

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.

Calypso U.S. Pipeline, LLC

Docket Nos. CP01-409-006
CP01-410-005
CP01-411-008
CP01-444-005

ORDER AMENDING CERTIFICATES,
SECTION 3 AUTHORIZATION AND PRESIDENTIAL PERMIT

(Issued January 25, 2007)

1. On May 9, 2006, Calypso U.S. Pipeline, LLC (Calypso) filed an application pursuant to sections 3 and 7 of the Natural Gas Act (NGA) seeking amendment of its authorizations and certain conditions for the construction and operation of natural gas pipeline facilities from the U.S./Bahamas Exclusive Economic Zone (EEZ) boundary to Florida for the transportation of regasified liquefied natural gas (LNG). For the reasons discussed herein, the Commission is (1) denying Calypso's request for modification of the condition that it may not commence construction until its affiliates have received authorizations from the Commonwealth of the Bahamas to construct an LNG terminal and pipeline from that facility to interconnect with Calypso's pipeline at the EEZ; and (2) granting, subject to conditions, Calypso's requests for amendment of its certificate to authorize construction of a tunnel to house a portion of its sub-sea pipeline facilities; (3) authorizing an increase in pipeline diameter from 24 inches to 30 inches; (4) authorizing increased initial rates; and (5) approving other amendments to certain certificate conditions, including an extension of Calypso's construction deadline.¹

¹ The original applications for the subject pipeline facilities and services were filed with the Commission by Calypso Pipeline, L.L.C., which filed for bankruptcy with the U.S. Bankruptcy Court for the Southern District of New York. With the court's approval, Calypso Pipeline, L.L.C sold certain assets, including the applications for the subject facilities, to Tractebel Calypso Pipeline, LLC. Tractebel Calypso Pipeline, LLC subsequently changed its name to Calypso U.S. Pipeline, LLC, which filed the instant application.

I. Background

2. Calypso is a limited liability company organized and existing under the laws of the State of Delaware and has its offices in Houston, Texas. Calypso is wholly owned by SUEZ LNG Ventures NA, LLC, a Delaware limited liability company. SUEZ LNG Ventures, NA, LLC is wholly owned by SUEZ Energy North America, Inc., which is an indirect wholly-owned subsidiary of SUEZ S.A., a French *societe anonyme*.

3. On March 24, 2004, the Commission granted Calypso authorization to construct and operate a new pipeline system consisting of an approximately 36 mile, 24-inch diameter offshore pipeline segment and an approximately 5.8 mile, 24-inch onshore segment.² The offshore pipeline will extend from the boundary of the U.S./Bahamas EEZ off the southeast Florida coastline to shore at Port Everglades, Florida. The onshore pipeline segment will be located in Broward County, Florida, and will connect the offshore pipeline with Florida Gas Transmission Company (FGT). Calypso's pipeline is designed to transport up to 832,000 MMBtu per day.

4. Calypso's pipeline project was designed to interconnect with and receive regasified LNG from a planned non-jurisdictional 53.9-mile, 24-inch offshore pipeline extending from a proposed LNG storage terminal to be constructed in Freeport, Grand Bahama Island. The March 24, 2004 Order approved Calypso's proposed annual levelized cost of service of \$27,450,828 based on Calypso's estimated total capital cost of approximately \$166 million to construct the pipeline and appurtenant facilities.

5. At the time the Commission authorized Calypso's pipeline facilities, the non-jurisdictional pipeline and the LNG facility were to be constructed and operated by an affiliate, Tractebel Bahamas LNG Limited (Tractebel Bahamas). Additionally, Calypso had a precedent agreement to provide firm transportation service for an affiliated gas marketer, Tractebel Calypso LNG Marketing, LLC (Tractebel Marketing).

II. Application For Amended Authorizations

6. Calypso requests the following amendments to its authorizations: (1) elimination of the requirement for authorization from the Commonwealth of the Bahamas prior to beginning construction; (2) authorization to construct a tunnel to house a portion of its sub-sea pipeline; (3) an increase in pipeline diameter from 24 inches to 30 inches;

² *Tractebel Calypso Pipeline, LLC*, 103 FERC ¶ 61,106 (2003) (preliminary determination on non-environmental issues) and 106 FERC ¶ 61,273 (2004) (order issuing certificate under NGA section 7 for pipeline facilities, siting authorization under NGA section 3 for import facilities and Presidential Permit for border crossing facilities).

(4) increased initial rates; and (5) other amendments to applicable certificate conditions, including an extension of construction deadline.

Condition Requiring Bahamian Authorizations

7. The original certificate order conditioned Calypso's authority to construct its pipeline from the EEZ upon receipt of approvals by Calypso's affiliates to construct an LNG regasification facility in Freeport, Grand Bahama Island, The Bahamas and an associated sub-sea pipeline from that facility to the point of interconnection with the Calypso pipeline at the EEZ. Specifically, Ordering paragraph (F) of the March 24, 2004 Order directed:

Prior to commencing construction, Tractebel Calypso shall provide the Commission with evidence that Tractebel Bahamas LNG, Limited or other applicable entity, has received all authorizations necessary to complete the Bahamian portions of this project.

