

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Liberty Gas Storage, LLC

Docket Nos. CP05-92-001
CP05-93-001
CP05-94-002

ORDER AMENDING CERTIFICATE

(Issued November 22, 2006)

1. On September 7, 2006, Liberty Gas Storage, LLC (Liberty) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) seeking amendment of the certificate authority granted by the Commission in an order issued on December 8, 2005.¹ The requested certificate amendment would authorize Liberty's transfer of legal title to certificated facilities under construction in Calcasieu Parish, Louisiana, to the Industrial Development Board of the Parish of Calcasieu, Inc. (Development Board), while retaining certificate authority to operate and provide service using the facilities. For the reasons discussed below, the Commission finds that Liberty's proposal is in the public interest and is granting the requested certificate amendment.

I. Background

2. Liberty is a limited liability company that was created to construct the storage facilities certificated by the Commission's December 2005 Order. 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). SEI 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.

3. The December 2005 Order authorized Liberty to construct and operate a high-deliverability, salt dome natural gas storage facility and associated pipeline facilities in Calcasieu and Beauregard Parishes, Louisiana (Liberty Gas Storage Project). This

¹ *Liberty Gas Storage, LLC*, 113 FERC ¶ 61,247 (2005).

project entails Liberty's conversion of two existing underground salt caverns in the Sulphur Mines salt dome near Sulphur in Calcasieu Parish, Louisiana, from brine production to natural gas storage. The Liberty Gas Storage Project 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. The Commission also authorized Liberty to provide open-access, Part 284 firm and interruptible storage services and interruptible hub services and to charge market-based rates for these services.

4. The specific facilities authorized by the December 2005 Order consist of: (1) 23.3 miles of a 30-inch diameter, bi-directional pipeline that will interconnect with up to seven natural gas pipelines; (2) bi-directional metering and regulation facilities at each point of interconnection with the other pipeline systems; (3) an on-site compressor station consisting of three natural gas-fueled compressor units providing a total of 14,205 horsepower and related dehydration, filtration, and other appurtenant facilities; (4) a remote compressor station consisting of two natural gas-fueled compressor units providing a total of 9,470 horsepower, as well as related dehydration, filtration, and appurtenant facilities; and (5) additional facilities, including new wells, required to convert the salt caverns to natural gas storage.

5. With the exception of the remote compressor station, nine miles of pipeline, and certain interconnection facilities, all of the facilities certificated by the December 2005 Order are located in Calcasieu Parish (Calcasieu Facilities). These Calcasieu Facilities are the subject of the instant application for amended certificate authority.

6. On December 21, 2005, Liberty accepted the certificates granted in the December 2005 Order. Liberty commenced construction on March 29, 2006. Liberty reports that construction is ongoing, and that it expects its project to be ready for initial service in early 2007.

II. Proposal

A. Purpose and Overview of Proposed Transaction

7. The December 2005 Order approved the Liberty Gas Storage Project based on the representations in Liberty's original application. As described in that application, all of the Liberty Gas Storage Project facilities would be owned by Liberty. Thus, Liberty was authorized by the December 2005 Order to construct and operate facilities that it would also own. Liberty now seeks amended certificate authority that will continue to authorize its construction and operation of the Calcasieu Facilities, but permit it to transfer legal title to those facilities to the Development Board and lease them back on a long-term basis.

8. Liberty explains that the purpose of its proposal is to receive a real property tax exemption with respect to the Calcasieu Facilities. Liberty states that because such a tax exemption will lower its costs, it will be in a position to offer service at more competitive rates. Liberty explains that property in Louisiana acquired and owned by governmental entities, such as the Development Board, in connection with the issuance of bonds is exempt from real property taxes. In order to qualify for this exemption, Liberty needs amended certificate authority allowing it to transfer legal title to the Calcasieu Facilities to the Development Board, which will issue bonds and sell the bonds to an affiliate of Liberty to finance the Development Board's purchase of the facilities.

