

127 FERC ¶ 61,221
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Liberty Gas Storage, LLC

Docket No. CP08-454-000

ORDER ISSUING CERTIFICATE

(Issued June 3, 2009)

1. On July 31, 2008, Liberty Gas Storage, LLC (Liberty) filed an application under section 7(c) of the Natural Gas Act, requesting a certificate of public convenience and necessity authorizing the construction and operation of additional salt dome natural gas storage facilities and associated pipeline facilities (Expansion Project) in Calcasieu and Cameron Parishes, Louisiana. In addition, Liberty requests that the Commission: (i) find that, after the proposed facilities are placed in service, Liberty will not exercise market power with respect to the storage and hub services it provides; (ii) make no material change to Liberty's existing authorization to charge market-based rates for such services; and (iii) grant limited waivers as set forth herein.

2. 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 expansion will further the development of the natural gas infrastructure necessary to, among other things, meet the storage needs of gas-fired electric generation plants. 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 confirms Liberty's authorization to charge market-based rates for its existing and expanded storage and hub services.

I. Background and Proposal

3. 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).¹ SEI is a wholly-owned subsidiary of Sempra Energy International. PT&S is a wholly-owned subsidiary of ProLiance Energy, LLC.

4. By virtue of the certificate of public convenience and necessity previously granted by the Commission to Liberty in 2005,² Liberty is a natural gas company within the meaning of the NGA and, as such, is subject to the jurisdiction and regulation of the Commission. Liberty is currently providing interruptible hub services through gas transmission facilities it placed in service in 2007. Liberty provides such services under the terms and conditions of its Commission-approved tariff. Liberty is in the process of completing construction of its natural gas storage facilities and, upon completion and testing of such facilities, will begin to provide storage services to its customers. Liberty's existing facilities are located in Calcasieu and Beauregard Parishes, Louisiana.

A. New Facilities

5. The Expansion Project consists of four new high-deliverability natural gas storage caverns and related pipeline and appurtenant facilities located in Cameron and Calcasieu Parishes, Louisiana. Three of the four proposed storage caverns will be converted from existing salt caverns. The fourth cavern will be newly developed. All of the caverns will be located on a 159.5-acre tract located approximately three miles west of Hackberry, Louisiana, and owned in fee by Liberty.

6. Liberty states that upon conversion, it will use the three existing caverns to store, in total, approximately 15.75 Billion cubic feet (Bcf) of natural gas, consisting of 12.40 Bcf of working gas and 3.35 Bcf of base gas. Liberty will use the newly developed cavern to store approximately 8.25 Bcf of natural gas, consisting of 6.50 Bcf of working gas and 1.75 Bcf of base gas. Liberty designed the Expansion Project facilities to inject natural gas into storage at a maximum rate of approximately 600 million cubic feet per day (MMcf/d) and withdraw natural gas from storage at a maximum rate of approximately 1.2 Bcf per day.

7. The three existing salt caverns were formed as a result of commercial brine production and were engineered and maintained in a manner compatible with eventual conversion to natural gas storage. The brine that remains in the existing caverns will be displaced with natural gas during the early operation of the storage facility. The new

¹ Prior to May 16, 2005, when PT&S acquired a 25 percent ownership interest in Liberty, Liberty was wholly-owned by SEI Storage Corp.

² *Liberty Gas Storage, LLC*, 113 FERC ¶ 61, 247 (2005) (December 8 Order) (2005).

cavern will be created through a brine-leaching process involving the injection of water through a well bore. The brine displaced by the conversion of the existing caverns and the development of the new cavern will be transported by a brine disposal pipeline to four saltwater disposal wells. The brine disposal pipeline will be approximately four miles long and 16 inches in diameter.

