

157 FERC ¶ 61,114
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Magnum Gas Storage, LLC

Docket No. CP16-18-000

ORDER AMENDING CERTIFICATE

(Issued November 17, 2016)

1. On November 16, 2015, Magnum Gas Storage, LLC (Magnum) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Parts 157 and 284 of the Commission's regulations,² seeking to amend the certificate of public convenience and necessity granted to Magnum on March 17, 2011, in Docket No. CP10-22-000 (March 2011 Order).³ Magnum proposes to relocate the previously authorized locations for its natural gas storage caverns and associated surface facilities, and to add a new firm wheeling transportation service. In addition, Magnum requests an extension of time by which the facilities must be constructed and placed in service.

2. For the reasons discussed below, the Commission grants the requested authorizations, subject to the conditions herein.

I. Background

3. The March 2011 Order granted Magnum authority to construct and operate a solution-mined salt cavern natural gas storage facility and related facilities in Millard, Juab, and Utah Counties, Utah. Specifically, the order approved the development of: four natural gas storage caverns and associated wells;⁴ a 61.6-mile-long, 36-inch-

¹ 15 U.S.C. § 717(f) (2012).

² 18 C.F.R. Pt 157, Subpart A (2016) and 18 C.F.R. § 284.502(a) (2016).

³ *Magnum Gas Storage, LLC*, 134 FERC ¶ 61,197 (2011).

⁴ Each cavern was to have a working gas capacity of approximately 10.5 billion cubic feet (Bcf) and approximately 3.0 Bcf of base gas for a total cavern volume of

(continued...)

diameter natural gas pipeline header;⁵ five water supply wells; gas compression and dehydration facilities; water/brine pumping facilities; three brine evaporation ponds; eight monitoring wells; and various other above and below ground piping, control and communications equipment, and metering (Magnum Gas Storage Project). The March 2011 Order also issued Magnum a blanket certificate under Part 157 of the Commission's regulations and granted Magnum authority under Part 284 of the Commission's regulations to provide firm and interruptible natural gas storage services at market-based rates, including market-based rates for interruptible wheeling service.

4. To date, construction of the approved project facilities has not yet begun. On December 3, 2015, Commission staff extended the time to complete construction and place the authorized facilities in service until March 17, 2017, in recognition of Magnum's amendment application.⁶

II. Amendment Proposal

5. Magnum seeks authority to amend its certificate to change the layout of its approved natural gas storage facilities' site due to construction activities associated with a non-jurisdictional natural gas liquids (NGL) storage facility.⁷ Magnum states that the proposed amendment is required due to an overlap of the project facilities and the NGLs

13.5 Bcf. Together, the four caverns will hold a total of 42 Bcf of working gas and 12 Bcf of base gas.

⁵ The header extends from the storage site to points of interconnection with interstate gas transmission facilities owned by Kern River Gas Transmission Company (Kern River) and Questar Pipeline Company (Questar) at the end of the header near Goshen, Utah.

⁶ *Magnum Gas Storage, LLC*, Docket No. CP10-22-000 (December 3, 2015) (delegated letter order). The letter order noted that should the Commission approve the amendment application, the Commission order would establish a new deadline for completing construction.

⁷ Magnum notified the Commission on March 16, 2012, that it received the required authorizations to construct a non-jurisdictional natural gas liquids (NGLs) storage facility, Sawtooth NGL Storage Caverns, LLC (Sawtooth), within Magnum's approved natural gas storage project boundary. Magnum stated that it planned to construct the non-jurisdictional NGL storage facilities prior to constructing the Magnum Gas Storage Project due to changes in market dynamics that drove a strong demand for new NGLs storage and suppressed demand for natural gas storage.

storage facility boundary and utility easements. Magnum proposes to relocate the four natural gas storage caverns, well pads, and associated pumping facilities to avoid conflicts with the locations of the NGL storage facilities and to meet state and federal spacing requirements between the facilities.⁸ Magnum also proposes to adjust the locations of: a 6,252-foot-long segment of the 36-inch-diameter header pipeline, five water supply wells, gas compression and dehydration facilities, and other project-related facilities within the storage facility boundary.⁹ Additionally, Magnum requests approval to eliminate from the project one brine evaporation pond, as well as the associated five water quality monitoring wells and two aquifer monitoring wells.¹⁰ None of the proposed project facility modifications extend outside of the previously-analyzed project boundary.

