

135 FERC ¶ 61,233  
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.

Turtle Bayou Gas Storage Company, LLC

Docket No. CP10-481-000

ORDER DENYING APPLICATION  
FOR CERTIFICATE AUTHORIZATIONS

(Issued June 16, 2011)

1. On August 9, 2010, Turtle Bayou Gas Storage Company, LLC (Turtle Bayou) filed an application in Docket No. CP10-481-000 under section 7(c) of the Natural Gas Act (NGA),<sup>1</sup> requesting a certificate of public convenience and necessity under Part 157, Subpart A, of the Commission's regulations<sup>2</sup> authorizing the construction and operation of a salt dome natural gas storage facility and associated pipeline facilities in Chambers and Liberty Counties, Texas. In addition, Turtle Bayou seeks a blanket certificate under Part 157, Subpart F, of the Commission's regulations to engage in certain eligible construction activities<sup>3</sup> and a blanket certificate under Part 284, Subpart G, of the regulations to provide open-access transportation services, including storage service.<sup>4</sup> Turtle Bayou also requests authority to charge market-based rates for its storage services, and accordingly seeks a waiver of certain filing, accounting, and reporting requirements. As discussed below, the Commission denies Turtle Bayou's application for the requested certificate authorizations.

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<sup>1</sup> 15 U.S.C. § 717f(c) (2006).

<sup>2</sup> 18 C.F.R. Part 157 (2011).

<sup>3</sup> *Id.*

<sup>4</sup> 18 C.F.R. Part 284 (2011).

## **I. Background and Proposal**

2. Turtle Bayou is a limited liability company organized under the laws of the State of Alabama.<sup>5</sup> Turtle Bayou is a new company that does not own any existing storage facilities and is not currently engaged in natural gas operations. Upon construction and operation of its proposed facilities, Turtle Bayou would become a natural gas company within the meaning of section 2(6) of the NGA<sup>6</sup> and would be subject to the jurisdiction of the Commission under the NGA.<sup>7</sup>

### **A. Proposed Facilities**

3. Turtle Bayou proposes to construct and operate a new, high-deliverability salt cavern natural gas storage facility consisting of: (1) two subsurface natural gas storage caverns, approximately 1,000 feet apart and 2,600 feet from the perimeter of the salt formation; (2) one well pad for the two cavern wells and control equipment; (3) eight well pads for water supply and brine injection wells; (4) a leaching plant, with associated pumps, tanks, and piping; (5) one compressor station, with three reciprocating units totaling 16,470 horsepower (hp) of compression; (6) natural gas piping between the compressors, the caverns, and the header pipelines;<sup>8</sup> (7) two header pipelines; (8) two bidirectional meter stations; and (9) other appurtenant facilities.

4. Turtle Bayou states that upon completion, the proposed facilities would provide 12 billion cubic feet (Bcf) of working gas capacity in two salt caverns.<sup>9</sup> Each cavern would have approximately 6 Bcf of working gas capacity and 2.3 Bcf of cushion gas

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<sup>5</sup> Turtle Bayou is 100 percent owned by The Cornelia Lacey Wright Testamentary Trust, ASTO Overbrook Land LLC, The Pittman Charitable Trust, Entrust Administration of the Southeast FBO James Standridge IRA, and Entrust Administration of the Southeast FBO Vaughn P. Stough IRA.

<sup>6</sup> 15 U.S.C. § 717a(6) (2006).

<sup>7</sup> 15 U.S.C. § 717f(c) (2006).

<sup>8</sup> A header pipeline connects a natural gas storage facility to the interstate transportation grid.

<sup>9</sup> The total certificated capacity for a storage field is composed of: (1) certificated working gas capacity (the amount of capacity available for storage of customers' gas); and (2) certificated cushion gas capacity (the volume of gas required to operationally support storage services).

capacity.<sup>10</sup> The facilities would be capable of injecting gas at a maximum rate of up to 300 million cubic feet (MMcf) per day and withdrawing gas at a maximum rate of up to 600 MMcf per day, with the capability of cycling the capacity six times per year.