8. In order to transport natural gas to and from the Expansion Project's four storage caverns, Liberty proposes to construct approximately 5.1 miles of 36-inch diameter bi-directional natural gas pipeline. This pipeline will interconnect with the mainline of Cameron Interstate Pipeline, LLC (Cameron Interstate). Liberty will also construct a bi-directional natural gas metering station at its interconnection with Cameron Interstate. In addition, Liberty plans to construct an 18,940 horsepower (hp) compressor station comprising four natural gas-powered reciprocating compressor engines as well as additional appurtenant jurisdictional facilities.

B. Market and New Services

9. Liberty cites a Commission staff report as evidence that the Gulf Coast area is expected to require 77 Bcf of additional storage capacity by the year 2020.³ Liberty asserts that high-deliverability storage, as offered by the Expansion Project, most effectively responds to these needs.

10. Liberty states that its proposed salt storage caverns will be able to withdraw inventories of natural gas from storage on very short notice, and at very high rates of deliverability. Liberty maintains that this type of storage can serve a critical role during periods of peak demand, production interruption, or market dislocation. Liberty states that salt cavern storage can also be an economically viable alternative to selling gas production during periods of low demand and depressed prices and can further provide an economic alternative to paying pipeline scheduling and imbalance penalties resulting from load swings.

11. Liberty asserts that high-deliverability gas storage is often the most economical means of supporting deliveries to highly variable loads since it can be substituted for upstream pipeline capacity and flowing gas supply, and can mitigate the adverse effects of production and pipeline outages and other temporary capacity constraints that can cause gas price spikes and require costly fuel switching. Liberty further asserts that high-

³ Federal Energy Regulatory Commission Staff Report, "*Current State of and Issues Concerning Underground Natural Gas Storage*," at 15, Docket No. AD04-11-000 (Sept. 30, 2004).

deliverability salt cavern storage facilities are also ideally suited to support the use of variably dispatched gas-fired power generation.

12. Liberty conducted an open season for the Expansion Project from February 12, 2007 through March 2, 2007. Liberty states that over twenty prospective customers expressed interest through the open season in contracting for an aggregate quantity that substantially exceeds the total 18.9 Bcf of working gas capacity that will be made available through the Expansion Project facilities. Liberty entered into binding precedent agreements with two of those parties.

13. Liberty proposes to use the Expansion Project facilities to continue to provide the services it currently provides under its tariff, i.e., firm storage services and hub-related services, including interruptible wheeling and park and loan transactions. As with service through Liberty's existing facilities, the hub-related services can be provided on a "stand alone" basis or in connection with Liberty's storage services.

C. Market-Based Rates

14. The December 8 Order concluded that Liberty lacked market power.⁴ The Commission based that decision on the fact that the facilities authorized in the December 8 Order are in a "highly competitive production area where numerous storage and interruptible hub service alternatives exist for potential customers."⁵ The Commission also found that Liberty's prospective market shares would be low and that market concentration levels determined using the Herfindahl Hirschman Index (HHI) would be below the threshold warranting further review.⁶ Accordingly, the Commission granted approval for Liberty to charge market-based rates for its storage and hub services.

15. Liberty asks the Commission to determine that it will not exercise market power with respect to the storage and hub services it provides after the proposed Expansion Project facilities are completed and placed in service. Liberty further requests that the Commission confirm that Liberty's existing authorization to charge market-based rates for such services will continue in effect after the Expansion Project facilities are placed into service.

⁴ December 8 Order, 113 FERC ¶ 61,247 at P 50 (2005).

⁵ *Id.*

⁶ *Id.*

D. Waivers

16. 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. The specific requests for waivers and the Commission's treatment of such requests are discussed fully below.

II. Notice And Interventions

17. Notice of Liberty's application was published in the *Federal Register* on August 22, 2008 (73 Fed. Reg. 49,666). Florida Gas Transmission Company, LLC 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.⁷

III. Discussion

18. 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

19. The Commission's September 15, 1999 Certificate Policy Statement provides guidance as to how it will evaluate proposals for certificating new construction.⁸ 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.

⁷18 C.F.R. § 385.214(c)(2008).