6. Second, Magnum proposes to add a new rate schedule to its tariff to allow for firm wheeling transportation service under market-based rates. Magnum asserts that the addition of this rate schedule will enhance commercial opportunities for Magnum, provide flexibility in the market, and support the continued timely development of the overall Magnum Gas Storage Project. Magnum attached to its application a market power study to support its request for market-based rates for the new firm wheeling service.¹¹ Magnum also states that there are no changed circumstances that would impact the Commission's previous grant of market-based rate authority for Magnum's natural gas storage services.

7. Additionally, Magnum seeks an extension of time to construct its facilities and place them into service. As stated above, the Commission granted an extension of time

⁸ Application at 8-9. Magnum states that it proposes to relocate the salt caverns to meet pillar size and spacing requirements relative to the natural gas storage caverns and the adjacent NGL storage caverns.

⁹ Magnum states that it adjusted the locations of segments of a 4-inch-diameter gas supply line, office and warehouse buildings, utilities corridors, a substation, and a site access road within the natural gas storage facility boundary. Magnum also proposes to add a permanent 11-acre maintenance and equipment laydown area at the storage site. Application at 12-15.

¹⁰ The March 2011 Order approved eleven groundwater monitoring wells associated with the brine evaporation ponds. Six of the shallow ground monitoring wells around Ponds 2 and 3 will remain; five of the previously approved wells are being removed as part of the amendment request. Application at 12.

¹¹ Application, Exhibit I.

to construct the Magnum Gas Storage Project until March 17, 2017, due to the pendency of this proceeding, noting that if the Commission approves the proposed amendment it will establish a new timeframe for construction of the authorized facilities.

III. Notice, Interventions, and Protests

8. Notice of the application was published in the Federal Register on November 24, 2015.¹² On December 14, 2015, Kern River Gas Transmission filed a motion to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹³ No protests or adverse comments were filed.

IV. Discussion

9. Because the proposed facilities will be used for the storage of natural gas in interstate commerce subject to the Commission's jurisdiction, the proposal is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹⁴

A. Certificate Policy Statement

10. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction. It provides that a pipeline must financially support a project without relying on subsidization from its existing customers. The Certificate Policy Statement also explains that in deciding whether to authorize the construction of the new pipeline facilities, the Commission balances the public benefits against the potential adverse impacts.

11. The March 2011 Order analyzed Magnum's proposal in light of the Certificate Policy Statement and found it to be in the public convenience and necessity.¹⁵ Specifically, the order found that since Magnum was a new company with no existing customers, there is no subsidization. The order noted that under Magnum's market-based rate proposal, Magnum assumes the economic risks associated with the costs of the project's facilities. Further, the order found that there would be no adverse impacts to existing customers or services or existing pipelines and storage companies or their

¹² 80 Fed. Reg. 75,079 (2015).

¹³ 18 C.F.R. § 385.214(c) (2016).

¹⁴ 15 U.S.C. §§ 717f(c), (e) (2012).

¹⁵ *Magnum Gas Storage, LLC*, 134 FERC ¶ 61,197 at PP 19-24.

captive customers because the natural gas storage facilities would serve new demand for storage services in the region and enhance new storage options available to transportation customers of existing pipelines. With regard to landowners, the order found that because the storage site is located on land subleased by Magnum in a rural, undeveloped area adjacent to a coal-fired generation plant, construction of the storage facilities would have minimal adverse impacts on landowners. Therefore, the order found that the project was consistent with the Certificate Policy Statement, based on the benefits that the project will provide and the lack of adverse effects on other pipeline and storage companies and their captive customers, and landowners and surrounding communities. As discussed below, Magnum's amendment proposal does not change the findings of the March 2011 Order.

12. Magnum is not proposing to construct any new facilities. Rather, Magnum is proposing to relocate previously authorized facilities within the footprint of the project boundary as currently authorized. Magnum's request to amend its certificate to relocate the facilities will enable it to safely and effectively complete construction of the authorized natural gas project while ensuring that the project will not conflict with the non-jurisdictional NGL facilities. The relocated facilities will be within the previously approved project site, as discussed in the environmental section below. Moreover, no pipeline or storage company in Magnum's market area has protested the proposed amendment. Commission staff, after evaluating the information provided in the application and data response,¹⁶ concluded that the proposal is technically feasible.¹⁷ Accordingly, we find that Magnum's amendment proposal will have no adverse impacts on existing customers, other pipelines, landowners, or communities. Thus, consistent with the Certificate Policy Statement and section 7(c) of the NGA, the Commission concludes that approval of Magnum's amendment proposal is required by the public convenience and necessity, subject to the conditions discussed below.