8. In its application for amendment, Calypso states that its affiliates continue to pursue the Bahamian authorization but asks the Commission to consider an alternative to such authorization. Calypso explains that it may seek to interconnect with a new receipt point approximately 10 miles off the coast of Florida to the northeast of Port Everglades to accept deliveries from a deepwater port which an affiliate has proposed to construct and operate.³ Therefore, Calypso seeks modification of the condition on its authority to commence construction so that may begin construction upon an affiliate's receiving either (1) Bahamian authorizations for an LNG terminal in the Bahamas and pipeline facilities extending to the EEZ boundary or (2) MARAD's authorization for offshore LNG facilities under the Deepwater Port Act.

Tunnel Modification

9. Calypso states that as the result of discussions with the Army Corps of Engineers, the Florida Department of Environmental Protection (Florida DEP), Broward County Environmental Protection Department, the U.S. Navy and Port Everglades, it is seeking authority from the Commission to use a tunnel alternative to the nearshore horizontal directional drilling (HDD) previously approved. The tunnel alternative would consist of a 10-foot internal diameter tunnel extending 3.20 miles from Port Everglades to a point on the sea floor where the water depth is approximately 126 feet.

³ On March 2, 2006, SUEZ Calypso filed an application with the U. S. Maritimes Administration (MARAD) for authorization to construct a deepwater LNG port 10 miles northeast of Port Everglades, Florida.

10. Calypso explains that the tunnel would require that an onshore shaft pit that is 20 feet by 50 feet and 210 feet deep be constructed within Port Everglades. An offshore transition shaft pit would be located further east of the approved HDD exit pit location, which will no longer be needed. The transition shaft pit will not be larger than the previously approved HDD exit pit. The tunneling machine would be abandoned below the seabed at the seaward end of the tunnel.

11. In addition, Calypso notes that the tunnel alternative results in a change to the point of the pipeline's landfall in Florida but that the end points of the pipeline at the EEZ and interconnection with FGT's system are unchanged. Calypso states that the route modification eliminates landfall within, and any impact to, the John U. Lloyd Beach State Park.

Pipeline Diameter Expansion

12. Calypso seeks amended certificate authority to expand the diameter of its pipeline from 24 inches to 30 inches. Calypso states that the change in pipeline diameter is not intended to change the certificated capacity of 832,000 MMBtu/day. Calypso explains that while the maximum allowable operating pressure will remain at 2,220 psig for the 30-inch line, Calypso expects that the pipeline will operate at approximately 1,530 psig (at the EEZ) based upon a regasification pressure of approximately 1,750 psig at the LNG terminal in the Bahamas.

13. In addition to the request to increase pipeline diameter, Calypso proposes to include internal pipe coating for all jurisdictional piping.

Revision of Initial Section 7 Rates

14. Calypso requests approval of revised initial section 7 rates for its transportation services. Calypso requests to increase its previously approved initial rates due to increased cost of service as the result increasing pipeline diameter, tunneling construction and pipeline coating.

Requested Changes to Conditions

15. Calypso requests a number of modifications to the Environmental Conditions listed in Appendix A to the March 24, 2004 Order granting Calypso's existing certificate authority.

16. First, Calypso seeks elimination of Environmental Condition No. 22 requiring that the nearshore portion of its pipeline, which was to be installed using HDD, be installed before commencing construction of any of Calypso's other authorized facilities.

Calypso requests elimination of this requirement because nearshore construction will no longer be completed using HDD if its tunneling proposal is approved.

17. Similarly, Calypso requests elimination of Environmental Condition No. 27 that it must coordinate with the Florida DEP regarding John U. Lloyd Beach State Park because the Park will no longer be impacted if Calypso's instant proposal is approved.

18. Calypso requests a finding that it has satisfied Environmental Condition No. 14 requiring identification and surveys of any wells or wellfields along its pipeline route. Calypso states that the information required by the condition was submitted in the revision to Resource Report 2 completed for this filing. Calypso requests that the Public and Private Water Supply Well Survey submitted in Resource Report 2 be deemed to satisfy compliance with Condition No. 14.

19. In addition, Calypso requests modification of the requirement in Environmental Condition No. 35 that Calypso comply with the terms of its Memorandum of Agreement with the U.S. Navy to recognize that modified agreement has been reached.

20. Finally, Calypso requests extension of the deadline set forth in the March 24, 2004 Order, Ordering Paragraph (E)(1), for completing construction and placing its facilities in service. Specifically, Calypso seeks to extend this deadline from March 24, 2007, until June 30, 2010.

21. These requested modifications are further described and addressed below.

III. Notice And Interventions

22. Public notice of Calypso's application was published in the *Federal Register* on May 16, 2006 (71 *Fed. Reg.* 29,928) with comments, protests, and interventions due on or before June 6, 2006. The City of Fort Lauderdale, Coastal Terminals LLC, and TPSI Terminals LLC filed late motions to intervene. 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, the Commission will grant these late-filed motions to intervene.⁴ None of these parties protest or comment in opposition to Calypso's proposal. However, several governmental agencies have submitted comments and recommendations, as discussed below in the section of this order addressing environmental matters.