⁸*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).

20. 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.

21. 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. The Commission authorized Liberty to charge market-based rates in its December 8 Order addressing Liberty's original storage certificate application in Docket No. CP05-92-000, *et al.*⁹ The December 8 Order found that Liberty satisfied the threshold requirement of the Certificate Policy Statement since there would be no subsidization because Liberty was a new entrant in the natural gas storage market with no existing customers. The December 8 Order also found that, under its market-based rate proposal, Liberty would assume the economic risks associated with the costs of the project's facilities to the extent that any capacity is unsubscribed.¹⁰ Similarly, under this market-based rate proposal, Liberty assumes the economic risks associated with the costs of the Expansion Project's facilities to the extent that any capacity is unsubscribed.

22. Thus, the Commission finds that Liberty satisfies the threshold requirement of the Certificate Policy Statement in this proceeding. The Commission is 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. The evidence shows no relevant negative impacts on landowners and communities since Liberty owns the property on which the caverns will operate. As to the natural gas and brine pipeline facilities, negotiations for property rights are ongoing, and Liberty states that the use of condemnation procedures is not anticipated. Additionally, no storage company or customer in Liberty's market area has protested Liberty's application.

⁹ December 8 Order, 113 FERC ¶ 61,247 (2005).

¹⁰ *Id.* P 24 and 25.

B. Market-Based Rates

23. Generally, the Commission evaluates requests to charge market-based rates for storage under the analytical framework of its 1996 Alternative Rate Policy Statement (Policy Statement).¹¹ Under the Policy Statement, the Commission will approve market-based rates for storage providers where the applicant has demonstrated it lacks market power or has adopted conditions that significantly mitigate market power. The Commission has approved requests to charge market-based rates for storage services based on a finding that the proposed projects would not be able to exercise market power due to small size, anticipated share of the market, and numerous competitors.¹² The Commission permits storage applicants to include non-storage products and services, including pipeline capacity and local production and LNG supply in the calculation of its market concentration and market share.¹³

24. The Commission has distinguished between production area storage facilities, such as Liberty's, and market-area storage.¹⁴ In general, alternative storage facilities make market power in a production area less of a concern. Liberty's market power analysis states that, in order to be conservative, it includes only storage facilities available to the relevant product market and does not include services provided by non-storage facilities and alternatives available to potential storage customers such as pipeline

¹¹ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076; *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *petitions denied and dismissed*, *Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998).

¹² *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).

¹³ *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220; *order on clarification and den'g reh'g*, Order No. 678-A, 117 FERC ¶ 61,190, at P 26 (2006).

¹⁴ *Moss Bluff Hub Partners, L.P.*, 80 FERC ¶ 61,181 (1997); *Steuben Gas Storage Co.*, 72 FERC ¶ 61,102 (1995), *order on compliance filing and denying reh'g*, 74 FERC ¶ 61,024 (1996).

balancing and park and loan services, pipeline expansions, LNG services and fuel switching, which effectively compete with Liberty's storage and hub services.¹⁵

25. 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. Liberty identifies the relevant product market as firm and secondary firm (interruptible) storage services and hub services consisting of parking, loaning, balancing, imbalance trading and wheeling services. These are the same services that were included in Liberty's original storage project application. The relevant geographic market for Liberty's products/services, except wheeling, is defined as consisting of East Texas, Louisiana, Mississippi, and Alabama (Gulf Coast Production Area). Interruptible wheeling, which is a transportation service, is also covered by Liberty's study for the Gulf Coast Production Area.

26. The Commission uses the 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 closer scrutiny to make a determination about a seller's ability to exert market power. Liberty's revised market power analysis¹⁶ shows an HHI calculation of 737 for working gas capacity (Revised Exhibit No. 4) and an HHI calculation of 709.1 for peak day deliverability (Revised Exhibit No. 6). 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.