9. Liberty emphasizes that it will not transfer operational control of, or responsibility for, the facilities to the Development Board, but that the transfer of passive ownership to the Development Board nevertheless will qualify Liberty for the tax exemption. Liberty reports that it has entered into a Development Agreement with the Development Board and the Parish of Calcasieu, Louisiana (the Parish) to document the transaction and the exemption of the Calcasieu Facilities from real property taxes. The Development Agreement requires that Liberty make certain payments to the Parish in lieu of the property taxes, as discussed below.

10. Liberty further explains that at the time of the title transfer, Liberty and the Development Board also will enter into a Lease Agreement that will grant Liberty a leasehold interest in the Calcasieu Facilities and complete operational and managerial responsibility and control. Liberty will make monthly rental payments to the Development Board under the Lease Agreement, as described below.

11. Additionally, Liberty states that it will remain the sole holder of, and be responsible for all obligations under, the certificate of public convenience and necessity granted by the Commission's December 2005 Order in Docket No. CP05-92-000 authorizing construction and operation of the Calcasieu Facilities and other facilities that are part of the Liberty Gas Storage Project. Liberty further states that the proposed transaction will have no impact on its contracts with its customers, its operations, or the terms, conditions, and quality of the services that it will provide to its customers.

B. Development Agreement and Closing of Transaction

12. On May 24, 2006, Liberty entered into its Development Agreement with the Parish and the Development Board.² In addition to documenting the real property tax exemption, which will be in force as long as the Lease Agreement (described below)

² Liberty attaches a draft Lease Agreement to its application as Exhibit Z-2.

remains in effect, the Development Agreement establishes the amounts of payments that will be made by Liberty to the Parish in lieu of the real property taxes. These annual payments in lieu of taxes (PILOT payments) will begin on December 31, 2017, and will be in amounts equal to increasing percentages of the amount of ad valorem tax that otherwise would be required to be paid with respect to the Calcasieu Facilities absent the tax exemption.³

13. The Development Agreement states that the exemption from ad valorem taxes and the favorable PILOT payments have been negotiated in exchange for Liberty's maintenance of certain minimum employment levels at the project and minimum levels of gas in storage, which must be met in order for Liberty to continue to qualify for the tax exemption. Liberty states that the tax exemption and its payments to the Parish will become effective only upon receipt of the necessary approvals, including Commission authorization, and the closing of the transaction.

14. At closing, the Development Board (1) will issue and sell to a Liberty affiliate bonds equal to the purchase price that the Development Board will pay Liberty for the Calcasieu Facilities; (2) will use the proceeds from the sale of the bonds to purchase the Calcasieu Facilities; and (3) will enter into the Lease Agreement that will transfer to Liberty complete operational responsibility for, and control of, the Calcasieu Facilities. Liberty states that the net effect of the closing will be to transfer to the Development Board passive ownership in the Calcasieu Facilities.

C. Lease Agreement

15. Following Liberty's transfer of title to the Calcasieu Facilities to the Development Board pursuant to the Development Agreement, the Lease Agreement provides for the Development Board's transfer to Liberty of responsibility for and control of the Calcasieu Facilities for a stated term of 15 years. Liberty will make monthly payments under the Lease Agreement to the Development Board for the rental of the leased facilities in amounts sufficient for the Development Board to make payments of principal and interest that are due with respect to the bonds issued and sold by the Development Board to a Liberty affiliate. The monthly payments will also include any PILOT payments that are due pursuant to the Development Agreement.

³ For example, the PILOT payment in 2017 is 40 percent of the ad valorem taxes, and in 2021, the last year a PILOT payment is due, the payment is 100 percent of the ad valorem taxes.

16. Liberty states that during the term of the Lease Agreement, the Development Board will have no operational or managerial control over either the Calcasieu Facilities or the project in general, and will have no recourse under the Lease Agreement to the Calcasieu Facilities or any other assets of the project. Liberty states that neither the Calcasieu Facilities, nor any other assets of the project, will be pledged for the bonds that will be issued by the Development Board.

17. Liberty asserts that at the termination of the Lease Agreement, Liberty will make the final principal payment (and any accrued interest thereon) due with respect to the bonds that the Development Board has issued. Liberty states that at termination, it will have the right to repurchase the Calcasieu Facilities for a predetermined price. Liberty indicates that it intends to exercise that right, and that by doing so, it will again own legal title to the Calcasieu Facilities. Further, Liberty states that it will have the right to undo the transaction at any time by terminating, at its sole option, the Lease Agreement and paying the remaining principal (and accrued interest) on the bonds to the Development Board. Liberty states that if it so elects to terminate the Lease Agreement prior to the end of the stated term, it will still have the right to repurchase the facilities.