⁴ 18 C.F.R. § 385.214(d) (2006).

IV. Discussion

23. Because Calypso seeks amendment of its certificate authorization for the construction of operation of facilities to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, Calypso's application is subject to the requirements of section 7 of the NGA. Further, because Calypso will use its facilities to receive imported gas at the U.S./Bahamas EEZ boundary, Calypso also requires authorization pursuant to section 3 of the NGA for the siting and construction of its facilities at the EEZ boundary as well as a Presidential Permit for such border crossing facilities.

Certificate Policy Statement

24. The Commission's September 15, 1999 Certificate Policy Statement provides guidance as to how it will evaluate proposals for certificating new construction.⁵ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, and the avoidance of the unnecessary exercise of eminent domain or other disruptions of the environment.

25. 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 existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any other adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified, after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered. The Commission applied

⁵*Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

the Certificate Policy Statement in the May 21, 2003 Order that reached a preliminary determination, pending completion of environmental review, supporting issuance of the section 7 certificate currently held by Calypso.⁶ In this order, the Commission will apply the Certificate Policy Statement's balancing test in considering Calypso's application for amendment of its certificate authorization to using tunneling rather than horizontal drilling, increase pipeline diameter from 24 inches to 30 inches, include internal pipe coating for all jurisdictional piping, and increase Calypso's approved initial section 7 rates to reflect the increased construction costs that will result from the changes to its construction activities and facilities.

26. Calypso is a new company proposing a new pipeline project; therefore, there is no potential for this project to be financially subsidized by existing customers or for existing customers to be otherwise adversely impacted. Moreover, there is no potential for adverse impacts on other pipelines in the market or on those pipelines' captive customers, because the Calypso project is designed to bring gas supplies from a new source outside the United States to meet an anticipated new market demand, not replace any existing service. Further, no existing pipelines or gas shippers object to the proposal.

27. Calypso notes in its application that there are no new landowners directly or indirectly impacted by the alignment change in conjunction with its proposed change in construction methodology. Calypso also notes that at the request of Commission staff, an open house was held to discuss the proposed modifications to the pipeline, and all land owners were notified through a direct mailing in addition to advertisement in a local newspaper.

28. In the May 21, 2003 Order making a preliminary determination supporting approval of Calypso's project as currently authorized, the Commission stated:

[Calypso's] project will provide a public benefit because it will introduce substantial new volumes of natural gas into Florida and help satisfy the growing demand for natural gas in that State. The new pipeline will also provide a competitive transportation alternative, diversify the sources of supply to the State, and increase electric reliability by securing baseload supplies of fuel for both new and existing power generation. [Calypso's] proposed pipeline is a new project that will serve new market demand and provide public benefits without subsidies and without adverse impact on

⁶ *Tractebel Calypso Pipeline, LLC*, 103 FERC ¶ 61,106 (2003).

existing pipelines and customers. Construction of the proposed facilities would also help diversify the sources of supply to the State, and increase competitive alternatives to the existing pipeline infrastructure. We expect that both gas and electric customers will benefit from the availability of additional supplies of competitively priced gas.⁷

29. The above conclusions also apply to Calypso's project, as modified to use tunneling rather than horizontal drilling, increase pipeline diameter from 24 inches to 30 inches, include internal pipe coating for all jurisdictional piping, and increase Calypso's approved initial section 7 rates. Therefore, the Commission finds that Calypso's project will have substantial public benefits that continue to outweigh any remaining adverse effects on landowners or communities. Consequently, the Calypso project, as amended, is required by the public convenience and necessity.

Revised Initial Section 7 Rates

30. As discussed above, Calypso's application proposes changes in its construction methodologies which will result in increased costs. Therefore, Calypso requests approval of increased initial section 7 rates.⁸

31. Calypso states that approval of its proposed increase in pipeline diameter (from 24 to 30 inches) will not change its approved reservation rate design determinants (303,680,000 Dth) because it expects to operate at a decreased pressure. However, because of increased construction costs, Calypso requests approval to increase its annual levelized cost of service from the \$27,450,828 approved in the March 24, 2004 Order to \$41,648,678, which will increase its maximum cost-based Rate Schedule FTS daily reservation rate from \$.0904 per Dth to \$.1371 per Dth.

⁷ 103 FERC ¶ 61,106 at P 25.

⁸ Following issuance of the Commission's March 24, 2004 order granting Calypso's existing authorizations for its project and approving its initial section 7 rates, 106 FERC ¶ 61,273 (2004), Calypso made the compliance filing required by that order. On February 14, 2005, the Commission issued an order, 110 FERC ¶ 61,157 (2005), which approved, subject to certain modifications, Calypso's pro forma tariff, including pro forma tariff sheets reflecting the terms of a settlement between Calypso and FGT on issues related to their onshore interconnection. The Commission's February 14, 2005 order on compliance directed Calypso to file its actual tariff at least 30 days but not more than 60 days prior to the commencement of service.