27. Liberty's revised market power study identifies 50 alternative storage facilities existing or under construction, including the Expansion Project facilities, affiliated with 29 separate entities, in the relevant market area. Revised Exhibit No. 4 shows that the working gas capacity for the entire Gulf Coast Production Area, including Liberty, is 954.9 Bcf, with Liberty (including the Bay Gas and Mississippi Hub facilities)

¹⁵ Liberty's market power analysis was prepared by Timothy E. McClive of Pace Global Energy Services, LLC and is included as Exhibit I to Liberty's application.

¹⁶ Liberty noted at p. 16 of its application that its affiliate, Sempra Energy, had agreed to acquire EnergySouth, Inc. (EnergySouth). On September 11, 2008, Liberty submitted a revised market power analysis to include EnergySouth's two Gulf Coast Production Area storage projects, Bay Gas Storage Company, Ltd. and Mississippi Hub, LLC.

controlling 72.9 Bcf, or 7.63 percent of the Gulf Coast Production Area working gas capacity. Revised Exhibit No. 4 also shows that no single entity controls more than 13 percent of the total working gas capacity in the Gulf Coast Production Area and that 25 of the 29 entities control less than 10 percent of the working gas capacity.

28. Revised Exhibit No. 6 shows that Liberty's 5,810 MMcf per day of peak day deliverability (including the Bay Gas and Mississippi Hub facilities) will be 16.04 percent of the total Gulf Coast Production Area peak day deliverability of 36,222 MMcf per day. Thus, Liberty's aggregate share of the relevant storage market will be relatively small. Revised Exhibit No. 6 also shows that no single entity other than Liberty controls more than 9 percent of the total deliverability in the Gulf Coast Production Area and that 25 of the 29 entities control less than 7 percent of the working gas capacity. Furthermore, the 7.63 percent working gas capacity and the 16.04 percent peak day deliverability market shares in the instant proceeding are comparable to the 5.98 percent working gas capacity and 16.61 percent peak day deliverability market shares contained in Liberty's original storage application, which was approved by the December 8 Order.¹⁷

29. 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 13 storage projects proposed or under development in the Gulf Coast Production Area (Exhibit No. 12). These projects, if built, will expand the current working gas capacity in the Gulf Coast Production Area by 218 Bcf (or 22.8 percent) and expand peak day delivery by about 11,350 MMcf per day (or 31.3 percent). In addition, Liberty lists nine existing facilities within the market area that are expanding current working gas capacity and peak day deliverability (Exhibit No. 14). Exhibit No. 15 lists Gulf Coast Production Area peak shaving and LNG import facilities and their capacities and peak deliverability, which may provide alternatives to underground natural gas storage. In light of this information, we conclude that the barriers to entry to the storage markets in the relevant market area are low.

30. Liberty's proposed parking, loaning, balancing, and imbalance trading hub services are essentially variations of storage service. Therefore, 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.

31. Exhibit Nos. 9 and 10 show that there are thirteen natural gas hubs and market centers in the Gulf Coast Production Area, including Liberty, with 106 delivery points and 92 receipt points available to shippers. Exhibit No. 9 shows that there is 30.9 Bcf per day of delivery capacity in the hubs and market centers in the Gulf Coast Production Area and the expanded Liberty project will account for 3.1 Bcf per day, or about 10

¹⁷ December 8 Order, 113 FERC ¶ 61,247 at P 47.

percent of the total. Exhibit No. 9 also shows that the HHI for total delivery capacity at the Gulf Coast Production Area hubs and market centers is 926.8.

32. Exhibit No. 10 shows that there is 28.1 Bcf per day of receipt capacity in the hubs and market centers in the Gulf Coast Production Area and the expanded Liberty project will account for 3.1 Bcf per day, or about 11 percent of the total. Exhibit No. 10 also shows that the HHI for total receipt capacity at the Gulf Coast Production Area hubs and market centers is 961.8. These HHIs are well below the 1,800 HHI threshold, indicating that Liberty lacks market power regarding its proposed wheeling hub services. Liberty presents a matrix, referred to as a bingo-card analysis (Exhibit No. 7), which identifies other interconnections available to the six pipelines connected to Liberty. Exhibit No. 8 shows the alternative receipt and delivery points for the bingo-card analysis and the available capacity at each point. Exhibit Nos. 7 and 8 indicate that shippers can avoid the interconnections provided by Liberty through the use of alternative routes.

