facility is located in south eastern Florida, an area which does not provide the geological formations necessary to create traditional underground facilities to store natural gas in gaseous form. Therefore, shippers in that region seeking storage service currently must seek access to storage fields outside of Florida. The primary market for FGS's storage service is dual-fuel electricity generating plants that meet summer peaking needs by relying on natural gas or No. 2 or No. 6 fuel

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<sup>12</sup> An HHI is calculated by summing the squares of each storage seller's market share. Alternative Rate Policy Statement at 61,235.

<sup>13</sup> See Market-Power Study, Exhibit I of FGS's application, as revised in the April 11, 2008 data response at answer to question 1.e and Exhibits 3 and 4, pp. 28, 30-31.

<sup>14</sup> In general, the Commission considers the geographic market for storage providers to include only those states in close proximity to the applicant's facilities in order to ensure that the cost of providing storage service, including transportation charges, are comparable.

oil for power generation.<sup>15</sup> FGS's storage facility will serve as an alternative supply source for the dual-fired plants, thus competing against both other natural gas storage service providers in the Gulf Coast region as well as No. 2 and No. 6 fuel oil.

30. Transportation capacity constraints currently exist on the pipeline systems of Gulfstream and FGT, the only two pipelines currently providing the transportation link between storage providers in the Gulf Coast region and the Florida electric generation market that FGS seeks to serve. FGS, however, reports that the electric generators comprising the FGS target market have firm transportation capacity on both FGT and Gulfstream, which provides them firm service access to Gulf Coast region storage.<sup>16</sup> While Gulfstream, FGT, and Southern Natural Gas Company's (SNG) Cypress Pipeline are the only interstate pipelines now directly serving Florida, SNG is planning a major expansion to interconnect with FGT in Suwannee County, Florida, providing additional access to the growing Florida market and the Gulf Coast storage fields.<sup>17</sup> In addition, both FGT and Gulfstream are planning major system expansions to increase their transportation capacity to better serve the Florida market, enabling greater access to the alternative storage providers in the Gulf Coast region.<sup>18</sup> With FGT's and Gulfstream's proposed expansions and SNG's proposal to extend its system into Florida, FGS's storage customers will have greater access to Gulf Coast storage providers, which will serve as good alternatives to the FGS facility.

31. Further, we find that FGS does not possess market power because the relevant market is easy to enter; the Commission has found in numerous cases that there are no

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<sup>15</sup> According to Energy Information Agency statistics, the Florida market has been historically the largest user of fuel oil in the United States for electric power generation.

<sup>16</sup> See FGT's and Gulfstream's Index of Customers, FGS's April 11, 2008 data response at pp. 7-16.

<sup>17</sup> SNG is engaged in the pre-filing process in Docket No. PF08-13-000 for a planned project to increase its capacity by 737 MMcf, connect to FGT, and provide direct access to the Florida market from the Gulf Coast region.

<sup>18</sup> FGT is engaged in the pre-filing process in Docket No. PF08-14-000 for its planned Phase VIII Expansion, which would increase its throughput capacity by 800 MMcf/d, with a projected in-service date of April 1, 2011. This date coincides with FGS's projected in-service date of May 2011 for its Phase 1 expansion. In May 2007, Gulfstream proposed a mainline expansion and initiated an open season (which closed August 31, 2007) to add an additional 750 MMcf/d of incremental firm transportation capacity and projects an in-service date of late 2011.

significant barriers to entry in the natural gas storage market in the Gulf Coast region.<sup>19</sup> FGS identified five proposed LNG storage projects to serve Florida in the geographic market.<sup>20</sup> In addition, the MoBay Gas Storage project in Alabama is currently under construction and may well be in service prior to FGS's proposed 2011 Phase 1 startup date.<sup>21</sup> The MoBay Gas Storage project is connected to both FGT and Gulfstream, providing an additional 50 Bcf of working gas capacity and approximately 1 Bcf of peak day deliverability.

32. In prior orders, we have approved requests to charge market-based rates for storage services based on a finding that a proposed project would not be able to exercise market power due to its low HHI analysis, small size, its anticipated small share of the market, and the existence of numerous competitors.<sup>22</sup> In accordance with Commission precedent, supporting evidence exists proving that the Gulf Coast storage providers are good alternatives to FGS and sufficient transportation capacity will exist by the time Phase I of FGS storage project goes into service to access that storage. Therefore, the Commission concludes that FGS will lack market power. For these reasons, we will approve FGS's request to charge market-based rates for all firm and interruptible storage service.

33. In addition to other reporting requirements imposed herein, FGS must notify the Commission if future changes in circumstances significantly affect its present market power status. Thus, our approval of market-based rates is subject to reexamination in the event that: (a) FGS 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 FGS; or (d) FGS, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to FGS. Since these circumstances could affect its market power status, FGS shall notify the Commission within 10 days of acquiring knowledge of any such changes. The notification shall include a detailed description of the new

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<sup>19</sup> See e.g., *Tarpon Whitetail Gas Storage, LLC*, 123 FERC ¶ 61,274, at P 28 (2008); *Enstor Houston Hub Storage and Transportation, LP*, 123 FERC ¶ 61,019, at P 32 (2008); *Port Barre Investments, L.L.C.*, 116 FERC ¶ 61,052, at P 25 (2006); *Katy Storage and Transportation, L.P.*, 106 FERC ¶ 61,145, at P 19 (2004); *Unocal Keystone Gas Storage, LLC*, 106 FERC ¶ 61,033, at P 16 (2004).

<sup>20</sup> See Application at Exhibit I, Brenton's testimony, Exhibit No. 8.

<sup>21</sup> *MoBay Storage Hub, Inc.*, 117 FERC ¶ 61,298 (2006).

<sup>22</sup> *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002); *Egan Hub Partners, L.P.*, 95 FERC ¶ 61,395 (2001); *Moss Bluff Hub Partners, L.P.*, 80 FERC ¶ 61,181 (1997); *Egan Hub Partners, L.P.*, 77 FERC ¶ 61,016 (1996).

facilities and their relationship to FGS.<sup>23</sup> The Commission also reserves the right to require such an analysis at any intervening time.<sup>24</sup>

### C. Waivers of Certain Commission Requirements

34. FGS proposed waiver of certain filing and reporting requirements, the “shipper must have title” policy, and other requirements, as discussed below.

#### 1. Waivers of Filing, Reporting, and Accounting Requirements

35. In light of its request for authority to charge market-based rates and the fact that FGS has no pre-existing facilities, FGS requests that the Commission waive the requirements of section 157.6(b)(8) and 157.20(c)(3) of the Commission’s regulations to file cost-based data,<sup>25</sup> as well as the filing requirements of section 157.14(a)(13), (14), (16), and (17), which requires submission of Exhibits K (Cost of Facilities), Exhibit L (Financing), Exhibit N (Revenues, Expenses, and Income), and Exhibit O (Depreciation and Depletion), since these exhibits also support cost-based rate authority.<sup>26</sup> For the same reasons, FGS requests waiver of the accounting and annual reporting requirements under Part 201 and section 260.2 of the Commission’s regulations. Similarly, FGS requests waiver of the requirement for reservation charges and the straight fixed-variable rate design set forth in sections 284.7(e) and 284.10, as being inapplicable to market-based rate design. Finally, FGS requests waiver of the filing requirement of section 157.14(a)(10) to submit total gas supply data (Exhibit H), since this regulation is inapplicable to natural gas storage operations.

36. The cost-related information, required by the regulations listed above, is not relevant in light of our approval of market-based rates for FGS’s storage services. Thus,

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<sup>23</sup> See *Copiah County Storage Co.*, 99 FERC ¶ 61,316; *Egan Hub*, 99 FERC ¶ 61,269 (2002).

<sup>24</sup> See *Liberty Gas Storage LLC*, 113 FERC ¶ 61,247, at P 51 (2005) and *Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141, at P 40 (2005). We note that in Order Nos. 678 and 678-A, the Commission chose not to impose a generic requirement that storage providers, granted market-based rate authority on the basis of a market power analysis, file an updated market power analysis every five years, or at other periodic intervals. See Order No. 678-A, 117 FERC ¶ 61,190 at P 12-15 (2006).

<sup>25</sup> See 18 C.F.R. §§ 157.6(b)(8) and 157.20(c)(3).

<sup>26</sup> See 18 C.F.R. § 157.14(a)(13), (14), (16), and (17).

consistent with our findings in previous orders,<sup>27</sup> the Commission will grant FGS's request for waivers of the regulations requiring the filing of cost-based information, reservation charges, and the use of a straight fixed variable rate design. We 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 service. There is also no ongoing regulatory need to have cost-based financial statements prepared in accordance with the Commission's Uniform System of Account (USofA). Accordingly, the Commission will grant FGS's request to waive accounting requirements, as stipulated in Part 201, Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act. In addition, the Commission will grant FGS's request to waive reporting requirements, as mandated in section 260.2, FERC Form No. 2-A, Annual Report for Nonmajor Natural Gas Companies (Form 2-A), and section 260.300, FERC Form No. 3-Q, Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies, but notes that such waivers do not extend to the FERC's annual charge assessment (ACA).<sup>28</sup> Therefore, FGS is required to file Gas Account-Natural Gas Schedule currently at page 520 of Form No. 2-A, reporting the gas volume information which is the basis for imposing an ACA charge.<sup>29</sup> In addition, the Commission also requires FGS to maintain records to separately identify the original cost and related depreciation on its storage gas facilities should the Commission require FGS to produce these reports in the future.

## 2. Segmentation

37. Section 284.7(d) of the Commission's regulations 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.<sup>30</sup> FGS requests a waiver of the Order No. 637 segmentation requirement in section 284.7(d), contending that, because it will operate a stand-alone storage facility and will not provide separate transportation service, segmentation of storage and transportation is not feasible. FGS requests that the Commission find that segmentation is operationally infeasible on its system.

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<sup>27</sup> See e.g., *Port Barre Investments, L.L. C.*, 116 FERC ¶ 61,052, at P 34 (2006); *Liberty Gas Storage, LLC*, 113 FERC ¶ 61,247, at P 54 (2005)

<sup>28</sup> See *Bluewater Gas Storage, LLC*, 117 FERC ¶ 61,122, at P 49 (2006).

<sup>29</sup> See *BGS Kimball Gas Storage, L.L.C.*, 117 FERC ¶ 61,122, at P 49 (2006); *Unocal Windy Hill Gas Storage L.L.C.*, 115 FERC ¶ 61,218, at P 38 (2006).

<sup>30</sup> 18 C.F.R. § 284.7(d).

38. In *Clear Creek Gas Storage Company*,<sup>31</sup> we found that the requirements of section 284.7(d) do not apply to pipelines engaged solely in natural gas storage and which do not provide stand-alone transportation services. FGS meets the requirements in *Clear Creek*. Thus, we hold that the requirements of section 284.7(d) do not apply to FGS.

### **3. Acquisition of Off-System Capacity and Waiver of Shipper Must Have Title Policy**

39. FGS requests a generic waiver of the “shipper must have title” policy for any off-system capacity it may need to acquire in order to provide storage services, to enable it to use that capacity to transport natural gas owned by other parties. Section 19 of FGS’s pro forma tariff provides:

FGS may, from time to time, acquire transportation and/or storage capacity on a third party pipeline system. FGS shall only provide transportation and storage services for others using such capacity pursuant to the relevant open access FERC Gas Tariff subject to the rates approved by the FERC and the “shipper must hold title” policy is waived to permit such use.

