

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.

Central New York Oil & Gas Company, LLC

Docket Nos. CP06-64-000  
CP06-64-001

ORDER ISSUING CERTIFICATE

(Issued September 22, 2006)

1. On February 10, 2006, as amended May 9, 2006, and supplemented on August 23, 2006, Central New York Oil & Gas Company, LLC, (CNYOG) filed an application under section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing it to (a) construct and operate the necessary facilities to expand the Stagecoach Storage Facility (Stagecoach Facility) by adding four additional gas storage reservoirs; (b) install a lateral pipeline and appurtenant facilities (North Lateral) to connect the Stagecoach Facility to the planned Millennium Pipeline Company, L.L.C. (Millennium) system; and (c) offer interruptible wheeling service from the Stagecoach Facility, in addition to the services already available under CNYOG's FERC Gas Tariff. For the reasons discussed below, the Commission grants the requested certificate authorization, subject to conditions. The Commission also grants CNYOG's request to charge market-based rates for its proposed expanded storage and interruptible wheeling services.

**I. Background**

2. CNYOG, a limited liability company organized and existing under the laws of the State of New York, was formed to construct, own and operate the Stagecoach Facility. CNYOG is an indirect, wholly-owned subsidiary of Inergy, L.P.

3. The Stagecoach Facility commenced operation in April 2002.<sup>1</sup> It consists of the Widell Pool and the Barnhart-Owens Pool, two of the six gas reservoirs in the Stagecoach Gas Field, a depleted natural gas production field in Tioga County New York and Bradford County, Pennsylvania. The Stagecoach Facility was certificated for a combined total capacity of 16.75 Bcf, and currently operates with a 15.109 Bcf total inventory, of which 13.25 Bcf is working gas. Its facilities include ten injection/withdrawal (I/W) wells, seven observation wells, a 25,000 horsepower (hp) compressor station, and approximately 12 miles of interconnecting pipeline. As certificated, the maximum reservoir shut-in pressure is 3,250 psia, the minimum pressure is 300 psia, the maximum withdrawal rate is 500 MMcf per day (MMcf/d), and the maximum injection rate is 250 MMcf/d. The Stagecoach Facility is connected to Tennessee Gas Pipeline Company's (Tennessee) Line 300 by the Stagecoach Lateral, a 23-mile lateral owned and operated by Tennessee.

## **II. Proposals**

### **A. Facilities**

4. CNYOG proposes, in this Phase II Expansion Project (Expansion Project), to expand the Stagecoach Facility by integrating the four remaining depleted gas reservoirs in the Stagecoach Gas Field, thereby adding approximately 13.1 Bcf of working gas capacity. The Expansion Project is intended to provide additional natural gas infrastructure to support increased demand for natural gas in the northeast United States.

5. Specifically, CNYOG proposes to develop, connect, and integrate the four remaining depleted gas reservoirs in the Stagecoach Gas Field - the Racht Pool, the Brenchley-Cook Pool, and the Nichols-Mead Pool (all located in Tioga County, New York), and the Lidell Pool (located in Bradford County, Pennsylvania) - with the Widell and Barnhart-Owens Pools. The Expansion Project will involve: (i) drilling eight new I/W wells; (ii) converting up to nine existing production wells to observation wells; (iii) installing approximately 6.7 miles of 6-inch and 20-inch diameter field line;

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<sup>1</sup> *Central New York Oil & Gas Co., LLC*, 94 FERC ¶61,194 (2001).

(iv) installing a 12,000 hp compressor unit; and (v) constructing a 9.3-mile long, 20-inch diameter North Lateral from the compressor station to an interconnect with the proposed Millennium Pipeline near the town of Owego, New York.<sup>2</sup>

6. When completed, the total inventory for the Stagecoach Facility will be approximately 31.9 Bcf at 14.73 psia and 60 degrees Fahrenheit, with a maximum stabilized shut-in reservoir pressure of 3,250 psia. There is no proposed change to the Stagecoach Facility's withdrawal capacity of 500 MMcf/d and injection capability of 250 MMcf/d. However, CNYOG states that the increase in storage capacity and the added compression will allow it to lengthen the Stagecoach Facility's deliverability season.

7. Capacity on the North Lateral will accompany storage service for customers using the injection/withdrawal point at CNYOG's proposed interconnect with Millennium. Under CNYOG's market-based rate proposal, firm storage customers will pay a North Lateral Reservation Charge as part of the charges under their FSS service agreements. CNYOG also proposes to make available to firm storage customers who use the injection/withdrawal point at CNYOG's interconnection with Tennessee's Stagecoach Lateral the ability to purchase firm capacity on the North Lateral up to the customer's maximum Daily Withdrawal Quantity, so that such customers will have the option to receive gas from and deliver gas to both Tennessee and Millennium.

#### **B. Rates and Services**

8. CNYOG has market-based rate authority for firm and interruptible storage services using its existing capacity. This market-based rate authority is subject to review because CNYOG is proposing an expansion. CNYOG seeks market-based rate authority for firm and interruptible storage services using its existing storage capacity and proposed expansion capacity. CNYOG also seeks to offer its proposed interruptible wheeling service at market-based rates. The proposed wheeling service will be for interruptible transportation service that uses CNYOG's North Lateral to move gas to or from storage between CNYOG's Stagecoach Storage Facility and Millennium and for interruptible transportation service that uses CNYOG's North Lateral to move gas between Tennessee's Stagecoach Lateral and Millennium through CNYOG's Stagecoach Storage Facility. CNYOG will assess a market-based commodity charge on the wheeling service,

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<sup>2</sup> Millennium proposes in Docket Nos. CP98-150-006, CP98-150-007, and CP98-150-008, pending before the Commission, to construct and operate facilities to provide gas supply to central and southeastern New York as well as northeast markets.

and CNYOG's electric charge (currently \$0.05/Dth) and lost and unaccounted for gas retention (0.25 percent) will be imposed on wheeling service from Millennium to storage, from Millennium to Tennessee's Stagecoach Lateral, and from Tennessee's Stagecoach Lateral to Millennium.