¹⁶ Responses to engineering data requests of Magnum Gas Storage, January 14, 2016.

¹⁷ To ensure sufficient salt pillar thickness and prevent any cavern interactions, Magnum states it re-evaluated its design and has proposed the minor relocations of the caverns to ensure proper distances between caverns and property boundaries. Magnum has not proposed any changes to the cavern designs or certificated cavern parameters, only the location of the caverns within its boundary. Commission staff has determined that the proposed relocation would not result in any changes to the geomechanical design recommendations, the engineering design, cavern solution mining, or operation of the four previously approved storage caverns.

B. Market-Based Rates

13. In its amendment application, Magnum also requests authority to provide a firm wheeling service at market-based rates under its Rate Schedule FWS for up to 250 million cubic feet per day (MMcf/d). In addition, Magnum requests reaffirmation of its authorization to charge market-based rates for the firm and interruptible natural gas storage services and interruptible wheeling service approved in the March 2011 Order.

14. Generally, the Commission evaluates requests to charge market-based rates for storage under the analytical framework of its *Alternative Rate Policy Statement*.¹⁸ Under the *Alternative Rate Policy Statement*, the Commission's framework for evaluating requests for market-based rates has two principal purposes: (1) to determine whether the applicant can withhold or restrict services and, as a result, increase prices by a significant amount for a significant period of time; and (2) to determine whether the applicant can discriminate unduly in price or terms and conditions of service.¹⁹ To find that an applicant cannot withhold or restrict services, significantly increase prices over an extended period, or discriminate unduly, the Commission must find that there is a lack of market power²⁰ because customers have good alternatives,²¹ or that the applicant or Commission can mitigate the market power with specified conditions.

¹⁸ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *petitions for review denied sub nom., Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (*Alternative Rate Policy Statement*). *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220, *order on clarification and reh'g*, Order No. 678-A, 117 FERC ¶ 61,190 (2006).

¹⁹ See *Blue Sky Gas Storage, LLC*, 129 FERC ¶ 61,210 (2009); *Orbit Gas Storage, Inc.*, 126 FERC ¶ 61,095 (2009).

²⁰ The Commission defines "market power" as "the ability of a pipeline to profitably maintain prices above competitive levels for a significant period of time." See *Alternative Rate Policy Statement*, 74 FERC at 61,230.

²¹ A good alternative is an alternative to the proposed project that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative for an applicant's service. *Alternative Rate Policy Statement*, 74 FERC at 61,230.

15. The Commission's analysis of whether an applicant has the ability to exercise market power includes three major steps. First, the Commission reviews whether the applicant has specifically and fully defined the relevant markets²² to determine which specific products or services are identified, and the suppliers of the products and services that provide good alternatives to the applicant's ability to exercise market power.²³ Additionally, as part of the first step, the applicant must identify the relevant geographic market.²⁴ Second, the Commission measures an applicant's market share and market concentration.²⁵ Third, the Commission evaluates other relevant factors such as ease of entering the market.

1. Geographic and Product Markets

16. In Magnum's original certificate application in Docket No. CP10-22-000, Magnum evaluated two separate geographic markets for its proposed firm and interruptible storage service and interruptible wheeling service: the Rockies/Plains Region and the Southwest/Southern California Region. In support of its request to charge market-based rates for firm wheeling service, Magnum relies on a narrower geographic market defined as the region served by the pipelines directly connected to Magnum, including Questar Pipeline Company (Questar) and Kern River Gas Transmission (Kern River) and the pipelines directly interconnected to Questar and Kern River that are located within the Rockies/Plains production area. This reflects the pipeline interconnections, market hubs, and market centers in Utah, Wyoming, and Colorado (Rockies Region). Magnum states that this geographic market is consistent with a recently approved market-based rates storage hub providing wheeling service.²⁶

17. The Commission approves Magnum's proposal to use the Rockies Region as the relevant geographic market for its proposed firm wheeling service. The Commission finds that the narrower geographic market is reasonable for firm wheeling service on the

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

²³ *Alternative Rate Policy Statement*, 74 FERC at 61,231.

