

135 FERC ¶ 61,216
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Liberty Gas Storage, LLC

Docket No. CP05-92-008

ORDER APPROVING CHANGES TO TARIFF,
SUBJECT TO CONDITIONS

(Issued June 7, 2011)

1. On December 6, 2010, Liberty Gas Storage, LLC (Liberty) filed proposed rate schedules and cost-based rates for firm and interruptible transportation services, and *pro forma* tariff revisions to its existing FERC Gas Tariff, to comply with an October 7, 2010 Order issued by the Director of the Division of Pipeline Certificates in the Office of Energy Projects.¹ The Commission will approve Liberty's proposed rates and tariff revisions, with appropriate conditions, as discussed below.

I. Background

2. In 2005, the Commission authorized Liberty to construct and operate two salt dome natural gas storage caverns and related pipeline and appurtenant facilities in Calcasieu and Beauregard Parishes, Louisiana (the Liberty Gas Storage Project).² Specifically, the Commission authorized the construction of: (1) two salt dome natural gas storage caverns to be converted from brine production, with one new well and two modified wells; (2) 23.3 miles of bi-directional pipeline header connecting the two storage caverns to interconnections with six interstate pipelines; (3) bi-directional metering and regulation facilities at each pipeline interconnection; (4) an on-site compressor station and appurtenant facilities, including injection/withdrawal wells; (5) a remote compressor station and appurtenant facilities along the pipeline header system; and (6) pig launching and receiving facilities.³ The 2005 Order also authorized

¹ *Liberty Gas Storage, LLC*, 133 FERC ¶ 62,033 (2010) (2010 Order).

² *Liberty Gas Storage, LLC*, 113 FERC ¶ 61,247 (2005) (2005 Order).

³ Subsequent to the issuance of the 2005 Order, the Commission's Office of

(continued...)

Liberty to provide open-access, Part 284 firm and interruptible storage services and interruptible hub services in connection with the Liberty Gas Storage Project, and to charge market-based rates for these services.

3. Liberty completed construction of the two storage caverns and substantially completed construction of the other storage facilities. During testing activities on the storage caverns, each of the caverns failed to demonstrative mechanical integrity due to a failure of the geologic formation in which the caverns are situated. As a result, Liberty determined that it would be unable to place into service the natural gas storage caverns, and would not place into service the related injection/withdrawal wells, on-site compressor station, and brine disposal wells and pipeline, all of which were intended to be used only in connection with the two caverns (collectively, Storage Facilities).

4. In conjunction with its construction of the Storage Facilities, Liberty also completed the 23.3-mile pipeline header, the remote compressor station, the pipeline interconnections, and the pigging facilities (the Existing Facilities), and proceeded to place these facilities into service. Liberty began using the Existing Facilities, which were intended to be a header system for the storage facilities, to provide interruptible hub-related services at market-based rates in May 2007.

5. Because of the failure of the storage caverns, Liberty filed an application with the Commission requesting authorization, among other things, to abandon the uncompleted Storage Facilities. Liberty also requested that the Commission amend its certificate to reflect that it would not provide firm or interruptible storage services. Liberty requested no changes with respect to the Existing Facilities that had been placed in service, or to the interruptible hub-related services at market-based rates it was providing using those facilities under the terms and conditions of its Commission-approved tariff.

6. As is relevant to the instant compliance filing, the 2010 Order, among other things, authorized Liberty to abandon the uncompleted Storage Facilities and vacated Liberty's certificate authority to operate the Storage Facilities. With respect to the Existing Facilities through which Liberty was providing interruptible hub services, the 2010 Order found: (1) that it was in the public interest to permit Liberty to continue to operate and provide service on the Existing Facilities, and (2) that Liberty's ongoing hub services using the Existing Facilities were, in effect, stand-alone transportation services.⁴ Thus, the 2010 Order amended Liberty's certificate to reflect its changed operations from storage to stand-alone transportation service.

Energy Projects (OEP) authorized Liberty to construct and operate three saltwater disposal wells and 3.2 miles of a brine disposal pipeline, as part of the Liberty Gas Storage Project. *See* OEP's November 20, 2006 letter order in Docket No. CP05-92-000.

⁴ 2010 Order, 133 FERC ¶ 62,033 at 64,059.