5. In order to connect the storage facility to the interstate pipeline grid, Turtle Bayou proposes to construct an 8.7-mile-long, 24-inch-diameter header pipeline extending from the storage site north to a point of interconnection with an existing natural gas mainline owned by Natural Gas Pipeline Company of America (NGPL). Turtle Bayou also proposes to construct a 4.4-mile-long, 24-inch-diameter header pipeline extending from the storage site south to a point of interconnection with an existing natural gas mainline owned by Texas Eastern Transmission, LP (Texas Eastern).

### **B. Markets, Services, and Rates**

6. Turtle Bayou states that there is significant need and market demand for new natural gas storage capacity. Turtle Bayou states that its proposed project would be located at a strategic point between new sources of natural gas supply in Texas, Arkansas, Louisiana, and the Gulf of Mexico, and growing markets in the southern, southeastern, and eastern United States (U.S.). Turtle Bayou further states that the proposed project is located in close proximity to significant existing pipeline infrastructure, which could afford new storage options for customers in the area.

7. Turtle Bayou argues that evidence of market need is set forth in numerous recognized sources, such as the Energy Information Administration's "Annual Energy Outlook 2005," which projects that total U.S. demand for natural gas will grow an average of 1.5 percent per year through 2025, primarily due to the growth in demand by electric generation and industrial loads. In addition, Turtle Bayou states that the U.S. Congress has recognized the need for additional storage capacity in the Energy Policy Act of 2005 (EPAAct 2005), giving the Commission new authorization to grant market-based rates for storage services even when an entity is unable to show it lacks market power.<sup>11</sup> Turtle Bayou emphasizes that in Order No. 678, which promulgated regulations implementing these provisions of EPAAct 2005, the Commission found that the underground storage of natural gas is critical in assuring that overall demands and

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<sup>10</sup> During review of the project, staff found that Turtle Bayou's engineering calculations underestimated the size and capacity of the proposed project. If Turtle Bayou intends to re-file its proposal at a later date, Turtle Bayou must conduct all necessary surveys and submit all calculations correctly demonstrating the actual capacity of each cavern.

<sup>11</sup> Codified at 15 U.S.C. § 717c(f) (2006).

specific requirements of natural gas customers are met, and that storage can have a moderating influence on gas prices.<sup>12</sup> Turtle Bayou further emphasizes that significant growth in demand is expected in the southcentral U.S., due in large part to growth in gas-fired electric generation, which has large hourly, daily, and monthly supply variations.

8. Turtle Bayou has not conducted an open season for its proposed storage capacity, and has not submitted any precedent agreements or contracts with its application. Turtle Bayou states that it intends to conduct an open season to obtain commitments for storage capacity after it receives a certificate of public convenience and necessity, and will inform the Commission of the results of any open season. Turtle Bayou asserts that there is a need in the Gulf Coast region for storage infrastructure and associated services, which it believes will result in customer agreements for substantially all of the proposed capacity following Commission approval of the project.

9. In its pro forma FERC NGA Gas Tariff, Turtle Bayou proposes to provide firm storage service under proposed Rate Schedule FSS and interruptible storage service under proposed Rate Schedule ISS. The proposed services would include interruptible hub services, such as parking, loaning, wheeling, balancing, and imbalance trading services. Turtle Bayou requests market-based rate authorization for all aspects of those services, and asserts its request is consistent with the Commission's rate policies.<sup>13</sup> Turtle Bayou asserts that the project would operate within a competitive market, and that Turtle Bayou would lack market power for its proposed storage and hub services.<sup>14</sup>

### **C. Blanket Certificate and Waiver Requests**

10. Turtle Bayou requests a blanket certificate under Part 284, Subpart G, of the Commission's regulations to provide storage and hub services on an open-access,

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<sup>12</sup> Citing *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220, at P 8-9 (2006).

