

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Liberty Gas Storage LLC

Docket Nos. CP05-92-000  
CP05-93-000  
CP05-94-000

ORDER ISSUING CERTIFICATES

(Issued December 8, 2005)

1. On March 25, 2005, Liberty Gas Storage LLC (Liberty) filed an application under section 7(c) of the Natural Gas Act (NGA) requesting: (1) a certificate of public convenience and necessity under Part 157, Subpart A of the Commission's regulations authorizing the construction and operation of a salt dome natural gas storage facility and associated pipeline facilities (Liberty Gas Storage Project) in Calcasieu and Beauregard Parishes, Louisiana; (2) a blanket certificate under Part 157, Subpart F, authorizing Liberty to construct, acquire, operate, and abandon eligible facilities (self-implementing routine activities); and (3) a blanket certificate under Part 284, Subpart G authorizing Liberty to provide open-access firm and interruptible natural gas storage and interruptible hub services in interstate commerce with pre-granted abandonment for such services.
2. In addition, Liberty requests authority to charge market-based rates for the proposed storage and hub services, and waiver of certain filing requirements applicable to storage providers proposing cost-based rates. Liberty also requests waiver of the Commission's "shipper must have title" policy, and approval of its proposed *pro forma* gas tariff.
3. The Commission finds that Liberty's proposed project will serve the public interest by providing high-deliverability storage service, which is in demand in the Gulf Coast area, without significant landowner or environmental impacts. The proposed storage service will further the development of the natural gas infrastructure necessary to meet the storage needs of gas-fired electric generation plants and to store regasified liquefied natural gas (LNG) from LNG terminals currently in service, approved, or proposed for the Gulf Coast region. Accordingly, as discussed below, the Commission finds that Liberty's proposals are required by the public convenience and necessity, and issues Liberty its requested certificate authorizations, subject to conditions. The Commission also grants Liberty authorization to charge market-based rates for its storage and hub services.

## **I. Background and Proposal**

4. Liberty is a limited liability company organized and existing under the laws of Delaware. Liberty is jointly owned by SEI Storage Corp., a wholly owned subsidiary of Sempra Energy International (SEI), and ProLiance Transportation and Storage-Liberty, LLC (PT&S) (75 percent/25 percent joint ownership, respectively).<sup>1</sup> SEI is a wholly owned subsidiary of Sempra Global, which is a wholly owned subsidiary of Sempra Energy. PT&S is the asset development and ownership affiliate of ProLiance Energy, LLC (ProLiance), a natural gas marketing company.<sup>2</sup> Liberty is a new company that has no existing jurisdictional or non-jurisdictional operations in the natural gas pipeline or storage industry. Upon receipt of its requested certificate authorizations, Liberty will become a natural gas company within the meaning of section 2(6) of the NGA.

### **A. New Facilities**

5. Liberty proposes to construct and operate a high-deliverability natural gas storage facility located in Calcasieu Parish, Louisiana by utilizing two caverns in the Sulphur Mines salt dome near Sulphur, Louisiana. In July 2001, Liberty's parent affiliate, Sempra Pipelines and Storage, acquired the leasehold rights to the caverns and other property rights associated with the project from Williams Midstream Natural Gas Liquids, Inc. (Williams). Liberty states that the two caverns were formed as a result of over twenty years of commercial brine production and were engineered and maintained in a manner compatible with eventual conversion to natural gas storage. Liberty explains that the existing salt caverns will be converted from brine production service to gas storage service by drilling a new well into each of the existing caverns and reworking each of the existing brine wells. The brine that remains in the salt caverns will be displaced with natural gas during the early operation of the facility, and the displaced

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<sup>1</sup> Prior to May 16, 2005, when PT&S acquired a 25 percent ownership interest in Liberty, Liberty was wholly owned by SEI Storage Corp. This change in ownership necessitated Liberty's August 2, 2005 filing supplementing its certificate application with documents describing the terms of the transaction and the relationship between Liberty and PT&S.

<sup>2</sup> Following the open season for its proposed project, Liberty entered into a binding precedent agreement with ProLiance for approximately 35 percent of the project's working gas capacity before PT&S acquired its ownership interest in Liberty. ProLiance remains the anchor shipper for the proposed project. In its August 2, 2005 supplemental filing, Liberty filed a letter agreement to supplement the terms of the original precedent agreement.

brine will then be pumped via an existing brine pipeline to the existing commercial brine operation located close to the Liberty storage caverns. Liberty states that because the project as proposed is in an area that is already developed and used for brine recovery, oil production and ethylene storage, construction and operation of the proposed above-ground and pipeline facilities will have minimal impact on the natural environment.

6. Liberty states that after conversion of the caverns for natural gas storage is complete, the storage facility will provide nearly 5.8 billion cubic feet (Bcf) of base gas and 17.6 Bcf of working gas storage capacity from the two fully developed salt caverns. One cavern will have a working gas capacity of 6.1 Bcf, while the other cavern will have working gas capacity of 11.5 Bcf. Liberty asserts that upon completion, the storage facility will be capable of delivering natural gas at the rate of approximately 1.0 Bcf per day, and receiving injection gas at a rate of approximately 500 million cubic feet (MMcf) per day.

7. In order to move gas to and from the project's storage caverns, Liberty proposes to construct 23.3 miles of a 30-inch diameter, bi-directional pipeline header that will interconnect with up to seven natural gas pipelines in the area.<sup>3</sup> Approximately 14.3 miles of the pipeline will be located in Calcasieu Parish and the remaining 9.0 miles will be located in Beauregard Parish, Louisiana.

8. Liberty also proposes to construct bi-directional metering and regulation sites (M&R stations) at each pipeline interconnect. Liberty will also construct two compressor stations. An on-site compressor station will consist of three, natural gas fueled, engine-driven compressor units providing a total of 14,205 horsepower (HP),<sup>4</sup> as well as dehydration, filtration, and other appurtenant facilities. A remote compressor station, located along the pipeline header route at approximately milepost 19.7, will consist of dehydration and filtration facilities and approximately 9,470 HP of natural gas fueled,

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<sup>3</sup> Liberty plans to deliver and receive gas to and from interconnections with the following pipelines: Cameron Interstate Pipeline, LLC (Cameron Pipeline), Florida Gas Transmission Company (FGT), Tennessee Gas Pipeline Company (Tennessee), Texas Eastern Transmission Company (Texas Eastern), Transcontinental Gas Pipe Line Corporation (Transco), Trunkline Gas Company, LLC (Trunkline) and Port Arthur Pipeline, L.P. (Port Arthur Pipeline).

<sup>4</sup> As originally proposed in Liberty's application, the on-site compressor station would have provided 17,650 of HP, but in an August 2, 2005 supplemental filing, Liberty modified the design by replacing an 8,180 HP engine with a 4,735 HP engine to match the HP of the other two units.

engine-driven compression provided by two compressor units, and appurtenant facilities. Additionally, a 1.2 mile long, non-jurisdictional electric distribution line to provide electric power to the remote compressor station will be constructed, owned, and operated by Entergy Corporation.

9. Liberty maintains that the proposed facility will employ the newest technologies and will be engineered and constructed to meet or exceed all applicable regulatory requirements utilizing the most modern industry standards available. Liberty further provides that it will install, inspect, test, operate, replace and maintain the proposed facilities in accordance with all applicable safety standards and plans for maintenance and inspection in accordance with the Natural Gas Pipeline Safety Act of 1968, as amended, (49 U.S.C. § 60101 *et seq.*), and the Department of Transportation's safety standards as set forth in 49 C.F.R Part 192 (2004).

#### **B. Market and New Services**

10. Liberty states that the Energy Information Administration's "Annual Energy Outlook 2005" projects that total U.S. demand for natural gas will grow an average of 1.5 percent per year through 2025 (2.8 percent per year in the east south central region of the U.S., where the proposed project is located), primarily due to the growth in demand for gas-fired electric generation. Liberty further states that the National Petroleum Council has projected that 550 Bcf of additional gas storage working capacity will be needed over the 2005-2025 period, including 80 Bcf of additional, high-deliverability salt-cavern storage capacity, to meet the growth in gas-fired electric generation, which has large hourly, daily, and monthly gas supply variations. Moreover, Liberty asserts that additional storage capacity is also needed to meet projected growth in LNG imports, particularly into the Gulf Coast region. Liberty states that due to expansions at existing LNG terminals and new terminals projected to be constructed, net LNG imports are projected to be 2.2 Tcf in 2010 and 4.8 Tcf in 2025. Liberty explains that because LNG arrives in batches year round, and because of the seasonal nature of demand, additional storage facilities for regasified LNG will be needed to accommodate timing differences between off-load and delivery to market.

11. Liberty held an initial open season from August through October 2004 to gauge the level of market interest in the proposed project. The bids from electric power generators, local distribution companies, industrial end users, and natural gas marketers exceeded the project's proposed 17.6 Bcf of storage capacity. However, as of the time Liberty filed its application, Liberty had entered into a binding precedent agreement with only one of the open season participants for approximately 6 Bcf of firm storage capacity over an 11-year primary term, representing approximately 35 percent of the project's working gas capacity. Liberty states that this shipper, identified in its August 2, 2005

supplemental filing as ProLiance, has requested an in-service date of June 2006. Liberty asserts that it is also in the process of negotiating additional precedent agreements with other interested customers.

12. In its *pro forma* tariff, Liberty proposes to provide Part 284 firm and interruptible storage services and interruptible hub services on an open-access basis. Liberty states that it will offer two forms of firm storage service under proposed Rate Schedules FSS and SFS. Liberty submits that Rate Schedules FSS and SFS will enable customers to contract separately for firm inventory, injection, and withdrawal rights, each of which can be tailored in terms of timing and quantity to match the customer's needs. Liberty proposes to provide interruptible storage service under Rate Schedule ISS. Additionally, Liberty proposes to offer a variety of interruptible hub services, including park and loan, imbalance trading, balancing, title transfer, and wheeling services.

### C. Market-Based Rates

13. Liberty requests authority to charge market-based rates for its proposed storage and hub services. To support its market-based rate proposal under the Commission's 1996 Alternative Rate Policy Statement,<sup>5</sup> Liberty has included in its application a market power study based on the criteria set forth in the policy statement. Liberty maintains that the market study took a narrow, conservative approach, by defining the relevant geographic market to include only Alabama, Mississippi, Louisiana and East and South Texas (the "Gulf Coast Production Area") and to exclude the rest of Texas and Oklahoma, and by including only the storage facilities that are available to the relevant market, and not other services provided by non-storage facilities or other alternative services that effectively compete with the proposed storage and hub services. Liberty states that the market power analysis demonstrates that good alternatives to the proposed services exist, given the number and size of existing storage facilities and hubs in the relevant market, and that no barriers to entry in the market exist. Liberty's market power study concludes that it will not possess market power over storage and hub services to sustain significant price increases and that, therefore, the grant of market-based rate authority is justified.

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<sup>5</sup>*Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076, *reh'g 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).

#### **D. Waivers**

14. Liberty requests waivers of certain filing and other requirements that it considers inapplicable to its proposal for storage and hub services with market-based rates. Because it proposes to charge market-based rates, Liberty requests waiver of the following Commission regulations relating to cost-based rate proposals: (1) section 157.6(b)(8) (submission by certificate applicants of cost and revenue data); (2) sections 157.14(a)(13), (14), (16), and (17) and 157.20(c)(3) (submission of cost-based-related exhibits); (3) Part 201 (accounting and reporting requirements of Uniform System of Accounts), and sections 260.1 and 260.2 (filing of annual reports in FERC Form Nos. 2 and 2-A); and (4) section 284.10 and section 284.7(e) (use of straight fixed-variable rate design methodology). Liberty also requests a waiver of the section 157.14(a)(10) requirement to provide a showing of accessible gas supplies, and the section 284.7(d) requirement pertaining to segmentation, both of which Liberty states do not apply to its proposal to provide natural gas storage operations.

15. In addition, Liberty seeks a waiver of the Commission's "shipper must have title" policy for any off-system capacity that Liberty may obtain in the future in order to provide storage or hub services. In support of this request, Liberty proposes tariff language stipulating that any service Liberty provides by utilizing a third-party pipeline system will be pursuant to Liberty's open-access tariff, subject to the rate authority approved by the Commission for Liberty. Liberty also requests approval of its proposed *pro forma* gas tariff.