32. Consistent with the calculation of Calypso's previously approved initial rates, Calypso's proposed revised initial rates are calculated by levelizing the increased cost of service by adjusting the annual depreciation expense over a 20-year period and using a capital structure consisting of 70 percent debt and 30 percent equity and a 14 percent return on equity and an 8 percent cost of debt, with a resulting overall rate of return of 9.80 percent.

33. Calypso has not identified any variable costs and therefore proposes the same \$0.0000 per Dth FTS usage rate approved in the March 24, 2004 Order. Calypso proposes a \$0.1371 per Dth usage rate for the Rate Schedule ITS interruptible transportation calculated as a 100 percent load factor derivative of the proposed Rate Schedule FTS rates. As in its original application, Calypso does not request negotiated rate authority.

34. The Commission has reviewed Calypso's increased cost of service and finds that it is reasonable given the increased pipeline diameter, tunneling construction and pipeline coating. Further, Calypso has calculated its revised initial rates consistent with the methodologies approved by the Commission's May 1, 2003 preliminary determination order. Therefore, the Commission will approve Calypso's revised initial rates.

North American Energy Standards Board (NAESB)

35. Calypso's instant application includes a Second Revised Pro Forma Sheet No. 177 which incorporates Version 1.6 of the NAESB standards into its tariff. NAESB Version 1.7 is currently effective. When Calypso files its actual tariff sheets, it should incorporate into its tariff the version of the NAESB standards which is effective at that time.⁹

Commonwealth of Bahamas Authorization

36. Calypso has requested that the Commission remove its requirement that prior to commencing construction, Calypso provide the Commission with evidence that it has received all authorizations and approvals from the Commonwealth of The Bahamas necessary to complete the Bahamian portions of the project. Calypso notes that it might

⁹ The Commission notes that, in the proceeding on Calypso's original application, numerous rate and tariff directives were set forth in the May 1, 2003 preliminary determination order, the March 24, 2004 order granting Calypso's existing certificate authority and the February 14, 2005 order addressing Calypso's compliance filing. Calypso must comply with those directives as well as the directives contained in the instant order when it files its actual tariff sheets.

add a new receipt point approximately 10 miles off the coast of Florida to accept deliveries from a deepwater port which its affiliate has proposed to construct and operate. Calypso requests that it be permitted to commence construction upon the earlier of either receipt of Bahamian authority, or Deepwater Port Act authority.

37. The Commission is unable to grant this request. While Calypso's affiliate, SUEZ Calypso, filed an application on March 2, 2006 with MARAD for authorization to construct a deepwater LNG port approximately 10 miles off the coast of Florida to the northeast of Port Everglades, Calypso has not yet filed an application for authorization to construct pipeline facilities to interconnect with this deepwater LNG port. Further, while Calypso states that it contemplates the deepwater port interconnection as a second interconnection, it also states that it may seek authorization to construct pipeline facilities to access a deepwater port interconnection in lieu of an interconnection at the EEZ, if its affiliates are unsuccessful in obtaining the necessary authorizations for the Bahamian LNG terminal and pipeline.

38. If it turns out that Calypso needs both interconnections or just a deepwater port interconnection, Calypso will have to file an application seeking approval of additional pipeline route and facilities and further rate review. Further, if both interconnections are to be built, tariff changes presumably will be required to provide for segmentation, flexible point rights and within the path allocation priority provisions, issues that did not come into play when the Commission reviewed Calypso's application proposing only one receipt point, i.e., the interconnection at the EEZ.

39. In view of these considerations, the Commission is denying Calypso's request for authorization to commence construction upon the earlier of either receipt of Bahamian authority, or Deepwater Port Act authority.

Request for Extension of Time to Complete Construction

40. In light of the modifications to the Calypso project approved by this order, including the construction of a tunnel to house a portion of the pipeline and an increase in pipeline diameter, the Commission will grant Calypso's request for an extension of time, from March 24, 2007, until June 30, 2010, to complete construction and place its facilities in service.

Amendment of Presidential Permit and NGA Section 3 Authorization

41. On June 22, 2006, the Commission sent copies of Calypso's May 9, 2006 application to modify its project and a draft Presidential Permit to the Secretaries of State and Defense for their recommendations. The Secretaries of State and Defense responded favorably by letters dated November 22, 2006, and December 21, 2006, respectively, on granting Calypso's request for modification of its border crossing facilities. The letter

from the Department of Defense noted that its favorable recommendation is subject to the approval and validation of any associated Army Corps of Engineers permits. The Secretary of Defense's concern is addressed by Environmental Condition 6 of this order which requires that Calypso obtain necessary Army Corps of Engineers permits prior to commencing construction.

42. In view of the favorable recommendations of the Secretaries of State and Defense, and this order's approval of Calypso's request for amended certificate authority to increase the diameter of its pipeline from 24 inches to 30 inches, the Commission will also amend Calypso's Presidential Permit, as set forth in Appendix B to this order, and its authorization pursuant to section 3 of the NGA to authorize Calypso to increase to 30 inches the diameter of that portion of its pipeline located in the United States immediately adjacent to the EEZ boundary between the Exclusive Economic Zones of the United States and the Commonwealth of the Bahamas.