7. The 2010 Order also determined that Liberty was providing such transportation services using its Existing Facilities at market-based rates, despite the fact that in authorizing such rates the Commission relied on Liberty's market power study, which analyzed Liberty's market power in the provision of storage services, not stand-alone transportation services, to approve market-based rates for storage services. The 2010 Order found that without a new market power study that demonstrated Liberty lacked market power in the provision of stand-alone transportation services, allowing Liberty to continue charging market-based rates for its stand-alone transportation service would be inconsistent with Commission policy.⁵

8. Therefore, the 2010 Order required Liberty to establish new rate schedules and propose initial Natural Gas Act (NGA) section 7 cost-based rates for the stand-alone transportation services using its Existing Facilities.⁶ The 2010 Order also required Liberty to propose revisions to its tariff to reflect its changed operations, including the removal of firm and interruptible storage service from its tariff and the inclusion of firm and interruptible transportation services as required by section 284.7(a) of the Commission's regulations.⁷

9. In a separate proceeding involving facilities not related to or connected with the Liberty Gas Storage Project, the Commission authorized Liberty to construct and operate storage facilities and associated pipeline facilities in Calcasieu and Cameron Parishes, Louisiana. Specifically, the Commission authorized Liberty to construct: (1) four high-deliverability natural gas storage caverns; (2) 5.1 miles of bi-directional pipeline interconnecting with Cameron Interstate Pipeline, LLC and a bi-directional metering station at the interconnection; and (3) additional appurtenant facilities (hereinafter called the Expansion Facilities).⁸ The Commission also authorized Liberty to charge market-based rates for the storage and hub services to be provided through the Expansion Facilities.

⁵ *Id.* at 64,059 and n.16. (2010).

⁶ *Id.* The 2010 Order required that Liberty file its proposed cost-based rates, rate schedules, and terms and conditions within 30 days of the issuance of the 2010 Order, since the NGA requires that such rates and terms and conditions be on file for services being provided. However, the 2010 Order stated that Liberty was not precluded from seeking approval of market-based rate authority for its transportation services and was free to submit a market power study to support such a request.

⁷ *See* 18 C.F.R. § 284.7(a) (2010).

⁸ *Liberty Gas Storage, LLC*, 127 FERC ¶ 61,221 (2009).

10. On March 4, 2011, Liberty and its affiliate, LA Storage, LLC (LA Storage), jointly filed an application in which: (1) Liberty proposes to abandon by transfer to LA Storage all of Liberty's Existing Facilities, which are currently in service, and Liberty's Expansion Facilities;⁹ and (2) LA Storage proposes to acquire and operate the Existing Facilities, and to construct and operate the Expansion Facilities.¹⁰ As relevant to this proceeding, LA Storage states that it intends to charge the cost-based rates that Liberty has proposed in the instant compliance filing for the firm and interruptible transportation services it will provide through the Existing Facilities, and indicates that it will be bound by any modification to the cost-based rates imposed by the Commission in this order.¹¹ The joint application clarifies that the cost-based rates proposed herein apply solely to the Existing Facilities and does not impact the rate authorization for the Expansion Facilities.¹²

II. Proposal

11. Liberty's December 6, 2010 compliance filing¹³ includes proposed cost-based rates for firm and interruptible transportation services, together with the supporting information required by the Commission's regulations,¹⁴ and *pro forma* tariff revisions to its FERC Gas Tariff to reflect its change in operations from storage to stand-alone transportation services. Specifically, Liberty's filing includes: (1) the removal of the Firm Storage Service (FSS) and Secondary Firm Storage Service (SFS) Rate Schedules and related provisions in the General Terms and Conditions (GTC), which collectively set forth the conditions under which Liberty would have provided firm and secondary storage services; (2) the addition of Rate Schedules FT and IT under which Liberty will provide firm and interruptible transportation services; (3) the addition of a single rate sheet, showing the proposed applicable cost-based rates for each of Liberty's

⁹ Liberty accepted the certificate authorization for the Expansion Facilities, but has not yet commenced construction.

¹⁰ This filing is currently pending Commission action.

¹¹ March 4, 2011 Joint Abbreviated Application of Liberty and LA Storage at 8.

¹² In the joint application, LA Storage requests the same market-based rate authority to provide storage and hub services through the Expansion Facilities as Liberty was granted.

¹³ By Commission letter order dated October 20, 2010, Liberty was granted a 30-day extension in which to make its compliance filing.

¹⁴ See 18 C.F.R. §§ 157.6(b)(8), 157.20(c)(3), and 157.14(a)(13), (14), (16), and (17) (2010).

transportation and other services;¹⁵ (4) procedures for resolving transportation imbalances; (5) procedures for the exercise of a right of first refusal by a transportation customer; and (6) forms of service agreements for service under Rate Schedules FT and IT. In addition, the filing reflects further modifications to the GTC to reflect the provision of firm and interruptible transportation service.