<sup>13</sup> See *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996), *order granting clarification*, 74 FERC ¶ 61,194, *order denying reh'g and clarification* 75 FERC ¶ 61,024, *reh'g denied*, 75 FERC ¶ 61,066, *pet. for review denied sub nom., Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998).

<sup>14</sup> Turtle Bayou submitted as Exhibit I of its application a market power study in support of its request to charge market-based rates.

non-discriminatory basis, as proposed in its pro forma FERC NGA Gas Tariff. Turtle Bayou also requests a blanket certificate under Part 157, Subpart F, of the Commission's regulations to perform routine activities in connection with construction, maintenance, and operation of the proposed facilities.

11. Since it proposes to charge market-based rates, Turtle Bayou requests waiver of certain filing, accounting, and reporting requirements applicable to cost-based rate proposals. Turtle Bayou also seeks a waiver of the Commission's segmentation requirements and shipper-must-have-title policy.

## **II. Notice and Interventions**

12. Notice of Turtle Bayou's application was published in the *Federal Register* on August 30, 2010.<sup>15</sup> Timely motions to intervene were filed by HLM Moss Bluff, Ltd.; the Carol T. Kyle Real Estate Partnership, Ltd.; Kathryn Kyle, individually and as executor of the estate of W.W. Kyle III, deceased; and Brudge Kyle Hopkins, filing jointly (collectively, Mineral Interest), and by Moss Bluff Hub, LLC (Moss Bluff).<sup>16</sup>

13. Mineral Interest states that it owns the oil, gas, and other minerals in, on, and under the property in which Turtle Bayou proposes to construct its project. Mineral Interest protests Turtle Bayou's application because Turtle Bayou has not obtained the necessary property and mineral rights from Mineral Interest for construction of the proposed project. Additionally, Mineral Interest seeks a formal, full evidentiary hearing on Turtle Bayou's application.

14. Moss Bluff owns and operates an intrastate natural gas storage facility adjacent to the proposed Turtle Bayou project, and within the same salt formation (the Moss Bluff Salt Dome). Moss Bluff's facilities consist of three active gas storage salt caverns with a working gas capacity of 15 Bcf, and a fourth cavern under development. Moss Bluff states that Turtle Bayou's proposed caverns would be between 1,700 and 1,800 feet from two of Moss Bluff's existing storage caverns. Moss Bluff requests that Commission staff carefully review the geotechnical and engineering studies in Turtle Bayou's application, and the proposed project's water resource requirements.

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<sup>15</sup> 75 Fed. Reg. 52,937 (August 30, 2010).

<sup>16</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2011).

### III. Discussion

15. Since the proposed facilities would be used to provide natural gas transportation services in interstate commerce, subject to the jurisdiction of the Commission, the construction, acquisition, and operation of the facilities are subject to the requirements of sections 7(c) and 7(e) of the NGA.<sup>17</sup>

16. The Commission's Certificate Policy Statement provides guidance for evaluating proposals for certificating new construction by establishing criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest.<sup>18</sup> It explains that in deciding whether to authorize the construction of major new natural gas facilities, we balance the public benefits against the potential adverse consequences. Our goal is to appropriately consider the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruption of the environment, and the unneeded exercise of eminent domain.<sup>19</sup>

17. Under this policy, the threshold requirement is that the applicant be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing facilities in the market and their captive customers, or landowners and communities impacted by the project. If residual adverse effects on these 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 impacts. This is essentially an economic test. Only if the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

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<sup>17</sup> 15 U.S.C. §§ 717f(c), (e) (2006).

<sup>18</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *orders clarifying policy*, 90 FERC ¶ 61,128 and 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

<sup>19</sup> Certificate Policy Statement, 88 FERC ¶ 61,227.

**A. Threshold Requirement – No Subsidization**

18. The threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Turtle Bayou is a new entrant in the natural gas storage market and has no existing operations or customers. Therefore, there will be no subsidization. Thus, the Commission finds that Turtle Bayou satisfies the threshold requirement of the Certificate Policy Statement.