#### **II. Notice And Interventions**

16. Public notice of Liberty's application was published in the *Federal Register* on April 11, 2005, 70 *Fed. Reg.* 18,385. Motions to intervene were due by April 25, 2005. Cheniere LNG, Inc., Starks Gas Storage L.L.C., Tennessee Gas Pipeline Company, and Trunkline Gas Company, LLC filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>6</sup>

17. On June 6, 2005, Thomas Lee Spears, a landowner, filed a motion to intervene out of time and separate comments expressing concerns regarding the noise levels and air quality resulting from the remote compressor station, and requesting that Liberty

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<sup>6</sup>18 C.F.R. § 385.214(a)(3)(2005).

purchase his home. Mr. Spears has demonstrated an interest in this proceeding and his intervention will neither delay, disrupt, nor otherwise prejudice this proceeding. Thus, we will grant Mr. Spears' motion to intervene.

18. On September 23, 2005, well after the April 25, 2005 deadline for intervention, Yellow Rock, LLC (Yellow Rock), an oil and gas producer, and its operator, Vonco of Mississippi, Inc. (Vonco), filed a joint motion to intervene out of time, protest, and request for technical conference. Yellow Rock owns leasehold rights in and around the Sulphur Mines Field to conduct oil and gas exploration and production operations in coexistence with Liberty's proposed gas storage field. Yellow Rock and Vonco allege that: (1) Liberty has proposed a "buffer zone" around its on-site compressor station that limits the surface areas that could be used for Yellow Rock's and Vonco's oil and gas drilling operations; (2) Liberty's proposed northern route for its header system connecting the storage wells to the on-site compressor station will interfere with their planned oil and gas operations; and (3) the structural integrity of one of the storage caverns (Cavern 15) may be unsound. Yellow Rock and Vonco state that they did not intervene earlier because they believed that Liberty would honor their rights to conduct oil and gas operations and would agree to test the integrity of Cavern 15 and, therefore, they expected their negotiations with Liberty over the last year to have resulted in an agreement resolving these issues. On October 3, 2005, Liberty filed an answer to Yellow Rock's and Vonco's protest. On October 13, 2005, Yellow Rock and Vonco filed a response to Liberty's answer.

19. Yellow Rock and Vonco should have intervened in a timely manner to have protected their interests. However, the Commission will nevertheless grant Yellow Rock and Vonco's late motion to intervene and consider their protest, as they have demonstrated an interest in the proceeding and the issues they have raised regarding the impact of the project on their leasehold property rights and the safety and structural integrity of one of the storage caverns are significant issues. We have considered Yellow Rock's and Vonco's request for technical conference and have determined that the record is sufficiently complete to address their concerns.

20. Additionally, on November 3, 2005, Mr. Ron LeLeux, the mayor of the City of Sulphur, Louisiana, filed a letter with the Commission expressing both support for the proposed storage project, and concern that structural integrity of Cavern 15 be properly tested prior to being placed into service to assure the safety and suitability of the cavern for high pressure natural gas storage.

### **III. Discussion**

21. Since the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction, acquisition, and operation of the facilities are subject to the requirements of subsections (c) and (e) of Section 7 of the NGA.

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

22. The Commission's September 15, 1999 Certificate Policy Statement provides guidance as to how it will evaluate proposals for certificating new construction.<sup>7</sup> The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, and the avoidance of the unnecessary exercise of eminent domain or other disruptions of the environment.

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

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<sup>7</sup>*Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order clarifying statement of policy*, 90 FERC ¶ 61,128, *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

24. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Liberty is a new entrant in the natural gas storage market and has no existing customers. Therefore, there will be no subsidization. Moreover, under its market-based rate proposal, Liberty assumes the economic risks associated with the costs of the project's facilities to the extent that any capacity is unsubscribed. Thus, the Commission finds that Liberty has satisfied the threshold requirement of the Certificate Policy Statement.

25. The proposed Liberty Storage Project will have no adverse impact on existing customers or services since Liberty has no current customers or services. The Commission is also satisfied that there will be no negative impact on existing storage providers or their captive customers. As discussed below, the proposed project will be located in a competitive market and will serve new demand in a region that is experiencing rapid growth in natural gas use. The proposal also will enhance storage options available to pipelines and their customers, and thus, will increase competitive alternatives. Additionally, no storage company in Liberty's market area has protested Liberty's application.

26. Further, the proposed project should have minimal impact on landowners and communities since Liberty will be utilizing two existing, previously developed salt caverns in an already disturbed area that has long been developed and used for brine recovery, oil production and ethylene storage. Also, Liberty already owns the leasehold property and cavern storage rights associated with the proposed storage caverns. However, as noted *supra*, Liberty shares its rights in the Sulphur Mines Field with Yellow Rock and Vonco, who have raised the issue, which we address below, whether Liberty's purported use of the acreage designated for its on-site compressor station and its header system will interfere with or preempt Yellow Rock and Vonco's use of their surface rights in the Sulphur Mines Field for oil and gas drilling operations. As discussed in more detail below, we find that the extent to which Yellow Rock and Vonco will be adversely affected by the project, if at all, is speculative. In addition, the proposed 23.3-mile pipeline connecting the storage facilities to the interconnecting pipelines also should have minimal effect on landowners and communities since it has been routed to follow existing pipeline rights-of-way to the extent practicable. However, Liberty must obtain some private property rights, and as of the date of its application, had already negotiated over 30 percent of the private rights-of-way necessary for the 30-inch pipeline. Liberty has also committed that any use of eminent domain to acquire easement rights will occur only when necessary and after the failure of good-faith negotiations.

27. As background, Liberty and Yellow Rock hold their interests in the Sulphur Mines Field through a common owner, Burlington Resources Oil & Gas Company, LP (Burlington). In 1991, Burlington's predecessor granted a 99-year lease for the mining of

brine and salt cavern storage to Williams Midstream Natural Gas Liquids, Inc. (Williams) covering between 2,500 and 3,000 acres in the Sulphur Mines Field. On July 18, 2001, Williams subleased its rights to Liberty's parent, Sempra. The 1991 lease expressly reserved oil and gas rights on the subject land to the lessor, Burlington.<sup>8</sup> Therefore, in May 2003, pursuant to an oil and gas lease and a surface lease, Burlington granted to Yellow Rock oil and gas exploration, production, and ownership rights for approximately 4,000 acres in and around the Sulphur Mines Field, with attendant surface rights to conduct oil and gas exploration and production operations. Yellow Rock currently operates 39 active oil wells and injection wells in and around the Sulphur Mines Field and plans to conduct additional oil and gas drilling and production operations within the same acreage as sites selected by Liberty. As a result of the 1991 lease, Liberty and Yellow Rock each own "correlative rights" under Louisiana law, which require that each party not unreasonably interfere with the other party's operations and that they accommodate each other's pursuit of their respective goals.<sup>9</sup>

28. Yellow Rock and Vonco contend that the public convenience and necessity requires that Liberty's proposed above-ground, on-site compressor station and pipeline header system connecting the wells to the on-site compressor station be located so as to accommodate Yellow Rock and Vonco's correlative oil and gas and surface rights in the Sulphur Mines Field, so that both Yellow Rock and Liberty can engage in their respective operations in harmony, without unreasonable interference. Yellow Rock and Vonco maintain that because much of the surface in the Sulphur Mines Field is covered by water, viable operational oil and gas sites are extremely limited, making access to the project acreage that Liberty has designated for its above-ground facilities and piping critical to Yellow Rock's ability to conduct oil and gas operations. Yellow Rock and Vonco state that negotiations with Liberty over the past year to reach an agreement to harmonize the siting of Liberty's on-site compressor station and header system for natural gas storage operations, and Yellow Rock's existing and planned oil and gas drilling and production operations, have failed. Below, we consider separately Yellow Rock's and

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<sup>8</sup> Section 2.8 of the 1991 lease agreement between Burlington (as successor Lessor) and Williams provides that "each party [*i.e.*, oil and gas lessee and storage cavern lessee] agrees not to unreasonably interfere with, or authorize or permit unreasonable interference with the other party's unrestricted exercise of rights." *See* Yellow Rock and Vonco Motion to Intervene Out-of-Time, Protest, and Request for Technical Conference at 6.

<sup>9</sup> Yellow Rock and Vonco Motion to Intervene Out-of-Time, Protest, and Request for Technical Conference at 6-7 and n.3.

Vonco's objections, first, to the location of Liberty's on-site compressor station, and second, to the placement of Liberty's header system connecting the storage wells to the on-site compressor station.

### **On-Site Compressor Station**

29. In its application, Liberty proposes to situate its on-site compressor station on 11 acres of a 40-acre forested tract of land that it subleases from Williams.<sup>10</sup> According to Liberty, the proposed construction and operation boundary, or footprint, of the on-site compressor station is limited to the 11 contiguous acres.<sup>11</sup> However, as part of the negotiations between Liberty and Yellow Rock, Liberty transmitted a settlement proposal to Yellow Rock on September 19, 2005 which reportedly proposed a 1,000-foot safety buffer zone around the compressor station site.

30. Yellow Rock and Vonco argue that the imposition of such a 1,000-foot safety buffer zone would effectively condemn a significant portion of Yellow Rock's correlative oil and gas rights in the Sulphur Mines Field. Therefore, Yellow Rock and Vonco assert that Liberty's proposed 11-acre location for its on-site compressor station is acceptable provided that there is no buffer zone attached to the compressor station site and that the remaining 29 acres of the originally designated 40-acre tract are available for oil and gas operations. Yellow Rock and Vonco argue that if a safety buffer zone must be imposed around the compressor station, the Commission must consider an alternative site for the location of the compression station. They suggest a particular 14-acre site south of the oil and gas activity of the salt dome is appropriate.

31. In its answer, Liberty explains that it proposed the 1000-foot buffer zone as a "placeholder" to ensure the safe and prudent co-use of the property, and that this was necessary because Yellow Rock had not provided Liberty with any specifics of its planned drilling proposals. However, Liberty argues that the Commission need not address the issue of whether a buffer zone around the on-site compressor station is appropriate because, states Liberty, it has not asked the Commission to approve a buffer zone. Liberty maintains that this is simply an issue under negotiation between the parties. Moreover, Liberty urges that Yellow Rock's concern about the buffer zone should not

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<sup>10</sup> Liberty's March 25, 2005 certificate application, Resource Report 1, Section 1.2.2.1.

<sup>11</sup> Liberty's October 13, 2005 Answer at 5 and at Appendix A (Affidavit of Mark Roberge) at 2.

interfere with the siting of Liberty's proposed compressor station, since, claims Liberty, Yellow Rock's drilling plans are speculative and, therefore, Yellow Rock has failed to show that it has an actual, or concrete potential, conflict with a buffer zone.

32. As discussed below, the Commission finds that any adverse impacts on Yellow Rock's oil and gas rights from the placement of the on-site compressor station on the proposed 11-acre site are speculative and, as such, do not warrant consideration of the alternative compressor station site proposed by Yellow Rock.

33. By certificating this project, the Commission is approving Liberty's use of only the 11-acre site for its on-site compressor station, and not the other 29 acres of Liberty's 40-acre leasehold tract of land, as well. Further, the Commission is approving the 11-acre compressor station site without requiring or imposing a minimum safety buffer zone around the 11-acre compressor station site. As Liberty notes, it has not requested in this proceeding that the Commission impose any buffer zone around the on-site compressor station. Therefore, the remaining 29 acres will be potentially available, physically, for oil and gas operations. It is up to the parties to negotiate how they will jointly utilize these 29 acres in which they share an interest.

34. Although the Commission is not approving any particular buffer zone around the on-site compressor station, Liberty indicates in its answer that the state of Louisiana could require a minimum buffer zone in the future if Yellow Rock actually proposes a well project near the compressor station. It remains uncertain whether Louisiana would, in fact, impose a minimum buffer zone, or that a buffer, if required, would be a full 1,000 feet. Moreover, Liberty asserts that it will attempt to accommodate Yellow Rock's drilling plans wherever it can as long as those plans do not impact Liberty's safe operation of its project, and that it "has not precluded Yellow Rock from drilling on the western portion of the 40-acre site for the purpose of their oil and gas exploration activities."<sup>12</sup>

35. Given this uncertainty regarding whether the state would impose a buffer zone, and Liberty's sworn declarations that it will attempt to accommodate Yellow Rock's drilling plans and is not precluding Yellow Rock from drilling on the entire 40-acre site, including the western portion where the compressor station is situated (all of which

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<sup>12</sup> Liberty's October 13, 2005 Answer at Appendix A (Affidavit of Mark Roberge) at 2.

would be within a 1,000-foot buffer zone), the Commission concludes that the extent, if any, to which Yellow Rock and Vonco will be negatively affect by our approval of the proposed on-site compressor location is speculative.