9. CNYOG held an open season in November and December 2005, and states that it received expressions of interest for more than double the Expansion Project's capacity. CNYOG states that it has executed three precedent agreements with Coral Energy Resources, L.P., Nexen Marketing, U.S.A., Inc., and Consolidated Edison Company of New York, Inc., securing long-term commitments for 8.4 Bcf of the Expansion Project's proposed 13.1 Bcf of additional working storage capacity and 175,000 Dth/d of deliverability.<sup>3</sup>

### **III. Interventions**

10. Notices of CNYOG's application and amendment were published in the *Federal Register* on February 27, 2006 (71 Fed. Reg. 9808) and May 25, 2006 (71 Fed. Reg. 30125), respectively. The New York State Department of Environmental Conservation, PSEG Energy Resources & Trade LLC., Millennium, Tennessee, Public Service Commission of the State of New York, Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (ConEd), National Fuel Gas Distribution Corporation, New Jersey Natural Gas Company, and Ms. Alice Supa filed timely, unopposed motions to intervene.<sup>4</sup> Central Hudson Gas & Electric Corporation and Christopher S. Marinich and Jeannette G. Marinich (the Marinichs) filed motions to intervene out-of-time. The Commission finds that granting these late-filed motions to intervene at this stage of the proceeding will not cause undue delay or disruption, or place an undue burden on or otherwise prejudice existing parties. Therefore, for good cause shown, we will grant the late-filed motions to intervene.<sup>5</sup>

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<sup>3</sup> CNYOG's affiliate, Inergy Gas Marketing, LLC (Inergy), holds the existing capacity in the Stagecoach project. CNYOG states that it has agreed with Inergy on an allocation of the deliverability on and after September 1, 2007, the expected in-service date of the expansion such that Inergy will reduce its withdrawal capacity to 325,000 DT/d. Thus, all parties will have their full contract share of the existing deliverability.

<sup>4</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214.

<sup>5</sup> 18 C.F.R. §385.214(d) (2006).

11. ConEd filed comments in support of the Expansion Project, stating that market support for CNYOG's proposed services is reflected in CNYOG's receiving expressions of interest for more than double the expansion capacity.

12. The Marinichs protest CNYOG's application, contending that trenching activities will adversely impact their property, that their personal safety is threatened by the proximity of the pipeline and the use of epoxy in sealing the pipeline, and that their property's value will be reduced as a consequence of these impacts. Charles and Beatrice Struppler (the Strupplers), Anne B. and Randolph B. Cooke (the Cookes), and Richard M. WasylIn for Mary T. WasylIn (the WasylIns) filed comments protesting the application, raising issues concerning impacts of CYNOG's proposal on property values and compensation through the eminent domain process, safety, surface and ground water, vegetation, wildlife, and agricultural land. A number of these protesters contend that the pipeline could be rerouted to avoid or reduce these impacts. These landowners' comments are addressed below.

#### **IV. Discussion**

13. Since the proposed facilities will be used to transport natural gas 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 Natural Gas Act.

##### **A. Certificate Policy Statement**

14. The Commission's Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.<sup>6</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, we balance the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

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<sup>6</sup> *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶61,227 (1999), *order on clarification*, 90 FERC ¶61,128, *order on clarification*, 92 FERC ¶61,094 (2000).

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

### **Subsidization**

16. As explained above, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. CNYOG was granted authorization to charge market-based rates for the Stagecoach Facility and, as discussed below, is authorized to continue charging market-based rates. Under its market-based rate proposal, CNYOG assumes the economic risks associated with the costs of the project's facilities to the extent that any capacity is unsubscribed or revenues are not sufficient to recover costs. Thus, there will be no subsidization and CNYOG's proposal meets the threshold test of the Certificate Policy Statement.

### **Adverse Impacts on Existing Pipelines and Their Customers, Landowners, and Communities**

17. There will be no negative impact on existing customers or their services, as a result of this incremental expansion of the existing storage project. In addition, CNYOG's project is located in a competitive market and will serve new demand in a region where the market is experiencing steady, rapid growth. CNYOG's Expansion Project will enhance storage options available to other pipelines and their customers. Also, no storage company in CNYOG's market area protested the application. Thus, we conclude that that CNYOG's storage proposal will have no adverse impact on existing pipelines or their captive customers.

18. Construction of the Expansion Project will affect approximately 264 acres of land, of which approximately 115 acres would be permanently maintained for operation and maintenance of the facilities. The surface is agricultural, forested, residential and open lands. CNYOG has acquired 79.2 percent of the mineral rights, most of the storage rights for the buffer zone, 65.5 percent of the lands necessary for the development of the wells

and field pipeline, and 41 percent of the necessary rights-of-way for the North Lateral. CNYOG anticipates that it will acquire the remaining necessary rights-of-way through negotiation with landowners, and thus expects to make minimal use of eminent domain procedures.