Environmental Assessment and Conditions

43. On June 9, 2006, in response to Calypso's filing its application for authorization to modify its authorized facilities and construction methods, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Modifications to the Calypso Pipeline Project and Request for Comments on Environmental Issues (NOI). The notice was sent to landowners, individuals, organizations, and government entities that had expressed an interest in the project as originally and received a copy of the Commission's Final Environmental Impact Statement (FEIS). No new landowners are affected by the proposed modifications. The notice was also sent to all identified potential right-of-way grantors. In addition, Commission staff provided an advanced interagency draft document that was forwarded to the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) and the Minerals Management Service (MMS).

44. In response to the NOI, the Commission received comments from four agencies: the South Florida Regional Planning Council (South Florida Planning Council), the Florida Department of Transportation (Florida DOT), the Port Everglades Department of Broward County (the Port) and NOAA Fisheries. These agencies' comments were generally in favor of Calypso's proposal to modify its project to construct a tunnel in the area instead of using HDD in order to reduce impacts to the nearshore environment.

45. However, the South Florida Planning Council recommends analyzing and minimizing to the greatest extent feasible, the impacts to natural systems. This Council also recommends determining the extent of sensitive wildlife, marine life, and vegetative communities in the vicinity of the project and suggests protection and/ or mitigation of disturbed habitat. Comments from the Florida DOT and the Port express siting concerns that these agencies had previously raised in response to the draft EIS for the project as

originally proposed. NOAA Fisheries submitted comments concerning tunnel construction methods, marine impact and mitigation, and water quality.

46. The Commission's staff prepared an environmental assessment (EA) for Calypso's proposal addressing geology, soils, water resources, vegetation, wildlife, fisheries, sensitive species, land use, cultural resources, air quality and noise, socioeconomics, reliability and safety, and alternatives. The comments received on the NOI in the instant proceeding and the advanced interagency draft documents have been incorporated, as appropriate, into the EA.

47. The South Florida Planning Council's concerns regarding impacts to natural systems were addressed in the FEIS prepared in the proceeding on Calypso's original application and in the EA for the instant application to modify the project. More specifically, the Council concerns have been taken into account in the sections of the FEIS and the EA addressing Soils and Sediment, Water Resources, Fishery Resources, Benthic Communities, and Wildlife, Vegetation and Wetlands, and Threatened and Endangered Species.

48. NOAA Fisheries participated as a cooperating agency in the drafting of the EA in this proceeding. Its recommendations have been fully integrated throughout the appropriate sections of the EA.

49. The Commission believes that the particular siting concerns raised by the Florida DOT and the Port were adequately addressed in the FEIS prepared in the original proceeding on this project, so that further discussion in this proceeding's EA is not needed. In particular, Environmental Condition Nos. 26 and 29 recommended by the FEIS were set forth as conditions in Appendix B to the March 24, 2004 Order granting Calypso a certificate to require that Calypso (1) continue to coordinate and consult with the Florida DOT and the Port, respectively, until all their concerns have been addressed to their satisfaction, and (2) file the written results of such coordination with the Commission prior to commencing construction.

50. As discussed above, Calypso requests elimination of Environmental Condition No. 22 in Appendix B to the March 24, 2004 Order granting Calypso's original certificate authority. That condition requires that Calypso "successfully complete installation of the (nearshore) pipeline segment between MP 33.8 and MP 37.1 before commencing construction on any other jurisdictional facilities." Calypso maintains that this condition will no longer be necessary if the Commission approves Calypso's proposal to construct a tunnel obviating the need for HDD for nearshore construction.

51. Given the environmental sensitivity of the nearshore marine resources that will still be crossed by Calypso's project, the Commission continues to believe that Calypso should demonstrate the viability of its nearshore routing and tunnel construction prior to

initiating construction of any other portion of the modified project. However, completion of the tunnel will be a sufficient demonstration of the viability of Calypso's proposal, and the Commission therefore sees no need to require that Calypso also install pipe through the completed tunnel prior to commencing any other construction activities. Therefore, Environmental Condition No. 22 of the March 24, 2004 Order is replaced by Environmental Condition No. 3 in Appendix A to this order, which requires that Calypso successfully complete the construction of the concrete segment lined tunnel between MP 33.6 and MP 36.8 before commencing construction of any other jurisdictional facilities.

52. Environmental Condition No. 21 in Appendix B to the March 24, 2004 Order requires that Calypso provide a post-construction monitoring plan, including an as-built baseline survey, to document the actual impacts of pipeline installation between MP 16.0 and 33.8. However, as described in Section 3.4.1 of the EA, recently conducted preconstruction surveys have documented the occurrence of hardbottom habitat and deepwater corals at greater depths than covered by the March 24, 2004 Order's Environmental Condition No. 21.