²⁴ *Id.* at 61,232-34.

²⁵ *Id.* at 61,234.

²⁶ Prepared Testimony of Tobias Bishop (Bishop Testimony), Exhibit I at 9 (citing *Ryckman Creek Resources, LLC*, 136 FERC ¶ 61,061 (2011)).

header pipeline since the origin and destination markets of the gas transported on Magnum are one and the same, namely the Rockies Region.

18. Magnum states that in its original certificate application in Docket No. CP10-22-000, it defined the product market for interruptible wheeling service as transportation service. Magnum states that the Commission has recognized wheeling services as a separate product distinct from firm and interruptible storage services.²⁷ In the instant application, Magnum proposes to define the product market for firm wheeling service as firm and interruptible transportation service.²⁸ The Commission finds Magnum's proposed product market is reasonable and consistent with its original certificate application and with Commission precedent.²⁹

2. Bingo Card Analysis

19. With respect to the product market for wheeling service, the Commission uses a "bingo card" analysis to assess whether prospective customers of an applicant seeking market-based rate authority could obtain those same services from alternative providers. The Commission has relied upon the bingo card analysis to determine whether shippers can avoid the pipeline interconnections provided by the applicant by utilizing alternative interconnections available between the pipelines that are directly or indirectly connected to the applicant.

20. Magnum states that the bingo card analysis for the project in Appendix 4 of its application represents a summary of the alternate receipt and delivery points available between Questar, Kern River, and Questar Overthrust Pipelines other than the connection to Magnum's facilities. Magnum explains that the bingo card for Magnum is filled-in because the pipelines that are directly and indirectly interconnected to Magnum are also interconnected with each other in other locations within close proximity to Magnum. As a result, shippers could avoid Magnum's pipeline interconnections and instead rely on other available pipeline interconnections in the market to wheel natural gas in the event Magnum raised prices and exercised market power. Specifically, Magnum argues that there are 17 large volume receipt and delivery interconnections between the pipelines that are directly or indirectly interconnected to Magnum that are capable of providing

²⁷ *Id.*

²⁸ *Id.*

²⁹ See *Golden Triangle Storage, Inc.*, 152 FERC ¶ 61,158 (2015) (*Golden Triangle*).

competing firm wheeling service.³⁰ The Commission concludes that the market definition set forth by Magnum properly identifies numerous good alternatives to the service proposed by Magnum as reflected by the completely filled-in bingo card presented by Magnum.

3. Market Concentration, Market Share, and Other Factors

21. The Commission also examines concentration in the relevant market using the Herfindahl-Hirschman Index (HHI). 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 alternatives in the relevant market.³¹ If the HHI is above 1,800, the Commission will give the applicant more scrutiny in order to make a determination about a seller's ability to exercise market power because the market is more concentrated.³² The Commission also considers an applicant's market share and other relevant factors.

22. Magnum states that it will be a small participant in the relevant market.³³ Magnum has 250 MMcf/d of firm transportation capacity between its interconnections with Questar and Kern River. Magnum claims there are 72 receipt and delivery interconnections in the Rockies Region for the pipelines directly and indirectly interconnected to Magnum providing alternative routes for natural gas to be wheeled in lieu of Magnum's pipeline facilities. Magnum asserts that these alternative interconnections provide approximately 47 times the amount of firm wheeling capacity that Magnum would be capable of providing.

23. Magnum's market power analysis generates a market share of 2.1 percent for both receipt and delivery capacity. Appendix 5 shows the HHI for receipt capacity is 2,883 and 3,451 for delivery capacity. Magnum states that while the HHI levels are above 1,800 and indicative of a concentrated market, there are a number of large pipeline providers that have at least 50 percent ownership interest in multiple pipelines in the region. Furthermore, Magnum states that a majority of the other providers of transportation service are interstate pipelines which are obliged to provide their services on an open-access basis at cost-based rates. Consequently, Magnum argues that there is

³⁰ See Appendix 4.

³¹ *Alternative Rate Policy Statement*, 74 FERC at 61,235.