19. There are four landowners, the Cookes, Strupplers, Wasylns, and Mariniches, who protest the expansion project on the grounds that they will be adversely affected by CNYOG's proposal. The Strupplers are concerned that their commercial property will be devalued as a result of damage to their two wells and septic systems. The Cookes are similarly concerned that construction activities will damage agricultural soils, springs, a pond, water supply, and drainage ditch located on their property, as well as destroy their 150-year old hardwood tree lot, thereby decreasing the value of their property. The Wasylns contend that the proximity of the pipeline to the dwelling on the property will reduce their property's value. Finally, the Mariniches assert that the proximity of the gas pipeline to their house poses personal health and safety concerns adversely affecting property values, and that CNYOG offered an unrealistically low amount for the easement.

20. Before issuing a certificate of public convenience and necessity to a natural gas company, the Commission must find, as required by NGA section 7(c), that the project will benefit the public or be in the public interest. Under NGA section 7(h), the certificate of public convenience and necessity carries with it the right to obtain rights-of-way through the use of eminent domain if they cannot be obtained through private negotiation.

21. Under the Certificate Policy Statement, the Commission will not certificate the construction of a project, with the concomitant right to obtain the necessary rights-of-way through the eminent domain process, unless it first finds that the overall public benefits of the project will outweigh the potential adverse consequences.<sup>7</sup> As we discuss below, we find that the project provides the benefit of additional natural gas storage services that are demonstratively in demand.

22. We are satisfied that CNYOG has designed the proposed project to minimize the impact on landowners. In fact, as noted in the Environmental Assessment for this project and discussed further below, CNYOG has made several minor route revisions to accommodate these protesting landowners' concerns and has stated that it will continue to carefully consider possible future private plans identified by landowners on an individual basis in conjunction with a number of other factors, including design,

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<sup>7</sup> Certificate Policy Statement, 88 FERC at pp. 61,748-50.

engineering, permitting, constructability, other landowners' requests, and sensitive environmental resources. CNYOG states it will continue diligent efforts to reach fair settlements with these landowners. In view of these considerations and the findings in the environmental assessment for this project, as discussed below, we find that any adverse impacts on landowners and communities near the storage field or along the pipeline route will be minimal. In the event the pipeline company and property owners cannot agree on the terms and amount of compensation to be paid for rights-of-way needed to construct authorized pipeline facilities, preventing the execution of easement agreements, section 7(h) of the NGA grants powers of eminent domain to the certificate holder.<sup>8</sup> In an eminent domain proceeding, the court will require the pipeline to compensate the landowner for the economic value of the right-of-way, as well as for any damages incurred during construction. The level of compensation paid in a condemnation proceeding would be determined by the court. The Commission simply has no authority here to determine what constitutes just compensation.

23. CNYOG's proposal will create approximately 13.1 Bcf of new storage capacity. The existing capacity of the Stagecoach Facility is fully subscribed under market-based rates and CNYOG has binding precedent agreements for 8.4 Bcf of the expansion capacity. Further, CNYOG received, during its open season, interest for more than double the proposed expansion capacity. We conclude that the expansion of the Stagecoach Facility is needed to further the development of the interstate natural gas infrastructure. We have identified no adverse effects on existing customers, other pipelines, landowners, or communities. For these reasons, we find, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that the public convenience and necessity requires approval of CNYOG's proposal.

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

24. CNYOG is seeking market-based rate authority for the Stagecoach Facility to provide interruptible wheeling transportation service under the proposed Rate Schedule IWS, as well as additional firm and interruptible natural gas storage service pursuant to its Rate Schedule FSS and ISS. The Commission previously granted CNYOG's request to charge market-based storage rates for firm and interruptible natural gas storage, but expressly required CNYOG to submit a new market power study in case it expanded the capacity of the Stagecoach Facility.<sup>9</sup> CNYOG submitted such a study covering its firm and interruptible storage services as well as its proposed interruptible wheeling service.

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<sup>8</sup> 15 U.S.C. § 717f.

<sup>9</sup> 94 FERC ¶61,194 at 61,707 and 61,710 (2001).

CNYOG states that the proposed interruptible wheeling service will allow gas to flow in either direction as needed to address supply basin disruptions. CNYOG further indicates that the interruptible wheeling service will be helpful to shippers on the Tennessee and the proposed Millennium systems in resolving imbalances on the two pipelines.

25. For interruptible wheeling service performed under Rate Schedule IWS, CNYOG proposes to charge a negotiated commodity charge (or interruptible wheeling rate). In addition, for interruptible wheeling service from the planned Millennium pipeline to CNYOG's Central Compressor Station (i.e. storage), from the planned Millennium pipeline to Tennessee's Stagecoach Lateral, or from Tennessee's Stagecoach Lateral to the planned Millennium pipeline, CNYOG would charge its electric use charge (currently \$0.05 Dth per day) and lost and unaccounted for gas retention charge (currently 0.25%). However, consistent with CNYOG's practice for storage service, the electric use charge and lost and unaccounted for gas retention charge will not be assessed on interruptible wheeling service from CNYOG's Central Compressor Station to the planned Millennium pipeline.

26. CNYOG requests that the Commission waive the various accounting and reporting requirements established in 18 C.F.R. Parts 201 and 260, and waive all other provisions of the Commission's regulations which CNYOG considers inapplicable to its market-based rate proposal. Specifically, because CNYOG is requesting authorization to charge market-based rates, CNYOG requests that section 157.14<sup>10</sup> of the Commission's regulations requiring the applicant to provide information regarding the cost, financing, revenues, expenses, incomes, depreciation and depletion of the facilities (Exhibits K, L, N and O) as part of its application be waived. In addition, CNYOG also requests waiver of the accounting and reporting requirements of Part 201, section 260.2<sup>11</sup> and section 157.6(b)(8)<sup>12</sup>.