53. Therefore, Environmental Condition No. 21 in the March 24, 2004 Order replace by Environmental Condition No. 6 in Appendix A to this order which requires Calypso to develop a post-construction monitoring plan that would provide a qualitative assessment of impacts to significant deepwater resources that could not be avoided by construction of this segment of the pipeline. The plan shall include proposed survey methodologies including the types of equipment to be used, the expected resolution of survey data, and the dimensions of the survey corridor; provisions for an as-built baseline survey for the pipeline between MP 0.0 and MP 33.6; an assessment of impacts to significant deepwater resources at year two following construction. The post-construction monitoring plan shall be developed in consultation with the Commission, MMS, NOAA Fisheries, U. S. Army Corps of Engineers and Florida DEP and filed with the Secretary for review and written approval by the Director of the Office of Energy Projects (OEP) at least 45 days prior to initiating pipeline installation between MP 0.0 and 33.6.

54. The Commission is granting Calypso's request for elimination of the March 24, 2004 Order's Environmental Condition No. 27 requiring that it coordinate with the Florida DEP regarding John U. Lloyd Beach State Park. This order's approval of Calypso's proposal for a tunnel will avoid any impacts on the Park.

55. In addition, the Commission finds, as requested by Calypso, that Environmental Condition No. 14 of the March 24, 2004 Order requiring identification and surveys of any wells or wellfields along its pipeline route is satisfied by Calypso's submission of the Public and Private Water Supply Well Survey in the revised Resource Report 2.

56. Calypso states that it and the U.S. Navy have modified their Memorandum of Agreement (MOA). Therefore, Environmental Condition No. 1 in Appendix A to this order requires that, prior to commencing construction, Calypso file a copy of the final amended MOA between Calypso and the Naval Surface Warfare Center.

57. Except as provided above, Calypso remains subject to the environmental conditions in Appendix B to the March 24, 2004 Order granting Calypso's original certificate. Further, based on the findings of the EA on Calypso's current proposal to modify its project, Appendix A of this order includes several additional conditions, as follows.

58. Prior to construction, Calypso will be required to identify the specific location, size, and configuration of the concrete segment fabrication plant, and file with the Secretary for review and written approval by the Director of OEP, all pertinent information on the proposed site including sensitive resources present, agency consultation, survey results, potential impacts, and appropriate mitigation, as necessary.

59. Calypso will also be required to file a detailed tunnel contingency plan for review and written approval by the Director of OEP. The tunnel contingency plan must establish the specific measures that would be implemented to address and minimize any potential inadvertent impacts associated with tunnel construction activities.

60. In addition, Calypso will be required to file updated Hydrostatic Testing Procedures developed in consultation with NOAA Fisheries and permitting agencies.

61. Finally, Calypso will not be allowed to commence construction until the Commission has completed any necessary consultations with the U.S. Fish and Wildlife Service and/or NOAA Fisheries-Protected Resources Division, and Calypso has received a determination from the Florida DEP that the modified project is consistent with its Coastal Zone Management Program.

62. Based on the discussion in the EA, the Commission concludes that approval of this proposal would not constitute a major Federal action significantly affecting the quality of the human environment if the project is constructed in accordance with Calypso's application and supplements, the conditions in Appendix B to the March 24, 2004 Order, except as modified herein, and the additional environmental conditions recommended in this proceeding's EA and set forth in Appendix A to this order.

63. 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 or operation of facilities

approved by this Commission.¹⁰ Calypso U.S. Pipeline, LLC (Calypso) 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 Calypso. Calypso shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

The Commission orders:

(A) Calypso's certificate of public convenience and necessity granted pursuant to Part 157 of the regulations on March 24, 2004, in Docket Nos. CP01-409-000, -001 and -002 for the construction and operation of facilities to transport natural gas in interstate commerce is amended as discussed and approved herein.

(B) The amended certificate authority granted in Ordering Paragraph (A) is conditioned on Calypso's acceptance of such authority in accordance with the provisions of section 157.20(a) of the regulations, 18 C.F.R. § 157.20(a) (2006).

(C) Calypso is granted an amended Presidential Permit, set forth in Appendix B to this order, and amended construction authorization pursuant to section 3 of the NGA to authorize and increase, from 24 inches to 30 inches, the diameter of that portion of Calypso's pipeline located in the United States immediately adjacent to the boundary between the Exclusive Economic Zones of the United States and the Commonwealth of the Bahamas. Calypso's Presidential Permit is further amended to reflect the favorable recommendations of the Secretary of State and the Secretary of Defense on granting Calypso's request for modification of its border crossing facilities.

(D) Calypso shall sign and return the Testimony of Acceptance of all the provisions, conditions, and requirements of the Amended Presidential Permit in Appendix B to the Secretary of the Commission within thirty days of the issuance of this order.

(E) Calypso is granted an extension of time until June 30, 2010 to complete construction of and place in service its authorized facilities.

(F) Not more than 60 days and not less than 30 days prior to commencing service, Calypso shall file actual tariff sheets revising its initial section 7 rates and incorporating the version of NAESB standards effective at that time.

¹⁰See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Nat'l Fuel Gas Supply v. Public Service Comm'n*, 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).

(G) Calypso shall comply with environmental conditions in Appendix A to this order. Except as provided discussed herein, Calypso continues to also be subject to the environmental conditions set forth in Appendix B to the March 24, 2004 Order granting Calypso's original certificate authority.