**B. Factors to be Balanced in Assessing the Public Convenience and Necessity**

**1. Adverse Effects on Potentially-Impacted Interests**

19. Once an applicant has satisfied the threshold requirement that its project is financially viable without subsidies, the Commission will consider the effects of the project on three major interests that may be adversely affected by approval of the project: the interests of the applicant's existing customers, the interests of competing existing facilities and their captive customers, and the interests of landowners and surrounding communities.<sup>20</sup> Since Turtle Bayou is a new company proposing to construct and operate a new storage facility, it has no existing customers that would be impacted by its current proposal.

20. With respect to the potential impact of the new facility on existing storage providers or their captive customers, Turtle Bayou states that its proposed storage project will be located in the competitive Gulf Coast market area, thereby enhancing existing competition in the market by providing additional competitive service options. The Certificate Policy Statement explained that the purpose of examining the effects of proposed projects on existing facilities is not to protect incumbent facilities from competition, but to evaluate all relevant factors to determine if a project is needed.<sup>21</sup> Generally, construction of new facilities whose rates are unsubsidized will not be considered to have an adverse effect on an existing facility.<sup>22</sup> In any event, while Moss Bluff requests careful review to assure that Turtle Bayou's project would not jeopardize the integrity of Moss Bluff's nearby existing storage facilities, no storage provider or pipeline company opposes Turtle Bayou's proposal. The Commission finds no evidence

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<sup>20</sup> Certificate Policy Statement, 88 FERC at 61,747.

<sup>21</sup> *Id.*

<sup>22</sup> Certificate Policy Statement, 90 FERC at 61,397.

that the proposed project will have adverse impacts on existing storage providers or their captive customers.

21. With respect to the potential impact of the new facility on landowners and surrounding communities, Turtle Bayou states that it or its affiliates own in fee most of the surface area for the project, and it has negotiated or will negotiate long-term leases or easements with affected landowners for the remaining portion of the project area, which Turtle Bayou asserts consists primarily of rights of way for the proposed pipeline facilities. However, Mineral Interest protests Turtle Bayou's application and asserts that it owns the oil, gas, and other mineral rights Turtle Bayou would have to acquire in order to go forward with its project. Commission staff sought further information on Turtle Bayou's progress in acquiring the rights to use the Mineral Interest's property in data requests issued September 10, 2010, November 17, 2010, and February 16, 2011. Turtle Bayou submitted responses explaining that it is involved in ongoing negotiations with Mineral Interest, but the rights have not yet been acquired through negotiation.<sup>23</sup> In each of the data responses, Turtle Bayou emphasized that it need not acquire Mineral Interest's rights prior to Commission approval of its application because the certificate it seeks under the NGA will allow it to acquire those rights through eminent domain.

22. We find that the proposed project will have a significant impact on Mineral Interest's property rights. Mineral Interest owns the oil, gas, and other minerals in, on, and under the property within which Turtle Bayou proposes to construct its project. Mineral Interest protests the application and Turtle Bayou has not acquired the rights to use Mineral Interest's property. As things stand now, Turtle Bayou would need to use eminent domain to acquire all of the subsurface mineral rights necessary for its storage project to go forward. Therefore, we find that approval of the proposed project could have a substantial adverse impact on Mineral Interest.

## **2. Indicators of Public Benefit**

23. To demonstrate that a specific proposal is in the public convenience and necessity, an applicant must show the public benefits that would be achieved by the project are proportional to the project's adverse impacts.<sup>24</sup> Public benefits could include, among other things, meeting unserved demand, eliminating bottlenecks, providing access to new supplies, lowering costs to consumers, providing new interconnects that improve the

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<sup>23</sup> Turtle Bayou filed responses to the data requests on October 19, 2010, December 3, 2010, and February 25, 2011.