³² *Id.*

³³ Bishop Testimony at 16 (citing Appendix 5).

diminished opportunity for Magnum to work in conjunction with other providers to exert market power for firm wheeling services.³⁴

24. In addition to market share and concentration, Magnum asserts that other factors inhibit its ability to exercise market power in the Rockies Region. First, Magnum states that there are relatively low barriers to entry for other parties to compete with Magnum, allowing other market participants to mitigate any potential exercise of market power by Magnum.³⁵ Magnum claims the small relative capacity and short relative distance of Magnum pipelines as compared to the numerous other large scale pipeline projects in the Rockies Region demonstrates the ease of entry.

25. Second, Magnum states that it is a new entrant to the Rockies Region transportation market with no captive customers. Therefore, Magnum states that it must offer rates that are competitive in order to attract customers and cannot inappropriately rely on captive customers to subsidize new customers. Magnum claims that it is not affiliated with any other pipelines that provide firm transportation service in the Rockies Region or elsewhere.³⁶

26. Finally, Magnum states that there are numerous local distribution companies, producers, and marketers in the region that hold firm capacity on many of the pipelines to which Magnum will directly or indirectly interconnect. Magnum argues that these parties are able to effectuate transactions for third parties between these pipelines without relying on Magnum.³⁷

4. Commission Determination

27. Magnum's bingo card analysis for its proposed firm wheeling service shows that numerous wheeling service alternatives will exist for potential shippers. While the HHIs for total delivery and receipt capacity in the Rockies Region are higher than the 1,800 HHI screen the Commission uses to determine whether the market is concentrated, other factors demonstrate that Magnum will not have the ability to exercise market power. First, as Magnum states in its application, its market share for this service represents only 2.1 percent of the delivery and receipt capacity in the Rockies Region,

³⁴ *Id.* at 17.

³⁵ *Id.* at 19.

³⁶ *Id.* at 20-21.

³⁷ *Id.* at 21.

compared to Kinder Morgan Inc. which represents 46.5 percent market share for receipt capacity and 39.3 percent market share for delivery capacity. Second, Magnum is a new independent storage provider in the relevant geographic market and the other potential providers of transportation services are either primarily interstate pipelines, such as those affiliated with Kinder Morgan Inc., or intrastate pipelines that are subject to cost-based rates. Third, we note that Magnum's request for market-based rate authority is unopposed. For these reasons, the Commission will approve Magnum's request for authority to charge market-based rates for its proposed firm wheeling service.

28. The Commission will also approve Magnum's request for continued authority to charge market-based rates for its storage and hub services. Magnum has not increased its storage capacity or deliverability from its prior certificate application, nor has Magnum, nor any affiliate, acquired an interest in any natural gas storage or pipeline transportation facilities in the relevant geographic market. As required by section 284.504 (b) of the Commission's regulations, Magnum is required to notify the Commission if future changes in circumstances significantly affect its present market power status. Any event which would affect Magnum's ability to withhold or restrict services or increase its ability to discriminate unduly in price or terms of service must be reported to the Commission within 10 days of acquiring knowledge of any such changes. For example, significant changes would include, but are not limited to (1) an expansion of capacity; (2) the acquisition of additional transportation facilities; (3) an affiliate providing transportation services in the same market area; and (4) Magnum or an affiliate acquiring an interest in, or being acquired by, an interstate pipeline. Failure to timely file a change in circumstance report or failure to comply with the reporting requirements would constitute a violation of the Commission's regulations. The Commission also reserves the right to require an updated market power analysis at any time.³⁸

C. Tariff Provisions

29. Magnum proposes *pro forma* tariff records to incorporate its proposed firm wheeling service pursuant to Rate Schedule FWS and the corresponding FWS Service Agreement. Magnum also proposes numerous conforming changes to its existing tariff sections for Rate Schedule FWS service that refer to additional or modified defined terms that describe the services provided by Magnum or reference the individual rate schedules.

30. The Commission finds the language in the *pro forma* tariff records is acceptable and directs Magnum to file actual tariff records, including such language, not less than 30 days and no more than 60 days before service is to commence. Magnum is directed to

³⁸ See *Arlington Storage Co., LLC*, 147 FERC ¶ 61,120, at P 39 (2014). See also *Golden Triangle*, 152 FERC ¶ 61,158 at P 24.

comply with the Commission's electronic filing requirements set forth in Order No. 714³⁹ and Part 154 of the Commission's regulations.⁴⁰