33. 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. Also, Liberty's prospective market shares are low and the HHIs are below the threshold warranting further review. Thus, we conclude that Liberty will lack market power. Furthermore, Liberty's proposal for market-based rates is unopposed. For these reasons, we will approve Liberty's request to continue market-based rates for its storage and hub services, including its interruptible wheeling service.

34. Nevertheless, as we stated in the December 8 Order, 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.¹⁸ The Commission reserves the right to require an updated market-power analysis at any time.¹⁹

¹⁸ See, e.g., *Copiah County Storage Co.*, 99 FERC ¶ 61,316 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002).

¹⁹ See *Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141, at P 40 (2005).

C. Waivers of Filing Requirements

35. In light of its request for authority to continue to charge market-based rates, Liberty requests that the Commission grant waiver of 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 grant waiver of the filing requirements of sections 157.14(a)(13), (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 continuation of its waiver of the accounting and annual reporting requirements under Part 201 and sections 260.1 and 260.2, respectively, of the Commission's regulations, except for the information necessary for the assessment of annual charges. Similarly, Liberty requests continuation of its 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 requirement in section 157.14(a) (10) that applicants file total gas supply data (Exhibit H), as being inapplicable to natural gas storage services. Liberty notes that its customers will supply their own gas for storage.

36. The cost-related information required by the above-described regulations is not relevant in light of our approval of Liberty's continuing to charge market-based rates for its storage services. Thus, consistent with our findings in previous orders²⁰ and the December 8 Order, 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), which requires an applicant to submit gas supply data, as being inapplicable to storage operations.

37. In addition, the Commission grants the requested continuation of the waiver of the requirement to file an annual report (Form No.2-A), as required by section 260.2 of the regulations,²¹ 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,

²⁰ See, e.g., *SG Resources Mississippi, L.L.C.*, 101 FERC ¶ 61,029, at P 26 (2002); *Egan Hub Partners, L.P.*, 95 FERC ¶ 61,395, at 62,473 (2001) and 99 FERC ¶ 61,269, at 62,142 (2002).

²¹ 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.

reporting the gas volume information which is the basis for imposing an Annual Charge Adjustment (ACA) charge.²²

D. Engineering Analysis

38. Commission staff completed an engineering analysis of both the proposed 5.1-mile, 36-inch pipeline, and the three existing caverns and one new cavern proposed for natural gas storage. Based on this analysis, we find that the facilities are appropriately designed to withdraw up to 1.2 Bcf of natural gas per day from storage and to inject up to 0.6 Bcf of natural gas per day into storage.

39. 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. The existing caverns associated with Pelican Well Nos. 001, 002 and 003 shall be operated as a "gallery" in accordance with Louisiana Office of Conservation Order No. 2003-08 SDS, and comply with all of the requirements of such order. Liberty shall constantly monitor the pressures in each gallery cavern, and initiate a shutdown if the pressure difference between caverns in the gallery exceed a given tolerance factor to be determined. Additionally, the maximum and minimum operating cavern pressures, with the maximum allowable pressure gradient of 0.85 psi/ft and the minimum allowable pressure gradient of 0.20 psi/ft, throughout the storage cycle will preserve the structural integrity of the caverns. The certificate issued in this proceeding is conditioned on operation of the certificated facilities in accordance with the terms and conditions provided in Appendix B to this order.