40. This language implements the Commission’s policy with respect to pipelines’ acquisition of off-system capacity. In *Texas Eastern Transmission Corporation (TETCO)*,<sup>32</sup> the Commission found that pipelines no longer need to obtain prior approval to acquire capacity on another pipeline, provided the acquiring pipeline has filed tariff language specifying that it will only transport for others using off-system capacity pursuant to its existing tariff and rates. FGS’s proposed tariff language is consistent with the requirements set forth in *TETCO* and authorizations granted other storage companies permitted to charge market-based rates.<sup>33</sup>

41. Therefore, we accept FGS’s proposed tariff language and grant waiver of the shipper must have title policy, with the following clarifications. Because FGS has proposed only to offer firm and interruptible storage services, and has proposed no rates or tariff relating to any other transportation services other than storage, FGS may only use capacity obtained on other pipelines pursuant to the *TETCO* waiver in order to move gas into and out of storage, pursuant to FGS’s open-access tariff and the Commission’s

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<sup>31</sup> 96 FERC ¶ 61,071 (2001) (*Clear Creek*).

<sup>32</sup> 93 FERC ¶ 61,273 (2000), *reh’g denied*, 94 FERC ¶ 61,139 (2001).

<sup>33</sup> See e.g., *SG Resources Mississippi, L.L.C.*, 101 FERC ¶ 61,029, at P 30-33 (2002).

approved rates. FGS 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, FGS's authorized use of the *TETCO* waiver to provide storage services shall be limited to the geographic area covered by its market study.

42. To ensure that FGS uses acquired off-system capacity in a manner consistent with its market-based rate authority and tariff provisions, and to satisfy our responsibility to monitor and prevent the exercise of market power, we direct FGS, once it becomes operational, to make an annual informational filing regarding its provision of service using off-system capacity, as detailed below.<sup>34</sup>

43. Within 30 days after its first full year of operation, and every year thereafter, FGS 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 FGS;
- 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 FGS; and
- f. identification of total volumes, by FGS's rate schedule and customer, that FGS has nominated on each off-system provider during the reporting period.

#### **4. Implementation of NAESB Standards**

44. The Commission has adopted in Part 284 of its regulations various standards for conducting business practices and electronic communication with interstate pipelines as

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<sup>34</sup> See e.g., *Starks Gas Storage, L.L.C.*, 111 FERC ¶ 61,105 at P 54-57 (2005).

promulgated by the North American Energy Standards Board (NAESB).<sup>35</sup> These standards govern nominations, allocations, balancing, measurement, invoicing, capacity release, and mechanisms for electronic communication between pipelines and those with whom they do business. FGS states that its pro forma tariff is consistent with Order Nos. 636 and 637, and with Version 1.7 of the NAESB Standards,<sup>36</sup> the latest version of the standards adopted by the Commission at the time FGS filed its certificate application.<sup>37</sup> However, FGS does not state the specific standards that are applicable. Therefore, we shall require FGS to file a cross-reference showing each NAESB standard number, the tariff section containing the standard, and whether FGS incorporated the standard verbatim or by reference. FGS should file any information it believes relevant to its compliance with the NAESB Standards.

45. FGS requests a partial waiver of section 284.12(a)(1)(iv) of the Commission's regulations which require interstate pipelines to comply with the EDI standards established by NAESB. FGS requests a limited waiver in the form of an extension of time to comply with the NAESB standards related to EDI/EDM and FF/EDM requirements so as to allow FGS to postpone implementation until 90 days following receipt by FGS of a request to send information via EDI/EDM. Consistent with Commission precedent, we will grant FGS's request for an exemption of the EDI

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<sup>35</sup> *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, 57 Fed. Reg. 13267 (April 16, 1992), FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 30,939, at pp. 30,425-427 (April 8, 1992), *order on reh'g*, Order No. 636-A, 57 Fed. Reg. 36,128 (August 12, 1992), FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 30,950 (August 3, 1992), *order on reh'g*, Order No. 636-B, 57 Fed. Reg. 57,911 (December 8, 1992), 61 FERC ¶ 61,272 (1992), *notice of denial of reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and vacated and remanded in part*, *United Dist. Companies v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997). NAESB was formerly called the Gas Industry Standards Board (GISB).

<sup>36</sup> In Section 24 of the General Terms and Conditions of its pro forma tariff sheets, FGS adopts Version 1.7 of the NAESB standards.

<sup>37</sup> *See Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-S, FERC Stats. & Regs. ¶ 31,179 (2005).

standards, but will require FGS to implement those standards within 90 days following the receipt of such a request.<sup>38</sup>

## **5. Exemption from Transmission Provider Standards of Conduct**

46. As stated, FGS requests that the Commission explicitly confirm that FGS meets the requirements for the independent storage provider exemption set forth in section 358.3(a)(3) of the Commission's regulations and, therefore, is exempt from the transmission provider Standards of Conduct promulgated in Order No. 2004. Under section 358.3(a)(3), transmission provider status and the obligations of the Standards of Conduct do not attach to a "natural gas storage provider authorized to charge market-based rates that is not interconnected with the jurisdictional facilities of any affiliated interstate natural gas pipeline, has no exclusive franchise area, no captive ratepayers and no market power."<sup>39</sup> The Commission clarifies that FGS is exempt from the transmission provider Standards of Conduct since it has no interconnections with any affiliated pipelines, no captive ratepayers, no exclusive franchise area, and no market power.

### **D. Tariff Issues**

47. FGS proposes to offer firm and interruptible storage services on an open-access basis under the terms and conditions set forth in the pro forma tariff attached as Exhibit P to the application. As discussed below, we find that FGS's proposed tariff generally complies with Part 284 of the regulations, with the following exceptions.

#### **1. Formatting Tariff Sheets**

48. The Commission notes that FGS did not file pro forma tariff sheets in compliance with section 154.102 of the Commission's regulations. FGS will be required to file actual tariff sheets at least 60 days prior to the in-service date of the proposed facilities. That filing must be consistent with the Commission's electronic tariff font, point size, format, character set, characters per line, and lines per sheet requirements. The filing must also reflect the changes to the proposed FERC Gas Tariff that this order requires, including correct pagination, and any intervening regulatory changes generally applicable to the tariffs of natural gas storage companies.

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<sup>38</sup> See *Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141 (2005), *Saltville Gas Storage Co. LLC*, 109 FERC ¶ 61,200 (2004); *Missouri Interstate Gas, LLC*, 102 FERC ¶ 61,172 (2003).

<sup>39</sup> 18 C.F.R. § 358.3(a)(3) (2008).

## 2. Statement of Rates

49. FGS proposes a liquefaction charge and a vaporization charge in the rate statement for the ISS Rate Schedule (pro forma page 7), but does not include these specific components on pro forma page 16 where FGS lists the applicable rate components for the ISS Rate Schedule. In addition, FGS does not propose the liquefaction or vaporization components in the rate statement for the FSS Rate Schedule on pro forma page 6.

50. Since FGS refers to liquefaction and vaporization services for storage customers throughout its tariff, FGS is required to provide these components for each service in the statement of rates as well as in the explanation of the rate components for both the FSS and ISS Rate Schedules. Therefore, the Commission will require FGS to clarify these inconsistencies by either including these rate components in the appropriate tariff sheets.

## 3. Withdrawal of Storage Inventory Balance

51. FGS states on pro forma pages 12, 17, and 43 that “to the extent that Customer fails to withdraw or transfer its Storage Inventory, FGS shall have the right to take and retain title to Customer’s Storage Inventory at no cost to FGS.” However, FGS provides no explanation of its planned actions with respect to storage inventory to which it may take title pursuant to this provision. Other natural gas storage companies have typically provided for an auction for such retained gas with the auction proceeds credited to customers.<sup>40</sup> The Commission has found gas retention penalties to be appropriate and consistent with the mandates of Order No. 637 as a deterrent to customer behavior that could threaten the system or degrade service to firm customers.<sup>41</sup> The Commission, however, has required that the value of such gas retained, net of costs, be credited to the natural gas company’s customers pursuant to the penalty revenue crediting requirements of Order No. 637.<sup>42</sup>

52. FGS’s intention regarding the retained storage inventory or potential gas retention penalties is unclear. We direct FGS to clarify these provisions, make the appropriate tariff revisions and explain: (1) the proposed disposition of the retained gas; (2) how a sale of a storage inventory would be conducted; (3) whether an auction will be held and

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<sup>40</sup> See e.g., *Tres Palacios Gas Storage, LLC*, 120 FERC ¶ 61,253 (2007); *Monroe Gas Storage Company, LLC*, 121 FERC ¶ 61,285 (2007); *Enstor Houston Hub Storage and Transportation, LP*, 123 FERC ¶ 61,019 (2008).

<sup>41</sup> See *Pine Prairie Energy Center, LLC*, 109 FERC ¶ 61,215, at P 46 (2004); *Blue Lake Gas Storage Co.*, 96 FERC ¶ 61,164 (2001).

<sup>42</sup> See *Ozark Gas Transmission, L.L.C.*, 96 FERC ¶ 61,160 (2001).

how the auction would be conducted; (4) any applicable penalties; (5) the accounting for the retained gas; and (6) whether the customers will be credited for penalty revenue.

#### **4. Right of First Refusal**

53. FGS does not provide for a contractual Right of First Refusal (ROFR) to renew the customer's firm service agreement. The Commission does not require a storage service provider to include a provision that permits negotiation of a contractual ROFR, and has accepted storage service provider tariffs that do not include such a provision.<sup>43</sup>

Accordingly, we accept FGS's proposal to provide service under Rate Schedule FSS without the option for customers to negotiate contractual ROFRs.

#### **5. Curtailement**

54. Curtailments, when necessary, can help to maintain reliable operations of a system. Curtailments to relieve constraints must be applied on a non-discriminatory basis. It is not clear whether FGS proposes a provision for curtailment in its proposed tariff. The Commission will require FGS to state the location of this provision in its tariff. In the alternative, FGS must explain the basis for not including curtailment provisions and, if necessary, incorporate the appropriate provisions.

#### **6. Requests for Service**

55. In section 3.1 of the General Terms and Conditions (GT&C) at page 23, FGS proposes to allocate capacity to those customers offering the highest acceptable bids and reject any bids not acceptable to FGS, in its sole discretion. The Commission finds that the proposed provision provides FGS with too broad a discretion in accepting or rejecting bids. FGS is directed to specify the proposed guidelines it will follow in order to determine whether bids are acceptable. In addition, FGS is directed to replace all references to the phrase "in its sole discretion" with the phrase "with reasonable and non-discriminatory discretion." This directive is consistent with Commission findings regarding similar tariff qualifications.<sup>44</sup>

#### **7. Creditworthiness**

56. Section 4 of the GT&C provides at pages 25-27 FGS's Credit Evaluation provisions. Specifically, Section 4.2 at pages 25-26 outlines the type of information that customers must supply to FGS in order to establish creditworthiness, while section 4.3 at

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<sup>43</sup> See *Windy Hill Gas Storage, LLC*, 119 FERC ¶ 61,291, at P 46 (2007).