D. Requested Waivers

31. The March 2011 Order waived certain regulations that are ordinarily only applicable to projects charging cost-based rates. In its request for an amendment to its certificate, Magnum requests continuation of these waivers for the new service. Specifically, Magnum requests that the Commission continue to waive (1) section 157.6(b)(8) (certificate applicants to submit cost and revenue data); (2) sections 157.14(a)(13), (14), (16), and (17) and 157.20(c)(3) (cost -based rates exhibits); (3) the accounting and reporting requirements of Part 201 and 260.1, and 260.2 relating to cost-of-service rate structure (Form 2 and 2A); (4) section 260.300 (quarterly financial report); (5) section 284.7(e) (reservation charge); and (6) section 284.10 and section 284.7(e) (straight fixed-variable rate design methodology). Magnum also requests a waiver of the section 157.14(a)(10) requirement to provide a showing of accessible gas supplies, which it states does not apply to Magnum's natural gas storage operations.

32. The cost-related information required by these regulations is not relevant in light of our approval of market-based rates for Magnum's storage and hub services. Thus, consistent with our findings in previous orders,⁴¹ the Commission will grant Magnum's request for waivers with one exception. The Commission will grant the requested waiver of section 260.2 (Form No 2-A) of the regulations except for information necessary for the Commission's assessment of annual charges. Magnum is required to file page 520 of Form 2A, reporting the gas volume information which is the basis for imposing an Annual Charge Adjustment (ACA) charge.⁴² Magnum is required to comply with all of the Commission's regulations applicable to interstate pipelines not specifically waived herein including the transactional reporting requirements in section 284.13(b) of the

³⁹ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

⁴⁰ 18 C.F.R. § 154.4 (2016).

⁴¹ See, e.g., *SG Resources Mississippi, L.L.C.*, 101 FERC ¶ 61,029, at P 26 (2002); *Egan Hub Partners, L.P.*, 95 FERC ¶ 61,395, at 62,473 (2001), *order amending certificate*, 99 FERC ¶ 61,269, at 62,142 (2002). See also *Caledonia Energy Partners, L.L.C.*, 111 FERC ¶ 61,095, at P 20 (2005).

⁴² See *Chestnut Ridge Storage LLC*, 128 FERC ¶ 61,210, at P 45 (2009); *Arlington Storage Co., LLC*, 125 FERC ¶ 61,306, at P 71 (2008).

Commission's regulations, and the semi-annual storage reporting required in section 284.13(e).

33. The waivers granted herein are subject to revision in the event the Commission finds cause to review Magnum's market power or market-based rates. In addition, in the event the Commission finds cause to review records and data regarding Magnum's costs, we require Magnum to maintain records to separately identify the original cost and related depreciation on its facilities, and to maintain accounts and financial information of its facilities consistent with generally accepted accounting principles.

E. Environment

34. On January 14, 2016, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Magnum Gas Storage Amendment Project and Request for Comments on Environments Issues (NOI). The NOI, which identified a 30-day public comment period and instructed interested parties on how to comment on the project, was mailed to federal, state, and local government representatives and agencies; elected officials; Native American tribes; potentially affected landowners and other interested individuals and groups; conservation organizations; local libraries and newspapers; and other parties to this proceeding.

35. We received three comments in response to the NOI, one comment from the Hopi Tribe, stating that the Hopi Cultural Preservation Office supports the identification and avoidance of prehistoric archaeological sites, and appreciates the Commission's consultation efforts regarding the amendment project. We received another comment from the State of Utah, Office of the Governor, stating that it supports the amendment project and that the Utah Departments of Environmental Quality's Division of Water Quality (DWQ) and Natural Resource's Division of Oil, Gas of Mining (DOG M) would be authorizing permits for the construction, development, and operation of the Amendment Project under the authority of the a Class III Solution Mining permit issued by DWQ's Underground Injection Control (UIC) Program, as well as approvals and a special board order issued by DOGM. The State of Utah, School and Institutional Trust Lands Administration (SITLA) also commented that it has been contacted by the State Historic Preservation Office (SHPO) for the Section 106 Consultation under the National Historic Preservation Act for the amendment project, and that the NGL caverns and the Amendment Project are processed under two separate projects.

36. To satisfy the requirements of NEPA, our staff prepared an EA for Magnum's amendment project.⁴³ The analysis in the EA addresses geology, soils, water resources, land use, socioeconomics, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. The U.S. Department of Transportation (DOT), SITLA, State of Utah, and Millard County, Utah, were cooperating agencies in the preparation of this EA. All substantive comments received in response to the NOI were addressed in the EA. The EA was placed in the public record on July 29, 2016.