III. Notice and Intervention

18. Public notice of Liberty's application was published in the *Federal Register* on September 19, 2006. 71 *Fed. Reg.* 54,809 (2006). Motions to intervene were due by October 4, 2006. No person or entity moved to intervene in this proceeding or filed a protest.

IV. Discussion

19. Since Liberty's application pertains to facilities certificated for natural gas service in interstate commerce subject to the jurisdiction of the Commission, the proposal is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. The Certificate Policy Statement

20. The Commission's September 15, 1999 Certificate Policy Statement provides guidance as to how it will evaluate proposals for certificating new construction.⁴ 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.

⁴*Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

The Certificate Policy Statement 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.

21. 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.

22. In applying the Certificate Policy Statement in the December 2005 Order that certificated the Liberty Gas Storage Project, the Commission found that Liberty, as a new entrant in the natural gas storage market with no existing customers, satisfies the threshold requirement of no subsidization. The Commission also found that with the authority to charge market-based rates for its services, Liberty will assume all economic risk associated with the project. The Commission further found the Liberty Gas Storage Project will have no adverse impacts on existing customers, or on existing pipelines or storage providers and their captive customers. With respect to landowners and communities affected by the project, the Commission found that any adverse impacts should be minimal, 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.⁵

⁵ The Commission did find in the December 2005 Order that the project could adversely impact the rights of an oil and gas producer, Yellow Rock, LLC, to conduct drilling operations, but that such impacts were too speculative to require any changes to the location of Liberty's facilities. Moreover, the Commission concluded that any impacts on Yellow Rock were outweighed by the substantial benefits of Liberty's storage project. 113 FERC ¶ 61,247 at P 43.

23. In terms of benefits, the Commission found that Liberty's storage project will have substantial benefits by helping to meet the need for high-deliverability natural gas storage service in the southeastern United States and in markets served directly and indirectly by the numerous natural gas pipelines in the vicinity of the project. In particular, the Commission found that Liberty's storage project will further the development of the natural gas infrastructure necessary to meet the needs of gas-fired electric generation plants and to store regasified liquefied natural gas (LNG) from LNG terminals already in service or approved or proposed for the Gulf Coast region. The Commission further found that as a new market entrant, Liberty will offer additional storage options and alternative services that will serve to increase competition in the regional storage area.

24. The Commission's December 2005 Order approved the Liberty Gas Storage Project based on the above findings and the representations in Liberty's original application for the project, including the fact that all of the Liberty Gas Storage Project facilities would be owned by Liberty. Granting Liberty's request for amended certificate authority that will continue to authorize its construction and operation of the Calcasieu Facilities, but permit it to transfer legal title to those facilities to the Development Board and lease them back on a long-term basis, will not change any of the above-described findings in the Commission's December 2005 Order underlying its grant to Liberty of a certificate for its storage project.

25. Liberty will operate the facilities as a new entrant in the natural gas storage market with no existing customers. Therefore, Liberty will still meet the threshold requirement that it financially support the project without relying on subsidization from its customers. Further, while Liberty's proposal involves a complicated financial arrangement that could affect the Commission's public interest findings if they had been based on an assumption that Liberty would be charging cost-based rates, Liberty has been authorized to charge market-based rates for its services using the certificated facilities. Thus, Liberty has assumed the economic risk of any unsubscribed capacity or revenues being insufficient to recover costs. Liberty's proposal does not in any way affect the December 2005 Order's market-power analysis that provided the basis for the Commission's conclusion that Liberty will lack market power and approval of market-based rate authority.