<sup>44</sup> *Freebird Gas Storage, LLC*, 111 FERC ¶ 61,054, at P 42 (2005).

page 26 provides that upon notification by FGS to the customer that it has failed to satisfy the credit criteria, the customer may still obtain credit approval if it elects to provide additional financial assurances in the form of one of the following: (1) an advance deposit; (2) a standby irrevocable letter of credit; (3) a security interest in collateral satisfactory to FGS; or (4) a guaranty by another party.

57. Under the Commission's policy statement setting forth its approach to credit issues relating to transportation on natural gas pipelines,<sup>45</sup> pipelines must establish and use objective criteria for determining creditworthiness.<sup>46</sup> FGS has outlined the information that needs to be supplied and the criteria for creditworthiness; however, other requirements of the Creditworthiness Policy Statement have not been met.

58. Specifically, FGS has not made it clear how or when it intends to communicate its initial determinations on creditworthiness to shippers, and whether it will specify the reasons for any denial of creditworthiness in such communication. If a pipeline finds a shipper to be not creditworthy, we require that the pipeline must communicate that finding in writing to the shipper within 10 days of the determination, state the reasons for its finding, and provide the shipper with recourse to challenge the finding.<sup>47</sup> FGS is directed to revise the creditworthiness section to clarify how and when it intends to communicate its initial creditworthiness determinations and include the reasons for denial in such communications.

59. Further, in accordance with our holding in the Creditworthiness Policy Statement, FGS's shippers that opt to make an advance deposit as financial assurance under section 4.3 must have an opportunity to earn interest on such prepayments by FGS either paying the interest itself at the Commission's interest rate or allowing the shipper to designate an interest-bearing escrow account to which FGS may have access for payments for services provided if needed. If FGS holds collateral, the applicable interest rate will be at least the rate as outlined in the Commission's regulations at 154.501(d).<sup>48</sup> Moreover, in such situations, the Commission will require that FGS be responsible for any expenses related to the maintenance of escrow accounts holding advance payments made by shippers to be

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<sup>45</sup> See *Creditworthiness Standards for Interstate Natural Gas Pipelines*, 111 FERC ¶ 61,412 (2005) (Creditworthiness Policy Statement).

<sup>46</sup> *Id.* at P 10.

<sup>47</sup> See *Natural Gas Pipeline Co.*, 106 FERC ¶ 61,175, at P 80 (2004). See also *Tennessee Gas Pipeline Co.*, 103 FERC ¶ 61,275, at P 45 (2003).

<sup>48</sup> FGS will have the option, but is not required, to pay a higher interest rate if it chooses.

held as collateral. We direct FGS to clarify its tariff in accordance with these directions. We also direct FGS to clarify in its tariff that such advance payments are considered collateral held for security and not prepayments for services.<sup>49</sup>

60. Section 4.5 of the GT&C at page 27 provides that if a customer no longer satisfies the credit criteria, the customer has only three business days to satisfactorily provide additional security, and if the customer fails to do so, FGS shall, upon two business days advance notice, suspend service until such security is tendered. Section 4.5 further states that “if customer’s failure to tender satisfactory security continues for 60 days after the original due date, then FGS, in addition to any other remedy available to it, shall have the right upon five days advance notice to terminate customer’s service agreement.”

61. We have found similar proposals to require a customer to provide the total amount of collateral within five days to be an unreasonably short period of time.<sup>50</sup> FGS’s proposal is even more stringent since it would allow customers only three days to provide the total amount of collateral. However, the Creditworthiness Policy Statement provides that when a customer is no longer creditworthy, a pipeline need give the customer only five business days following notice to post security for the value of previously loaned gas and to pay in advance to cover one month’s service.<sup>51</sup> We also found that it is reasonable for a pipeline to require that a customer fully comply with the financial assurance provisions within 30 days of notification.<sup>52</sup> For these reasons, we will require FGS to revise section 4.5 to comply with this timeline or, in the alternative, to propose a new timeline that addresses the policy statement’s concerns that shippers be provided a reasonable amount of time to supply the full amount of financial assurance.

62. In addition, the Commission will require FGS to clarify the last sentence of section 4.5. As it currently reads, it is unclear whether the reference to 60 days is intended to mean that service will continue for 60 days or refers to a customer’s failure to provide satisfactory security within 60 days.

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<sup>49</sup> See *Tennessee Gas Pipeline Co.*, 105 FERC ¶ 61,120, at P 17-24 (2003).

<sup>50</sup> *Bluewater Gas Storage LLC*, 117 FERC ¶ 61,122, at P 44 (2006), *order on reh’g*, 117 FERC ¶ 61,351 (2006) (*Bluewater*); *Northern Natural Gas Co.*, 102 FERC ¶ 61,076, at P 49 (2003); *Tennessee Gas Pipeline Co.*, 102 FERC ¶ 61,075 at P 18 (2003).

<sup>51</sup> Creditworthiness Policy Statement at P 28. See also *Bluewater*, 117 FERC ¶ 61,122 at P 44.

<sup>52</sup> Creditworthiness Policy Statement at P 28.

## **8. Electric Reimbursement Charge**

63. FGS states in section 7.4 of the GT&C at page 32 that if the Electric Reimbursement Charge is more than 1.25 percent, then such Electric Reimbursement Charge (ERC) shall be increased or decreased, as applicable, by such percentage difference. It is not clear why the ERC would be increased if it is more than 1.25 percent. Moreover, ERC provides no justification for why 1.25 percent is an appropriate level for comparison, and therefore the Commission cannot determine that it is appropriate. We will require FGS to explain and justify its reasoning for using the 1.25 percent value.

## **9. Gas Quality**

64. Section 9.3 of the GT&C at page 33 reads:

Unless waived by FGS, if, as of the date 18 months after the date that Customer tendered a quantity of gas at the Point(s) of Receipt to FGS for liquefaction and storage, Customer has not received redelivery of any such gas from FGS at the Point(s) of Delivery, Customer shall be required to accept redelivery of a quantity of gas that is equal to at least 50% of the quantity of gas that Customer tendered for liquefaction and storage to FGS.

This provision is included in the tariff provisions relating to gas quality specifications. The Commission finds that there is no indication why this provision is considered a quality issue. We will direct FGS to explain its reasoning for including this provision in the quality section and, if necessary, propose a new location for the provision.

## **10. Billings and Payments**

65. In section 17.3 of the GT&C at page 43, FGS proposes that when a customer in good faith disputes any amount of an invoice, the customer shall pay such amount it concedes to be correct and provide FGS documentation to support withholding payment of the disputed amount. However, FGS provides no details on a timeline for customers to submit the required documentation. Customers need to be given a reasonable, specified time period in which to meet the requirements for completing the processing of a disputed bill. The Commission will require FGS to revise this provision to clearly state the time period for when documentation is due regarding disputed billing amounts.

66. Section 17.4 at page 43 explains the procedures if a customer fails to pay FGS the entire undisputed amount when due. FGS proposes that the unpaid portion shall bear interest from the original due date until the date actually paid. However, FGS fails to provide details on the interest rate that will be applied. Thus, we request that FGS provide information regarding the interest rate as outlined in the Commission's regulations at 154.501(d). This provision should apply to the interest rate referenced in section 17.5 at page 43 as well.

67. Further, in section 17.4, FGS states that it will have the right to suspend service when a default occurs for 30 days past the original due date. When a pipeline elects to suspend service under a service contract, the Creditworthiness Policy Statement provides that the pipelines may not impose reservation charges during the period of suspension.<sup>53</sup> Therefore, we will require FGS to clearly state in section 17.4 that it will not bill the shipper for periods during which a shipper's service is suspended.

68. In addition, section 17.4 provides that FGS shall have the right and option to terminate service if a customer has not paid the undisputed portion of an invoice 60 days after the due date. Section 154.602 of the Commission's regulations provides that a pipeline must give at least 30 days notice to the customer and to the Commission before terminating a service agreement. Thus, we will require FGS to revise section 17.4 to conform to section 154.602 of the Commission's regulations.

## 11. Waiver

69. Section 23 of the GT&C at pages 45-46 provides that "FGS may waive any of its rights or any obligations of Customer under this Tariff or Customer's executed Service Agreement on a basis which is not unduly discriminatory." The section further provides that such waiver does not constitute waiver of any future default in performance. Consistent with the Commission's order issued in *Northern Border Pipeline Company*,<sup>54</sup> we find the quoted tariff language to be overly broad, with the potential for unreasonable and unjust application. As we stated in that order, this language could be interpreted as giving the service provider almost unfettered discretion to include non-conforming material terms and conditions in a transportation agreement without seeking Commission approval. Therefore, FGS is directed to revise section 23 to clarify that this provision for waiver of FGS's rights or a customer's obligations only applies to specific defaults that have already occurred.

## 12. Miscellaneous

70. In sections 3.3 and 4.4 of the GT&C at pages 24 and 27, respectively, FGS proposes to refund earnest money for a service request not granted "promptly." Further, when it is necessary for a customer to provide additional credit information, FGS proposes in section 4.4 of the GT&C to require the customer provide such information "promptly." However, FGS does not define the term "promptly," and its meaning is ambiguous. Customers need to be given a reasonable, specified time period in which to expect refunds for service requests that are not granted and to provide additional credit

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<sup>53</sup> Creditworthiness Policy Statement at P 35.

<sup>54</sup> 110 FERC ¶ 61,203, at P 4 (2005).

information. Therefore, the Commission finds that FGS must clarify these provisions to clearly state the time period in which refunds will be returned to customers and in which customers must submit additional credit information.

71. Section 4.1 of the GT&C at page 25 references 5.2 of the GT&C at pages 27-28, but does not state “section.” The Commission requests that FGS verify that all references include “section” before the number and include all the correct references.

72. FGS’s proposed Form of Service Agreements at pages 48 and 51, use the date “2007” for Precedent Agreements between FGS and the customer. As this date has passed, we direct FGS to update its Form of Service Agreements with the correct and applicable dates.

#### **E. Blanket Certificates**

73. FGS requested a Part 157 subpart F blanket certificate. The subpart F blanket certificate gives a natural gas pipeline authority under section 7 of the NGA to automatically, or after prior notice, undertake certain construction and replacement activities and to abandon certain facilities. Because FGS will become an interstate pipeline with the issuance of a certificate to construct and operate the proposed facilities, we will issue the requested Part 157 subpart F blanket certificate to FGS.

74. FGS also requested a Part 284 subpart G blanket transportation certificate in order to provide certain automatic natural gas transportation authorizations under section 7 of the NGA for individual customers under the terms of its contracts and tariff. FGS filed a pro forma Part 284 tariff to provide open-access services. Because FGS will become an interstate pipeline with the issuance of a certificate to construct and operate the proposed facilities, and because a Part 284 subpart G blanket certificate is required for FGS to offer these services, we will issue the requested blanket certificate authority, subject to the conditions imposed herein.

