

123 FERC ¶ 61,277
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Black Bayou Storage, LLC

Docket Nos. CP07-451-000,
CP07-452-000,
and CP07-453-000

ORDER ISSUING CERTIFICATES

(Issued June 19, 2008)

1. On September 25, 2007, Black Bayou Storage, LLC (Black Bayou) filed applications under section 7(c) of the Natural Gas Act (NGA) requesting (1) a certificate of public convenience and necessity to construct and operate a salt dome natural gas storage facility in Cameron Parish, Louisiana; (2) a blanket certificate under Subpart F of Part 157 of the Commission's regulations to perform certain construction activities and operations; and (3) a blanket certificate under Subpart G of Part 284 of the Commission's regulations to provide open-access, non-discriminatory firm and interruptible natural gas storage and hub services. Black Bayou also requests authorization to charge market-based rates for its proposed services and waiver of certain Commission requirements related to the provision of such services.
2. We will grant the requested authorizations, as discussed and conditioned below.

Background and Proposal

3. Black Bayou is a Delaware limited liability company (LLC) authorized to do business in Louisiana and a wholly owned subsidiary of Kaiser-Francis Oil Company (Kaiser-Francis), a privately held oil and gas exploration company based in Tulsa, Oklahoma. Black Bayou is a new company with no jurisdictional or non-jurisdictional operations. Upon receipt of its requested certificate authorizations, Black Bayou will become a natural gas company within the meaning of NGA section 2(6).
4. On July 26, 2006, in Docket No. CP06-396-000, the Commission exempted Kaiser-Francis from the section 7(c) certificate requirements of the NGA to drill a

stratigraphic test well to determine the feasibility of developing a salt cavern storage project.¹ The Commission gave Black Bayou until July 26, 2007, to complete the proposed testing. Black Bayou states that the test well was successfully completed in the fall of 2006.

5. Black Bayou states that Kaiser-FrancisLLCs owns in fee or has other property rights to approximately 28,000 acres on and around the Black Bayou salt dome. Black Bayou further states that approximately 65 percent of the project's proposed operational footprint is located on property that these LLCs own in fee or for which they own storage rights. Black Bayou also states that it anticipates that the owners of the remaining required property rights will either take an ownership position in Black Bayou and contribute the necessary property rights to Black Bayou, or will sell the necessary rights to Black Bayou. The proposed project will permanently affect a total of 45.9 acres.

A. New Facilities

6. Black Bayou proposes to construct and operate a high-deliverability salt dome natural gas storage facility on the Black Bayou salt dome, approximately 15 miles west of Hackberry in Cameron Parish, Louisiana. The Black Bayou Storage Project will consist of two natural gas storage caverns providing an ultimate total working gas capacity of 15 billion cubic feet (Bcf), gas compression and withdrawal facilities, a leeching plant for the solution mining, raw water withdrawal and brine disposal facilities, pipelines, metering and regulating stations. The project will be developed over a four-year period on land in which Black Bayou owns the surface and underground mineral rights by developing two caverns in the Black Bayou salt dome. Black Bayou states that it would use the requested market-based rate authority to provide firm and interruptible storage services and interruptible hub and wheeling services to support further development of domestic gas production in the Gulf Coast region, as well as new liquefied natural gas projects.

7. Black Bayou states that after it completes solution mining, the two fully-developed salt storage caverns will have a total capacity of nearly 20.8 Bcf (15 Bcf of working gas and 5.8 Bcf of cushion gas). Each cavern will have a total capacity of 10.4 Bcf (7.5 Bcf of working gas and 2.9 Bcf of cushion gas). Black Bayou plans to place Cavern No. 1 into service by May 2011 and Cavern No. 2 into service by June 2012. Black Bayou

¹ See *Kaiser-Francis Oil Company*, 116 FERC ¶ 61,083 (2006).

asserts that upon completion, the storage facility will have maximum injection and withdrawal rates of 1.2 Bcf per day.

8. Black Bayou proposes to construct and operate a compressor station which will house four 4,735 horsepower (hp) natural gas-fired, two-stage reciprocating compressor units for a total of 18,940 hp. The compressor station will include standard appurtenant equipment such as separators, dehydration units, and an emergency blow down stack. In addition, two 20-inch diameter pipelines (totaling approximately 0.5 miles in length) will connect the compressor station to two proposed injection/withdrawal wells above the storage caverns.

9. Black Bayou proposes to construct a 30-inch diameter, 2.45-mile pipeline to connect the Black Bayou compressor station with Transcontinental Gas Pipe Line Corporation (Transco) and a 24-inch diameter, 4.7-mile pipeline to connect with Kinder Morgan Louisiana Pipeline LLC (Kinder Morgan), both of which will deliver gas to and from Black Bayou's storage facility. Black Bayou proposes to construct bi-directional meter and regulator stations with appurtenant facilities at the pipeline interconnections with Transco and Kinder Morgan. Black Bayou proposes to install appropriate piping for each of the five fresh water supply wells and five brine disposal wells to connect with the leaching plant on site.

10. A 230 kilovolt (kV) electrical substation will be constructed by Entergy, Inc., the local electricity service provider who will own, operate, and construct the electric line and substation facilities. The electrical facilities associated with the project consist of a 5.33-mile long, 34.5 kV electric power line connecting the proposed project site to available electric service in the area.