III. Notice and Intervention

12. Public notice of Liberty's compliance filing was published in the *Federal Register* on February 8, 2011 (76 Fed. Reg. 6778), with protests or interventions due by February 7, 2011. No motions to intervene, protests, or adverse comments were filed.

IV. Discussion

A. Rates

13. Liberty proposes: (1) a firm maximum reservation recourse rate for Rate Schedule FT transportation service of \$3.9155 per Dth; and (2) a maximum recourse rate for interruptible service under Rate Schedule IT of \$0.1287 per Dth, which is the 100 percent load factor equivalent of the FT rate.¹⁶ The proposed maximum reservation rate for Rate Schedule FT is based on the calculated first-year cost-of-service of \$15,599,547.¹⁷ In developing the proposed cost-of-service rates for Rate Schedule FT, Liberty utilized a pre-tax return of 9.5 percent and proposes to depreciate its new gas transmission plant using a 2 percent, 50-year straight line depreciation rate.

14. The Commission finds that Liberty's proposed recourse rates for service under Rate Schedule FT and its interruptible rate schedules are cost-based rates that fully recover the costs of the construction and are based on the actual design capacity of the pipeline. Therefore, the Commission will accept Liberty's proposed recourse rates, subject to the conditions discussed below.

¹⁵ Under its existing tariff, Liberty offers open-access parking, wheeling, loaning, imbalance trading, and balancing services pursuant to Rate Schedules IP, IW, IL, IBT, and IB.

¹⁶ The maximum recourse rate under Rate Schedule IT is applicable to service under all of Liberty's interruptible rate schedules.

¹⁷ Compliance Filing, Exhibit P at 3.

Interruptible Revenue Crediting

15. Commission policy requires a pipeline to either allocate costs to interruptible service or to credit revenues from such service to ensure that the rates established for firm service do not recover more than the costs properly allocated to firm service.¹⁸ Liberty has done neither. Thus, in its filing to comply with this order, Liberty must revise its rates to reflect an allocation of costs to interruptible service or add a provision to its GTC for the crediting of interruptible revenues.

Interruptible Rate Design

16. Section 4.1 of Liberty's Rate Statement For All Services (Rate Statement) states that payment for its Rate Schedule IP should be equal to the Interruptible Parking Charge multiplied by the Customer's Maximum Park Quantity. Similarly, Liberty's Rate Schedule IL states that payment should be equal to the Interruptible Loan Charge multiplied by the Customer's Maximum Loan Quantity. Section 284.10(c)(1) of the Commission's regulations requires a rate for interruptible service to be based on actual units of gas transported or, in this case, actual quantities of gas parked or loaned.¹⁹ However, under Liberty's proposal, the interruptible parking and loan charges are based on the maximum quantities in the agreement, rather than on the quantity of gas actually parked or loaned, as the Commission's regulations require. Therefore, the Commission directs Liberty to revise its Interruptible Parking and Loan charges on its Rate Statement and in its Rate Schedules to reflect that payment for the interruptible parking service will be based on the actual quantities of gas parked, not the Maximum Park Quantity, and payment for its interruptible loan service will be based on the actual quantities of gas loaned, not the Maximum Loan Quantity.

¹⁸ See, e.g., *Creole Trail LNG, L.P.*, 115 FERC ¶ 61,331, at P 27 (2006); *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177, at P 51 (2005).

¹⁹ Section 284.10(c)(1) regarding rate design for volumetric rates, states in relevant part:

[A]ny rate filed for service subject to this section [interruptible transportation service] must be a one-part rate that recovers the costs allocated to the service to the extent that the projected units of that service are actually purchased and may not include a demand charge, a minimum bill or minimum take provision or any other provision that has the effect of guaranteeing revenue.

18 C.F.R. § 284.10(c)(1) (2010).

17. Similarly, section 4.7.3(a) of Rate Schedule IW states that Liberty's Interruptible Wheeling Charge will be a charge for each Dth wheeled by Liberty or the Customer's Maximum Wheeling Quantity, as applicable.²⁰ The Commission directs Liberty to revise Rate Schedule IW so that its daily Interruptible Wheeling Charge is solely based on the actual quantities of gas wheeled.