27. 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

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<sup>10</sup> 18 C.F.R. §157.14 (2006).

<sup>11</sup> 18 C.F.R. §260.2 (2006).

<sup>12</sup> 18 C.F.R. §157.6(b)(8) (2006).

significantly mitigate market power.<sup>13</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. The Commission previously has approved market-based rates for storage services in the same geographic market area as CNYOG's, finding that the projects would not be able to exercise market power due to small size, ease of new entrants into the market, and the competitors' rates being regulated.<sup>14</sup>

28. In support of its request for continuation and expansion of its market-based rate authority, CNYOG has filed, as Exhibit Z-2 to its application, a market power study based on the criteria set forth in the Alternative Rate Policy Statement.<sup>15</sup> CNYOG'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 south central New York, and Pennsylvania, and includes firm and interruptible market-area storage facilities and interruptible wheeling services. The market power study demonstrates that numerous alternatives to the proposed services exist, given the number and size of existing storage facilities and interruptible wheeling services in the relevant market, and that no barriers to entry in the market exist. The market power study states that "CNYOG's market shares for both working gas and deliverability are well below the 20 percent safe harbor threshold level that the FERC has found indicative of a lack of

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<sup>13</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).

<sup>14</sup> *See Wyckoff Gas Storage Company, L.L.C.*, 105 FERC ¶61,027 (2003); *Central New York Oil & Gas*, 94 FERC ¶61,194 (2001); *Honeoye Storage Corp.*, 91 FERC ¶62,165 (2000); *Market Hub Partners*; 83 FERC ¶61,403 (1998); *Avoca Natural Gas Storage*, 68 FERC ¶61,045 (1994).

<sup>15</sup> CNYOG commissioned Concentric Energy Advisors to prepare a market power study. CNYOG's market power study includes an analysis for market-based rates for expanded storage and interruptible wheeling service.

market power.”<sup>16</sup> CNYOG’s Market Power Study concludes that it will not possess market power over storage or interruptible wheeling services and that CNYOG’s rates “will be rendered just and reasonable by market forces,” under the Commission’s standards.<sup>17</sup>

29. As to the proposed interruptible wheeling service, CNYOG also presents an analysis showing interconnections between seven delivering pipelines and seven receiving pipelines, indicating that shippers can avoid CNYOG through the use of alternative routes (Attachment C to Exhibit Z-2). CNYOG’s market power study identifies 23 alternative storage areas, affiliated with 11 separate entities, in the relevant market area. CNYOG asserts that there will be 84 delivery and receipt points available to shippers among the various competing wheeling service facilities in the market area.

30. 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.

31. CNYOG’s market power analysis shows an HHI calculation of 2,225 for working gas capacity and an HHI calculation of 2,273 for peak day deliverability, which exceeds the 1,800 threshold established by the Commission. However, when reviewing HHI figures, the Commission will consider other factors in determining market share. First, the proposed total market working gas capacity of all the relevant facilities, including CNYOG’s facilities, is 500,620 MMcf. CNYOG’s share will be 26,250 MMcf, or 5.2 percent of the market (Attachment A to Exhibit Z-2). In addition, CNYOG’s 500 MMcf/d of peak deliverability will be 5.3 percent of the total market peak deliverability of 9,358 MMcf/d (Attachment B to Exhibit Z-2). Second, the number of

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<sup>16</sup> Market power study at p. 10, stating that the Commission has traditionally presumed a lack of market power if the market share is 20 percent or less, including when evaluating, among other things, market-based rate applications for electric companies. *See e.g. AEP Power Marketing, Inc. et al.*, 108 FERC ¶61,026 (2004); *Atlantic City Electric, et al.*, 86 FERC ¶61,248 (1999); *Southwestern Public Service Company*, 72 FERC ¶61,208 at 61,966 (1995); *Louisville Gas & Electric Co.*, 62 FERC ¶61,016 at 61,146 (1993); and *Public Service Co. of Indiana, Inc.*, 51 FERC ¶61,367 (1990).

<sup>17</sup> CNYOG’s Application at p. 23, *citing* Alternative Rate Policy Statement.

pipelines to be connected to the facility and the interchange alternatives that exist on and between these pipelines indicate that CNYOG lacks significant market power in the hub market. Third, as indicated earlier, the Market Power Study shows that CNYOG's market share is relatively small. Market shares indicate whether the applicant could hold the price above a competitive level, whereas the HHI indicates whether all providers acting in concert could collude to hold prices at a monopoly level. Upon completion of its proposed expansion, CNYOG will have a market share of only 3.3 percent for both receipt and delivery capacities in the relevant market. CNYOG's small market share would make it difficult for it to hold its price above a competitive level. Moreover, CNYOG is dependent on unaffiliated interstate pipelines to transport gas to and from the Stagecoach Facility.

32. CNYOG correctly notes that most hub services are considered variations on the traditional interruptible storage service. However, interruptible wheeling service is not a storage service.<sup>18</sup> As such, the market power study identifies the wheeling service as a separate product market and therefore performs a separate analysis to determine market power. The analyses include two tests: (1) an analysis which demonstrates the alternatives to the Stagecoach Storage Facility for interruptible wheeling service; and (2) a market share and concentration analysis for the market centers and pipeline interconnects that are competitive alternatives to the wheeling service proposed by CNYOG. CNYOG's market power analysis shows a market share of 3.3 percent and an HHI of 1,650 for receipt capacity and a market share of 3.3 percent and an HHI of 1,659 for delivery capacity. The results of both tests indicate that CNYOG lacks market power with respect to interruptible wheeling service in the relevant market area.