36. Further, the environmental assessment (EA) prepared by the Commission's staff analyzed an alternative site and finds that the proposed on-site compressor station is appropriately sited to minimize and mitigate potential impacts to the environment. Specifically, the EA analyzed both Liberty's proposed 11-acre site for the on-site compressor station, and an adjacent, alternative site suggested by Liberty located on the southwestern-most portion of Liberty's 40-acre leasehold property. While the EA found that use of the alternative site would reduce potential impacts to the wetlands on which the proposed compressor would be sited, the EA rejected the alternative site because it would require that nearby existing pipelines be significantly altered and it would increase aesthetic and noise impacts to nearby residences.<sup>13</sup> The EA found that with the proposed 11-acre compressor site, the predicted noise levels at the NSAs near the compressor site would be below the Commission-required day-night noise level (Ldn) of 55 decibels of the A-weighted scale (dBA), noting that the remaining 29 acres (out of the 40) of forest "would provide a dense existing vegetation buffer between the NSAs and the compressor station."<sup>14</sup>

37. The environmental aspects of Yellow Rock's proposed alternative compressor site have not been evaluated. The Commission has found Liberty's proposed compressor site to be environmentally sound. The speculative harm which Yellow Rock alleges it might experience as a result of the compressor station being located on the proposed 11-acre site is not sufficient to persuade the Commission otherwise.

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<sup>13</sup> EA, Section 3.4.1 at p. 3-7. The nearest noise sensitive areas (NSAs) to the proposed and alternative on-site compressor station locations are single-family residences southeast and south of the site. Thus, the alternative site considered in the EA is closer than the proposed site to those NSAs.

<sup>14</sup> EA, Section 2.10.2 at p. 2-40. However, the Commission recognizes that Liberty does not have complete control over whether those 29 acres will remain dense forest vegetation. It is possible that in the future, the forest will be disturbed or cleared by Yellow Rock's planned oil and gas drilling operations on the land. The Commission notes that in the event the 29-acre forested buffer is disturbed or eliminated, Liberty will still be required to meet the required day-night noise level (Ldn) of 55 dBA at the NSAs located near the on-site compressor station, using mitigation measures if necessary.

### **Header System Route**

38. In its application, Liberty proposed, and the EA evaluated, two alternative routes for the header system connecting the storage wells to the on-site compressor station. The north route, Liberty's primary proposal, is a single 20-inch diameter pipeline approximately 1.3 miles long. The north route would allow both storage caverns to be used together, but not independently of one another. The south alternative route consists of two individual pipelines from the on-site compressor station, allowing each cavern to be used independently of the other. The EA concludes that the north route is preferable because independent use of each cavern is not required and the north route results in less environmental disturbance, minimizes the amount of property crossed that is owned by the existing brine operator, and provides access to future storage cavern options.<sup>15</sup>

39. Yellow Rock and Vonco object to the proposed north route because the lines would run across the northern perimeter of the salt dome, passing directly through Yellow Rock's existing and planned oil and gas sites. Yellow Rock and Vonco have submitted a map showing Yellow Rock's existing and planned well sites and the path of the north and south routes.<sup>16</sup> They argue that, as indicated on Reply Exhibit A, the north route passes right through Yellow Rock's planned development well sites 759-2, 759-3, 840-2, and 1018MIO on the northwest edge of the dome, thereby eliminating those sites for development.<sup>17</sup> Yellow Rock and Vonco further argue that placing the header system on the thin strip of dry land that follows the northern and western edge of the dome would effectively create a barrier to future oil and gas operations because they would be forced to drill in the surrounding shallow lakes, where drilling is impossible or economically infeasible. Yellow Rock and Vonco, therefore, propose an alternative header route that essentially tracks Liberty's proposed alternative south route considered in the EA, except that it stays on the right-of-way for the road on the southwest side of the salt dome, thereby avoiding adjacent oil and gas operations ("modified alternative south route"). Yellow Rock and Vonco request the Commission to condition its approval of the project on Liberty's use of this modified alternative south route.

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<sup>15</sup> EA, Section 3.3.2 at p. 3-5.

<sup>16</sup> October 13, 2005 Reply of Yellow Rock and Vonco to Liberty, Exhibit A (Reply Exhibit A).

<sup>17</sup> October 13, 2005 Reply of Yellow Rock and Vonco at 2, and Reply Exhibit A.

40. In response, Liberty argues that Yellow Rock and Vonco have provided no evidence that its header system will interfere with Yellow Rock's existing or future operations, and therefore, that claims of interference are purely speculative.<sup>18</sup> Liberty maintains that Yellow Rock has failed to provide it with detailed site plans, specifications, or permit applications filed with the Louisiana Department of Conservation and Natural Resources (DCNR) for its planned oil and gas drilling operations.

41. Although Yellow Rock may not yet have developed final plans and specifications, or filed applications with the Louisiana DCNR, for its future oil and gas drilling operations, their plans do not appear to the Commission to be speculative or, as Liberty asserts, a "mystery."<sup>19</sup> Well sites have been considered, planned, and documented. However, what is not at all clear is that use of the northern header route will actually cause interference with Yellow Rock's planned drilling operations, or that it will necessarily impact Yellow Rock's ability to drill on the northwest rim of the salt dome. It is conceivable that either Yellow Rock could move its well sites slightly away from the header lines or Liberty could move its header lines a few feet so that Yellow Rock would not have to drill directly on top of the header line. Additionally, other accommodations could be made through further negotiation between the parties.

42. The Commission finds that Yellow Rock's and Vonco's concerns over the north route location of the header preempting its drilling operations in the same area are too uncertain to warrant conditioning approval of the project on use of the modified alternative south route. We note, however, that Liberty indicates several times in its answer that it is open to the possibility of rerouting the header system to a southern route.<sup>20</sup> In his affidavit appended to Liberty's answer, Mr. Mark Roberge, a director of development for Liberty, states that "in the spirit of cooperation, we would consider rerouting the well connect lines from the current northern route to a southern route at

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<sup>18</sup> We note that according to Yellow Rock and Vonco, in their negotiations with Liberty, Liberty was presented with the aerial photograph and map that is Yellow Rock and Vonco's Reply Exhibit A, along with an explanation by Yellow Rock how the northern header route would interfere with Yellow Rock's existing and planned operations. *See* October 13, 2005 Reply of Yellow Rock and Vonco at 2.

<sup>19</sup> *Id.*

<sup>20</sup> October 3, 2005 Answer of Liberty at 3, 10, and Exhibit A at 2.

Yellow Rock's request."<sup>21</sup> Moreover, Liberty also states in its answer that "Liberty has expressed to Yellow Rock its willingness to perform environmental surveys of Yellow Rock's preferred route, and depending on the results of those surveys, to consider coming back to the Commission in the future. That remains an option for the parties in the future."<sup>22</sup> The Commission encourages the parties to continue negotiations on this issue. If those negotiations result in an agreement for a significantly altered header route, Liberty may seek amended certificate authority.

43. In summary, the Commission finds that there will be no adverse impacts on other pipelines or their customers or landowners and communities surrounding the project. There could be an adverse impact on co-lessee Yellow Rock's rights to conduct oil and gas drilling operations on the salt dome. However, Liberty has made efforts to minimize such adverse potential impacts through negotiations with Yellow Rock over the past year, and such adverse impacts remain speculative. We find that the potential adverse effects of the Liberty project on Yellow Rock and Vonco are outweighed by the substantial benefits of the proposed Liberty Storage Project. The project will provide public benefits by helping to meet the need for high-deliverability natural gas storage in the southeastern United States and in markets served directly and indirectly by the numerous natural gas pipelines in the vicinity of the proposed facilities. Due to the location of the proposed facilities, Liberty is positioned to serve local distribution companies (LDCs), electric generation companies, pipeline shippers, and gas marketers, as well as existing and proposed LNG terminals that may be placed in service in the region. Liberty will also offer interruptible hub services including park and loan, imbalance trading, balancing, title transfer, and wheeling to prospective market area shippers. Thus, as a new market entrant, Liberty will offer additional storage options and alternative services, increasing competition in the regional storage area, and thereby providing further benefits. Accordingly, consistent with the Certificate Policy Statement and section 7 of the NGA, we find that the public convenience and necessity require approval of the proposed project.

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

44. We have approved market-based rates for storage services where applicants have demonstrated, under the criteria in the Commission's Alternative Rate Policy Statement, they lack significant market power or have adopted conditions that significantly mitigate

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<sup>21</sup> October 3, 2005 Answer of Liberty, Exhibit A at 2.

<sup>22</sup> October 3, 2005 Answer of Liberty at 3, n.2.

market power.<sup>23</sup> In prior orders, we have approved requests to charge market-based rates for storage services based on a finding that proposed projects would not be able to exercise market power due to small size, anticipated share of the market, and numerous competitors.<sup>24</sup> We have also distinguished between production area storage facilities, such as Liberty's, and market-area storage.<sup>25</sup> In general, alternative storage facilities make market power in a production area less of a concern.

45. Liberty's market power analysis for the storage market provides a description of the services for which market-based rates are proposed, defines the relevant product and geographic markets, measures market share and concentration, and evaluates other factors. For the purpose of its analysis, Liberty identifies the relevant product market as firm and secondary firm storage services for natural gas, as well as interruptible hub services consisting of parking, loaning, balancing, imbalance trading and wheeling services. The relevant geographic market for those products/services, except wheeling, is defined as consisting of East Texas, Louisiana, Mississippi, and Alabama. Liberty states that it has further narrowed the potential market by removing from the study any facility that does not currently offer storage capacity and deliverability into the marketplace for the use of third parties. Interruptible wheeling, which is a transportation service, is also covered by Liberty's study for the geographic market that includes Texas, Louisiana, Mississippi, and Alabama.

46. The Commission uses the Herfindahl Hirschman Index (HHI) test to determine market concentration for gas pipeline and storage markets. The Alternative Rate Policy Statement states that a low HHI – generally less than 1,800 – indicates that sellers cannot exert market power because customers have sufficiently diverse alternatives in the relevant market. While a low HHI suggests a lack of market power, a high HHI – generally greater than 1,800 – requires a closer scrutiny in order to make a determination about a seller's ability to exert market power. Liberty's market power analysis shows an

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<sup>23</sup> Alternative Rate Policy Statement, 74 FERC ¶ 61,076; *reh'g denied*, 75 FERC ¶ 61,024 (1996), *petition for review denied sub nom.*, *Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998).

<sup>24</sup> *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002); *Egan Hub Partners, L.P.*, 95 FERC ¶ 61,395 (2001); *Moss Bluff Hub Partners, L.P.*, 80 FERC ¶ 61,181 (1997); *Egan Hub Partners, L.P.*, 77 FERC ¶ 61,016 (1996).

<sup>25</sup> *Moss Bluff Hub Partners, L.P.*, 80 FERC ¶ 61,181 (1997); *Steuben Gas Storage Company*, 72 FERC ¶ 61,102 (1995), *order on compliance filing and denying reh'g*, 74 FERC ¶ 61,024 (1996).

HHI calculation of 1,452 for working gas capacity and an HHI calculation of 1,112 for peak day deliverability. These measures of market concentration are well below the Commission's threshold level of 1,800, indicating that Liberty would be unable to exert market power in the relevant market area after the construction of its proposed storage facilities.

47. In addition to the proposed facility and the facility of Liberty's Pine Prairie Energy Center (Pine Prairie) affiliate, Liberty's market power study identifies 23 alternative storage facilities, affiliated with 12 other separate entities, in the relevant market area. The study finds that the current combined market working gas capacity of all the included facilities, including Liberty, is 695.83 Bcf, with Liberty and Pine Prairie together controlling 41.6 Bcf, or 5.98 percent of the market (Exhibit No. 4). In addition, the study finds that Liberty's and Pine Prairie's 3,400 MMcf per day of peak deliverability will be 16.61 percent of the total market peak deliverability of 20,465 MMcf per day (Exhibit No. 6). Thus, Liberty's aggregate share of the relevant storage market will be relatively small.

48. Liberty provides data to support its contention that it will have to compete against other potential storage facilities for customers within the market area. Liberty lists 10 storage projects under development in East Texas, Louisiana, Mississippi, and Alabama (Exhibit No. 13). These projects, if built, will expand the current working gas capacity in the Gulf Coast region by 109.9 Bcf (or 15.8 percent) and expand peak day delivery by about 6,980 MMcf per day (or 34.1 percent). In addition, Liberty lists four existing facilities within the market area that are expanding current working gas capacity and peak day deliverability (Exhibit No. 15). In light of this information, we conclude that the barriers to entry to the storage markets in the relevant market area are low.