#### **V. Environmental Analysis**

75. A draft environmental impact statement (EIS) for FGS’s proposed storage project was issued on March 21, 2008. Public notice of the availability of the draft EIS was published in the *Federal Register* on March 28, 2008 (73 Fed. Reg. 16,662). The draft EIS was mailed to federal, state, and local government agencies; elected officials; Native American tribes; local libraries; and newspapers; and other interested parties (i.e., affected landowners, miscellaneous individuals, and environmental groups who provided scoping comments or asked to remain on the mailing list). The public was given 45 days from the date of the publication in the *Federal Register* to review and comment on the draft EIS.

76. On July 11, 2008, the Commission issued the final EIS and a notice of availability of the final EIS for the FGS project. On July 18, 2008, issuance of the final EIS was noticed in the *Federal Register*. 73 Fed. Reg. 41351. *Notice of Availability of the Final Environmental Impact Statement for the Proposed Floridian Natural Gas Storage Company, LLC* was also published in the *Federal Register* on July 22, 2008 (73 Fed. Reg. 42,562). The final EIS analyzed and addressed the project's: purpose and need, geology, soils, water resources, vegetation, wetlands, wildlife and aquatic resources, threatened, endangered, and special status species, land use, recreation and visual resources, socioeconomics, transportation, cultural resources, air quality and noise, reliability and safety, and alternatives. The final EIS was mailed to the same parties as the draft EIS, as well as to parties that commented on the draft EIS. The distribution list is provided in Appendix A of the final EIS. The final EIS addressed comments from individuals, federal and state agencies, and organizations that either attended public meetings or provided written comments. The final EIS was prepared in cooperation with the U.S. Fish and Wildlife Service (FWS), the U.S. Army Corps of Engineers (COE), and the EPA.

#### **A. Project Background**

77. On January 10, 2007, the Commission approved FGS's request to use the Pre-Filing Review Process for the proposed project and Docket PF07-3-000 was assigned. The purpose of the pre-filing review is to work in partnership with the project sponsor, other federal and state agencies, and concerned citizens and non-governmental organizations, to identify and address project-related issues prior to the filing of a certificate application.

78. In connection with the pre-filing process, we issued a *Notice of Intent to Prepare an Environmental Impact Statement, Request for Comments on Environmental issues and Notice of Public Scoping Meetings* (NOI) on February 15, 2007. The notice was published in the *Federal Register* on February 27, 2007 (72 Fed. Reg. 8723). The notice was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; local libraries; newspapers; and other interested parties.

#### **B. Public Outreach and Comments**

##### **1. Comments to the NOI**

79. Subsequent to the issuance of our NOI, staff conducted a public scoping meeting in Indiantown, Florida and a public site visit on March 7, 2007. In response to our notice, public site visits, and scoping meeting, we received comments from landowners, concerned citizens, public officials, and government agencies regarding the project. These comments expressed concerns about project effects on wetlands, threatened and endangered species, vegetation, water resources, waste management, land use, visual

resources, socioeconomics, air quality, noise, public safety and alternatives. All issues raised during scoping were addressed in staff's draft EIS.

## **2. Comments to the Draft EIS**

80. On April 6, 2008, a public comment meeting on the draft EIS was held in Indiantown, Florida, to solicit comments, and in addition, written and electronic comments were submitted directly to the Commission.

81. Staff received comments regarding location of the proposed LNG storage facility, the affects on land use, wetlands, safety and reliability, cumulative impacts, noise, air quality, environmental justice, alternatives and threatened and endangered species. Specifically, we received comment letters from EPA, FWS, the U.S. Department of Interior, the Florida Department of Environmental Protection (FDEP), the Florida Department of State's Division of Historical Resources, as well as three landowners or interested individuals, including Mr. Charles Sisco, Matthew and Patrice Manning, and the Palm Beach Coalition. The public comment transcripts and all written comments on the draft EIS are part of the public record for the project. Comments received on the draft EIS and Commission staff's responses to these comments are provided in Appendix D to the final EIS.

82. The Palm Beach Coalition contends that allowing FGS to submit environmental plans or permits subsequent to the issuance of the final EIS renders the final EIS incomplete, in violation of the provisions of the National Environmental Policy Act (NEPA)<sup>55</sup> governing preparation of a draft and final EIS. Thus, the Palm Bach Coalition argues, the final EIS would not allow agencies or the public the opportunity to assess the project's complete and cumulative impacts to the environment.

83. NEPA only requires agencies to employ proper procedures to ensure that environmental consequences are fully evaluated, not that a complete plan be presented at the outset of environmental review.<sup>56</sup> The Commission has thoroughly considered the environmental issues and impacts associated with this project as required by NEPA and identified appropriate mitigation measures and conditions. The plans required to be filed by FGS relate to the implementation details for ensuring that the identified mitigation measures will be carried out. Further, the Palm Beach Coalition's comments were filed in response to the draft EIS, not the final EIS. Thus, other than the design and construction details that FGS must file prior to construction and the reports and plans regarding operational matters that FGS will be required to file for the life of the project,

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<sup>55</sup> 42 U.S.C. §§ 4321-4347 (2000).

<sup>56</sup> See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 322, 352 (1989).

there is only one remaining plan to be completed by FGS. That is the Standard Operating Procedure for Herbicide Use meeting EPA requirements that Environmental Condition No. 12 requires FGS to develop.<sup>57</sup> The D.C. Circuit Court in *National Committee for New River v. FERC*<sup>58</sup> held that “if every aspect of the project were to be finalized before any part of the project could move forward, it would be difficult, if not impossible, to construct the project.”<sup>59</sup> Further, the Commission is directed by the Energy Policy Act of 2005 to establish a schedule for the regulatory review by relevant state and federal agencies that ensures expeditious completion of proceedings on all requests by an applicant for necessary authorizations for proposed natural gas facilities.<sup>60</sup> FGS provided all of the information required by the draft EIS to be filed prior to the issuance of the final EIS. The final EIS addressed all of the documents filed by FGS in response to the draft EIS and, as appropriate, recommended additional environmental conditions, which we are imposing in this order, that must be satisfied before FGS will be granted by the Commission’s Office of Energy Projects to commence construction. In view of these considerations, the Commission finds that the potential environmental consequences of FGS’s storage project have been fully evaluated.

### **C. Summary of EIS’s Findings**

84. The final EIS considers and responds to the comments received on the draft EIS in the final EIS, as discussed below. The final EIS concludes that construction and operation of FGS’s proposed project would result in limited adverse environmental impacts. The limited impacts would be most significant during the period of construction. The final EIS finds that if constructed and operated in accordance with the applicable laws and regulations, FGS’s proposed mitigation plans, and recommended mitigation measures set forth in the final EIS, the proposed project would be an environmentally acceptable action.

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<sup>57</sup> We also note Environmental Condition No. 13, which will only become operative if noise attributable to the operation of the LNG storage facility at full load increase to a level exceeding an Ldn of 55 dBA at any nearby noise sensitive area. In that event, Environmental Condition No. 13 requires FGS to identify and report what changes are needed to meet the level and to install any necessary noise controls within one year of the in-service date.

<sup>58</sup> 373 F.3d 1323 (D.C. Cir. 2004).

<sup>59</sup> *Id.* at 1329 (citing *East Tennessee Natural Gas Co.*, 102 FERC ¶ 61,225, at 61,659 (2003)).

<sup>60</sup> 15 U.S.C. § 717n(c).

## 1. Geology

85. Construction and operation of the project would have minimal impact on geological resources. The project is located in an area with no known extractive or surficial paleontological resources, as well as low risk of soil liquefaction, slope failures, or landslides. The area also poses as one of the lowest areas of potential seismic hazards within the continental United States. Probabilistic and deterministic seismic hazard analyses were used to determine the required input ground motions for design of the LNG storage facility. These determinations were found to be consistent with the requirements of the National Fire Protection Association (NFPA) 59A<sup>61</sup> and FERC's Draft Seismic Design Guidelines and Data Submittal Requirements for LNG Facilities. However, prior to construction, the Commission requires FGS to provide additional geotechnical and structural design details for the LNG storage facility to support our review and approval of the final engineering design of the facility. No blasting is anticipated.

## 2. Soils

86. The project will temporarily disturb 127.03 acres of land. None of this land or its soils are classified as prime farmland or considered to have high erosion potential by the U.S. Department of Agriculture; and none are currently in agricultural use. These soils, however, are generally very poorly to poorly drained, which contribute to their fair to very poor revegetation potential.

87. FGS will be required to implement the mitigation measures contained in our plan to control erosion, ensure successful revegetation, and minimize any potential adverse impacts to soil resources. FGS will further limit potential impacts to soil resources by implementing site-specific Spill Prevention, Control and Countermeasures (SPCC), Stormwater Pollution Plan (SWPP), and Unanticipated Hazardous Waste Discovery plans. With the implementation of our plan and FGS's site-specific plans, the project would not result in any significant impacts to soils.

## 3. Water Resources

88. Project activities will not occur within 500 feet of any public water supply well and will not affect any sole-source aquifers or wellhead protection areas. The project would withdraw a maximum of 30 gallons per minute (gpm) of groundwater for landscaping purposes, but this withdrawal rate will have a negligible impact on the surficial aquifer at the storage facility site. On March 7, 2008, the South Florida Water Management District (SFWMD) approved the Water Use Permit (No. 43-02115-W) for

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<sup>61</sup> The seismic design provisions contained in NFPA 59A (2001) were adopted by the United States Department of Transportation (DOT). See 49 C.F.R. Part 193 (2008).

landscaping irrigation at the proposed facility. The greatest potential for impact to groundwater would be from spills, leaks, or other releases of hazardous materials during construction or operation. FGS has agreed to implement our procedures as well as its own SPCC and SWPP plans to address this issue.

89. There are no major waterbodies in the project area; the nearest major waterbody is the St. Lucie Canal, about two miles away. The pipeline will cross five minor waterbodies, which are all intermittent drainage ditches. FGS proposes to use open-cut methods to cross four ditches and will restore the ditches in accordance with our procedures. FGS will also bore under one ditch from MP 0.99 to 1.02, avoiding impacts to 0.03 acre of wetlands.

90. FGS proposes to withdraw water from the St. Lucie Canal for hydrotesting of the LNG storage tanks and the pipeline (i.e., approximately 33.5 million gallons for tank testing and one million gallons for pipeline testing). FGS will use an existing irrigation intake structure, withdraw water at a rate that is less than 0.1 percent of the annual flow of the canal, not use any biocides or other water additives, and return the water to the canal after the testing is completed. On April 10, 2008, the SFWMD approved the Water Use Permit (No. 43-02186-W) for hydrostatic testing of the LNG storage tanks. Therefore, we do not anticipate that the project will have any significant adverse effects on water resources.

#### **4. Wetlands**

91. Construction of the project will temporarily impact 3.91 acres of wetlands; there should be no permanent impacts. All of the wetland impacts will be associated with pipeline construction. No wetlands would be impacted by construction or operation of the LNG storage facility. None of the affected wetlands are forested or considered high-quality, sensitive, or special status.

92. FGS minimized impacts to wetlands by evaluating route alternatives to avoid wetlands, reducing the nominal construction right-of-way width in wetlands to 65 feet, using a bore rather than open trenching to avoid impacting 0.03 acres of wetlands, and adopting our procedures without modifications. Following construction, FGS will revegetate wetlands in accordance with our procedures and COE permit conditions. On March 19, 2008, the FDEP issued the Environmental Review Permit (ERP), which states the proposed wetland mitigation will improve on-site wetlands. By implementing these measures, effects on wetlands will be minimized.