<sup>24</sup> Certificate Policy Statement, 88 FERC at 61,747.

interstate grid, providing competitive alternatives, increasing electric reliability, or advancing clean air objectives.<sup>25</sup>

24. As support for its proposed project, Turtle Bayou states that “[t]he benefit and need for the Project is shown by the growing demand for natural gas storage services in the Gulf Coast region, and the need for additional storage capacity to accommodate increased gas supply development in the Gulf coast area, and new market demands in the Southern, Southeastern and Eastern United States.”<sup>26</sup> To support this assertion, Turtle Bayou offers as evidence the Energy Information Administration’s “Annual Energy Outlook 2005,” EAct 2005 and its implementing regulations, and a Commission order from 2006.

25. Turtle Bayou states that the “Annual Energy Outlook 2005” finds that total U.S. demand for natural gas is projected to grow an average of 1.5 percent per year through 2025, primarily due to increased demand by electric generation and industrial loads. Turtle Bayou asserts that this increased demand for natural gas supplies will require increased natural gas storage and transportation infrastructure.

26. Next, Turtle Bayou emphasizes that the U.S. Congress recognized the need for additional storage capacity in EAct 2005, in which it gave the Commission new authorization under NGA section 4(f) to grant market-based rates even where an entity is unable to show it lacks market power. Turtle Bayou asserts that in the rulemaking implementing this section of EAct 2005, the Commission adopted policy reforms to encourage the development of new natural gas storage facilities. Turtle Bayou contends that in this order, the Commission stated that the underground storage of natural gas is critical in assuring that overall demands and specific requirements of natural gas customers are met, and that storage can have a moderating influence on gas prices.<sup>27</sup>

27. Finally, Turtle Bayou asserts the Commission has acknowledged that a significant growth in demand is expected in the southcentral U.S.,<sup>28</sup> and the statement of the

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<sup>25</sup> Certificate Policy Statement, 90 FERC at 61,389, 61,396.

<sup>26</sup> Turtle Bayou August 9, 2010 Application at 26.

<sup>27</sup> Citing *Rate Regulation of Certain Natural Gas Storage Facilities*, 115 FERC ¶ 61,343, at P 8-9 (2006).

<sup>28</sup> Citing the Commission’s order in *Port Barre Investments, L.L.C.*, 116 FERC ¶ 61,052, at P 7 (2006) (*Port Barre*) (background section of order reciting storage applicant’s assertions based on Annual Energy Outlook 2005).

National Petroleum Council (2003) that storage additions of 550 billion cubic feet (Bcf) of working gas capacity will be needed over the 2005-2025 period, including 80 Bcf of additional, high-deliverability, salt cavern capacity.<sup>29</sup>

### **3. Balancing Public Benefits and Adverse Effects**

28. The Commission will approve an application for a certificate of public convenience and necessity only if the public benefits from a proposed project outweigh any adverse effects.<sup>30</sup> The focus of the Commission's analysis under the Certificate Policy Statement is on the impact of a proposed project on the relevant interests balanced against the benefits to be gained from the project. This is a proportional approach, where the amount of evidence required to establish need will depend on the potential adverse effects of the proposed project.<sup>31</sup> The more interests adversely affected, or the more adverse impact a project would have on a particular interest, the greater the showing of need and public benefits required to balance the adverse impact.<sup>32</sup>

29. The Certificate Policy Statement describes a situation where sponsors of a new company proposing to serve a new, previously unserved market "are able to acquire all, or substantially all, of the necessary right-of-way by negotiation prior to filing the application" and explains that "[s]uch a project would not need any additional indicators of need . . . [since] landowners would not be subject to eminent domain proceedings."<sup>33</sup> The Certificate Policy Statement goes on to recognize that it may not be possible for a sponsor to acquire all the necessary right-of-way by negotiation, stating that:

[T]he company might minimize the effect of the project on landowners by acquiring as much right-of-way as possible. In that case, the applicant may be called upon to present some evidence of market demand, but under this sliding scale approach the benefits needed to be shown would be less

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<sup>29</sup> *Id.* (background section of order reciting storage applicant's assertions based on a 2003 statement of the National Petroleum Council).