Backhaul Transportation

18. Section 4.1 of Liberty's Rate Statement reflects that Liberty will provide both forward haul and backhaul service for Rate Schedule IT, but only forward haul service for Rate Schedule FT. Liberty states in its February 10, 2011 data response that it considers transportation that requires the use of compression to be a forward haul and any counter-cyclical transportation that relies on displacement of the firm, forward haul supply to be interruptible backhaul service. Thus, according to Liberty, a shipper can transport supply on Liberty on a firm or interruptible basis, but can only use backhaul transportation on an interruptible basis. The Commission finds that Liberty's explanation is sufficient. However, there is no definition of forward haul and backhaul in Liberty's tariff to provide such information regarding these terms to shippers. Therefore, the Commission directs Liberty to modify its tariff to include definitions of what constitutes forward haul and backhaul service.

Cost and Revenue Study

19. Consistent with its precedent,²¹ the Commission will require Liberty to file a cost and revenue study at the end of its first three years of operation to justify its existing cost-based firm and interruptible recourse rates. In its filing, the projected units of service should be no lower than those upon which Liberty's approved initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the regulations to update cost of service data. After reviewing the data, the Commission will determine whether to exercise authority under section 5 of the NGA to establish just and reasonable rates. In lieu of this filing, Liberty may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

²⁰ In contrast, Liberty's Rate Statement (section 4.1) states that its wheeling charge will be the Interruptible Wheeling Charge multiplied by the Dth quantity Liberty shall have wheeled for Customer during a given invoice period, and does not reference the Customer's Maximum Wheeling Quantity.

²¹ See, e.g., *Cimarron River Pipeline, LLC*, 124 FERC ¶ 61,069 (2008).

B. Tariff Revisions**Fuel Retainage Percentage**

20. Section 5.19.2 states that Liberty's Fuel Retainage Percentage (FRP) shall be equal to the sum of the currently effective FRP and any increment of fuel added during an Operational Flow Order. Liberty provided substantially revised fuel retainage provisions in its February 10, 2011 data response to clarify its fuel recovery process. The Commission directs Liberty to file these revised tariff records when it makes its compliance filing to this order and to clearly label these tariff records as section 5.19.

Negotiated Rate Authority

21. Section 5.36 provides Liberty with the authority to enter into negotiated rate agreements and includes a list of information describing the details of the agreement that Liberty states it will file with the Commission when it enters into a negotiated rate agreement. In addition to the information set forth in Section 5.36, the Commission will require Liberty to disclose any other agreement, understanding, negotiation, or consideration associated with the negotiated rate agreements. Liberty must also maintain separate and identifiable accounts for any volumes transported, billing determinants, rate components, surcharges, and revenues associated with its negotiated rates for the project in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate proceedings. When Liberty files a description of a negotiated rate agreement under section 4 of the NGA, interested parties may protest if they believe the rates are discriminatory.

22. In addition, should the negotiated rate agreement contain provisions that do not conform with Liberty's form of service agreement, Liberty must clearly delineate differences between its negotiated contractual terms and that of its form of service agreement in redline and strikeout. Further, Liberty must provide a detailed narrative outlining the terms of its negotiated contract, the manner in which such terms differ from its form of service agreement, the effect of such terms on the rights of the parties, and why such deviation does not present a risk of undue discrimination.²²

Operational Balancing Agreements

23. Section 5.38.1(a) states that Liberty "may" enter into Operational Balancing Agreements (OBAs) with interstate or intrastate pipelines that operate natural gas

²² See *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, at P 33.

facilities that directly interconnect with Liberty's pipeline system. In Order No. 587-G,²³ the Commission adopted section 284.12(b)(2)(i) of the regulations,²⁴ requiring interstate pipelines to enter into OBAs at all points of connection between their systems and the systems of other interstate or intrastate pipelines. Liberty must comply with this requirement. Thus, the Commission directs Liberty to modify its tariff to reflect a mandatory obligation to enter into OBAs with interstate or intrastate pipelines.

Liability

24. Article 7.1 of section 6.1 of Liberty's Form of Service Agreement for Rate Schedule FT and Article 7.1 of section 6.2 of Liberty's Form of Service Agreement for Rate Schedule IT state that the

Customer acknowledges and agrees that: (a) Customer shall have no recourse against [] Liberty's parent and other affiliates with respect to Liberty's obligations under this Agreement and that its sole recourse shall be against the assets and revenues of Liberty, irrespective of any failure to comply with any provision of this Agreement; (b) no claim shall be made against Liberty's parent and other affiliates under or in connection with this Agreement; and (c) this representation is made expressly for the benefit of [] Liberty's parent and other affiliates.