#### **5. Vegetation**

93. In addition to the wetland vegetation resources described above, project construction will clear 123.12 acres of upland cover types. Project operations will permanently affect 53.10 acres for the LNG storage facility, and 25.30 acres for the

permanent pipeline right-of-way, Metering and Regulation (M&R) station, and pipeline interconnections. Much of this land is previously disturbed and is dominated by invasive species such as Australian pine and Brazilian pepper. Further, the LNG storage facility site was previously contaminated and is currently undergoing EPA-supervised remediation and is nearing completion.

94. FGS will implement our plan to facilitate the revegetation of disturbed areas not used for aboveground facilities. In addition, FGS prepared a Preserve Area Management Plan (PAMP) for the LNG storage facility site that identifies the location of preserve areas, invasive species controls, construction procedures, and monitoring requirements. To ensure appropriate application of herbicides, we are requiring that FGS develop a Standard Operating Procedure for Herbicide Use that meets EPA requirement. Given these measures, impacts to upland vegetation should be effectively minimized.

## **6. Wildlife and Aquatic Resources**

95. The upland and wetland vegetative communities in the project area support habitats for a variety of wildlife species. As indicated above, the project will result in the clearing of 127.03 acres of land and the permanent loss of 56.07 acres of wildlife habitat (53.10 acres for the LNG storage facility and 2.97 acres for the M&R station and interconnections). In addition, 2.48 acres of upland habitat will become part of the stormwater pond. Much of this affected land, however, was previously disturbed and contaminated and does not represent valuable habitat. During construction, more mobile species will be temporarily displaced to similar habitats nearby, while less mobile species may suffer direct mortality or permanent displacement. Regardless of mobility, some wildlife species will be affected by the loss of cover, nesting, and foraging habitat. Once construction is complete and work areas restored, wildlife should re-occupy available habitat. Pipeline construction and right-of-way maintenance can also fragment wildlife habitat reducing its value, but in this case the pipeline follows an existing electric transmission line right-of-way for much of its length. Therefore, wildlife should not be significantly impacted by the project.

96. The project will not affect any naturally occurring waterbodies, including any major, navigable, or sensitive waterbodies. Drainage ditches crossed by the pipeline contain only common forage fishes such as mosquito fish, least killifish, and small sunfish. The ditches are not considered critical habitat by FWS for any native or game fish species and do not provide habitat for recreationally important fish species. The on-site stormwater pond does not provide significant aquatic habitat, therefore, expansion of the stormwater pond will not adversely affect aquatic resources at the LNG storage facility site. FGS proposes to construct the project in accordance with our procedures, ensuring that the physical characteristics of the drainage ditches that may provide aquatic habitat are restored to pre-project conditions. Therefore, we conclude that the project will not have any significant adverse effects on aquatic resources.

## 7. Threatened, Endangered, and Special Status Species

97. Four federally-listed endangered or threatened species may occur in the project area, including Audubon crested caracara, wood stork, American alligator, and Eastern indigo snake. Based on our review of FWS species accounts and field survey information provided by FGS, we have determined that the project will have no effect on the Audubon crested caracara. We have also determined that the project is not likely to adversely affect the wood stork, the American alligator, or the Eastern indigo snake.

98. The wood stork is highly mobile and not dependent upon the industrial land use at the LNG storage facility site. It does not use the storage facility site or proposed pipeline corridor for nesting, and large areas of suitable foraging habitat are available in the vicinity. The project is designed to avoid forested wetland areas and any impacts to emergent and scrub-shrub wetlands and vegetated ditches along the pipeline corridor that the wood stork uses for foraging will be temporary. All areas would be restored. No loss of potential foraging habitat for the wood stork will occur.

99. At the LNG storage facility site, a single alligator was observed in one of the ponds and other individuals may inhabit other open water habitats and wetlands in the vicinity of the site. FGS proposes to expand one of the ponds on-site to provide increased stormwater management capacity. Temporary construction impacts to the American alligator are likely to be minor and of short duration. During the expansion of the stormwater pond, it is likely that individual alligators that may be in the pond would temporarily relocate to adjacent ponds on-site. Expansion of the stormwater pond would ultimately provide additional suitable habitat.

100. Although no Eastern indigo snakes were observed on the LNG storage facility site or along the pipeline corridor, FGS surveys identified several gopher tortoise burrows on the proposed storage facility site. Gopher tortoise burrows are commonly used by the Eastern indigo snake. FGS will have to obtain a pre-clearing gopher tortoise relocation permit from the Florida Fish and Wildlife Conservation Commission (FFWCC) to excavate any burrows within 25 feet of construction areas prior to initiation of construction. Any Eastern indigo snakes captured during gopher tortoise relocation efforts would also be relocated to an approved on-site or off-site location in consultation with FFWCC and FWS representatives. In addition to these measures, FGS has agreed to implement the FWS Standard Protection Measures for the Eastern Indigo Snake.

101. Staff has informally consulted with the FWS, a cooperating agency in the preparation of the EIS, regarding project effects on these listed species. In a letter dated June 2, 2008, the FWS concurred with the findings of the EIS that the project would not affect or would not likely adversely affect any federally-listed species. In a letter dated June 27, 2008, the FWS also concurred that the project would have no affect on listed

species at the Tampa Farms construction staging area. Consequently, the Commission's required consultation under section 7 of the Endangered Species Act is complete.

102. Six state-listed species may also be found at the project, including gopher tortoise, little blue heron, tricolor heron, snowy egret, white ibis, and Florida sandhill crane. Nine active gopher tortoise burrows were observed at the LNG storage facility site. FGS has proposed measures to capture the tortoises during construction and relocate them to an on-site preserve. Five state-listed birds, including little blue heron, tricolor heron, snowy egret, white ibis, and Florida sandhill crane, are also found in the project area, but suitable habitat does not exist at the project for nesting. Foraging habitats would only be temporarily affected by construction and would be immediately restored. Therefore, we conclude that the project will not have any significant adverse effect on state-listed species. In an e-mail dated June 14, 2007, the FFWCC stated they had no official comment on the project but did not find any substantive issues with the project and believe the impacts to state-listed species should be negligible.

## **8. Land Use, Recreation, and Visual Resources**

103. The project would be located at an EPA superfund site. The site was an industrial steel mill that recycled old cars into steel reinforcement bars from 1970-1982. This process resulted in contamination of the soil and groundwater. Soil at the site was contaminated with lead, zinc, and polychlorinated biphenyls (PCBs). Approximately 100,000 tons of contaminated soil was treated and disposed of at the site.

104. Groundwater was contaminated with sodium due to the periodic discharges from an industrial waste softener used to treat processed water at the steel mill. A groundwater remediation system was installed in June 1996 and is currently in operation.

105. Soil remediation has been completed at the site. Correspondence with the EPA has indicated that the proposed site has been cleaned up, making it suitable for re-use.

106. Project construction will require 55.58 acres for the LNG storage facility and 71.45 acres for the construction right-of-way, construction staging area, the M&R station, and pipeline interconnections. Project operations will require 53.10 acres for the LNG storage facility and 25.30 acres for the permanent 50-foot-wide pipeline right-of-way, the M&R station, and pipeline interconnections. The project will be consistent with current zoning and future land use plans by Martin County and compatible with surrounding land uses, which are principally industrial or agri-business in nature (e.g., Cogentrix power plant, Louis Dreyfus citrus processing plant, and the Tampa Farms wholesale egg facility).

107. The project will have no effect on recreation resources or special interest areas. No residences are located within 0.6 mile of the pipeline right-of-way. There are three residences within 0.50 mile of the LNG storage facility, with the nearest residence

located approximately 0.46 mile away. Although the storage tanks would be visible to the surrounding area, the storage facility site has an established industrial character and is adjacent to other industrial uses. As a result, the visual changes resulting from tank construction and operation would be visually consistent with the character of the area.

108. The FDEP approved the ERP permit for the project on March 19, 2008, which included the federal coastal zone consistency determination; therefore, the project is consistent with the federal Coastal Zone Management Act (CZMA).

## **9. Socioeconomics**

109. Construction of the project will not have a significant adverse impact on local population, housing, employment, community services, or local commerce. Any adverse impacts would be highly localized and temporary. Project construction will temporarily increase demand for housing and public services such as medical and law enforcement, but these effects will be temporary and limited to the construction period. During project operation, the LNG storage facility will have self-contained safety, fire, and security resources and will not require these services from the community. Pursuant to DOT regulations, FGS will coordinate with local emergency responders regarding pipeline facilities and public safety. In addition, facility operation will require only 33 permanent staff, which would present a negligible increase in the demand for housing and public services.

110. The project should have a beneficial effect on government tax revenues. In addition to fees paid to the Martin County Building Department by FGS during construction, local spending by construction employees and the project should increase sales tax revenues locally. During operation, FGS would pay a minimum of \$1.6 million annually in property taxes to the county as well as corporate income tax (5.5 percent annually) to the State. Annual payroll during operations is estimated at \$2.2 million per year.

111. The proposed storage facility and pipeline corridor avoid populated areas, minimizing the number of persons at risk of injury due to an accident at the storage facility or a pipeline failure. Although the proposed storage facility would emit some air emissions during normal project operation, these emissions would be minor, below Prevention of Significant Deterioration (PSD) applicability thresholds, and not a public health hazard. The potential health risk from project operations is extremely small, while potential economic benefits may be substantial. Although the racial and economic composition of the Indiantown Census County Division does not appear to meet the EPA definition of a minority or low-income community, the project is proximate to the Indiantown Census Designated Place (CDP), which does have a minority population that is meaningfully higher than the general area. There is no evidence, however, that the

proposed project would have any significantly higher or adverse environmental or human health effects and would not result in any environmental justice issues.

## **10. Transportation**

112. Project construction would occur over 36 months and involve a peak of approximately 450 workers. FGS proposes to mitigate any temporary traffic problems by scheduling shifts and truck deliveries for off-peak hours, providing temporary traffic lights, and using off-duty representatives of the Martin County Sheriff's Department to avoid any congestion. No construction would occur on public roads and no road closures or detours are planned.

113. The project expects to have up to 33 full-time employees. The traffic generated by this number of employees would be minor compared to average daily traffic on SR 710 (i.e., 7,800 vehicles per day). Therefore, we conclude that the project will not have any significant adverse effect on transportation or traffic conditions in the project area.

## **11. Cultural Resources**

114. FGS conducted cultural resource surveys on the LNG storage facility site and pipeline corridor, as well as at the proposed M&R station site, access roads, and temporary workspaces. No archaeological sites were identified within the project area. In addition, a survey was completed of historic properties in the surrounding area, which did not identify any sites as eligible for listing in the National Register of Historic Places. The Cultural Resource Assessment Survey Reports for the project and Tampa Farms construction staging area were reviewed by the Florida Division of Historical Resources, which concurred with the findings of the reports and agreed that no further investigation is necessary. FGS contacted five Native American groups regarding the project including, the Miccosukee Tribe of Indians of Florida, the Muscogee Creek Indians, Band of Creek Indians, the Seminole Nation of Oklahoma, and the Seminole Tribe of Florida. FGS also held informal conversations with both the Seminole THPO and Miccosukee Section 106 representative, both of whom concurred with the findings of the cultural resource studies.