<sup>30</sup> Certificate Policy Statement, 90 FERC at 61,389, 61,396.

<sup>31</sup> *Arlington Storage Co., LLC*, 128 FERC ¶ 61,261, at P 7 (2009); *Transcontinental Gas Pipe Line Corp.*, 120 FERC ¶ 61,181, at P 90 (2007); *Midwestern Gas Transmission Co.*, 116 FERC ¶ 61,182, at P 37 (2006).

<sup>32</sup> Certificate Policy Statement, 88 FERC at 61,749.

<sup>33</sup> *Id.* at 61,748.

than in a case where no land rights had been previously acquired by negotiation.<sup>[34]</sup>

30. In this case, Turtle Bayou's proposed project presents a potentially significant impact on one landowner, the Mineral Interest. Mineral Interest owns the rights to oil, gas, and other minerals in, on, and under the property within which Turtle Bayou proposes to construct its project. Turtle Bayou will have to acquire the right to access this property either through negotiation, which thus far has been unsuccessful, or eminent domain. Because Mineral Interest is an unwilling landowner, Turtle Bayou's proposal will have an adverse effect on Mineral Interest. Because the Certificate Policy Statement calls for a proportional balancing approach, Turtle Bayou must present evidence of need for its proposed project that outweighs this adverse impact.

31. The Certificate Policy Statement established a new policy under which the Commission would allow an applicant to rely on a variety of relevant factors to demonstrate need, rather than continuing to look primarily at the percentage of proposed capacity subscribed under long-term precedent or service agreements.<sup>35</sup> These other factors might include, but are not limited to, precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market.<sup>36</sup> The Commission stated that it will consider all such evidence submitted by the applicant reflecting on the need for the project. Nonetheless, the Certificate Policy Statement made clear that, although precedent agreements are no longer required to be submitted, they are still significant evidence of need or demand for a project.<sup>37</sup>

32. Turtle Bayou has not conducted an open season for the capacity to be created by the proposed project, and has not submitted precedent agreements or service agreements to demonstrate a need for this specific project. Rather, Turtle Bayou relies on the Energy Information Administration's "Annual Energy Outlook 2005," and EPA Act 2005 and its implementing regulations, for the proposition that the need for natural gas storage in the U.S. is expected to grow. These are generalized findings of the need for natural gas at the national and regional level; however, vague assertions of public benefits are not sufficient

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<sup>34</sup> *Id.* at 61,749.

<sup>35</sup> *Id.* at 61,747.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

to establish need for a particular project,<sup>38</sup> especially in the face of identified adverse impacts.<sup>39</sup>

33. Turtle Bayou has not shown that its specific project is needed. While a number of storage facilities have been authorized by the Commission without evidence of firm commitments for the project's capacity,<sup>40</sup> the proportional showing of benefit required for those projects was low because their identified adverse effects were so minimal. That is not the case here. Turtle Bayou's three data responses clearly indicate that it does not own the mineral and other property rights on which it intends to construct its project and has not yet been able to acquire other rights to do so. It therefore appears likely that Turtle Bayou would need to take all of the rights for its subsurface project facilities (including the storage caverns themselves), and a portion of the land used for its above-ground facilities, from an unwilling landowner through the exercise of eminent domain.

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<sup>38</sup> Certificate Policy Statement, 88 FERC at 61,748.

<sup>39</sup> Turtle Bayou also relies on *Port Barre*, in which the Commission approved the applicant's proposed storage project in Louisiana. However, while the Commission's certificate order in that proceeding noted the applicant's expectation of significant growth in demand in the southcentral U.S. and reference to a report projecting that more storage working gas capacity is needed, *Port Barre*, 116 FERC ¶ 61,052 at P 7, the Commission itself did not make such a finding. Further, although the Commission does not dispute the proposition that additional storage capacity is needed in the southern U.S., there were no objections raised to the Port Barre project and no adverse impacts on relevant interests were identified. Therefore, the applicant in *Port Barre* did not need to show as much evidence of need. Further, the applicant in *Port Barre* had held a non-binding open season shortly after filing its application to gauge the level of market interest in the proposed project, and indicated that bids from natural gas traders, local distribution companies, an industrial end user, and natural gas marketers exceeded the project's proposed 12 Bcf of storage capacity by four times. *Id.* P 8.