(H) Prior to commencing construction, Calypso shall provide the Commission with evidence that it has received all authorizations and approvals from the Commonwealth of The Bahamas necessary to complete the Bahamian portions of this project.

(M) Except as set forth herein, Calypso's authorizations granted by the Commission's March 24, 2004 granting authorizations in Docket No. CP01-409-000, *et al.* remain subject to the terms and conditions set forth in that order and in the Commission's February 14, 2005 Order on compliance in Docket No. CP01-409-005, *et al.*

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX A

Calypso U.S. Pipeline, LLC Docket No. CP01-409-006, *et al.*

Environmental Conditions

Approval of the May 9, 2006 application by Calypso U.S. Pipeline, LLC (Calypso) in Docket No. CP01-409-006 *et al.* is subject to the following conditions:

1. Prior to construction, Calypso U.S. Pipeline, LLC (Calypso) shall file a copy of the final amended Memorandum of Agreement between Calypso and the Naval Surface Warfare Center, Carderock Division with the Secretary of the Commission (Secretary). (Section 1.4)
2. Prior to construction, Calypso shall identify the specific location, size, and configuration of the concrete segment fabrication plant, and file with the Secretary for review and written approval by the Director of the Office of Energy Projects (OEP), all pertinent information on the proposed site including sensitive resources present, agency consultation, survey results, potential impacts, and appropriate mitigation, as necessary. (Section 2.2.1)
3. Calypso shall successfully complete the construction of the concrete segment lined tunnel between MP 33.6 and MP 36.8 before commencing construction of any other jurisdictional facilities. (Section 2.3) This condition replaces Environmental Condition No. 22 of the March 24, 2004 Order.
4. Prior to construction, Calypso shall file a detailed tunnel contingency plan with the Secretary for review and written approval by the Director of OEP. The tunnel contingency plan shall establish the specific measures that would be implemented to address and minimize any potential inadvertent impacts associated with tunnel construction activities. (Section 3.1)
5. Prior to construction, Calypso shall file with the Secretary for review and written approval by the Director of OEP, updated Hydrostatic Testing Procedures developed in consultation with the National Oceanic and Atmospheric Administration-National Marine Fisheries Service (NOAA Fisheries) and the permitting agencies. These updated procedures shall address and incorporate agency recommendations on the use of potentially toxic hydrostatic test water additives. (Section 3.3.4)
6. Prior to beginning construction, Calypso must obtain all permits required by the U. S. Army Corps of Engineers (COE).

7. Calypso shall develop a post-construction monitoring plan that would provide a qualitative assessment of impacts to significant deepwater resources that could not be avoided by construction of this segment of the pipeline. The plan shall include:

- a) proposed survey methodologies including the types of equipment to be used, the expected resolution of survey data, and the dimensions of the survey corridor;
- b) provisions for an as-built baseline survey for the pipeline between MP 0.0 and MP 33.6;
- c) an assessment of impacts to significant deepwater resources at year two following construction.

The post-construction monitoring plan shall be developed in consultation with the FERC, Minerals Management Service, NOAA Fisheries, COE, and Florida Department of Environmental Protection (DEP) and filed with the Secretary for review and written approval by the Director of OEP at least 45 days prior to initiating pipeline installation between MP 0.0 and 33.6. (Section 3.4.1) This condition replaces Environmental Condition No. 21 in the March 24, 2004 Order.

8. Calypso shall not begin construction of the Project pipeline until:

- a) the FERC completes any necessary consultations with the U.S. Fish and Wildlife Service and/or NOAA Fisheries-Protected Resources Division pursuant to Section 7 of the Endangered Species Act; and
- b) Calypso receives written notification from the Director of OEP that construction and/or implementation of any required conservation measures may begin. (Section 3.6)

9. Calypso shall not begin construction until it receives a determination from the Florida DEP that the modified Project is consistent with its Coastal Zone Management Program and Calypso has filed a copy of the coastal zone consistency determination with the Secretary. (Section 3.7.3)

10. Environmental Condition No. 27 in Appendix B to the March 24, 2004 Order requiring that Calypso coordinate with the Florida DEP regarding John U. Lloyd Beach State Park is eliminated.

11. Environmental Condition No. 14 in Appendix B to the March 24, 2004 Order requiring that Calypso identify and survey of any wells or wellfields along its pipeline

route has been satisfied by Calypso's compliance with the condition through its submission of the Public and Private Water Supply Well Survey in revised Resource Report 2.

12. Except as provided herein, Calypso remains subject to the environmental conditions in Appendix B to the March 24, 2004 Order.