## **12. Air Quality and Noise**

115. Air quality impacts associated with construction of the project will include emissions from construction equipment and fugitive dust. Such air quality impacts, however, will be temporary and localized and will not cause or contribute to a violation of applicable air quality standards. The proposed LNG storage facility will emit air pollutants as a result of operation. Project emissions will be minimized through the use of low Nitrogen oxide burners for the Water Ethylene Glycol (WEG) heaters, use of clean-burning natural gas fuels, and appropriate operation and maintenance procedures.

In addition, the facility will be operated in compliance with federal and state air quality regulations driven by the Clean Air Act (CAA). The project is not subject to PSD permitting and will not exceed National Ambient Air Quality Standards (NAAQS) thresholds. Since Martin County is classified as an attainment area for all criteria pollutants, a General Conformity review of the project is not required. Therefore, we conclude that the project will not have a significant adverse effect on air quality.

116. Noise will be generated during construction of the pipelines and during construction and operation of the LNG storage facility. Impacts to noise quality associated with construction will generally be temporary, minor, and limited mostly to daylight hours. The proposed storage facility will generate noise on a continuous basis during operation, but potential noise-related impacts will be limited to the vicinity of the facility and modeling indicates that facility noise will be below 55 dBA at noise sensitive areas (NSAs). In addition, we are requiring that FGS complete post-construction noise surveys and implement additional mitigation measures, if required, to ensure that actual noise levels resulting from project operations will not exceed 55 dBA. Therefore, we conclude that the project will not have a significant adverse effect on noise in the project area.

### **13. Reliability and Safety**

117. Our evaluation of the front-end engineering design of the proposed LNG storage facility included a cryogenic design and review of proposed facility design and safety systems. As a result of the technical review of the proposed design of the LNG storage facility, a number of concerns were noted relating to the reliability, operability, and safety of the proposed design and staff has identified specific requirements to be addressed by FGS. Compliance with these recommendations will need to be demonstrated by FGS prior to initial site preparation, prior to construction of the final design, prior to commissioning, or prior to commencement of service, as appropriate. Therefore, we believe that appropriate features and modifications will be incorporated into the facility design to enhance the safety and operability of the proposed LNG storage facility. In addition, we believe that the proposed facility complies with the DOT siting requirements of 49 C.F.R. Part 193.

118. FGS will comply with DOT's pipeline material and construction standards for natural gas pipelines. After construction, FGS must implement a pipeline integrity management plan to ensure public safety during operation of the pipeline.

### **14. No Action or Postponed Action Alternatives**

119. The No Action or Postponed Action Alternatives would deny or defer the project. While these alternatives would avoid the environmental impacts identified in the EIS, the objectives of the project would not be met and customers and other markets in Florida would be denied the flexible and reliable gas supply that could be provided by the

project. This in turn could lead to higher natural gas prices, the use of alternative sources of energy, or proposals to develop natural gas import and transmission infrastructure. While conservation and the development of other sources of energy are anticipated to play a part in meeting the future energy needs of Florida, they do not eliminate the need for this project. Therefore, we conclude that the No Action and Postponed Action Alternatives are not preferable to the proposed action.

### 15. System Alternatives

120. Our analysis of system alternatives included an evaluation of alternatives to LNG storage facilities (e.g., underground storage), other planned or proposed LNG terminal projects, and pipeline expansions. Due to the geology in the state, very few suitable underground storage facilities exist within Florida and none are located in the southern part of the state.

121. Four LNG import terminals have been proposed near to, but outside of, Florida and are in varying stages of development. Two terminals have been proposed as onshore import terminals in the Bahamas, but neither of these have yet been approved by the Bahamian government. The other two terminals are deepwater port proposals subject to review by the USCG and approval by the Maritime Administration. These projects are not viable alternatives to the proposed project because the four LNG import terminals cannot be in service within the needed timeframe, or cannot perform storage and peaking service.

122. The proposed project is not an energy source itself; it simply is a storage facility to improve the overall reliability of the electric system in Florida. The Commission considered the status of alternative energy sources and energy conservation in Florida, finding that these alternative energy sources will play a significantly increasing role in meeting energy demands in the coming years. However, the Florida Public Service Commission (PSC) concluded that energy demand forecasts continue to surpass current energy conservation and renewable energy programs offered by Florida's utilities and that local utilities should continue investigating natural gas supply and delivery options such as natural gas storage to maintain diversity in the face of unplanned supply interruptions.<sup>62</sup>

123. Expansion, looping, and added compression to existing pipelines were also considered. Pipeline system expansions, consisting of the construction of large-diameter pipelines, looping of constrained portions of the pipelines, or additional compression would not provide needed storage capacity nor satisfy the project objective of having

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<sup>62</sup> See Florida Public Service Commission, *Review of 2007 Ten-Year Site Plans for Florida's Electric Utilities*, December 2007, at p. 3.

supply available in Florida to serve the region during peak demand periods and weather related shut-ins when pipeline deliveries are curtailed or disrupted, and are not considered a viable alternative to the proposed project.

## **16. Site and Route Alternatives**

124. In addition to system alternatives, we evaluated six alternative LNG storage facility sites in south Florida and three alternative pipeline corridors. Our evaluation of sites considered zoning and land use compatibility, wetlands avoidance, proximity to interstate natural gas pipelines, suitability for proposed use, and proximity to the market area. None of the alternative storage facility sites we evaluated are considered to be environmentally preferable to the proposed storage facility site. None of the alternative pipeline routes offered any environmental advantages to the proposed route.

125. LNG system alternatives considered include alternative natural gas storage facilities (e.g., salt domes, depleted oil and gas reservoirs, and aquifer storage), LNG import terminals, and pipeline expansion, looping, and compression. We also considered six alternative LNG storage facility sites, three pipeline route alternatives, and several minor pipeline route variations.

126. We have determined that the proposed project, as modified by our recommended mitigation measures, is the preferred alternative to meet the project purpose.

127. We have reviewed the information and analysis contained in the final EIS regarding potential environmental effect of the project. Based on our consideration of this information, we agree with the conclusions presented in the final EIS and find that FGS's project is environmentally acceptable if the project is constructed and operated in accordance with the EIS's recommended environmental mitigation measures. Accordingly, the Commission adopts the findings and conclusions of the final EIS and includes the EIS's recommended environmental mitigation measures as conditions set forth in the appendix to this order.

128. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between pipeline companies and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction of facilities approved by this Commission.<sup>63</sup>

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<sup>63</sup> See e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

## VI. Conclusion

129. The Commission, on its own motion, received and made a part of the record all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein. Upon consideration of the record,

### The Commission orders:

(A) In Docket No. CP08-13-000, a certificate of public convenience and necessity is issued to FGS authorizing it to construct and operate the LNG storage and pipeline facilities, as described more fully in this order and in the application, and subject to the conditions set forth herein.

(B) The certificate issued in Ordering Paragraph (A) is further conditioned on the following:

- (1) FGS's completing the authorized construction of the proposed facilities and making them available for service within five years of the issuance of this order pursuant to 157.20(b) of the Commission's regulations;
- (2) FGS's compliance with all applicable Commission regulations under the Natural Gas Act, including, but not limited to, the general terms and conditions set forth in Parts 154, 157 and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations, excluding those provisions from which FGS has been granted waiver; and
- (3) FGS's compliance with the environmental conditions as set forth in the Appendix to this order.

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

(D) FGS is granted a blanket certificate under Part 157, subpart F of the Commission's regulations.

(E) FGS is granted a blanket certificate under Part 284, subpart G of the Commission's regulations and is authorized to provide firm and interruptible transportation service, on an open-access and non-discriminatory basis under such certificate.

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

(G) FGS shall notify the Commission within 10 days of acquiring knowledge of:

- (1) FGS's adding storage capacity beyond the capacity authorized in this order;
- (2) an affiliate's increasing storage capacity;
- (3) an affiliate's linking storage facilities to FGS; or
- (4) FGS or an affiliate's acquisition of an interest in, or being acquired by an interstate pipeline connected to FGS.

The notification shall include a detailed description of the new facilities and their relationship to FGS. FGS is also directed to file an updated market power analysis within five years of the date of this order and every five years thereafter. The Commission reserves the right to require such an analysis at any intervening time.

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

(I) FGS is required to file actual tariff sheets at least 60 days prior to the in-service date of the proposed facilities that reflect compliance with the NAESB standards in effect at that time and the modifications and revisions to the pro forma tariff sheets discussed in detail above.

(J) Within 30 days after its first full year of operation, and every year thereafter, FGS is directed to file an annual informational filing on its provision of service using off-system capacity, as detailed in this order.

(K) Based on FGS's assertions in its application, FGS will not be a transmission provider under 18 C.F.R. § 385.3(a)(3). If at any time FGS no longer fits the

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criteria in section 385.3(a)(3), it will be considered a transmission provider under Part 385 and must then follow the Standards of Conduct Requirements.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

## Appendix

### Environmental Conditions for FGS Storage Project Docket No. CP08-13-000

1. FGS shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff data requests), and as identified in this EIS, unless modified by the order. FGS must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the OEP **before using that modification.**
2. For pipeline facilities, the Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of the Commission's order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. For the LNG facility, the Director of OEP has delegated authority to take all steps necessary to ensure the protection of life, health, property, and the environment during construction and operation of the project. This authority shall include:
  - a. stop-work authority and authority to cease operation; and
  - b. the design and implementation of any additional measures deemed necessary to assure continued compliance with the intent of the conditions of the order.
4. **Prior to any construction**, FGS shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the

environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.

5. The authorized facility locations shall be as shown in the EIS, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, FGS shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the order. All requests for modifications of environmental conditions of the order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

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

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

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

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and

- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
7. **At least 60 days before the start of construction**, FGS shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how FGS will implement the mitigation measures required by the order. FGS must file revisions to the plan as schedules change. The plan shall identify:
- a. how FGS will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to on-site construction and inspection personnel;
  - b. the number of environmental inspectors assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
  - d. the training and instructions FGS will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change) with the opportunity for OEP staff to participate in the training session(s);
  - e. the company personnel (if known) and specific portion of FGS's organization having responsibility for compliance;
  - f. the procedures (including use of contract penalties) FGS will follow if noncompliance occurs; and
  - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - i. the completion of all required surveys and reports;
    - ii. the mitigation training of on-site personnel;
    - iii. the start of construction; and
    - iv. the start and completion of restoration.
8. FGS shall employ at least one environmental inspector. The environmental inspector shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the order and other grants, permits, certificates, or other authorizing documents;

- b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 7 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of the order, and any other authorizing document;
  - d. a full-time position, separate from all other activity inspectors;
  - e. responsible for documenting compliance with the environmental conditions of the order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - f. responsible for maintaining status reports.
9. FGS shall file updated status reports prepared by the environmental inspector with the Secretary on a **bi-weekly** basis **until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. the current construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector during the reporting period, (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
  - d. the effectiveness of all corrective actions implemented;
  - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of the order, and the measures taken to satisfy their concerns; and
  - f. copies of any correspondence received by FGS from other federal, state, or local permitting agencies concerning instances of noncompliance, and FGS's response.
10. FGS must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted following a determination that the LNG facility has been constructed in accordance with Commission approval and applicable standards, can be expected

to operate safely as designed, and the rehabilitation and restoration of the right-of-way is proceeding satisfactorily.