E. Environmental Analysis

40. On February 28, 2008, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Liberty Gas Storage Expansion Project and Request for Comments on Environmental Issues (NOI). We received responses to the NOI from the United States Fish and Wildlife Service (FWS), United States Department of Health and Human Services (HHS), Louisiana Department of Wildlife and Fisheries (LDWF), and four concerned citizens. The comments we received were related to impacts on groundwater, water resources, wildlife, wetlands, land use, use of environmental protection measures, potential impacts to the adjacent strategic petroleum reserve storage facilities, and public safety.

²² See *Wyckoff Gas Storage Co., LLC*, 105 FERC ¶ 61,027, at P 65 (2003).

41. Commission staff prepared an environmental assessment (EA) for Liberty's project that was issued for a 30-day comment period and placed in the public record on January 26, 2009. The EA addresses geology, soils, water resources including groundwater, wetlands, vegetation, fish and wildlife, threatened and endangered species, land use, recreation, cultural resources, air quality, noise resources, public safety and alternatives. The EA also addresses all substantive issues raised in the scoping comment letters.
42. The Commission received comments on the EA from the HHS, FWS, Mr. Charlie Atherton, LDWF, and the United States National Oceanic and Atmospheric Administration – National Marine Fisheries Service (NMFS).
43. In its comments on the EA, the HHS states that it believes potential construction-related impacts and cumulative impacts have been addressed and that the planned mitigation measures should minimize potential impacts on human populations if adequately implemented as described in the EA. Similarly, the FWS comments that the EA adequately describes impacts to fish and wildlife resources within the proposed action area, and it does not have any comments to provide on the EA.
44. Mr. Charlie Atherton's comments on the EA include his concern that salt water may intrude into the drinking water supply as a result of Liberty's use of groundwater to construct the new salt cavern. He also requests that Liberty implement a groundwater monitoring program.
45. The EA discusses salt water intrusion and other potential impacts on groundwater and concludes that construction and operation of the project would not result in significant impacts to groundwater availability or quality. The groundwater withdrawal uses and locations described in the EA were determined based on consultations with the Louisiana Geological Survey and the Louisiana Department of Natural Resources (LDNR) Ground Water Resources Division. Subsequently, on April 2, 2009, Liberty finalized and filed its Groundwater Monitoring and Mitigation Plans that were prepared in consultation with and approved by the LDNR.
46. Based on the information and findings presented in the EA regarding saltwater intrusions and impacts to groundwater, and Liberty's implementation of its Groundwater Monitoring and Mitigation Plans, we believe Mr. Atherton's comments have been adequately addressed.
47. In its comments on the EA, the LDWF states it has no objection to the proposed construction method on the south bank of Black Lake, and recommends the applicant use all prudent efforts, physical, chemical or mechanical, to eliminate establishment of noxious/exotic vegetation such as black willow or Chinese tallow.

48. As discussed in the EA, Liberty has committed to minimize the spread of Chinese tallow by implementing minimization and mitigation measures described in its Upland Erosion Control, Revegetation, and Maintenance Plan and Wetland and Waterbody Construction and Mitigation Procedures (Procedures). Liberty's commitment to require its contractors to clean construction equipment of Chinese tallow prior to mobilizing to other construction locations was also identified in the EA. We believe the implementation of these measures will minimize the spread of Chinese tallow as well as black willow and the LDWF's comments have been adequately addressed.

49. The NMFS comments that the EA adequately evaluates project-related impacts on wetlands, essential fish habitat (EFH) and marine fishery resources. The NMFS also states that the EA adequately explains how various alternative features were selected. The NMFS also states that the EA does not fully disclose the potential temporary impacts on wetlands and EFH. The NMFS recommends the EA be revised to include a discussion of the certainty of the recovery of impacted wetland areas and that the Commission require a monitoring plan to document the recovery of wetlands and EFH.