25. Conditioning jurisdictional service by requiring that a shipper agree in advance not to sue Liberty's parent or affiliates is not just and reasonable. The liability of parents and affiliates of the natural gas company subject to our NGA jurisdiction should be determined based on applicable state or other contract law, and a shipper should not be required to give up whatever rights it has under such contract law as a condition to obtaining jurisdictional service. Therefore, Liberty is directed to remove Article 7.1 from sections 6.1 and 6.2 of its Form of Service Agreements for Rate Schedules FT and IT.

26. Article 7.2 of section 6.1 of Liberty's Form of Service Agreement for Rate Schedule FT and Article 7.2 of section 6.2 of Liberty's Form of Service Agreement for Rate Schedule IT state that "neither Party shall be liable to the other Party for any special, indirect, punitive, or consequential damages (including, without limitation, loss of profits

²³ *Standards For Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-G, FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,062 (1998), *order on reh'g*, Order No. 587-I, FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,067 (1998).

²⁴ 18 C.F.R. § 284.12(b)(2)(i) (2010).

or business interruptions), whether in contract or in tort, arising out of or in any manner related to this Agreement, even if a party has been advised of the possibility of such damages.”

27. The Commission has consistently held that a simple negligence standard is appropriate for the liability and indemnification provisions of open-access tariffs.²⁵ The Commission, however, has allowed pipelines to limit their liability for negligence to direct damages, so that they are only liable for indirect, consequential, incidental, or punitive damages where there is gross negligence, willful misconduct, or bad faith.²⁶ Article 7.2, as revised, provides that “neither Party shall be liable for any special, indirect, punitive, or consequential damages . . . in any manner related to this Agreement.” This provision would insulate Liberty from all damages, direct as well as indirect, for its own negligence, contrary to Commission policy. Therefore, Liberty must modify this provision so as to not exclude itself from liability for direct damages arising from its own negligence.

Credit Requirements in Form of Service Agreement

28. Exhibit C of section 6.1 of Liberty’s Form of Service Agreement for Rate Schedule FT includes Credit Requirements. Section 5.32 of Liberty’s GTC also includes creditworthiness provisions and, although they are substantially similar, they are not identical. For example, the credit requirements in Exhibit C of section 6.1 of the Form of Service Agreement state that a customer shall be deemed creditworthy if its long-term unsecured debt is a rating of at least “BBB-” by Standard & Poor’s Rating Service or at least “Baa3” by Moody’s Investor Service, Inc, while section 5.32 of Liberty’s GTC states that the customer must have a credit rating that meets those requirements, but does not state that the credit rating applies to the customer’s long-term unsecured debt. The Commission sees no compelling reason for Liberty to include its credit requirements in its Form of Service Agreement. However, if Liberty intends to do so, it must ensure that the requirements in both its Form of Service Agreement and GTC are identical. Thus, the Commission directs Liberty to either delete the credit requirement provision from its Form of Service Agreement or revise it so that it is identical to the relevant provisions in Section 5.32 of its GTC.

²⁵ See, e.g., *Gulf South Pipeline Co.*, 98 FERC ¶ 61,278, at 62,182 & n.56 (2002); *Williams Pipe Line Co.*, 88 FERC ¶ 61,014, at 61,040 & n.31 (1999).

²⁶ *ANR Pipeline Co.*, 100 FERC ¶ 61,132, at 61,505 (2002).

Miscellaneous

29. Sections 4.6.6.1, 4.7.6.1, 4.8.6.1, and 4.10.6.1 of Rate Schedules IP, IW, IL, and IB, respectively, and sections 5.8.2(c) and 5.39.1 of the GTC use the word “Liberty” where the word “pipeline,” “facility” or “shipper” would appear to be more appropriate. Liberty provided revised *pro forma* tariff sheets in its February 10, 2011 data response to address these issues. The Commission directs Liberty to file its revised tariff sheets when it makes its compliance filing to place its tariff into effect.

30. Sections 5.6, 5.7, and 5.9 of the GTC are mislabeled as section 5.8. Liberty provided revised *pro forma* tariff sheets in its February 10, 2011 data response to address this issue. The Commission directs Liberty to file its revised tariff sheets when it makes its certificate compliance filing to place its tariff into effect.

31. Section 4.9.2 of Rate Schedule IBT makes reference to Liberty’s storage facility. Liberty is directed to revise the section to reference Liberty’s transmission facility.

The Commission orders:

(A) Liberty’s proposed revisions to its *pro forma* tariff are granted, subject to conditions, as discussed herein.

(B) Liberty shall submit actual tariff sheets that comply with the requirements contained in the body of this order within 45 days of the date of this order.

(C) In all other respects, the 2010 Order shall remain in full force and effect.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.