11. **Within 30 days of placing the certificated facilities in service**, FGS shall file an affirmative statement with the Secretary, certified by a senior company official:
  - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the certificate conditions FGS has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. FGS shall develop a Standard Operating Procedure for Herbicide Use that meets EPA requirements. (Section 4.4.2)
13. FGS shall make all reasonable efforts to assure its predicted noise levels from the LNG storage facility are not exceeded at nearby NSAs and file noise surveys showing this with the Secretary **no later than 60 days** after placing the LNG storage facility in service. However, if the noise attributable to the operation of the LNG storage facility at full load exceeds an  $L_{dn}$  of 55 dBA at any nearby NSAs, FGS shall file a report on what changes are needed and shall install additional noise control to meet the level **within one year** of the in-service date. FGS shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls. (Section 4.11.2)

**Environmental Conditions No. 14 through 23 below shall apply to the project design and construction details. All detailed design documents (drawings, calculations, specifications, etc.) and design submittals shall satisfy the requirements of Section 4, Part II of the FERC's Draft Seismic Design Guidelines and Data Submittal Requirements for LNG Facilities, January 2007 (draft Seismic Design Guidelines). The following information shall be filed with the Secretary for review and approval by the Director of OEP either prior to the issuing of requests for quotations; prior to construction; or prior to commissioning as indicated by each specific condition.**

14. File a detailed plan, including calculations, for the LNG tank foundation surcharge, **prior to construction**. (Section 4.1.4)
15. File a list of all structures, systems, and components that are assigned Seismic Category I **prior to construction** for review as described in section 3.6 of Part II of the FERC Seismic Guidelines. (Section 4.1.4)
16. Seismic Design Criteria shall be provided for all Seismic Design Category I structures, systems, and components as described in section 3.7 of Part II of the

- FERC Seismic Guidelines **prior to construction**. The Seismic Design Criteria shall satisfy Part I of the FERC Seismic Guidelines. (Section 4.1.4)
17. LNG Tank and Foundation Design shall comply with Part I of the FERC Seismic Guidelines. Submittals that demonstrate compliance shall be provided **prior to construction**. (Section 4.1.4)
  18. Final foundation design recommendations for all other Seismic Category I structures shall be submitted for review and approval **prior to construction**. (Section 4.1.4)
  19. All items identified in the submitted geotechnical/seismic reports which were proposed to be addressed during the detailed design shall be submitted for review and approval **prior to construction**. (Section 4.1.4)
  20. Seismic specifications to be used in conjunction with the procuring equipment as described in section 3.10 of Part II of the FERC Seismic Guidelines shall be submitted for review **prior to the issuing of requests for quotations**. (Section 4.1.4)
  21. Quality Control and Assurance procedures as described in section 3.11 of Part II of the FERC Seismic Guidelines that will be used for design and construction shall be submitted for review **prior to construction** of the project. (Section 4.1.4)
  22. A seismic instrumentation plan as described in section 3.12 of Part II of the FERC Seismic Guidelines shall be provided **prior to commissioning**. (Section 4.1.4)
  23. The results of the hydrostatic load tests on the LNG storage tanks, including settlement data as described in section 7.4.1 of the FERC Seismic Guidelines shall be provided **prior to commissioning**. (Section 4.1.4)

**Environmental Conditions No. 24 through 91 below shall apply to the FGS design and construction details. Information pertaining to these specific recommendations shall be filed with the Secretary for review and approval by the Director of OEP either: prior to initial site preparation; prior to construction of final design; prior to commissioning; or prior to commencement of service as indicated by each specific condition. Specific engineering, vulnerability, or detailed design information meeting the criteria specified in Order No. 683 (Docket No. RM06-24-000), including security information, shall be submitted as critical energy infrastructure information (CEII) pursuant to 18 C.F.R. § 388.112. See Critical Energy Infrastructure Information, Order No. 683, 71 Fed. Reg. 58,273 (October 3, 2006). FERC Stats. & Regs., Regulations Preambles 2006-2007 ¶ 31,228 (2006). Information pertaining to items such as: offsite emergency response; procedures for public notification and evacuation; and construction and operating reporting requirements would be subject to public disclosure. This information shall be submitted a minimum of 30 days before approval to proceed is required.**

24. Complete plan drawings and a list of the hazard detection equipment shall be filed **prior to initial site preparation**. The list shall include the instrument tag number, type and location, alarm locations, and shutdown functions of the proposed hazard detection equipment. Plan drawings shall clearly show the location of all detection equipment. (Section 4.12.2)
25. FGS shall provide a technical review of its proposed facility design that:
  - a. identifies all combustion/ventilation air intake equipment and the distances to any possible hydrocarbon release (LNG, flammable refrigerants, flammable liquids and flammable gases);
  - b. demonstrates that these areas are adequately covered by hazard detection devices and indicate how these devices would isolate or shutdown any combustion equipment whose continued operation could add to or sustain an emergency.

FGS shall file this review **prior to initial site preparation**. (Section 4.12.2)
26. Complete plan drawings and a list of the fixed and wheeled dry-chemical, fire extinguishing, and other hazard control equipment shall be filed **prior to initial site preparation**. The list shall include the equipment tag number, type, size, equipment covered, and automatic and manual remote signals initiating discharge of the units. Plan drawings shall clearly show the planned location of all fixed and wheeled extinguishers. (Section 4.12.2)
27. Facility plan drawings showing the proposed location of, and area covered by, each monitor, hydrant, deluge system, hose, and sprinkler, as well as piping and instrumentation diagrams of the fire water system, shall be filed **prior to initial site preparation**. (Section 4.12.2)
28. FGS shall perform a hazard design review, which addresses operability, reliability, and safety, of the updated intermediate process and instrumentation diagrams (P&IDs). A copy of the hazard design review, the list of recommendations that are to be incorporated in the final facility design, and the updated intermediate P&IDs shall be filed **prior to initial site preparation**. (Section 4.12.2)
29. Drawings of the storage tank piping support structure and support of horizontal piping at grade shall be filed **prior to initial site preparation**. (Section 4.12.2)
30. Procedures shall be developed for offsite contractors' responsibilities, restrictions, limitations and supervision of these contractors by FGS staff, **prior to initial site preparation**. (Section 4.12.2)
31. FGS shall file step-by-step calculations showing how the vapor production rate from a single trench element over a 10 minute period was determined, **prior to initial site preparation**. (Section 4.12.3)

32. FGS shall file revised vapor dispersion simulations with the following information, **prior to initial site preparation**:
- a. a quantitative grid sensitivity analysis that supports the selection of grid size and demonstrates the convergence of the downwind dispersion distances;
  - b. simulations with mirror boundary conditions for the side and top boundaries;
  - c. simulations that allow the wind profile to reach a steady or quasi-steady state before injecting LNG vapor into the domain;
  - d. a sensitivity analysis and technical justification that supports the slip factor value used to determine the downwind dispersion distances;
  - e. technical justification and/or sensitivity analyses that support the selection of the lapse rate, ground surface material properties, temperature, humidity, and wind profile used to determine the downwind dispersion distances; and
  - f. all pertinent input files (\*.fds) and output files (\*.out) used to determine the downwind dispersion distances. (Section 4.12.3)
33. FGS shall provide information/revisions related to the 39 responses to the January 17, 2008 Engineering Information Request which stated that corrections, or modifications would be made to the design. The **final design** shall specifically address response numbers 4, 6, 7, 11, 17, 18, 21, 22, 24, 27, 28, 29, 30, 33, 35, 36, 37, 38, 41, 42, 43, 49, 55, 58, 60, 61, 62, 63, 65, 67, 73, 76, 77, 78, 80, 83, 91, 94, and 99 using management of change procedures. (Section 4.12.2)
34. The **final design** shall clearly and consistently show the design of the process systems on both the process flow diagrams (PFDs) and P&IDs. (Section 4.12.2)
35. The P&IDs in the **final design** shall show and number all valves including drain, vent, main, and car sealed. (Section 4.12.2)
36. The **final design** shall specify that the set pressure of PAH-11055 shall not be greater than 50 psig below the design pressure of the system. (Section 4.12.2)
37. The **final design** shall include layout provisions for the installation of an adsorber feed gas cooler and chiller system. (Section 4.12.2)
38. In the event that ceramic support material is used to retain the molecular sieve, the **final design** shall include a witch hat type strainer at the bottom outlet of each adsorber, designed to retain support material. (Section 4.12.2)
39. The **final design** shall include a shutoff valve at the inlet to the NGL extraction exchanger. This valve may be the proposed manual isolation valve equipped with an actuator operated by the Safety Instrumentation System (SIS). (Section 4.12.2)

40. The **final design** shall include an isolation valve downstream of the ethylene pressure regulator. (Section 4.12.2)
41. The **final design** shall include a hazard and operability review of the completed design. A copy of the review and a list of the recommendations shall be filed with the Secretary. (Section 4.12.2)
42. The **final design** shall specify that the LNG tank carbon steel piping support plates and connections to piping supports shall be designed to ensure that corrosion protection is adequately provided and provisions for corrosion monitoring and maintenance of carbon steel attachments are to be included in the design and maintenance procedures. (Section 4.12.2)
43. The **final design** of the tank foundation shall include an inclinometer, instrumented to record and display tank settlement, with a minimum of eight permanent reference points equally spaced round the base for elevation survey measurement. (Section 4.12.2)
44. The **final design** shall include details of the LNG tank tilt settlement and differential settlement limits between each LNG tank and piping and procedures to be implemented in the event that limits would be exceeded. (Section 4.12.2)
45. The **final design** shall include detailed drawings of the spill control system to be applied to the LNG tank roof. (Section 4.12.2)
46. The **final design** shall provide a discretionary vent for each LNG tank that can relieve the tank pressure when the tank is isolated from the boiloff vapor system. (Section 4.12.2)
47. The **final design** shall include a recycle line from the top of the sendout pump suction header to storage. (Section 4.12.2)
48. The **final design** shall specify that the first isolation valve at the inlet to the sendout pumps would be a weld end shutoff valve. In the case that flanged valves would be specified, the sendout system should be shutdown in the event of a leak. (Section 4.12.2)
49. The **final design** shall provide a minimum flow recycle line from the sendout pumps to the LNG storage tanks. The piping, including the isolation valve upstream of the discharge to the storage tanks, shall be the same pressure and temperature rating as the piping at the discharge of the sendout pumps. (Section 4.12.2)
50. The **final design** shall include provisions to drain and purge the LNG inlet piping to the vaporizer to a safe location. (Section 4.12.2)
51. The **final design** shall specify that the LNG isolation valve from the inlet header to the vaporizer is to be a weld end shutoff valve operated by the SIS. In the case