49. Liberty's proposed parking, loaning, balancing, and imbalance trading hub services are essentially variations of storage service. Liberty's market power analysis for its storage services also demonstrates that it lacks market power over its parking, loaning, balancing, and imbalance trading services. Liberty presents an analysis showing interconnections between nine delivering pipelines and nine receiving pipelines, indicating that shippers can avoid the interconnections provided by Liberty through the use of alternative routes. (Exhibit No. 8) Therefore, we find that approving market-based rates for Liberty's wheeling service is consistent with the Commission's decisions regarding other storage service facilities.<sup>26</sup> Liberty also provides a market study of delivery and receipt capacity at Texas, Louisiana, and Mississippi hubs and market

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<sup>26</sup>See *Pine Prairie Energy Center, LLC*, 109 FERC ¶ 61,215 (2004); *Katy Storage and Transportation, L.P.*, 106 FERC ¶ 61,145 (2004).

centers. Liberty asserts that there will be 134 delivery points and 121 receipt points available to shippers among the various competing hubs and storage facilities in the market area. Liberty's study further states that the total HHI for delivery capacity at hubs and market centers is 1,171, and the total HHI for receipt capacity is 1,267.<sup>27</sup> (Revised Exhibit No. 10 and Revised Exhibit No. 11) These also are well below the 1,800 HHI threshold. The results of this analysis also indicate that Liberty lacks market power regarding its proposed wheeling hub services.

50. In sum, Liberty's study demonstrates that its proposed storage facilities will be in a highly competitive production area where numerous storage and interruptible hub service alternatives exist for potential customers. We also find that Liberty's prospective market shares are low and that market area HHIs are below the threshold warranting further review. Thus, we conclude that Liberty will lack market power. Further, Liberty's proposal for market-based rates is unopposed. For these reasons, we will approve Liberty's request to charge market-based rates for firm storage and interruptible hub services.

51. Nevertheless, Liberty must notify the Commission if future circumstances significantly affect its present market power status. Thus, our approval of market-based rates for the indicated services is subject to re-examination in the event that: (a) Liberty adds storage capacity beyond the capacity authorized in this order; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to Liberty; or (d) Liberty, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to Liberty. Since these circumstances could affect its market power status, Liberty shall notify the Commission within 10 days of acquiring knowledge of any such changes. The notification shall include a detailed description of the new facilities and their relationship to Liberty.<sup>28</sup> Liberty is also directed to file an updated market power analysis within five years of the date of this order and every five years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.<sup>29</sup>

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<sup>27</sup> See Liberty's June 20, 2005 response to a June 3, 2005 data request by Commission Staff.

<sup>28</sup> See, e.g., *Copiah County Storage Company*, 99 FERC ¶ 61,316 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002).

<sup>29</sup> See *Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141 at P 40 (2005).

52. We note that the Commission convened a technical conference in Docket Nos. PL04-17-000 and AD04-11-000 on October 21, 2004, to initiate an industry dialogue focused on policy issues related to underground storage, including the appropriate reporting requirements for storage providers granted market-based rate authority. The authorization granted to Liberty here will be subject to the outcome of the proceeding in Docket Nos. PL04-17-000 and AD04-11-000.

### C. Waivers of Filing Requirements

53. In light of its request for authority to charge market-based rates and the fact that Liberty has no pre-existing facilities, Liberty requests that the Commission waive sections 157.6(b)(8) and 157.20(c)(3) requiring Liberty to submit information otherwise necessary for the Commission to make an up-front determination of the rate treatment of the Liberty Storage Project and updated cost data after new facilities are placed into service. Liberty also requests that the Commission waive the filing requirements of section 157.14(a)(18), (14), (16), and (17) to submit Exhibits K (Cost of Facilities), Exhibit L (Financing), Exhibit N (Revenues, Expenses, and Income), and Exhibit O (Depreciation and Depletion), since these exhibits are for cost-based rate authority. For the same reasons, Liberty requests waiver of the accounting and annual reporting requirements under Part 201 and sections 260.1 and 260.2, respectively, of the Commission's regulations. Similarly, Liberty requests waiver of the requirement pertaining to straight fixed-variable rate design set forth in sections 284.7(e) and 284.10 also as being inapplicable to market-based rate design. Finally, Liberty requests waiver of the filing requirement of section 157.14(a)(10) to submit total gas supply data (Exhibit H), as being inapplicable to natural gas storage services. Liberty notes its customers will supply their own gas for storage.

54. The cost-related information required by the above-described regulations is not relevant in light of our approval of market-based rates for Liberty's storage services. Thus, consistent with our findings in previous orders,<sup>30</sup> we will grant Liberty's request for waiver of the regulations requiring cost-based related information. We will also grant a waiver of section 157.14(a)(10) requiring an applicant to submit gas supply data, which is inapplicable to storage operations.

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<sup>30</sup> See, e.g., *SG Resources Mississippi, L.L.C.*, 101 FERC ¶ 61,029 at P 26 (2004); *Egan Hub Partners, L.P.*, 95 FERC ¶ 61,395 at p. 62,473 (2001) and 99 FERC ¶ 61,269 at p. 62,142 (2002).

55. In addition, the Commission grants the requested waiver of the requirement to file an annual report (Form No.2-A) in section 260.2 of the regulations,<sup>31</sup> except for the information necessary for the Commission's assessment of annual charges. Liberty is required to file pages 520 and 520a of Form No. 2-A, reporting the gas volume information which is the basis for imposing an Annual Charge Adjustment (ACA) charge.<sup>32</sup>

#### **D. Tariff Provisions**

56. Liberty proposes to offer firm storage and interruptible hub services on an open-access basis under the terms and conditions set forth in the *pro forma* tariff attached as Exhibit P to the application. We find that Liberty's proposed tariff generally complies with Part 284 of the regulations; however, certain provisions are discussed further below.

##### **1. Segmentation**

57. Section 284.7(d) of the Commission's regulations provides that an interstate pipeline must permit a shipper to make use of the firm capacity for which the shipper has contracted by segmenting that capacity into separate parts for the shipper's own use, or for the purpose of releasing that capacity to replacement shippers to the extent that segmentation is operationally feasible. Liberty requests a waiver of the Order No. 637 segmentation requirement in section 284.7(d), contending that its system consists of a single storage facility and that there is nothing to segment.

58. In *Clear Creek Gas Storage Company*,<sup>33</sup> we found that the requirements of section 284.7(d) did not apply to pipelines engaged solely in natural gas storage and which did not provide stand-alone transportation services. Liberty meets the requirements in *Clear Creek*. Thus, we hold that the requirements of section 284.7(d) do not apply to Liberty. Other tariff provisions related to segmentation, such as the allocation of primary point rights in segmented release and within-the-path scheduling, also do not apply to Liberty.

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<sup>31</sup> However, we will require Liberty to maintain sufficient records of cost and revenue data consistent with the Uniform System of Accounts should the Commission require Liberty to produce this report in the future.

<sup>32</sup> See *Wyckoff Gas Storage Co., LLC*, 105 FERC ¶ 61,027 at P 65 (2003).

<sup>33</sup> 96 FERC ¶ 61,071 (2001) (*Clear Creek*).

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

59. Liberty requests a generic waiver of the “shipper must hold title” policy for any off-system capacity it may need to acquire in order to provide storage services, to enable it to use that capacity to transport natural gas owned by other parties. Relying on *Texas Eastern Transmission Corporation (TETCO)*,<sup>34</sup> Liberty asks the Commission to accept its off-system capacity statement proposed in Section 31 of the General Terms and Conditions of its *pro forma* tariff.<sup>35</sup> It states that Liberty will only provide transportation and storage services for others using off-system capacity acquired from third parties under its open-access tariff and subject to the rates approved by the Commission.

60. This language implements the Commission's policy with respect to pipelines' acquisition of off-system capacity. In *TETCO*, the Commission found that pipelines no longer need to obtain prior approval to acquire capacity on another pipeline provided the acquiring pipeline filed tariff language specifying that it would only transport for others on off-system capacity pursuant to its existing tariff and rates. Liberty's proposed tariff language is consistent with the requirements set forth in *TETCO* and the authorizations granted other storage companies authorized to charge market-based rates.<sup>36</sup> Therefore, we accept Liberty's tariff language and grant waiver of the shipper must have title policy, with the following clarification, however. Because Liberty has proposed only to offer storage and hub services, and does not propose to offer any transportation services other than storage and hub services, Liberty may only use capacity obtained on other pipelines in order to render the services set forth in its tariff. That is, Liberty may not use capacity on other pipelines to transport gas which will not physically or contractually enter its storage facility unless and until it has received Commission authorization to provide such transportation services. Furthermore, Liberty's authorized use of the *TETCO* waiver to provide storage service shall be limited to the geographic area covered by Liberty's market study.<sup>37</sup>

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<sup>34</sup> 93 FERC ¶ 61,273 (2000), *reh'g. denied*, 94 FERC ¶ 61,139 (2001).

<sup>35</sup> *Pro Forma* Original Sheet No. 152.

<sup>36</sup> *See, e.g., SG Resources Mississippi, L.L.C.*, 101 FERC ¶ 61,029 at P 30-33 (2002).

<sup>37</sup> *See Starks Gas Storage, L.L.C.*, 111 FERC ¶ 61,105 at P 55 (2005).

61. In order to ensure that Liberty uses acquired off-system capacity in a manner consistent with its market-based rate authority and tariff provisions, and in order to satisfy our responsibility to monitor and prevent the exercise of market power, Liberty is directed to make, once it becomes operational, an annual informational filing on its provision of service using off-system capacity, as detailed below.

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

- a. the name of the off-system provider;
- b. the type, level, term and rate of service contracted for by Liberty;
- c. a description of the geographic location - boundaries, receipt and delivery points, and segments comprising the capacity;
- d. the operational purpose(s) for which the capacity is utilized;
- e. a description of how the capacity is associated with specific transactions involving customers of Liberty; and
- f. an identification of total volumes, by Liberty's rate schedule and customer, that Liberty has nominated on each off-system provider during the reporting period.<sup>38</sup>

### **3. Implementation of NAESB Standards**

63. The Commission has adopted in Part 284 of its regulations various standards for conducting business practices and electronic communication with interstate pipelines as promulgated by the North American Energy Standards Board (NAESB).<sup>39</sup> These standards govern nominations, allocations, balancing measurement, invoicing, capacity release, and mechanisms for electronic communication between pipelines and those with whom they do business. In section 24 of the General Terms and Conditions of its *pro*

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<sup>38</sup> *Id.* at P 57.

<sup>39</sup> NAESB was formerly called the Gas Industry Standards Board (GISB).

*forma* tariff sheets,<sup>40</sup> Liberty has proposed to make its tariff comply with Version 1.6 of the NAESB Standards, the latest version of the NAESB standards adopted by the Commission at the time Liberty filed its certificate application.<sup>41</sup>

64. However, on May 9, 2005, the Commission issued Order No. 587-S,<sup>42</sup> which incorporates by reference into section 284.12 of its open-access regulations: (1) the most recent version, Version 1.7, of the NAESB Wholesale Gas Quadrant's consensus standards; (2) the standards to implement Order No. 2004,<sup>43</sup> ratified by NAESB on June 25, 2004 (2004 Annual Plan Item 2 FERC Order No. 2004); (3) the standards to implement Order No. 2004-A,<sup>44</sup> ratified by NAESB on May 3, 2005 (2005 Annual Plan Item 8 FERC Order No. 2004); and (4) the standards governing gas quality reporting, ratified by NAESB on October 20, 2004 (Recommendation R03035A).

65. Liberty is directed to revise section 24, as well as the remainder of its tariff, to comply with the Order No. 587-S requirements for which waiver has not been granted, as modified by any future NAESB requirements that may be in effect. In so doing, section 24 should delete the reference to Standard 1.3.2(v) since such standard is required to be stated verbatim in the tariff rather than incorporated by reference. The Commission will require Liberty to file actual tariff sheets consistent with this order not more than 60 days or less than 30 days prior to commencement of service.

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<sup>40</sup> *Pro Forma* Original Sheet No. 149.

<sup>41</sup> See *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-R, 68 *Fed. Reg.* 13813 (March 21, 2003), *FERC Statutes and Regulations* ¶ 31,141 (March 12, 2003).

<sup>42</sup> *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-S, 70 *Fed. Reg.* 28204 (May 17, 2005), *FERC Statutes and Regulations* ¶ 31,179 (May 9, 2005).

<sup>43</sup> *Standards of Conduct for Transmission Providers*, 68 *Fed. Reg.* 69134 (December 11, 2003), *FERC Statutes and Regulations* ¶ 31,155 (November 25, 2003).

<sup>44</sup> *Standards of Conduct for Transmission Providers*, 69 *Fed. Reg.* 23562 (April 29, 2004), *FERC Statutes and Regulations* ¶ 31,161 (April 16, 2004).

#### 4. Creditworthiness

66. Section 32 of Liberty's proposed General Terms and Conditions outlines the type of information that customers must supply to Liberty in order to establish creditworthiness.<sup>45</sup> Section 32.3 provides that upon notification by Liberty to the customer that it has failed to satisfy or no longer satisfies the credit criteria, the customer may still obtain credit approval if it elects to provide additional financial assurances in the form of an advance deposit, a standby irrevocable letter of credit, or a security interest in collateral, or a guarantee, as detailed in the tariff provision.