37. Based on the analysis in the EA, we conclude that if Magnum constructs and operates the amendment project in accordance with Magnum's application and supplements, and in compliance with the environmental conditions in the appendix to this Order and the environmental conditions in the March 17, 2011 Order (CP10-22-000), our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

38. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction and operation of facilities approved by this Commission.⁴⁴

V. Modification of Date

39. The March 2011 Order required Magnum to construct the authorized facility and make it available for service before March 17, 2016. Having granted Magnum's request to revise the location of its previously authorized facilities, we will require that Magnum

⁴³ As part of the review of the original storage project, the Commission issued an environmental assessment (EA) for the Magnum Gas Storage Project, on November 23, 2010, in Docket No. CP10-22-000.

⁴⁴ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

complete construction of all authorized facilities and place them into service within four years of the date of this order.

VII. Conclusion

40. At a meeting held on November 17, 2016, 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, as supplemented, and all comments submitted herein, and upon consideration of the record,

The Commission orders:

(A) The March 2011 Order is amended as described more fully in the application and in the body of this order. In all other respects, the certificate and conditions therein are unchanged.

(B) Magnum's certificate issued in Ordering Paragraph (A) is conditioned on:

- (1) Magnum's proposed project being constructed and placing the facilities into service within four years from the date of this Order.
- (2) Magnum's compliance with all applicable Commission regulations under the NGA, including, but not limited to, the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c)(1) and (2), (e), and (f) of section 157.20 of the regulations.
- (3) Magnum's compliance with the environmental conditions listed in Appendix A of this Order.

(C) Magnum's request to provide firm wheeling transportation service under Rate Schedule FWS at market-based rates is granted subject to the conditions in this order.

(D) Magnum must submit actual tariff records that comply with the requirements contained in the body of this order no less than 30 days and no more than 60 days prior to commencing service.

(E) Magnum's request for reaffirmation of its authority to charge market-based rates for the firm and interruptible natural gas storage services and interruptible wheeling service is approved.

(F) Waiver of certain cost-based regulations is granted as discussed in the body of this order.

(G) Magnum 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 Magnum. Magnum shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(H) All other conditions of the March 17, 2011 Certificate Order remain in effect.

(I) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order pursuant to 18 C.F.R. § 385.713.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A

As recommended in the environmental assessment (EA), this authorization includes the following conditions:

1. Magnum 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 EA, unless modified by the Order. Magnum must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the Amendment Project. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Magnum 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**, Magnum 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.

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

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

Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

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

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

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

6. **Within 60 days of the acceptance of the Certificate and before construction begins**, Magnum shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Magnum must file revisions to their plan as schedules change. The plan shall identify:
 - a. how Magnum will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Magnum 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;
 - c. the number of EIs assigned, and how Magnum will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. Magnum personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Magnum will give to all personnel involved with construction and restoration (initial and refresher training as the Project progresses and personnel change);
 - f. Magnum personnel (if known) and specific portion of Magnum's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Magnum will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or Program Evaluation Review Technique (PERT) chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of on-site personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Magnum shall file updated status reports with the Secretary on a **biweekly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

- a. an update on efforts to obtain the necessary federal authorizations;
 - b. The construction status of the Project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Magnum from other federal, state, or local permitting agencies concerning instances of noncompliance, and Magnum's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Magnum shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. Magnum must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the authorized facilities in service**, Magnum 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 the company has complied with or will comply with. This statement shall also identify any areas affected by

the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

11. **Prior to Construction**, Magnum should file with the Secretary for review and written approval by the Director of the OEP, certification that the conditions from the March 17, 2011 Order (Docket Numbers CP10-22-000) would be incorporated in the design for Magnum's Amendment Project.
12. Magnum cannot begin implementation of any treatment plans/measures (including archaeological data recovery; construction of facilities; and use of any staging, storage, or temporary work areas and new or to-be-improved access roads) **until**:
 - a. Magnum files with the Secretary the remaining treatment plans, and School and Institutional Trust Lands Administration, Bureau of Land Management, and State Historic Preservation Office comments on the plans,
 - b. the Programmatic Agreement for CP10-22-000 is amended to include CP16-18-000 docket, and
 - c. the FERC staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies Magnum in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.

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.”