- that flanged valves would be specified, the sendout system should be shutdown in the event of a leak. (Section 4.12.2)
52. The **final design** shall specify the vaporizer discharge valve to the outlet header to be a weld end shutoff valve operated by the SIS. In the case that flanged valves would be specified, the sendout system should be shutdown in the event of a leak. (Section 4.12.2)
  53. The **final design** shall specify that the shell side of the LNG vaporizer is to be equipped with a full flow bursting disc sized for tube failure. (Section 4.12.2)
  54. The **final design** shall include provisions to transmit the flow measurement of the WEG solution to each LNG vaporizer to the distributed control system (DCS). (Section 4.12.2)
  55. The **final design** shall include provisions to limit the LNG flow to the effective vaporization capacity of the circulating WEG at any time. (Section 4.12.2)
  56. The **final design** shall include a pilot relief valve, or operated vent valve, sized for thermal relief and located at the discharge of each vaporizer upstream of the isolation valves. (Section 4.12.2)
  57. The **final design** shall include shutoff valves operated by the SIS at the suction and discharge of the boiloff, tail gas, and NGL compressors. (Section 4.12.2)
  58. The **final design** shall specify that manual bypass valves shall be car sealed closed. (Section 4.12.2)
  59. The **final design** shall specify that all drains from LNG and refrigerant systems are to be equipped with double isolation and bleed valves. (Section 4.12.2)
  60. The **final design** shall specify that, for LNG and natural gas service, branch piping and piping nipples less than 50mm (2 inches), are to be no less than schedule 160. (Section 4.12.2)
  61. The **final design** shall include provisions to flare cryogenic and heavy hydrocarbon vapors currently shown as being discharged to atmosphere through the vent stack. (Section 4.12.2)
  62. The **final design** shall specify that the vent/flare stack separator vessel shall be equipped with a low level alarm, high level alarm and high-high level alarm. (Section 4.12.2)
  63. The **final design** shall specify that in the event that high-high level occurs in vent/flare stack separator vessel, the facility shall be shut down until the liquid has been removed to below the low level alarm limit. (Section 4.12.2)
  64. The **final design** shall provide P&IDs, specifications, and procedures that clearly show and specify the tie-in details required to safely connect the Phase 2 expansion. (Section 4.12.2)

65. Layout and elevation drawings of the process equipment that are appropriate for the proposed operation and maintenance of the facility shall be included in the **final design** and submitted to the FERC at the time that the EPC contractor issues the drawing for review. This milestone shall be included in the project schedule. (Section 4.12.2)
66. The **final design** shall specify that the hazardous area classification of the areas containing liquefaction exchangers, LNG pumps, LNG vessels, and inlet and outlet of LNG vaporizers would be as Class 1, Group D, Division 1. (Section 4.12.2)
67. The **final design** shall include details of the air gaps to be installed downstream of all seals or isolations that are located at the interface between a flammable fluid system and an electrical conduit or wiring system. Each air gap shall vent to a safe location and be equipped with a leak detection device that: shall continuously monitor for the presence of a flammable fluid; shall alarm the hazardous condition; and shall shutdown the appropriate systems. (Section 4.12.2)
68. The **final design** shall include audible and visual warning at buildings with instrument air service when nitrogen is supplied to the instrument air system. (Section 4.12.2)
69. The **final design** shall provide automatic shutoff of the fuel gas to the fuel gas heaters, upstream of the pressure regulators. (Section 4.12.2)
70. The **final design** shall include detection of flammable gas from the shell side vent of the LNG vaporizer and in the WEG system. Alarm and shutdown of equipment shall be provided as appropriate. (Section 4.12.2)
71. The **final design** of the hazard detection equipment shall identify manufacturer and model. (Section 4.12.2)
72. The **final design** shall specify that all hazard detection equipment shall include redundancy fault detection and fault alarm monitoring in all potentially hazardous areas and enclosures. (Section 4.12.2)
73. The **final design** of the fixed and wheeled dry-chemical, fire extinguishing and high expansion foam hazard control equipment shall identify the manufacturer and model. (Section 4.12.2)
74. The **final design** shall include an updated fire protection evaluation in accordance with the requirements of NFPA 59A 2001, chapter 9.1.2. (Section 4.12.2)
75. The **final design** shall specify that multiple cameras shall be installed to monitor the entry/exit gate and approach to the facility entrance. (Section 4.12.2)
76. The **final design** of the firewater system shall include provisions to measure and record the discharge flow and pressure from each of the firewater pumps. (Section 4.12.2)

77. The **final design** shall include an uninstalled spare firewater jockey pump. (Section 4.12.2)
78. The **final design** shall include details of the shut down logic, including cause and effect matrices for alarms and shutdowns. (Section 4.12.2)
79. The **final design** shall specify that all ESD valves are to be equipped with open and closed position switches connected to the DCS/SIS. (Section 4.12.2)
80. The **final design** shall include emergency shutdown of equipment and systems activated by hazard detection devices for flammable gas, fire, and cryogenic spills, when applicable. (Section 4.12.2)
81. The **final design** shall include drawings, P&IDs, and specifications for the mounding system and the coatings and cathodic protection system for the vessels. (Section 4.12.3)
82. The maintenance procedures to be **filed prior to commissioning** shall state that a foundation elevation survey of all LNG tanks shall be made on an annual basis. (Section 4.12.2)
83. All valves including drain, vent, main, and car sealed, or locked valves shall be tagged in the field during construction and **prior to commissioning**. (Section 4.12.2)
84. The car seal procedure and car seal control logs for all valves shall be provided **prior to commissioning**. (Section 4.12.2)
85. A tabulated list of the proposed hand-held fire extinguishers shall be filed **prior to commissioning**. The information shall include a list with the equipment number, type, size, number, and location. Plan drawings shall include the type, size, and number of all hand-held fire extinguishers. (Section 4.12.2)
86. Operation and Maintenance procedures and manuals, as well as emergency response plans and safety procedures, shall be filed **prior to commissioning**. (Section 4.12.2)
87. The Operations and Maintenance procedures to be **provided prior to commissioning**, shall state that filters are not to be opened unless the unit can be completely depressurized when isolated. (Section 4.12.2)
88. The contingency plan for failure of the LNG tank outer containment shall be filed **prior to commissioning**. (Section 4.12.2)
89. A copy of the criteria for horizontal and rotational movement of the inner tank for use during and after cool down shall be filed **prior to commissioning**. (Section 4.12.2)

90. The FERC staff shall be notified of any proposed revisions to the security plan and physical security of the facility **prior to commencement of service**. (Section 4.12.2)
91. Progress on construction of the project shall be reported in **monthly reports** filed with the Secretary. Details shall include a summary of activities, projected schedule for completion, problems encountered, and remedial actions taken. Problems of significant magnitude shall be reported to the FERC **within 24 hours**. (Section 4.12.2)

**Environmental Conditions No. 92 through 97 below shall apply throughout the life of the facility:**

92. The facility shall be subject to regular FERC staff technical reviews and site inspections on at least a **biennial basis** or more frequently as circumstances indicate. Prior to each FERC staff technical review and site inspection, FGS shall respond to a specific data request including information relating to possible design and operating conditions that may have been imposed by other agencies or organizations. Up-to-date detailed piping and instrumentation diagrams reflecting facility modifications and provision of other pertinent information not included in the semi-annual reports described below, including facility events that have taken place since the previously submitted annual report, shall be submitted. (Section 4.12.2)
93. **Semi-annual** operational reports shall be filed with the Secretary to identify changes in facility design and operating conditions, abnormal operating experiences, activities (including trucking, quantity and composition of feed gas and trucked LNG, vaporization quantities, boil-off/flash gas, etc.), plant modifications including future plans and progress thereof. Abnormalities shall include, but not be limited to: trucking problems, storage tank stratification or rollover, geysering, storage tank pressure excursions, cold spots on the storage tanks, storage tank vibrations and/or vibrations in associated cryogenic piping, storage tank settlement, significant equipment or instrumentation malfunctions or failures, non-scheduled maintenance or repair (and reasons therefore), relative movement of storage tank inner vessels, vapor or liquid releases, fires involving natural gas and/or from other sources, negative pressure (vacuum) within a storage tank and higher than predicted boiloff rates. Adverse weather conditions and the effect on the facility also shall be reported. Reports shall be submitted **within 45 days** after each period ending **June 30 and December 31**. In addition to the above items, a section entitled "Significant plant modifications proposed for the next 12 months (dates)" also shall be included in the semi-annual operational reports. Such information would provide the FERC staff with early notice of anticipated future construction/maintenance projects at the LNG facility. (Section 4.12.2)

94. FGS shall include completed car seal control logs with the first two **Semi-annual** operational reports filed with the Commission. (Section 4.12.2)
95. In the event the temperature of any region of any secondary containment becomes less than the minimum specified operating temperature for the material, the Commission shall be notified **within 24 hours** and procedures for corrective action shall be specified. (Section 4.12.2)
96. FGS shall develop a traffic control plan coordinated with local authorities to address LNG and NGL truck transportation from the facility. This plan shall be incorporated into the facility's operation and maintenance procedures and manuals **prior to any trucking activities** at the LNG facility. (Section 4.12.4)
97. Significant non-scheduled events, including safety-related incidents (i.e., LNG or natural gas releases, fires, explosions, mechanical failures, unusual over pressurization, and major injuries) and security related incidents (i.e., attempts to enter site, suspicious activities) shall be reported to FERC staff. In the event an abnormality is of significant magnitude to threaten public or employee safety, cause significant property damage, or interrupt service, notification shall be made **immediately**, without unduly interfering with any necessary or appropriate emergency repair, alarm, or other emergency procedure. In all instances, notification shall be made to the Commission **within 24 hours**. This notification practice shall be incorporated into the LNG facility's emergency plan. Examples of reportable LNG-related incidents include:
  - a. fire;
  - b. explosion;
  - c. estimated property damage of \$50,000 or more;
  - d. death or personal injury necessitating in-patient hospitalization;
  - e. free flow of LNG that results in pooling;
  - f. unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide, or flood, that impairs the serviceability, structural integrity, or reliability of an LNG facility that contains, controls, or processes gas or LNG;
  - g. any crack or other material defect that impairs the structural integrity or reliability of an LNG facility that contains, controls, or processes gas or LNG;
  - h. any malfunction or operating error that causes the pressure of a pipeline, or LNG facility that contains or processes gas or LNG, to rise above its maximum allowable operating pressure (or working pressure for LNG facilities) plus the build-up allowed for operation of pressure limiting or control devices;

- i. a leak in an LNG facility that contains or processes gas or LNG that constitutes an emergency;
- j. inner tank leakage, ineffective insulation, or frost heave that impairs the structural integrity of an LNG storage tank;
- k. any condition that could lead to a hazard and cause a 20 percent reduction in operating pressure or shutdown of operation of a pipeline or an LNG facility;
- l. safety-related incidents with LNG and NGL trucks at or en route to and from the LNG facility; or
- m. an event that is significant in the judgment of the operator and/or management even though it did not meet the above criteria or the guidelines set forth in an LNG facility's incident management plan.

In the event of an incident, the Director of OEP has delegated authority to take whatever steps are necessary to ensure operational reliability and to protect human life, health, property, or the environment, including authority to direct the LNG facility to cease operations. Following the initial company notification, the Commission staff would determine the need for an on-site inspection by Commission staff, and the timing of an initial incident report (**normally within 10 days**) and follow-up reports. (Section 4.12.2)

Document Content(s)

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