33. The market power study shows the market concentration for both working gas and peak day deliverability to be concentrated in the New York/Pennsylvania storage market, given the HHI levels of 2225 for working gas and 2273 for deliverability. However, while the New York/Pennsylvania storage market is considered concentrated based on HHI analysis, the concentration is the result of a single storage provider, Dominion Transmission Inc. (DTI). Market shares indicate whether the applicant could hold the price above a competitive level, whereas the HHI indicates whether all providers acting in concert could collude to hold prices at a monopoly level. Although the New York/Pennsylvania storage market is concentrated with DTI holding 40 percent of the market share, the Commission has found in similar cases that this market concentration

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<sup>18</sup> See, e.g., *Liberty Gas Storage L.L.C.*, 113 FERC ¶61,247 at 61,976 (2005); *Keystone Gas Storage, L.L.C.* 106 FERC ¶61,122 (2004).

was acceptable because DTI's facilities are regulated and cost-based, thus alleviating the market power potential of relatively small applicants.<sup>19</sup>

34. CNYOG will continue to have a small share of the relevant storage market. Further, prior Commission determinations involving several market-based rate storage projects also located in the New York and Pennsylvania area have received Commission approval to charge market-based rates.<sup>20</sup> In addition, CNYOG will bear any risk associated with the project if any capacity is not subscribed.<sup>21</sup> Finally, we note that CNYOG's proposal for market-based rates is unopposed.

35. In view of the above considerations, we will grant CNYOG's request to charge market-based rates for its expanded storage service and for its new interruptible wheeling services.<sup>22</sup> However, consistent with the February 23, 2001 Order that authorized CNYOG's existing market-based rates, the Commission will again require that CNYOG notify the Commission of future circumstances that may significantly affect its market

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<sup>19</sup> See, e.g. *Honeoye Storage Corp.*, 91 FERC ¶62,165 (2000); *Central New York Oil and Gas Co.*, 94 FERC ¶61,194 (2001); *Seneca Lake Storage, Inc.*, 98 FERC ¶61,163 (2002); *Wyckoff Gas Storage Company, L.L.C.*, 105 FERC ¶61,027 (2003).

<sup>20</sup> *Id.*

<sup>21</sup> CNYOG's Application at p 20. See also *Petal Gas Storage, L.L.C.*, 92 FERC ¶61,220 (2000).

<sup>22</sup> We note that on June 19, 2006, the Commission issued Order No. 678, which modified its market share power analysis to better reflect the competitive alternatives for storage. *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678 71 Fed. Reg. 36,612 (June 27, 2006); FERC Stats. and Regs. ¶31,220 (2006) (Order No. 678), *reh'g pending*. Specifically, Order No. 678 adopted a more expansive definition of the relevant product market for storage. In Order No. 678, the Commission recognized that if an applicant has demonstrated a lack of market power under the traditional definition of product market, it would follow that the applicant would also qualify for market-based rates using the expanded definition of product market adopted in Order No. 678. *Id.* at P 38. As discussed herein, the Commission found in the February 23, 2001 Order authorizing CNYOG's existing facilities, that CNYOG's market-based rate proposal met the criteria established in the Commission's Alternative Rate Policy Statement. Thus, any further inquiry under the modified analysis implemented in Order No. 678 is unnecessary.

power status.<sup>23</sup> Thus, our approval of continued market-based rate authority is subject to re-examination in the event that: (a) CNYOG adds storage capacity beyond the capacity authorized in this order; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to CNYOG; or (d) CNYOG, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to CNYOG. Since these circumstances could affect its market power status, CNYOG shall notify the Commission within 10 days of acquiring knowledge of any such changes. The notification shall include a detailed description of the new facilities and their relationship to CNYOG.<sup>24</sup>

36. CNYOG filed pro forma tariff sheets to its FERC Gas Tariff setting forth the terms and conditions under which it will provide open-access market-based rate storage and interruptible wheeling services. Specifically, the pro forma tariff sheets reflect changes permitting CNYOG to offer additional firm and high-deliverability natural gas storage service to customers in the mid-Atlantic and New England states under its Rate Schedule FSS. The pro forma tariff sheets also include a proposed Rate Schedule IWS and Form of IWS Service Agreement for the proposed interruptible wheeling service. CNYOG proposes to offer market-based rate storage and interruptible wheeling 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. We find CNYOG's proposed tariff sheets comply with the Commission's regulations. The Commission will require CNYOG to file actual tariff sheets consistent with the directives in this order at least 30 days but no more than 60 days prior to the commencement of service.

### C. Waivers

37. In *Richfield Gas Storage System*,<sup>25</sup> the Commission approved market-based rates for storage service and found that where the market is sufficiently competitive to warrant market-based rates, the submission of cost-based data is superfluous. In view of our decision to permit CNYOG to charge market-based rates for its storage services, we will waive compliance with the requirements of sections 157.6(b)(8) and 157.14 to submit

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<sup>23</sup> *Central New York Oil and Gas Company*, 94 FERC 61,194 at 61,707.

<sup>24</sup> *E.g., Copiah County Storage Company*, 99 FERC ¶61,316 (2002); *Egan Hub*, 99 FERC at 61,269 (2002).

<sup>25</sup> 59 FERC ¶61,316 (1992).