67. In *Natural Gas Pipeline Company of America*,<sup>46</sup> we stated that it is important that the creditworthiness evaluation process be open and objective. Liberty appears to have outlined the information that needs to be supplied and the criteria for creditworthiness, as discussed above. However, other requirements set out by *Natural* have not been met.

68. First, it is not clear how or when Liberty intends to communicate its initial determinations on creditworthiness to shippers under section 32.3, and whether it will specify the reasons for any denial of creditworthiness in such communication. In *Natural*, we held that if a service provider finds a shipper to be uncreditworthy, it must communicate that finding in writing, and state the reasons for its finding. We also required that the written communication be made within 10 days of the determination, and that the shipper be provided recourse to challenge the finding.<sup>47</sup> Liberty is directed to revise section 32 to clarify how and when it intends to communicate its initial creditworthiness determinations, and that it will include the reasons for denial in such communications.

69. Second, section 42.4 provides that if a customer obtains credit approval by providing an advance deposit and subsequently satisfies the credit criteria, Liberty will return to the customer the advance deposit plus interest. In accordance with our holding in *Tennessee Gas Pipeline Company*,<sup>48</sup> Liberty's shippers that opt to pay collateral as financial assurance under section 24.7 must have an opportunity to earn interest on such

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<sup>45</sup> *Pro Forma* Original Sheet Nos. 153-154.

<sup>46</sup> 102 FERC ¶ 61,355 at P 69 (2003) (*Natural*).

<sup>47</sup> *Natural*, 106 FERC ¶ 61,175 at P 69 (2004).

<sup>48</sup> 103 FERC ¶ 61,275 at P 21, *reh'g denied*, 105 FERC ¶ 61,120 at P 17-24 (2003).

prepayments either by Liberty paying the interest itself at the Commission's interest rate, or by the shipper designating an interest-bearing escrow account to which Liberty may have access to payments for services provided if needed. Therefore, we direct Liberty to clarify its tariff accordingly. We also direct Liberty to clarify in its tariff that such advance payments are considered collateral held for security and not prepayments for services.<sup>49</sup>

70. Finally, section 32.7 provides that if a customer's credit standing ceases to meet Liberty's credit requirements during the period of service, Liberty has the right to require security or a deposit. The section further provides that if security or a deposit is not tendered "in a timely period as reasonably determined by Liberty," then Liberty is not required to continue the service and the service agreement will terminate "as of the first day of the month following written notice to Customer." Liberty must clarify how long a shipper has to provide collateral assurances, consistent with our ruling in *Gulf South Pipeline Company, LP*.<sup>50</sup> In addition, this section must be revised to be consistent with Section 29 (Default and Termination) of the GT&C, which conforms to the Commission requirement in section 154.602 of the Commission's regulations that pipelines must give at least 30 days' notice to the customer and the Commission before terminating a service agreement.<sup>51</sup>

## 5. Transmission Provider Standards of Conduct

71. In Part 358 of its regulations, the Commission adopted new standards of conduct to ensure that transmission providers cannot extend their market power over transmission by giving energy affiliates unduly preferential treatment.<sup>52</sup> In Order No. 2004-A, the Commission granted a request "to generically exempt from the definition of 'Transmission Provider' natural gas storage providers authorized to charge market-based rates that are not interconnected with the jurisdictional facilities of any affiliated

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<sup>49</sup> See *Tennessee*, 105 FERC ¶ 61,120 at PP 17-24.

<sup>50</sup> 103 FERC ¶ 61,129 at P 49, *reh'g denied*, 107 FERC ¶ 61,273 at P 45 (2003).

<sup>51</sup> See Liberty's May 25, 2005 Data Response No. 3 to a May 9, 2005 data request by Commission Staff (confirming that Liberty will provide at least 30 days' notice before termination).

<sup>52</sup> 18 C.F.R. § 358.1, *et seq.* See *Standards of Conduct for Transmission Providers*, 68 *Fed. Reg.* 69134 (December 11, 2003), *FERC Statutes and Regulations* ¶ 31,155 (November 25, 2003).

interstate natural gas pipeline, have no exclusive franchise area, no captive ratepayers and no market power.”<sup>53</sup> Liberty states that it plans to interconnect with affiliated transmission providers, Cameron Interstate Pipeline, LLC and Port Arthur Pipeline, L.P., and that it will conduct its business as a Transmission Provider. Therefore, Liberty has proposed language in Section 22 of the General Terms and Conditions of its *pro forma* tariff that commits to full compliance with the Order No. 2004 Standards of Conduct.<sup>54</sup>

### **E. Engineering Analysis**

72. The Commission reviews the design capacity of proposed natural gas facilities to ensure that the design is appropriate and efficient. Commission staff completed an engineering analysis of both the proposed 23-mile, 30-inch pipeline and the two caverns proposed for natural gas storage. Based on this analysis, we find that the facilities are appropriately designed to withdraw up to 1.0 Bcf of natural gas per day from storage and to inject up to 0.5 Bcf of natural gas per day into storage.

73. Based on Commission staff’s review, we also find that the geological and engineering parameters for the underground natural salt cavern storage facilities are well defined and appropriate. Our analysis also shows that Liberty’s proposed cavern locations are well within the design criteria and confinement of the salt formation. Therefore, the caverns’ arrangement will avoid pressure influence between the two caverns when the caverns are operated at full capacity and pressure. In addition, the maximum and minimum operating cavern pressures throughout the storage cycle will preserve the structural integrity of the caverns.

74. Yellow Rock and Vonco question the structural integrity of the salt formation where Storage Cavern 15 is located and, therefore, its suitability for high pressure gas storage operations. Yellow Rock and Vonco state that in the 1990s, the U.S. Department of Energy decommissioned caverns in the same area that were used for storage of liquid petroleum products, citing concerns about leakage and cavern breaching. They also state that PPG Industries suspended brine extraction operations in Cavern 15 in 2001 without explanation. Further, Yellow Rock and Vonco assert that in October 2004 abnormally high subsurface pressures resulted in the blowout of Vonco’s 968 Fee Side Track #1 oil well. They state that investigation of the incident revealed the likely cause of the high pressures and blowout to be an integrity breach in ethylene Storage Cavern 1A operated

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<sup>53</sup> *Standards of Conduct for Transmission Providers*, 69 *Fed. Reg.* 23562 (April 29, 2004), *FERC Statutes and Regulations* ¶ 31,161 (April 16, 2004).

<sup>54</sup> *Pro Forma* Original Sheet No. 143.

by Sasol North America, Inc. (Sasol), which is located above Liberty's proposed Cavern 15. Further investigation, according to Yellow Rock and Vonco, found that the ethylene that was being stored in Cavern 1A was present in the well bores of other Vonco-operated wells close to the Vonco oil well that blew out. Thus, Yellow Rock and Vonco maintain that Cavern 15 below Cavern 1A also may be susceptible to leaking and migration, which could lead to the blowout of plugged and abandoned oil well bores and the release of high pressure, flammable natural gas and toxic hydrogen sulfide gas into the atmosphere.<sup>55</sup>

75. Yellow Rock and Vonco request that the Commission require that Liberty have an extended brine pressurization and nitrogen-method mechanical integrity test (MIT) conducted on Cavern 15 prior to placing it into storage service. Yellow Rock and Vonco argue that the extended MIT, which generally takes about 30 days to complete, represents current industry practice and is a more comprehensive and reliable test of storage cavern integrity than the 24-hour MIT currently required by the Louisiana Department of Conservation and Natural Resources (DCNR), because the extended MIT allegedly can detect smaller leaks or integrity breaches.<sup>56</sup> Yellow Rock and Vonco assert that even a very small leak would cause serious damage to their porous and permeable oil and gas bearing sands.

76. Liberty responds that it has already conducted an initial 20-hour pressure test on Cavern 15 and will conduct (a) extended, approximately 4-week brine pressure tests of both caverns prior to conversion of the caverns and (b) a 24-hour nitrogen brine interface MIT as required by the Louisiana DCNR after conversion of the caverns.<sup>57</sup> Liberty also states that it will conduct semi-annual safety inspections of its facilities in accordance with state and federal requirements. Further, Liberty suggests that Yellow Rock and Vonco should seek redress with the Louisiana DCNR if they feel the state-required testing methodologies are inadequate.

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<sup>55</sup> Yellow Rock and Vonco assert that the alleged past migration of low-pressure stored products, such as ethylene gas, from the caverns in the Sulphur Mines Salt Dome into surrounding underground reservoirs raises even more serious concerns about its suitability for the storage of higher pressure natural gas.

<sup>56</sup> Yellow Rock and Vonco claim that the extended MIT has become current cavern industry practice, citing the state of Texas' discontinuance of the 24-hour MIT and adoption of the extended brine pressurization and nitrogen method test.

<sup>57</sup> Answer of Liberty at 7 and at Exhibit B (excerpts from Resource Report 6); *see* Section 6.3.7 of Resource Report 6 of Liberty's application.

77. In response to Liberty's answer, Yellow Rock and Vonco argue that only after Cavern 15 has been fully converted to natural gas storage can mechanical integrity and cavern tightness be reliably determined, so that the tests conducted prior to conversion are of little or no value. They therefore assert that once the cavern has been converted, the proper test is the extended MIT, not the 24-hour MIT.

78. The Commission finds that the conventional, post-conversion 24-hour MIT proposed by Liberty and required by the Interstate Oil and Gas Compact Commission (IOGCC)<sup>58</sup> and Louisiana DCNR regulations is adequate to sufficiently determine the structural integrity of Cavern 15. Following the conversion of a cavern to natural gas storage service, according to the IOGCC an MIT should be conducted prior to the commissioning of a cavern to determine the integrity of the wellbore, the casing shoe, and the wellhead. The MIT can be a nitrogen (or natural gas) brine interface test or the equivalent, and should be conducted at the maximum operating pressure. Following conversion, this test should be conducted for 24 hours or for such longer period as the storage operator deems necessary to determine the integrity of the storage facility.

79. Resource Report 6 of Volume II of Liberty's application details Liberty's proposed mechanical integrity testing procedures. Section 6.3.7 of Resource Report 6 reflects that Liberty will conduct extended brine pressurization MITs on Caverns 15 and 17 prior to conversion.<sup>59</sup> Following the conversion of the caverns' existing Wells 15 and

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<sup>58</sup> The IOGCC is a multi-state government agency which promotes and encourages conservation and efficient recovery of domestic oil and natural gas resources while protecting health, safety, and the environment. The organization is comprised of twenty-nine oil and natural gas producing states and six associate member states. In November 1994, the IOGCC published the "I.O.G.C.C. Member State Regulation of Natural Gas Storage" which summarizes the various state and federal statutes and regulations relating to the storage of natural gas underground.

<sup>59</sup> Section 6.3.7 states that "[w]ith this [brine pressure test] method, a well and cavern are pressured repeatedly to test pressure and the transient pressure drop due to stress redistribution in the surrounding salt is observed. After several pressure cycles, the slopes of successive pressure cycles are used to predict the eventual equilibrium pressure change rate. This rate change can be compared to a no leak change rate to determine mechanical integrity of the caverns."

17 and the drilling of new Wells 15A and 17A, Liberty will conduct the conventional (24-hour) nitrogen-brine interface MIT on both the caverns and the wells, in accordance with Louisiana DCNR regulations.<sup>60</sup>

80. Yellow Rock and Vonco have not established that an extended, post-conversion 30-day MIT is either necessary or the accepted industry practice. Liberty's compliance with applicable Louisiana state regulations and IOGCC recommendations will ensure adequate testing.

81. While Yellow Rock and Vonco express concern over the alleged past leakage of ethylene Storage Cavern 1A above Cavern 15, an extended, 30-day post-conversion MIT would not provide more reliability or a higher level of assurance of structural integrity than the conventional, 24-hour post-conversion MIT will provide.

82. Yellow Rock and Vonco assert that a 24-hour period is "not enough time for the liquid nitrogen test fluid to disperse to and react with the outer walls of a salt cavern, so as to provide a reliable and effective assessment of cavern breaching or migration of stored products."<sup>61</sup> However, in designing the guidelines and regulations governing the underground storage of natural gas, the IOGCC and the Louisiana DCNR would have had to consider whether 24 hours is enough time for the test fluid to disperse to and react with

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<sup>60</sup> Section 6.3.7 of Liberty's Resource Report 6 outlines the post-conversion MIT procedure, as follows:

For test purposes, the cavern will be considered stable and the tests will commence when the shut-in brine pressure changes less than 10 pounds per square inch gauge (psig) in 24 hours. Calibrated temperature and pressure gauges will be used to monitor both wellhead and ambient temperatures throughout the test.