50. The EA does address wetlands impacts (temporary and long-term). The EA identifies Liberty's commitment to implement the measures described in its Procedures as one of the reasons for its finding that wetlands would not be significantly impacted. Liberty's Procedures include several measures to ensure the restoration of wetlands and the post-construction monitoring of impacted wetlands. Specifically, Liberty would monitor and record the success of wetland revegetation annually for three years after construction and file status reports with the Commission until wetland revegetation was deemed successful. Wetland revegetation would be considered successful if the cover of herbaceous and/or woody species is at least 80 percent of the type, density, and distribution of the vegetation in adjacent wetland areas that were not disturbed. Because vegetation is a significant component of wetland restoration and soil and hydrologic resources would be similarly restored, impacts on wetlands can be considered temporary. Additionally, the conversion of some wetlands from forested to scrub-shrub or emergent are considered short- to long-term impacts.

51. The EA concludes based on Liberty's proposed construction methods and techniques, the characteristics and potential impacts to the identified wetlands, the implementation of measures described in Liberty's Procedures, and its adherence to federal and state permits that construction and operation of the proposed facilities would not significantly impact wetlands. We believe that Liberty's commitment to restore impacted wetlands and monitor revegetation as outlined above, and its adherence to the conditions of this order and the requirements of other federal and state permits adequately addresses the NMFS comments regarding wetlands.

52. The EA identifies several project alternatives and numerous measures to avoid, minimize and mitigate impacts to wetlands and other impacted environmental resources including EFH.

53. Staff consulted with the NMFS on April 16, 2009 and was informed that the NMFS would not be submitting EFH conservation recommendations in response to the EFH Assessment included in the EA. The NMFS will be addressing any possible remaining concerns with EFH through the United States Army Corps of Engineers wetland permitting process. The EFH consultation process is complete. Based on the completion of this consultation process, the EA's environmental recommendation number 11 regarding EFH is no longer required.

54. The Commission believes based on information presented in the EA and recognized by the NMFS in its comments on the EA, that impacts on wetlands and EFH have been adequately addressed.

55. 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.²³

56. Based on the findings of the EA, the Commission concludes that if constructed and operated in accordance with Liberty's application and supplements, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

IV. Conclusion

57. For the reasons discussed above, the Commission finds that the Expansion 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.

58. 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,

²³See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Liberty, in Docket No. CP08-454-000, authorizing the ownership, construction and operation of the described storage facilities.

(B) The certificate authority granted in Ordering Paragraph (A) is conditioned upon:

(1) Liberty's compliance with all applicable Commission regulations under the NGA, including, but not limited to, the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c)(1) and (2), (e), and (f) of section 157.20 of the regulations;

(2) Liberty's compliance with the engineering and environmental conditions set forth in Appendices A and B to this order; and

(3) Liberty's making its new facilities 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.

(C) Liberty's request to continue to charge market-based rates for its storage and hub services, including its interruptible wheeling service, is approved, as discussed in this order.

(D) 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.

(E) 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.

(F) Liberty shall notify the Commission's environmental staff by telephone, email, 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.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX A

Environmental Conditions for the Liberty Gas Storage Project

1. Liberty shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA unless modified by this order. Liberty 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 OEP **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Liberty shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel would be informed of the environmental inspector's authority and have been or would be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Liberty shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by 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'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'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 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, and 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 Liberty's *Upland Erosion Control, Revegetation, and Maintenance Plan*, minor field realignments per landowner needs and requirements that do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the certificate and before construction begins**, Liberty shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Liberty must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Liberty will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA and required by this order;
 - b. how Liberty will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and

- specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
- c. The number of EIs assigned per spread, and how Liberty will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. what training and instructions Liberty 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;
 - f. the company personnel (if known) and specific portion of Liberty's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Liberty will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the mitigation training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Concurrent with the filing of its Implementation Plan, Liberty shall file updated status reports with the Secretary on a **biweekly** basis **until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Liberty's efforts to obtain the necessary federal authorizations;
 - b. the construction status (of the project), work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the 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);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;