Exhibits K (cost of facilities), L (financing), N (revenues, expenses and income), and O (depreciation and depletion).<sup>26</sup>

38. Since we are approving CNYOG's request for market-based rates, we find that there is no ongoing regulatory need to have cost-based financial statements prepared in accordance with the Commission's Uniform System of Accounts. Accordingly, we will grant CNYOG's request to waive Part 201 and section 260.2 of the Commission's regulations (pertaining to accounting and reporting requirements, which presume that cost-of-services rates are charged), but note that such waiver does not extend to the FERC's annual charges.

39. In addition, the Commission grants the requested waiver of the requirement in section 260.2 of the regulations to file an annual report (Form Nos. 2 and 2A), except for the information necessary for the Commission's assessment of annual charges. Therefore, CNYOG is required to file pages 520 and 520a of Form No. 2A, reporting the gas volume information which is the basis for imposing an Annual Charge Adjustment charge.<sup>27</sup> We will require CNYOG to maintain records of cost and revenue data consistent with the Uniform System of Accounts should the Commission require CNYOG to produce these reports in the future.

40. We are granting these waivers because of our approval of CNYOG's market-based rates. However, the waivers are subject to re-examination in the event that CNYOG's market power or market-based rates need to be re-examined as discussed above. In addition, at some future time, we may need to review records and data showing CNYOG's costs. Accordingly, the waivers are conditioned upon CNYOG maintaining accounts and financial information of its Stagecoach Storage Facility consistent with generally accepted accounting principles.

#### **D. Engineering**

41. The Commission's staff analyzed the data submitted in the application and supplemental filings and have determined that expansion of the Stagecoach Facility by

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<sup>26</sup> We note that in *Avoca Natural Gas Storage*, 68 FERC ¶61,045 (1994) and *Steuben Gas Storage Company*, 72 FERC ¶61,102 (1996), we similarly granted market-based rate authority for storage projects and granted waivers of the Exhibits K, N, and O. We grant omission of Exhibit L here because there is no protest and CNYOG will bear the financial risks of the project.

<sup>27</sup> See *Wyckoff Gas Storage Co., L.L.C.*, 105 FERC ¶61,027 at P 65 (2003).

integrating the four remaining pools is technically sound. Volumetric and material balance calculations confirmed the volumes of working gas, cushion gas, and total capacity for each pool. Size, length, number, and proposed locations of the new I/W wells will allow CNYOG sufficient contact within each pool to fill and withdraw each pool's corresponding working gas capacity seasonally. Based on simulation, all piping has been properly sized to meet the pressure limits of the interconnection with Millennium, and the maximum reservoir pressure.

42. CNYOG has proposed a total inventory volume of 31.9 Bcf for the entire Stagecoach Facility. There is no change to the maximum deliverability or injection rate for the field. CNYOG's certificate authorization will be conditioned, consistent with its proposal, to require that the maximum inventory of natural gas stored in the Stagecoach field (including remaining native gas-in-place) shall not exceed 31,900 MMcf (880 MMcf in the Racht Pool; 1,650 MMcf in the Brenchley-Cook Pool; 1,870 MMcf in the Nichols-Mead Pool; 10,770 MMcf in the Lidell Pool; and 16,750 MMcf in the Widell and Barnhart-Owens Pools) at 14.73 psia and 60 degrees Fahrenheit, and the maximum shut-in reservoir pressure shall not exceed 3,250 psia bottomhole. Any change to these operating conditions shall require prior Commission authorization.

#### **E. Environmental Assessment**

43. On March 17, 2006 we issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Stagecoach Phase II Expansion Project and Request for Comments on Environmental Issues and Notice of Site Visit (NOI). We received responses to the NOI from four individuals, one federal agency and one state agency. Our staff addressed all substantive comments in the environmental assessment (EA) which was issued July 28, 2006. The EA addresses geology and soils, water resources, wetlands, vegetation and wildlife, land use, cultural resources, air and noise quality, reliability and safety, and alternatives. The four individuals who commented on the NOI, the Cookes, Waslyns, Strupplers, and Marinichs, are landowners along the proposed North Lateral. As noted above, these landowners protested CNYOG's proposal raising issues concerning impacts on property values and compensation through the eminent domain process, safety, surface and ground water, vegetation, wildlife, and agricultural land. They also contend that the pipeline could be rerouted to avoid or reduce these impacts.

44. The Cookes, Waslyns, and Marinichs identified concerns regarding potential impacts of the proposed North Lateral pipeline on property values. Above, we have addressed the issue of right-of-way compensation to landowners through negotiation or eminent domain. Additionally, the Land Use section of the EA addresses concerns regarding the effect of the project on the value of property that the landowners will

continue to own and concludes that the proposed pipeline is not likely to significantly impact land values in the project area.

45. The Cookes also identified concerns regarding hardwood woodland impacts, agricultural impacts, stormwater runoff impacts, wildlife pond impacts, and water supply well impacts. The Waslyns further expressed concerns regarding the safety of the pipeline in close proximity to their residence. Subsequent to the Cookes' and Waslyns' comments, CNYOG incorporated two separate route variations into its proposed North Lateral pipeline alignment to accommodate these landowners' concerns. The route variation across the Cookes' parcel avoids the landowner's hardwood lands, wildlife pond, and agricultural land. In addition, the water supply well impacts are addressed in the Water Resources and Wetlands section of the EA, and CNYOG has appropriately proposed mitigation to minimize water well impacts on the Cookes' property. CNYOG's proposed erosion control measures, as analyzed in the EA, would adequately minimize stormwater runoff impacts on this parcel as well. CNYOG's route variation in the vicinity of the Waslyns' parcel is now aligned further from their residence and runs along the western property line.