A conventional nitrogen-brine interface test will then be conducted, in which sufficient nitrogen will be injected to lower the nitrogen-brine interface in the outer annulus to below the final production casing, but above the cavern roof. Temperature and interface surveys will be run at the beginning and at the end of the test. This data will be combined with surface pressure and temperature data to determine the mechanical integrity of the well.

<sup>61</sup> September 23, 2005 Protest of Yellow Rock and Vonco at 16.

the outer walls of the salt cavern. In requiring the 24-hour post-conversion MIT, the IGOCC and the Louisiana DCNR have determined that 24 hours is adequate for that purpose. We, therefore, decline to substitute our judgment for theirs.

83. Yellow Rock and Vonco also argue that the 24-hour MIT is not sensitive enough to detect smaller, yet dangerous, gas leaks or integrity breaches. As an example, they state that a leak of only 67.5 Mcf of gas would not be detected by the 24-hour MIT, but such a leak could result in pressures jeopardizing nearby oil and gas production activities and thus create dangerous situations.<sup>62</sup> The Commission disagrees; the 24-hour MIT will be able to detect leaks of that size.

84. Further, Yellow Rock and Vonco assert that the proposed 24-hour, post-conversion MIT is inadequate given that no salt cores on Cavern 15 have been taken and tested by a rock mechanics laboratory for strength, deformation, dilation, creep, or uniaxial and triaxial compression.<sup>63</sup> Yellow Rock and Vonco raise a valid point regarding the necessity of analyzing salt core samples for the quality of the salt. Therefore, the Commission will require that, prior to commencing natural storage operations in the proposed caverns, Liberty take core samples from the new wells drilled in each of the caverns and conduct tests to determine the chemical, lithological, and geomechanical properties of the formation immediately above the salt, at the salt section of the cavern roof, and at the depth of the natural gas storage cavern interval (if possible). Liberty must file the test results, analyses, and conclusions with the Commission.

85. Finally, Yellow Rock and Vonco reference problems encountered at the Magnolia Gas Storage facility in Napoleonville, Louisiana, where a 24-hour MIT failed to reveal the presence of five casing leaks that resulted in the leakage of high pressure gas into the atmosphere and the evacuation of the town of Napoleonville in December 2003.<sup>64</sup> The problem at the Magnolia facility, however, was not the result of a failure of the 24-hour MIT to detect the casing leaks, but rather the failure to undertake subsequent testing and monitoring to ensure timely correction of problems. A 24-hour MIT does not guarantee that there will never be cavern leaks or structural integrity issues, simply that none exist

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<sup>62</sup> October 13, 2005 Reply of Yellow Rock and Vonco at 9.

<sup>63</sup> October 13, 2005 Reply of Yellow Rock and Vonco at 7. Yellow Rock and Vonco add that Liberty has significantly overstated the ability and accuracy of its VSP to delineate the salt/sediment interface for Cavern 15. *Id.* at n.6.

<sup>64</sup> September 23, 2005 Protest of Yellow Rock and Vonco at 16 and 15, n.9.

at the time of the testing. That is why it is critical that further testing and monitoring occur on an on-going basis after a storage facility becomes operational. Consequently, as described in more detail below, the Commission is requiring not only that Liberty undertake a post-conversion MIT before placing the storage facility into service, but also that Liberty continue to monitor, test, and report on cavern conditions after the facility is operational.

86. Accordingly, consistent with the testing that Liberty has proposed in Resource Report 6 of its application, the Commission is requiring in Ordering Paragraph (L)(3)(a), as a condition to our approval of the project, that Liberty conduct on the proposed caverns and wells, the conventional nitrogen-brine interface MIT required by with state regulations and IOGCC guidelines, subsequent to conversion of the caverns/wells to natural gas storage, but prior to Liberty's injection of gas into the wells and commencement of gas storage operations. The Commission is also requiring Liberty to file the results of the MIT with the Commission. As in all cases involving the development of new storage caverns, Liberty will not be able to place any particular well into storage service until the Commission's staff has issued a notice authorizing Liberty to place that well into service. In making these determinations, the Commission's staff will review the results of the MIT to assure their adequacy and that the integrity of the caverns and wells are sound. If an individual cavern or well does not pass the MIT, Liberty will not be issued a notice authorizing those facilities for service until any problems are corrected and further testing demonstrates sound structural integrity of the cavern and its wells.

87. Liberty will also be required, prior to commencing storage operations, to file with the Commission a casing inspection base log or an equivalent test to verify the integrity of the cavern casing and the latest cavern tests conducted to verify the lack of communication between the caverns.<sup>65</sup> This is in addition to Liberty's filing of the core sample test results, described *supra*.<sup>66</sup>

88. Moreover, as noted above, the Commission is imposing a number of monitoring and reporting conditions to ensure the detection of any problems and the continued structural integrity of the caverns and wells. Ordering Paragraph L(4) of this order requires Liberty to conduct a leak detection test twice per year and to file the report with the Commission. Liberty must also file semi-annual storage reports which, which among

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<sup>65</sup> Ordering Paragraphs (L)(3)(f) and (g).

<sup>66</sup> Ordering Paragraph (L)(3)(b).

other things, require the reporting of volumes and shut-in wellhead pressures for each cavern and the results of tests to determine the actual size, configuration, or dimensions of the storage caverns.<sup>67</sup> Such information can help to identify cavern integrity issues. In addition, Liberty must periodically log each cavern's wells to check the cavern roof and status of each casing and conduct sonar surveys of the caverns every five years.<sup>68</sup>

89. In view of the required MIT and the additional safeguards provided by the above-described conditions, as well as the numerous safety, monitoring, and reporting conditions required by Louisiana state regulations with which Liberty must comply,<sup>69</sup> the Commission finds that the structural integrity of Liberty's proposed caverns and wells will be adequately assessed and maintained.

#### **F. Environmental Analysis**

90. On May 18, 2005, we issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Liberty Gas Storage Project and Request for Comments on Environmental Issues (NOI). We received responses to the NOI from landowners and various federal, state, and local agencies. Our staff addressed all substantive comments in the environmental assessment (EA).

91. On August 26, 2005, we issued a Notice of Availability (NOA) of the EA for the proposed Liberty Gas Storage Project. The EA addresses geology, soils, water resources, fisheries, wetlands, vegetation, wildlife, endangered and threatened species, land use, recreation, visual resources, cultural resources, air and noise quality, safety and reliability, alternatives, and cumulative impacts. The comment period for the EA ended on September 26, 2005. In response to the NOA, we received comments from Liberty, the Louisiana Department of Wildlife and Fisheries (DWF), and landowners, Don and Barbara Jean Ford.

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<sup>67</sup> Ordering Paragraphs (L)(8)(b) and (d).

<sup>68</sup> Ordering Paragraph (L)(5).

<sup>69</sup> These include semi-annual safety inspections (*see* Section 6.3.5 of Resource Report 6); subsequent MITs every five years (*see* Section 6.3.4 of Resource Report 6); wellhead and casing inspections (*see* Section 6.3.8 of Resource Report 6); detailed procedures for resolving a gas leak (*see* Section 6.4.2 of Resource Report 6); and cavern and well spacing requirements (*see* Sections 6.3.1, 6.3.2, and 6.3.4 of Resource Report 6).

92. Liberty seeks modification of several items in the EA. First, Liberty requests reconsideration of the EA's recommendation that Liberty be required to cross Indian and Marsh Bayous via horizontal direction drills (HDDs) and eliminate Environmental Condition 13.<sup>70</sup> Liberty asserts that the ecological value of the bottomland hardwoods associated with these bayous does not warrant the use of the expensive HDD construction method, since the HDD method will not perpetually preserve these resources, as the respective landowners of these bayous ultimately plan to clear the timber regardless of whether Liberty constructs the pipeline across the bayous. Liberty references landowner letters previously filed with the Commission indicating the landowners' interest in removing the adjacent bottomland hardwood trees.

93. According to Liberty, on September 13, 2005, the Louisiana DWF stated that it and the other resource agencies would consider supporting Liberty's request if further information from the two landowners demonstrated that they intend to clear all or large portions of their riparian wetlands as part of their land management program. Mr. Bob Brown, the property owner at Marsh Bayou, filed a letter on October 17, 2005 stating that he plans to clear all trees in the Marsh Bayou area within the next 12 to 18 months for his cattle ranching business. However, the landowner at Indian Bayou (Molpus Timberlands) was unwilling to provide additional information on their land management program, but in its earlier letter of August 15, 2005, had reserved for itself the right to clear all trees in advance of the start of pipeline construction.

94. The U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers (COE) and the Louisiana DWF have filed letters with the Commission stating their support for the crossing of these bayous via the HDD method. The Louisiana DWF, in its September 21, 2005 letter states that the use of the HDD method avoids the need to clear riparian forest wetlands and the valuable riparian habitat adjacent to the bayous, and that the logging of forested wetlands by landowners in anticipation of this project can result in impacts to areas or sites that are not to be impacted by the project and therefore is not recommended. In reaching its conclusion in the EA, the Commission, through data requests, sought and considered additional information from Liberty on the feasibility, benefits, and limitations of crossing the bayous by the HDD method. Nevertheless, staff has reconsidered its recommendation in the EA for the use of the HDD construction method, but we see no valid basis for not requiring that Liberty use horizontal directional drilling to cross the Indian and Marsh Bayous.

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<sup>70</sup> EA, Section 2.3.2 at p. 2-10 and Section 5.0 at p. 5-6.

95. Second, Liberty requests that it be allowed to place extra work areas closer to five specific waterbodies than typically permitted under the Commission's Wetland and Waterbody Construction and Mitigation Procedures. In the EA, staff denied a request for a variance from the procedures for these five waterbodies.<sup>71</sup> However, since the water flow of these waterbodies is intermittent and the waterbodies are located in disturbed areas, the Commission has reconsidered staff's previous denial and now approves Liberty's request for a variance as follows: If at the time of construction, the waterbodies at Mileposts 4.5, 5.5, 7.0, 16.5, and 22.5 contain perceptible flow, Liberty may place extra work spaces up to 10 feet from the water's edge or just outside the woody buffer zone, whichever is a greater distance from the water's edge.

96. Third, Liberty requests a modification of Environmental Condition 16 to allow initiation of construction in those areas where cultural resources surveys already have been completed, rather than requiring Liberty to defer the initiation of construction until all portions of the project have been surveyed. Approximately 4.73 miles of the 30-inch pipeline and the associated access roads have not yet been surveyed because rights-of-way were not granted by the landowners. Thus, Environmental Condition 16 of the EA requires Liberty to defer construction until Liberty files with the Commission a cultural resource report for the 4.73 miles of pipeline and access roads and the SHPO's comments on the report, and Commission review and approval of the reports is completed.<sup>72</sup> The Commission does not wish to segment construction clearance in this case and, therefore denies Liberty's requested modification. Liberty is encouraged to complete cultural resource survey and review as soon as possible.

97. Liberty also seeks to clarify the EA on several items discussed therein. Liberty states that the EA identifies the source of hydrostatic test water for the pipelines as the freshwater lake at the Sulphur Mine facility.<sup>73</sup> Liberty clarifies that it will need to obtain hydrostatic test water from each waterbody that would be crossed by a horizontal directional drill. As stated in the EA, Liberty will apply for a Hydrostatic Test Water General Permit under the Louisiana Pollutant Discharge Elimination System and will adhere to the measures concerning hydrostatic testing outlined in our Procedures. Therefore, we conclude these additional withdrawals and discharges will not significantly affect project resources.

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<sup>71</sup> EA , Section 2.3.2 at p. 2-12.

<sup>72</sup> EA, Section 2.9 at pp. 2-32 to 2-33, and Section 5.0 at p. 5-6.

<sup>73</sup> *See* EA, Section 1.5 at p. 1-8 and Section 2.3.2.2 at p. 2-13.

98. Liberty points out that the EA incorrectly states that all waterbodies would be crossed using a horizontal directional drill.<sup>74</sup> Table 3 of the EA, however, indicates that not all waterbodies would be crossed via a horizontal directional drill.<sup>75</sup> The text of the EA is in error; Table 3 of the EA correctly lists which waterbodies will be crossed via a horizontal directional drill, and which will be crossed via the open cut method.

99. Liberty states that the wetland impacts discussed in Sections 2.5 and 2.6 of the EA are for the project as designed and proposed by Liberty. Liberty notes, however, that if some of the recommendations in the EA are adopted by the Commission, fewer acres of wetlands will be impacted. Liberty maintains that since the wetland impacts of the EA are worst-case scenario estimates, the wetland estimates in the EA will be sufficient under NEPA for any configuration ultimately constructed. The Louisiana DWF also commented on this section of the EA, stating that all wetlands will need to be verified by the Corps of Engineers (COE). The Commission confirms that, as part of its permitting process, the COE will verify the wetlands affected and determine the need for mitigation.