<sup>40</sup> See, e.g., *Tallulah Gas Storage, LLC*, 134 FERC ¶ 61,221, at P 10 (2011); *Cadeville Gas Storage LLC*, 132 FERC ¶ 61,115, at P 13 (2010); *Port Barre*, 116 FERC ¶ 61,052 at P 8. We note that unlike Turtle Bayou, the project sponsors in each of those proceedings had conducted an open season to gauge interest for their particular project. We further note that the Commission recently clarified that it will apply its open season policies (which generally require that an open season should be conducted prior to the filing of an application) to all new construction projects, including storage projects with market-based rates, to ensure non-discriminatory access and the proper sizing of new facilities. *Pine Prairie Energy Center, LLC*, 135 FERC ¶ 61,168, at P 36 (2011).

We recognize that the Certificate Policy Statement makes clear that holdout landowners cannot veto a project that the Commission finds is required by the public convenience and necessity after balancing all relevant factors and considerations.<sup>41</sup> However, in a case where the project sponsor will need to obtain virtually all of the property rights needed for the project from a few unwilling landowners, the applicant needs to make a showing of public benefits proportional to the potential exercise of eminent domain.<sup>42</sup> Here, Turtle Bayou has not made such a showing. The evidence of need submitted by Turtle Bayou consists only of general assertions of a national and regional need for natural gas storage. While the Commission agrees with those general propositions, nothing has been submitted to show that there is any level of market demand for this particular project proposed by Turtle Bayou.

34. The generalized showing made by Turtle Bayou does not outweigh the impact on the landowner that holds the majority of property rights needed to develop the proposed project. While we recognize that there is a need for additional natural gas storage in the U.S., Turtle Bayou has failed to provide any basis for a finding that any of this need would be filled by the storage capacity that Turtle Bayou proposes to develop, on property it does not own. Therefore, we cannot find that Turtle Bayou's proposed project is required by the public convenience and necessity, and we deny its request for certificate authority to construct and operate its project.

#### **IV. Other Matters**

35. Moss Bluff, which owns and operates a neighboring salt cavern natural gas storage facility argues that the proposed Turtle Bayou project may have a physical impact on its existing salt cavern natural gas storage facilities, and its water resources operations. Moss Bluff asks the Commission to closely scrutinize the water resources requirements and the engineering specifications of Turtle Bayou's proposed project, given the proximity to Moss Bluff's storage caverns. Had Turtle Bayou's proposed project been found to be in the public convenience and necessity, Moss Bluff's engineering and water resources concerns would have been considered in our engineering and environmental analysis of the project. However, because we found that the adverse effects of the project outweighed the public benefits, it is unnecessary to complete an engineering and environmental analysis of the proposed project, where other interests, such as Moss Bluff's, would be considered.

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<sup>41</sup> Certificate Policy Statement, 88 FERC at 61,749.

<sup>42</sup> *Id.*

36. Since the Commission is denying Turtle Bayou's certificate for the project, Turtle Bayou's requests for market-based rates, Part 157, Subpart F and Part 284, Subpart G blanket certificates, and waiver of certain regulations are moot. Likewise, Mineral Interest's request for a formal hearing on the application is moot.

**V. Conclusion**

37. For the reasons discussed above, the Commission finds that Turtle Bayou's proposed project is not 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 not be issued.

38. At a hearing held on June 16, 2011, the Commission on its own motion, received and made part of the record all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

Turtle Bayou's request for certificate authorizations for the construction, operation and maintenance of a natural gas storage facility is denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.