46. The Strupplers expressed concerns regarding impacts of the Horizontal Directional Drill (HDD) on their water wells and septic system. These issues were addressed in the Water Resources and Wetlands section of the EA. After reviewing CNYOG's HDD Report Plan and Geotechnical Investigation Report, the EA concludes that its proposed mitigation measures would sufficiently reduce potential impacts to the Struppler's water wells and septic system. Additionally, CNYOG's proposal does not include any surface disturbance to the Struppler's property.

47. The Marinichs raised further concerns regarding environmental and safety impacts of the proposed North Lateral pipeline. Specifically, the Marinichs expressed concern that CNYOG's proposed right-of-way would clear numerous mature trees and permanently disrupt natural water flow patterns on their parcel, resulting in impacts on their house, well, and septic. The Marinichs' safety concerns include the proximity of the pipeline to their house and health concerns related to pipeline coating. The EA addresses these concerns in the Water Resources and Wetlands section, Vegetation and Wildlife section, and the Safety and Reliability section. CNYOG's proposed erosion control measures and our recommended condition number 14 in the appendix to this order would adequately minimize impacts on the Marinichs' house, well, septic, and forestland.

48. The EA was mailed out to all potentially affected landowners, including the above referenced landowners. A 30-day comment period was allowed for parties to express additional concerns or concerns that they felt may not have been addressed in the EA. None of the landowners that expressed initial concerns in response to the NOI submitted subsequent comments after being given the opportunity to review the EA.

49. We received one comment from Barry Fetterolf, regarding safety concerns and the feasibility of the HDD of the Susquehanna River. As indicated in the EA, the pipeline would be constructed in accordance with the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration regulations which include measures to ensure safety in the design, construction, testing, operation, maintenance, and emergency response of pipeline facilities. The Safety and Reliability section of the EA addresses this concern. The EA found that CNYOG's site-specific HDD crossing plan and its Geotechnical Investigation Report support the feasibility of the Susquehanna River crossing.

50. Based on the information, analysis and conclusions in the EA, we conclude that if constructed in accordance with CNYOG's application and supplements filed February 10, 2006, and the recommended environmental mitigation measures in the appendix to this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment. Thus, we are including the environmental mitigation measures recommended in the EA as environmental conditions to the authorization granted by this order for CNYOG's Expansion Project.

51. 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 interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>28</sup>

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

53. At a hearing held on September 21, 2006, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

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<sup>28</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).

The Commission orders:

(A) In Docket No. CP06-64-000, as amended in CP06-64-001, a certificate of public convenience and necessity is issued to CNYOG authorizing it to construct and operate storage and pipeline facilities, as described more fully in this order and in the application.

(B) The certificate issued in ordering paragraph (A) is conditioned on CNYOG's compliance with all applicable Commission regulations under the Natural Gas Act, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (d), (e), and (f) of section 157.20 of the regulations.

(C) CNYOG's request for Commission authorization to charge market-based rates for its services is approved, consistent with the discussion herein. CNYOG's market power and market-based storage rates authority shall be subject to re-examination in the event that:

1. CNYOG expands its storage capacity beyond the amount authorized in this proceeding;
2. CNYOG acquires additional transportation facilities or additional storage capacity;
3. An affiliate provides storage or transportation services in the same New York/Pennsylvania market area or acquires an interest in another storage field that can link CNYOG's facilities to the market area; or
4. CNYOG or an affiliate acquires an interest in or is acquired by an interstate pipeline.

CNYOG shall notify the Commission within 10 days of acquiring knowledge of any CNYOG expansion or of any entrance or acquisition that would link CNYOG to the market area; notification shall include a detailed description of the new facilities and their relationship to CNYOG.

(D) CNYOG is granted waiver of section 157.14 of the Commission's regulations requiring submission of Exhibits K (cost of facilities), L (financing), N (revenue-expenses-income), and O (depreciation and depletion); and the accounting and reporting requirements under Part 201 and section 260.2 of the Commission's

regulations, which presume cost-based rates are being charged and collected. This waiver is subject to CNYOG maintaining accounts and financial information of its Stagecoach Storage Facility consistent with generally accepted accounting principles.

(E) CNYOG shall file, not less than thirty days nor more than sixty days, prior to its proposed effective date, actual tariff sheets consistent with its pro forma tariff in accordance with the NGA and Part 154 of the Commission's regulations.

(F) The certificate issued in Ordering Paragraph (A) is conditioned upon CNYOG's compliance with the environmental conditions set forth in the appendix to this order.

(G) CNYOG's facilities shall be completed and made available for service within eighteen months of the date of the order in this proceeding as required by section 157.20(b) of the Commission's regulations.

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

(I) The certificate issued is further conditioned upon the following:

1. The maximum inventory of natural gas stored in the Stagecoach Field (including remaining native gas-in-place) shall not exceed 31,900 MMcf (880 MMcf in the Racht Pool, 1,650 MMcf in the Brenchley-Cook Pool, 1,870 MMcf in the Nichols-Mead Pool, 10,770 MMcf in the Lidell Pool, and 16,750 MMcf in the Widell / Barnhart-Owens Pools) at 14.73 psia and 60 degrees Fahrenheit, and the maximum shut-in reservoir pressure shall not exceed 3,250 psia bottomhole. Any change in these operating conditions shall require prior Commission authorization.
2. The Stagecoach Storage Facility shall be operated in such manner as to prevent/minimize gas loss or migration.
3. CNYOG shall submit semiannual reports (to coincide with the termination of the injection and withdrawal cycles) containing the following information (volumes shall be stated at 14.73 psia and 60 degrees Fahrenheit and pressures shall be stated in psia):