100. The EA states that during construction, the timber cut from the rights-of-way may be disposed of by one or more of several listed methods, including stacking it along the edge of the right-of-way with landowner approval. In its comments, the Louisiana DWF asserts that the proposed stacking of timber along the edge of the construction right-of-way in forested wetlands is unacceptable because the stacking of timber would increase the width of the right-of-way through this resource. The Commission concurs with this comment; timber should not be stacked along the construction right-of-way through forested wetlands. The remaining comments of the Louisiana DWF support the recommendations and conditions of the EA.

101. On September 8, 2005, Don and Barbara Jean Ford, filed comments on the EA expressing concerns regarding the air and noise quality at the proposed remote compressor station. The Ford's are landowners situated on Coonie Jackson Road within approximately 2,000 feet of the proposed remote compressor station. In addition, as noted, *supra*, intervenor Mr. Thomas Lee Spears also raises concerns regarding the air quality and noise levels from the remote compressor station. Mr. Spears' home, also on

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<sup>74</sup> The EA states that “[a]ll paved roads would be bored and all waterbodies would be HDD, thereby avoiding adverse effects on lands owned by federal or state agencies.” EA, Section 2.8.1 at p. 2-27.

<sup>75</sup> EA at p. 2-9.

Coonie Jackson Road, is 800 feet east of the proposed remote compressor station and is the nearest residence to the proposed compressor station.<sup>76</sup> Therefore, Mr. Spears is concerned about its potential effect on his health and safety.

102. In light of Mr. Spears' comments and concerns, and because the results of Liberty's noise analysis revealed that noticeable noise levels would be experienced during operation of the remote compressor station at Mr. Spears' residence, noise sensitive area (NSA) 2,<sup>77</sup> the Commission requested Liberty to evaluate additional site alternatives. Liberty evaluated three alternative sites to the proposed site. Alternative site 3 would be approximately 500 feet west and slightly south of the proposed site, making it almost 2,000 feet from Mr. Spears' residence, the nearest NSA. The expected increase in noise levels from the compressor station would decrease from 9.2 dBA to 5.7 dBA, making the increase noticeable, but not significant.<sup>78</sup> The EA recommends that Liberty use alternative site 3 for its remote compressor station because it results in the least noise impact of all the sites considered and does not result in additional environmental impacts over the proposed site. Based on the findings and conclusions of the EA, the Commission is requiring Liberty to use alternative site 3 for its remote compressor station.<sup>79</sup> Liberty's use of alternative site 3 for the remote compressor station should alleviate Mr. Spears' concerns regarding the noise level since the increase in noise will be much less severe than it would have been with the proposed site. It should also help alleviate his concerns regarding air quality and the close proximity of the pipeline to his home, since the remote compressor station now will be further away from his property.

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<sup>76</sup> Mr. Spears' residence is located within 400 feet of the southeastern corner of the proposed site. *See* EA at p. 3-10.

<sup>77</sup> The expected increase in the noise level at NSA 2, Mr. Spears' residence, would be 9.2 dBA; since an increase of 3 dBA is the threshold of a noticeable difference, the operation of the project could produce noise levels that would be significantly noticeable. *See* EA, Section 2.10.2 at pp. 2-39, Table 13 and p. 2-40.

<sup>78</sup> EA, Section 3.4.2 at p. 3-11.

<sup>79</sup> Environmental Condition 18. Liberty has indicated in its September 26, 2005 data response that it intends to construct and operate the remote compressor station at alternative site 3 as recommended in the EA.

103. The Fords' comments appear directed to the noise and air quality effects of locating the remote compressor station at the proposed site, rather than at the recommended alternative site 3. Our requirement that Liberty move the location of the remote compressor station to alternative site 3, further away from NSA 2 and the residences along Coonie Jackson Road, should also lessen to some degree the Ford's concerns. However, we address below, some of the specific points and issues they have raised.

104. The Ford's question the calculation of the noise levels provided in Table 13 of the EA. They seem to argue, essentially, that if an additional noise source, such as the new remote compressor station, is added in an existing environment, the noise levels (dBAs) should be added, not averaged.<sup>80</sup>

105. The noise levels presented in Table 13 of the EA, "Operational Noise Impact Results for the Remote Compressor Stations," are calculated correctly. While additional noise sources added to an area do increase the overall noise level, noise levels are not based on an arithmetic scale, as is suggested in the Fords' comment letter. That is, to find the overall noise of two or more sources, their individual noise levels are not simply added together to find the total noise. Rather, noise levels are based on a logarithmic scale. Liberty's noise levels were predicted using computer modeling and the appropriate equations for combining background noise levels with new noise sources. As indicated in Liberty's September 26, 2005 data response, the modeling took into account the existing background noise levels, including all noise sources operating at the time.

106. As stated in the EA, the threshold of change of sound levels that is noticeable to humans is 3 dBA. Liberty performed computer modeling to estimate the new sound levels. At NSAs 1, 3, and 4, locating the compressor station at the proposed site, the increase would be below 1 dBA, and people at these locations would not notice a change. As explained *supra*, at NSA 2, the NSA closest to the proposed site, the increase in noise level would be 9.2 dBA. However, with our requirement that Liberty relocate the remote compressor station to alternative site 3, the noise level increase at the new closest NSA would be only 5.7 dBA, a much less noticeable change. Moreover, the Commission requires a new source of noise to meet a maximum noise level of 55 dBA Ldn at any NSA. The predicted Ldn from the remote compressor station at NSA 2 if the compressor

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<sup>80</sup> We note that the Ford's refer to the remote compressor station as an NSA. The remote compressor station would be a source of noise to nearby noise sensitive areas, not a noise sensitive area itself. The noise produced by a noise source must be at or below the Commission-required 55dBA at any nearby NSA.

station is located at alternative site 3 would be 50.3 dBA, below the Commission limit. The combined noise level (the background Ldn of 45.9 dBA and the predicted Ldn of 50.3 dBA) at NSA 2 would be an Ldn of 51.6 dBA, just 5.7 dBA above the ambient noise level and still within the 55 dBA requirement.

107. The Fords also raise air quality issues with respect to the remote compressor station. The Fords state that their calculations indicate that the total emissions from the station would amount to 380.8 tons per year (tpy) and are in excess of the allowable tpy. They also note that as reported in the EA, emissions from the remote compressor station will require a Title V Operating Permit because the emissions will exceed the applicable carbon monoxide (CO) threshold. The Fords question why a facility is permitted when in excess of this threshold.

108. Federal regulations require any source which emits any single pollutant in excess of specified levels (as determined per pollutant) to file for a Title V Operating Permit. This allows a state to inventory total emissions, and ensure the overall air quality of the region is maintained. Sources in excess of the threshold may or may not cause a significant decrease in air quality. This permit does not make that distinction; it only gives the applicant permission to emit up to the levels specified in the permit.

109. For geographic areas which are in attainment with the National Ambient Air Quality Standards (such as Beauregard Parish, Louisiana), the process known as Prevention of Significant Deterioration (PSD) is used to identify a potential decrease in air quality using various thresholds. The PSD thresholds, as set by the Environmental Protection Agency and Louisiana Department of Environmental Quality (DEQ), do not reflect other facilities' emissions in the area. Should a potential source exceed the thresholds set by PSD (250 tpy per pollutant in this case), further analysis including modeling would be required, taking into account other existing sources to ensure that the area's air quality would not change to non-attainment or that the air quality would not significantly decrease.

110. As indicated in the EA, the proposed project will exceed the CO threshold requiring a Title V Operating Permit.<sup>81</sup> Liberty has applied for and obtained this permit from the Louisiana DEQ. Although Liberty will emit above the CO threshold for a Title V Operating Permit, all pollutants emitted would be below the PSD thresholds. Therefore, a significant decrease in air quality is not expected, and further analysis involving other facilities is not required for the proposed project. In a response filed

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<sup>81</sup> EA, Section 2.10.1 at p. 2-36.

September 26, 2005, Liberty indicates the Louisiana DEQ has determined that the remote compressor station will operate in conformance with all health based air quality standards. Also, the response indicates that the Title V Operating Permit requires monitoring and reporting to prove that the facility is meeting the air quality requirements.

111. The Fords also comment on the calculated emissions and question why actual emissions from other operating facilities could not be used to determine emissions from Liberty's proposed remote compressor station.

112. Liberty's air permit application with the Louisiana DEQ provides detailed calculations showing each individual source of emissions from its proposed facilities and the quantities which would be emitted. A copy of this application was filed with the Commission in Docket No. CP05-92-000. Basing emission calculations on other facilities' actual emissions is not a feasible method for calculating emissions, as a facility may be emitting below their permitted rate (tons per year) and many operating parameters change from facility to facility. Calculations of emissions are typically based on factors set by the EPA known as AP-42 or by manufacturer emission data. For Liberty's proposed compressor station, emissions were based on both AP-42 and manufacturer technical data sheets. These emissions calculations were reviewed by Commission staff and the permitting agency (the Louisiana DEQ).

113. The Fords further state that if the emissions limits are exceeded, the Commission would require Liberty to correct the problems within one year and then have it inspected within 60 days. The Fords are concerned that at this point the damage already would be done.

114. The EA's recommendation that in the event limits are exceeded Liberty should correct the problem within one year and then have the facility inspected is with respect to noise, not air, quality. Under the Louisiana DEQ's Title V Operating Permit, exceeding air emissions would be a violation of the permit. As is indicated in Liberty's data response filed September 26, 2005, if a violation occurs, Liberty must take immediate corrective action.

115. Finally, the Fords assert that the proposed remote compressor station would not be necessary if additional horsepower of compression were installed at the other proposed compressor located at the storage facility, the on-site compressor station. In response to the Fords' suggestion, Commission staff issued a data request on September 21, 2005, requiring Liberty to respond to the Fords' protest by providing both a detailed hydraulic and cost analysis of the project's pipeline facility operating without the remote compressor station while maintaining existing design capabilities.

116. Liberty filed its complete response on September 27, 2005. As part of its response, Liberty indicates that the current design configuration of the remotely sited and the on-site compressor stations allows for the most operationally efficient and cost-effective design, while minimizing the project's environmental impact. Liberty indicates that the primary purpose of the proposed remote compressor station is to allow for the movement of gas volumes between the proposed storage facilities and up to seven existing and/or proposed interstate pipeline facilities. As a result of the different operating pressures on the interstate pipelines, Liberty claims that the remote compressor station is strategically positioned to ensure firm transportation of gas supplies both on and off Liberty's 23.3-mile, 30-inch pipeline.

117. To support the proposed location for the remote compressor station, Liberty provided engineering data and flow studies in response to Commission staff's September 21, 2005 data request. These studies show that if the remote compressor station is not constructed, the required horsepower of compression at the on-site compressor station would increase by three times the total proposed horsepower of both the on-site and remote compressor stations combined. Additionally, Liberty would have to increase the pipeline diameter from the proposed 30 inches to 36 inches in order to maintain the same level of proposed service.

118. Based upon our staff's analysis of the engineering information provided in the application and in response to the data requests, we confirm Liberty's conclusion that the remote compressor station is necessary to avoid the need for a three-fold increase in compression and an increase in pipe size from 30 to 36 inches to maintain both the proposed 1.0 Bcf/d of withdrawal and 0.5 Bcf/d injection capabilities of Liberty's storage field and 23-mile pipeline. Based upon the original project design, our analysis confirms that the Fords' proposed alternative (*i.e.*, placing all compressor facilities at the on-site locations) is not an efficient design to provide the desired service. Therefore, from an engineering perspective, the Fords' proposed alternative is not a viable alternative.

119. Moreover, increasing the horsepower at the on-site compressor station site to three times the proposed total horsepower would result in significant increases in air emissions and noise levels. From an environmental perspective, the project as proposed in the EA, has significantly less environmental impacts than the proposed alternative in the Fords' letter.

120. Based upon the analysis in the EA, we have determined that if Liberty constructs and operates the facilities in accordance with its application, supplements, and staff's mitigation measures, listed below, approval of this project would not constitute a major federal action significantly affecting the quality of the human environment.

121. 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.<sup>82</sup>

122. Liberty 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 Liberty. Liberty shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

### **G. Blanket Certificates**

123. Liberty requests issuance of a Part 284, Subpart G, blanket certificate in order to provide open-access storage services. Under a Part 284 blanket certificate, Liberty will not require individual authorizations to provide storage services to particular customers. Liberty filed a *pro forma* Part 284 tariff to provide open-access storage services. Since a Part 284 blanket certificate is required for Liberty to offer these services, we will grant Liberty a Part 284 blanket certificate, subject to the conditions imposed herein.