- f. a description of any landowner/resident complaints which may relate to compliance with the requirements of this order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Liberty from other federal, state, or local permitting agencies concerning instances of noncompliance, and Liberty's response.
8. Liberty must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
9. **Within 30 days of placing the certificated facilities in service**, Liberty 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 would be consistent with all applicable conditions; and
 - b. identifying which of the certificate conditions Liberty has complied with or would comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
10. **Prior to the start of construction**, Liberty shall file a noise analysis, including all supporting detailed calculations, for review and written approval by the Director of OEP, for all NSAs within one-half mile of each drilling/workover site. The noise analysis shall include the following information:
 - a. the distance and direction to the NSAs and the proposed length of time drilling activities would occur;
 - b. background noise levels and estimated drilling noise contributions at the nearest NSAs to each well; and
 - c. any noise mitigation measures Liberty would commit to implement at each drilling/workover site location where estimated drilling noise contributions would exceed 55 dBA Ldn at a nearby NSA, and the resulting noise levels with the mitigation measures; and
 - d. site-specific plans identifying any noise walls or barriers, equipment locations, equipment barriers, or any other noise mitigation measures.
11. Liberty shall make all reasonable efforts to assure its predicted noise levels from the Pelican Compressor Station under the temporary and normal operating scenarios are not exceeded at all nearby NSAs and file noise surveys showing this with the Secretary **no later than 60 days** after placing the Pelican Compressor

Station into service under each operating scenario. However, if the noise attributable to the operation of the Pelican Compressor Station under either operating scenario at full load exceeds an Ldn of 55 dBA at any nearby NSA, Liberty shall file a report on what changes are needed and should install additional noise controls to meet that level **within 1 year** of the in-service date for that operating scenario. Liberty shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

APPENDIX B**Engineering Conditions for the Liberty Gas Storage Project**

- (1) The maximum inventory of natural gas stored in Liberty's facilities shall not exceed the certificated levels of 24,000 MMcf at 14.73 psia and 60 degrees Fahrenheit (cavern Pelican 001: 6.27 Bcf; cavern Pelican 002: 5.25 Bcf; cavern Pelican 003: 4.23 Bcf; and cavern Pelican 004: 8.25 Bcf); the maximum gas storage shut-in stabilized pressure shall be 2,333 psi for caverns associated with Pelican Well Nos. 001, 002 and 003; and 2,380 psi for Pelican Well No. 004; the minimum gas storage shut-in stabilized pressure shall be 549 psi for caverns associated with Pelican Well Nos. 001, 002 and 003; and 560 psi for Pelican Well No. 004.
- (2) Caverns Pelican 001, Pelican 002 and Pelican 003 shall be operated as a "gallery" in accordance with Louisiana Office of Conservation Order No. 2003-08 SDS, and comply with all of the requirements of such order. Liberty shall file a report with the Commission if gallery shut-down is initiated due to the pressure difference between the gallery caverns exceeding the given tolerance factor to be determined.
- (3) 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).
- (4) Before commencing natural gas storage operations in the proposed caverns, Liberty shall:
 - (a) conduct a Mechanical Integrity Test (MIT) on the four caverns, including Pelican Well Nos. 001, 002, 003 and 004 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 Pelican 004 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.
- (5) 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 Condition (1) above.
- (6) Liberty shall conduct sonar surveys of the caverns every five years to:
(a) monitor their dimensions and shape, including the cavern roof, (b) estimate pillar thickness between caverns throughout the storage operations, and (c) file the results with the Commission.
- In the alternative, no less than 30 days before placing the caverns into service, Liberty may file with the Commission, for prior approval of the methodology, a detailed cavern integrity monitoring plan that is consistent with the intent of the sonar survey.
- (7) Liberty must conduct an annual inventory verification study on each cavern.
- (8) The Liberty field shall be operated in such manner as to prevent/minimize gas loss or migration.
- (9) 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; and
 - (f) other data or reports which may aid the Commission in the evaluation of the storage project.
- (10) 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 Condition (1) above.