APPENDIX B

**AMENDED PRESIDENTIAL PERMIT
AUTHORIZING CALYPSO U.S. PIPELINE, LLC
TO CONSTRUCT, OPERATE AND MAINTAIN
NATURAL GAS FACILITIES AT THE BOUNDARY BETWEEN
THE EXCLUSIVE ECONOMIC ZONES OF THE UNITED STATES AND THE
COMMONWEALTH OF THE BAHAMAS**

**FEDERAL ENERGY REGULATORY COMMISSION
DOCKET NOS. CP01-409-006, CP01-410-005, CP01-411-008,
AND CP01-444-005**

(Issued _____, 2007)

In Docket Nos. CP01-409-006, CP01-410-005, CP01-411-008, and CP01-444-005, Calypso U.S. Pipeline, LLC (previously Tractebel Calypso Pipeline, LLC) (Permittee), a limited liability company organized and existing under the laws of the State of Delaware, requested, pursuant to Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 00-004.00, a Presidential Permit authorizing Permittee to construct, operate, install, and maintain certain pipeline and related facilities described in Article 2 below in waters off the southeast coast of Florida at the boundary between the Exclusive Economic Zones of the United States and the Commonwealth of the Bahamas.

By letter dated November 22, 2006, the Secretary of State, and by letter dated December 21, 2006, the Secretary of Defense, favorably recommended that the amended Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of a Permit is appropriate and consistent with the public interest.

Pursuant to the provisions of Executive Order Nos. 10485 and 12038, dated September 3, 1953, and February 3, 1978, respectively, the Secretary of Energy's Delegation Order No. 00-004.00A, effective May 16, 2006, and the Commission's Regulations, permission is granted to Permittee to construct, operate, install, and maintain the natural gas transmission facilities described in Article 2 below, upon the terms and conditions of the Permit.

Article 1. It is expressly agreed by the Permittee that the facilities herein described shall be subject to all provisions and requirements of this Permit. This Permit may be modified or revoked by the President of the United States or the Federal Energy

Regulatory Commission and may be amended by the Federal Energy Regulatory Commission upon proper application therefor.

Article 2. The following facilities are subject to this Permit: that portion of the 30-inch pipeline which is located in the United States immediately adjacent to the boundary between the Exclusive Economic Zones of the United States and the Commonwealth of the Bahamas.

Article 3. The natural gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for importation or exportation of natural gas in the manner authorized under Section 3 of the Natural Gas Act.

Article 4. The operation and maintenance of the aforesaid facilities shall be subject to the inspection and approval of representatives of the United States. The Permittee shall allow officers and employees of the United States, showing proper credentials, free and unrestricted access to the land occupied by the facilities in the performance of their official duties.

Article 5. If in the future it should appear to the Secretary of the Army that any facilities or operations permitted hereunder cause unreasonable obstruction to the free navigation of any of the navigable waters of the United States, the Permittee may be required, upon notice from the Secretary of the Army, to remove or alter the same so as to render navigation through such waters free and unobstructed.

Article 6. The Permittee shall be liable for all damages occasioned to the property of others by the operation or maintenance of the facilities, and in no event shall the United States be liable therefor. The Permittee shall do everything reasonable within its power to prevent or suppress fires on or near land occupied under this Permit.

Article 7. The Permittee agrees to file with the Commission, under oath and in such detail as the Commission may require, such statements or reports with respect to the natural gas imported or exported, or the facilities described herein, as the Commission may, from time to time, request. Such information may be made available to any Federal, State, or local agency requesting such information.

Article 8. Neither this Permit nor the facilities, nor any part thereof, covered by this Permit shall be voluntarily transferred in any manner, but the Permit shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of the facilities by operation of law (including transfer to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for a permanent Permit and decision thereon, provided notice is promptly given in writing to the Commission

accompanied by a statement that the facilities authorized by this Permit remain substantially the same as before the involuntary transfer. The Permittee shall maintain the facilities in a condition of repair for the efficient transportation of natural gas and shall make all necessary renewals and replacements.

Article 9. At such time that this Permit is surrendered, revoked, or otherwise terminated, the Commission shall determine which of the authorized facilities shall be removed and which shall remain in place. The Commission will specify the time within which any authorized facilities shall be removed, and the Permittee shall remove those facilities within such time and at the Permittee's expense. Upon failure of the Permittee to comply with the Commission's direction to remove any authorized facilities, the Commission may direct that possession of the same be taken and the facilities be removed at the Permittee's expense, and the Permittee shall have no claim for damages by reason of such possession or removal.

Article 10. The Permittee agrees that when, in the opinion of the President of the United States, evidenced by a written order addressed to it as holder of this Permit, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any of the facilities, or parts thereof, maintained or operated under this Permit, and all contracts covering the transportation or sale of natural gas by means of said facilities, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the Permittee; and in the event that the United States shall exercise such right it shall pay the Permittee just and fair compensation for the use of said facilities upon the basis of a reasonable profit in time of peace, and the cost of restoring said facilities to as good condition as existed at the time of taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the Permittee.

Article 11. This Permit is subject to any action which the Government of the United States may in the future deem expedient or necessary to take in case any part of the aforesaid facilities comes into the control of any foreign government.

Article 12. The Government of the United States shall be entitled to the same or similar privileges as may by law, regulation, agreement, or otherwise, be granted by the Permittee to any foreign government.

By direction of the Commission.

Secretary.

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittee this day of _____ has caused its named to be signed by _____, pursuant to a resolution of its Board of Directors duly adopted on the __ day of _____, _____, a certified copy of the record of which is attached hereto.

Calypso U.S. Pipeline, LLC

By _____

(Attest)

Executed in triplicate