124. We will also grant Liberty a Part 157, Subpart F blanket certificate. The Subpart F blanket certificate gives a natural gas company section 7 authority to automatically, or after prior notice, perform certain eligible activities related to the construction, acquisition, replacement and operation of pipeline facilities.

### **IV. Conclusion**

125. For the reasons discussed above, the Commission finds that the Liberty Gas Storage Project is required by the public convenience and necessity and that a certificate authorizing the construction and operation of the facilities described in this order and in the application should be issued, subject to the conditions discussed herein.

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<sup>82</sup>See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

126. The Commission, on its own motion, received and made part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Liberty, in Docket No. CP05-92-000, authorizing the ownership, construction and operation of the described storage facilities.

(B) A blanket construction certificate is issued to Liberty, in Docket No. CP05-93-000 under Subpart F of Part 157.

(C) A blanket transportation certificate is issued to Liberty, in Docket No. CP05-94-000 under Subpart G of Part 284.

(D) The certificate issued in Ordering Paragraph (A) is conditioned on Liberty's compliance with all applicable Commission regulations under the Natural Gas Act, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (g) of section 157.20 of the regulations.

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

(F) Liberty's request to charge market-based storage rates for firm and interruptible storage service and interruptible hub service is approved, as discussed in this order.

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

(H) Liberty shall file revised tariff sheets that comply with the requirements contained in the body of this order not more than 60 days or less than 30 days prior to commencement of service.

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

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

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

(L) The certificates issued to Liberty are further conditioned on the following:

- (1) The maximum inventory of natural gas stored in Liberty's facilities shall not exceed the certificated levels of 23,400 MMcf at 14.73 psia and 60 degrees Fahrenheit (Cavern 15: 8.2 Bcf and Cavern 17: 15.2 Bcf); the maximum gas storage shut-in stabilized pressure gradient of each cavern will not exceed 0.85 psi/ft. and the minimum pressure gradient in each cavern will be limited to 0.20 psi/ft. applied to the casing seats of the wells penetrating the caverns.
- (2) The final gas storage operating capacity of each cavern, working gas capacity, cushion gas capacity and the minimum pressure should be determined after the caverns' operating parameters are determined (including data work papers to support the actual operating capacity determination).
- (3) Before commencing natural gas storage operations in the proposed caverns, Liberty shall:
  - (a) conduct a Mechanical Integrity Test (MIT) on Caverns 15 and 17, including Wells 15, 15A, 17, and 17A, after conversion of the caverns and wells to natural gas storage, and file with the Commission the results of the MIT;
  - (b) remove core samples from the new wells drilled in each of the caverns and conduct tests to determine the chemical, lithological, and geomechanical properties of the formation immediately above the salt, at the salt section of the cavern roof, and at the depth of the natural gas storage cavern interval, if possible, and file the results of these tests with the Commission;

- (c) establish and maintain a subsidence monitoring network over the proposed caverns' storage area;
  - (d) assemble, test and maintain an emergency shutdown system;
  - (e) file with the Secretary of the Commission copies of well logs including Neutron logs, Gamma Ray logs, Cement Bond and Caliper logs for any wells drilled or used in conjunction with this project;
  - (f) file with the Secretary of the Commission a casing inspection base log or an equivalent survey or test obtained over the entire cased interval for the innermost string in any wells drilled or used in conjunction with this project to verify the integrity of the casing;
  - (g) file with the Secretary of the Commission copies of the latest interferences, tracer surveys, or other testing or analysis on the caverns, to verify the lack of communication between the caverns.
- (4) Twice annually, Liberty shall conduct a leak detection test during storage operations to determine the integrity of each cavern/wellbore, casing, and wellhead. In addition, Liberty shall file a report, with the Secretary of the Commission summarizing the results of these tests until one year after the operating capacity of the Liberty storage facility has reached the maximum defined in Ordering Paragraph (L)(1);
- (5) Liberty must periodically log each caverns' wells to check the cavern roof and status of each casing. Additionally, every five years Liberty must conduct sonar surveys of the caverns to monitor their dimensions and shape, and to estimate pillar thickness between openings throughout the storage operations.
- (6) Liberty must conduct an annual inventory verification study on each cavern.
- (7) The Liberty field shall be operated in such manner as to prevent/minimize gas loss or migration.

- (8) Liberty shall file with the Secretary semi-annual reports (to coincide with the termination of the injection and withdrawal cycles) containing the following information in accordance with Section 157.214(c) of the Commission's regulations (volumes shall be stated at 14.73 psia and 60 degrees Fahrenheit, and pressures shall be stated in psia):
  - (a) the daily volumes of natural gas injected into and withdrawn from the storage reservoir;
  - (b) the volume of natural gas and the shut-in wellhead pressures for each cavern at the end of the reporting period.
  - (c) the maximum daily injection and withdrawal rates experienced for the entire storage field during the reporting period, including the average working pressure on such maximum days taken at a central measuring point where the total volume injected or withdrawn is measured.
  - (d) the results of any tests performed to determine the actual size, configuration, or dimensions of the storage caverns.
  - (e) a discussion of current operating problems and conclusions.
  - (f) other data or reports which may aid the Commission in the evaluation of the storage project.
- (9) Liberty shall continue to file the above semi-annual reports in accordance with section 157.214(c) of the Commission's regulations until one year after the storage inventory volume has reached or closely approximates the maximum level defined in Order Paragraph (L)(1).
- (M) Liberty shall notify the Commission within 10 days of acquiring knowledge of (a) Liberty's adding storage capacity beyond the capacity authorized in this order; (b) an affiliate's increasing storage capacity; (c) an affiliate's linking storage facilities to Liberty; or (d) Liberty's or an affiliate's, acquisition of an interest in, or being acquired by, an interstate pipeline connected to Liberty. The notification shall include a detailed description of the new facilities and their relationship to Liberty. Liberty is also directed to file an

updated market power analysis within five years of the date of this order and every five years thereafter. The Commission reserves the right to require such an analysis at any intervening time.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

**APPENDIX**

**Environmental Conditions for the Liberty Gas Storage Project**

1. Liberty Gas Storage shall follow the construction procedures and mitigation measures described in its application and supplemental filings (including responses to staff data requests) and as identified in the EA, unless modified by this Order. Liberty Gas Storage must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the OEP before using that modification
2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of this Order; and
  - b. the design and implementation of any additional measures 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, Liberty Gas Storage shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets and shall include the staff's recommended facility locations, if any. As soon as they are available, and before the start of

construction, Liberty Gas Storage shall file with the Secretary revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

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

This requirement does not apply to extra workspace allowed by the Upland Erosion Control, Revegetation, and Maintenance Plan 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. At least 60 days before the anticipated start of construction, Liberty Gas Storage shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Liberty Gas Storage will implement the mitigation measures required by this Order. Liberty Gas Storage must file revisions to the plan as schedules change. The plan shall identify:
    - a. how Liberty Gas Storage will incorporate these requirements into contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
    - b. the number of environmental inspectors assigned per project area, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
    - c. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
    - d. what training and instructions Liberty Gas Storage will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
    - e. the company personnel (if known) and specific portion of Liberty Gas Storage's organization having responsibility for compliance;
    - f. the procedures (including the use of contract penalties) Liberty Gas Storage will follow if noncompliance occurs; and
    - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
      - i. the completion of all required surveys and reports;
      - ii. the mitigation training of onsite personnel;
      - iii. the start of construction; and
      - iv. the start and completion of restoration.
  7. Liberty Gas Storage shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and

simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the ROW. Prior to construction, Liberty Gas Storage shall mail the complaint procedures to each landowner whose property would be crossed by the project.

- a. In its letter to affected landowners, Liberty Gas Storage shall:
  - i. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
  - ii. instruct the landowners that, if they are not satisfied with the response, they should call Liberty Gas Storage's Hotline; the letter should indicate how soon to expect a response; and
  - iii. instruct the landowners that, if they are still not satisfied with the response from Liberty Gas Storage's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030.
  
- b. In addition, Liberty Gas Storage shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:
  - i. the date of the call;
  - ii. the identification number from the certificated alignment sheets of the affected property;
  - iii. the description of the problem/concern; and
  - iv. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
  
8. Liberty Gas Storage shall employ at least one environmental inspector on its project. The environmental inspector shall be:
  - a. responsible for monitoring and ensuring compliance with all mitigative measures required by this Order and other grants, permits, certificates or other authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 5 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of this Order, and an other authorizing document;

- d. a full-time position, separate from all other activity inspectors;
  - e. responsible for documenting compliance with the environmental conditions/permit requirements imposed by other Federal, state, or local agencies; and
  - f. responsible for maintaining status reports.
9. Liberty Gas Storage shall file updated status reports prepared by the environmental inspector with the Secretary on a bi-weekly basis until all construction-related activities, including restoration, are complete. On request, these status reports will also be provided to other Federal and state agencies with permitting responsibilities. Status reports shall include:
- a. the current construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other Federal, state, or local agencies);
  - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
  - d. the effectiveness of all corrective actions implemented;
  - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
  - f. copies of any correspondence received by Liberty Gas Storage from other Federal, state, or local permitting agencies concerning instances of noncompliance, and Liberty Gas Storage's response.
10. Liberty Gas Storage must receive written authorization from the Director of OEP before commencing service from its project. Such authorization will only be granted following a demonstration that rehabilitation and restoration of the sites are proceeding satisfactorily.

11. Within 30 days of placing the certificated facilities in service, Liberty Gas Storage 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 Liberty Gas Storage has complied with or will comply with. This statement shall also identify any areas along the right-of-way where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. Before construction, Liberty Gas Storage file with the Secretary, the location by milepost of all private wells within 150 feet of (pipeline construction or blasting) activities. Within 30 days of placing the facilities in service Liberty Gas Storage shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality and how each was resolved. Liberty Gas Storage shall also replace any potable water supply system that it damages during construction and cannot repair to its former capacity and quality.
13. Liberty Gas Storage shall cross the Indian and Marsh Bayous with the HDD method and file with the Secretary site-specific HDD construction plans for review and written approval by the Director of OEP prior to construction of these crossings.
14. Liberty Gas Storage shall file with the Secretary a site-specific HDD crossing plan for Hickory Branch that identifies the relocated HDD entry point for the review and written approval by the Director of OEP prior to construction of the crossing.
15. Liberty Gas Storage shall develop a landscaping plan for the proposed Remote Compressor Station to minimize visual impacts. This plan shall be filed with the Secretary for review and written approval of the Director of OEP, prior to construction of the station.
16. Liberty Gas Storage defer construction and use of facilities and staging, storage, and temporary work areas and to-be-improved access roads until:

- a. Liberty Gas Storage files with the Secretary a cultural resource report for the approximately 4.73 miles of the 30-inch-diameter pipeline right-of-way denied access areas, as well as access roads, extra workspaces, and the SHPO’s comments on the report; and
- b. The Director of OEP reviews and approves all reports and notifies Liberty Gas Storage in writing that it may proceed with construction.

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

- 17. Liberty Gas Storage shall file a noise survey with the Secretary no later than 60 days after placing the On-site and Remote Compressor Stations in service. If the noise attributable to the operation of either station at full load exceeds an Ldn of 55 dBA at any nearby NSAs, Liberty Gas Storage shall install additional noise controls to meet that level within 1 year of the in-service date. Liberty Gas Storage shall confirm compliance with the Ldn of 55 dBA requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls.
- 18. Liberty Gas Storage shall use Alternative Site 3 as identified in the EA as the site for its Remote Compressor Station. Liberty Gas Storage shall file updated information, as required by Condition 4 and 5 for Alternative Site 3 with the Secretary for the review and approval of the Director of OEP, prior to construction of the Remote Compressor Station.
- 19. For areas where the Liberty Gas Storage Project would be co-located with one or more planned pipeline(s) adjacent to an existing right-of-way, the first pipeline to be constructed shall be constructed closest to the existing right-of-way. The Liberty Gas Storage pipeline shall be constructed with a 25-foot offset from the nearest existing pipeline. For the Liberty Gas Storage Project, these areas include:

MILEPOST	CO-LOCATING PROJECT
0.0 to 2.1	Creole Trail Pipeline Project
0.0 to 2.1	Cameron LNG Project
2.1 to 18.3	Cameron LNG Project
2.1 to 18.3	Port Author LNG Project
17.3 to 23.3	Creole Trail LNG Project

Prior to construction, Liberty Gas Storage shall file alignment sheets and environmental information to support the new alignment with the Secretary for review and written approval by the Director of OEP.