26. Similarly, Liberty's proposed financial transaction does not change the Commission's determinations in the December 2005 Order that the Liberty Gas Storage Project will have no adverse impacts on existing customers, pipelines, or storage providers, and only minimal impact on affected landowners and communities. Liberty is not proposing to modify in any manner the facilities and construction activities authorized in the December 2005 Order. Nor is Liberty proposing any changes in the kinds of storages services it is authorized to offer or in its terms or conditions for such services. Liberty is proposing only a change in the ownership of those project facilities located in Calcasieu Parish for the term of the Development Agreement while retaining

operational control and responsibility for the facilities. Passive ownership of the facilities by Calcasieu Parish's Development Board will not result in any additional impacts on existing service providers or their customers or on landowners and communities.

27. Further, Liberty states that amendment of its certificate authority to permit ownership of the Calcasieu Facilities by the Development Board should provide additional public benefits. Liberty has explained that transferring legal title to the Calcasieu Facilities to the Development Board will exempt the facilities from local real property taxes, thereby reducing Liberty's costs. Thus, Liberty will be in a better position to offer more competitively-priced storage services if necessary to respond to market forces.

28. In view of the above considerations, the Commission finds that the public convenience and necessity require amendment of Liberty's certificate authority to permit its implementation of the Development Agreement and Lease Agreement, as described herein and in Liberty's instant application.⁶ In all other respects, the December 2005 Order's terms and conditions on Liberty's certificate authorizations for the Liberty Gas Storage Project are unchanged.⁷

⁶ The Commission's December 2005 Order granting Liberty a certificate for its Liberty Gas Storage Project concluded that approval of the project would not constitute a major federal action significantly affecting the quality of the human environment. This determination was based on the analysis of the environmental impact of the project in the Environmental Assessment (EA) issued on August 26, 2006 in Docket No. CP05-92-000 *et al.*, consideration of the comments to the EA addressed in the December 2005 Order, and the environmental conditions set forth in the appendix to the December 2005 Order. Liberty's current proposal concerns only the ownership of the facilities and involves no proposed changes to the project facilities or construction activities. Liberty will remain subject to the environmental conditions in the December 2005 Order. In view of these considerations, the Commission finds that approval of Liberty's instant application for amended certificate authority would not constitute a major federal action significantly affecting the quality of the human environment.

⁷ As Liberty states in its application, Commission precedent establishes that it is not necessary for a non-jurisdictional entity, *e.g.*, the Development Board, to obtain certificate authority in order to hold legal title giving it a passive ownership interest in the jurisdictional Calcasieu Facilities; as an otherwise non-jurisdictional entity, the Development Board's role as owner and lessor of the Calcasieu Facilities will not subject it to regulation as a natural gas company under the NGA. *Northwest Pipeline*

29. Liberty states that it will have the contractual right to repurchase the Calcasieu Facilities at the end of its 15-year agreement with the Development Board or any time prior thereto upon Liberty's satisfaction of its final payment obligations. Liberty states that it intends to exercise its repurchase rights. However, before Liberty can reacquire title to these facilities, it will need to again seek amended certificate authority to effect another transfer of title to the Calcasieu Facilities. The amended certificate authority granted by this order in order to permit implementation of Liberty's instant proposal does not include pregranted authority for Liberty to repurchase the Calcasieu Facilities. When Liberty is ready to reacquire title to these facilities, it will be necessary for the Commission to evaluate at that time whether the public convenience and necessity require amendment of Liberty's certificate authority to authorize its repurchase of the facilities.

30. 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) Liberty's certificate of public convenience and necessity granted in Docket No. CP05-92-000 to construct and operate the Liberty Gas Storage Project is amended solely to permit the transfer of legal title to the Calcasieu Facilities to the Development Board and the leaseback of the facilities by Liberty, as described herein and more fully in Liberty's application. In all other respects, Liberty remains subject to the terms and conditions applicable to its certificate authorizations granted by the order issued on December 8, 2005, in Docket No. CP05-92-000 *et al.*

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

Corporation, 106 FERC ¶61,174 at P 62 (2004); *Questar Pipeline Co.*, 93 FERC ¶61,279 at 61,937-38 (2000); and *Granite State Gas Transmission, Inc.*, 40 FERC ¶ 61,165 at 61,527-28 (1987).

(C) Liberty shall inform the Commission of the effective date of the transfer of title to the Calcasieu Facilities to the Development Board within 10 days thereof.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.