- (1) The daily volumes of natural gas injected into and withdrawn from each storage reservoir.
- (2) The volume of natural gas in the reservoirs at the end of the reporting period.
- (3) The maximum daily injection and withdrawal rates experienced during the reporting period. Average working pressure on such maximum days taken at a central measuring point where the total volume injected or withdrawn is measured.
- (4) Results of any tracer program by which the leakage of injected gas may be determined. If leakage of gas exists, the report should show the estimated total volume of gas leakage, the volume of recycled gas, and the estimated remaining inventory of gas in the reservoir at the end of the reporting period.
- (5) Any surveys of pressures in gas wells, and the results of back-pressure tests conducted during the reporting period.
- (6) The latest revised structural and isopach maps showing location of the wells and the location of the gas-water contact. These maps need not be filed if there is no material change from the maps previously filed.
- (7) For the reporting period, a summary of wells drilled, worked over, or recompleted with subsea depth of formation and casing settings. Copies of any new core analyses, back-pressure tests, or well log analyses.
- (8) Discussion of current operating problems and conclusions.
- (9) Such other data or reports which may aid the Commission in the evaluation of the storage project.

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

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary

AppendixEnvironmental Conditions for the  
Stagecoach Storage Facility Expansion Project

1. CNYOG shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Commission Order. CNYOG 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 OEP before using that modification.
  
2. The Director of OEP has delegation 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 Order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
  
3. **Prior to any construction**, CNYOG shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
  
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, CNYOG 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 Commission Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

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

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

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

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

6. **Within 60 days of the acceptance of this certificate and before the start of construction**, CNYOG shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how CNYOG will implement the mitigation measures required by the Commission Order. CNYOG must file revisions to the plan as schedules change. The plan shall identify:
- a. how CNYOG will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - b. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - c. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - d. the training and instructions CNYOG 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 CNYOG's organization having responsibility for compliance;
  - f. the procedures (including use of contract penalties) CNYOG will follow if noncompliance occurs; and
  - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the mitigation training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. CNYOG shall employ at least one EI for the Stagecoach Phase II Expansion Project. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Commission Order and other grants, permits, certificates, or other authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;

- c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
  - d. 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.
8. CNYOG shall file updated status reports prepared by the head 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 EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - c. a description of 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 CNYOG from other federal, state or local permitting agencies concerning instances of noncompliance, and CNYOG's response.
9. CNYOG 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 rehabilitation and restoration of the ROW and other areas of project-related disturbance are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, CNYOG shall file an affirmative statement with the Secretary, certified by a senior company official:

- a. that the facilities have been constructed and installed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the Certificate conditions CNYOG has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. CNYOG shall not begin an open-cut crossing of the Susquehanna River until it files an amended HDD Crossing Plan with the Secretary for review and written approval by the Director of OEP. The amended HDD Crossing Plan should include site-specific drawings identifying all areas that would be disturbed by construction using an alternate crossing method. CNYOG shall provide its amended HDD Crossing Plan to the COE, FWS, NYSDEC, as applicable, and other agencies responsible for issuing permits to implement this plan.
12. CNYOG must file a site-specific construction plan for crossing Wappasening Creek with the Secretary for review and approval of the Director of OEP prior to commencing construction of the crossing.
13. CNYOG must consult with the COE and other appropriate agencies and organizations to finalize its compensatory wetland mitigation plan. The plan should include details regarding the amount, location, and types of mitigation proposed; specific performance standards to measure the success of the mitigation; and remedial measures, as necessary, to ensure that compensatory mitigation is successful. CNYOG shall file the compensatory wetland mitigation plan with the Secretary for review and written approval by the Director of OEP **prior to construction.**
14. CNYOG shall reduce its construction ROW width to 75 feet in all forested areas along the proposed mainline and North Lateral except where side-slope construction techniques are required between milepost 8.4 and milepost 8.7.
15. CNYOG shall defer construction and use of facilities and staging, storage, and temporary work areas and new or to-be-improved access roads **until:**
  - a. CNYOG files the New York SHPO's comments on the Phase I survey report;
  - b. CNYOG files the Pennsylvania SHPO's comments on the additional information for the Stonefield Barn Site;

- c. CNYOG files supplemental survey reports for the denied access areas, any realignments or reroutes, extra work spaces, access roads, contractor yards, and other remaining areas requiring survey, and the SHPO's comments on the reports;
- d. CNYOG files any required treatment plan(s), and the SHPO's comments on any plan(s); and
- e. the Director of OEP reviews and approves all reports and plans and notifies CNYOG in writing that it may proceed with any treatment or construction.

All material filed with the Commission containing **location, character, and ownership information** about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: "**CONTAINS PRIVILEGED INFORMATION--DO NOT RELEASE.**"

16. If a 24-hour HDD is necessary, CNYOG shall file a residential HDD noise analysis and mitigation plan with the Secretary, for review and written approval by the Director of OEP **prior to starting the HDD**, indicating how noise levels will be controlled so they do not exceed an  $L_{dn}$  of 55 dBA at any nearby NSAs, or alternatively, what mitigation would be offered to the residents of those NSAs.
17. CNYOG shall file a noise survey with the Secretary no later than 60 days after placing the authorized unit at the Central Compressor Station in service. If the noise attributable to the operation of the modified compressor station at full load exceeds an  $L_{dn}$  of 55 dBA at any nearby NSA, CNYOG shall install additional noise controls to meet that level **within 1 year of the in-service date**. CNYOG shall confirm compliance with the  $L_{dn}$  of 55 dBA requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.