B. Markets and Services

11. Black Bayou states that its open season for its proposed storage capacity, conducted from February 1, 2007 through March 8, 2007, resulted in 12 expressions of interest in acquiring capacity, well in excess of the proposed capacity. Black Bayou states that although no firm precedent agreements have been executed, it is confident that strong demand for the proposed services exists. Black Bayou requests a Part 284 blanket transportation certificate to provide firm and interruptible storage services, as well as parking and loan, wheeling and balancing hub services.

12. Black Bayou requests authorization to charge market-based rates for its proposed storage and hub services. To support its market-based rate proposal, Black Bayou has submitted, as Exhibit I to its application, a market power study, which is addressed below.

13. Black Bayou proposes to provide firm storage services under its proposed Rate Schedule FSS and interruptible storage service under its proposed Rate Schedule ISS. Black Bayou also proposes to offer a variety of common interruptible hub services including a parking service under Rate Schedule IPS, a loan service under Rate Schedule ILS, and a wheeling service under Rate Schedule IWS.

14. Black Bayou requests market-based rate authority for all of its proposed services. Black Bayou's market power study, prepared by CRA International, finds that Black Bayou lacks market power in the provision of storage services, and that the lack of market power extends to the provision of interruptible hub services. The study states that, except for wheeling service, the proposed hub services are derivative storage services, or, in other words, forms of storage service. Black Bayou's study therefore concludes that if market-based rate authority is justified for Black Bayou's storage services, market-based rate authority is also justified for its non-wheeling hub services.

15. Black Bayou requests waivers of certain filing and other requirements, as described below, which Black Bayou considers inapplicable to its market-based rate proposal. Black Bayou also requests waiver of the Commission's regulations pertaining to standards of conduct for transmission providers, since it does not plan to interconnect with affiliated transmission providers. In addition, Black Bayou seeks a waiver of the Commission's shipper must have title policy for any off-system capacity that Black Bayou may obtain in the future to provide storage or hub services.

16. Black Bayou also requests a blanket certificate under Part 157 of Subpart F to perform routine activities in connection with the construction, maintenance, and operation of the facilities it proposes to construct.

Notice and Interventions

17. Notice of Black Bayou's application was issued on October 9, 2007, and published in the *Federal Register* on October 16, 2007.² A timely, unopposed motion to intervene was filed by Pine Prairie Energy Center. This timely, unopposed motion to intervene is granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.³

² 72 Fed. Reg. 58,651.

³ 18 C.F.R. § 385.214(a)(3) (2006).

Discussion

18. Because Black Bayou proposes to construct and operate facilities that will be used to provide jurisdictional natural gas services in interstate commerce, Black Bayou's proposal is subject to the jurisdiction of the Commission and the requirements of subsections (c) and (e) of NGA section 7.

A. Application of the Certificate Policy Statement

19. The Commission's Certificate Policy Statement provides guidance as to how it will evaluate proposals for certificating new construction.⁴ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. 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 unnecessary exercise of eminent domain or other disruptions of the environment.

20. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to support the project financially 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 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, the Commission 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 after a proposed project's benefits outweigh its adverse effects on economic interests will the Commission proceed to complete the environmental analysis, in which other interests are considered.

⁴ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, at 61,748 (1999); *order on clarification*, 90 FERC ¶ 61,128 (2000); *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

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. Black Bayou is a new entrant in the natural gas storage market and has no existing customers. Therefore, there will be no subsidization. Moreover, under its market-based rate proposal, Black Bayou assumes the economic risks associated with the costs of the project's facilities to the extent that any capacity is unsubscribed or revenues are not sufficient to recover costs. Thus, the Commission finds that Black Bayou has satisfied the threshold requirement of the Certificate Policy Statement.

22. The proposed Black Bayou Gas Storage Project will have no adverse impact on existing customers or services since Black Bayou has no current customers or services. The Commission is also satisfied that there will be no negative impact on existing storage providers or their captive customers. As discussed below, the proposed project will be located in a competitive market and will serve new demand in a region that is experiencing rapid growth in natural gas use. The proposal will also enhance storage options available to pipelines and their customers and thus will increase competitive alternatives. Additionally, no storage company in Black Bayou's market area has protested Black Bayou's application. The project will also have minimal impact on landowners and surrounding communities. The project has been designed, to the extent practicable, to utilize areas already owned by Black Bayou's affiliates and existing rights-of-way and other property rights. The project is located in a sparsely populated area that has been the site of extensive oil and gas production for over 70 years. Accordingly, consistent with the Certificate Policy Statement and NGA section 7, we find approval of Black Bayou's proposal to be required by the public convenience and necessity, subject to the conditions discussed below.

1. 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.⁵ Under the Alternative Rate Policy Statement, the Commission will approve market-based rates for storage providers where the applicant has demonstrated it lacks market power or

⁵ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076; *reh'g denied*, 75 FERC ¶ 61,024 (1996), *petitions for review denied and dismissed sub nom., Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement), *criteria modified, Rate Regulation of Certain Natural Gas Storage Facilities*, 71 Fed. Reg. 36,612 (June 27, 2006), *FERC Statutes and Regulations* ¶ 31,220 (2006) (Order No. 678), *order on clarification and reh'g*, 117 FERC ¶61,190 (2006) (Order No. 678-A).

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 applicants would not be able to exercise market power due to their small size, their anticipated share of the market, and the existence of numerous competitors.⁶ It has also distinguished between production-area storage facilities and market-area storage.⁷ In general, the existence of numerous alternative storage facilities make market power in a production area less of a concern. Black Bayou's proposed storage facility will be located in the Gulf Coast region, which is both a production zone and a market zone, and will have access to many supply sources and multiple market regions.

2. Storage and Hub Services

24. Black Bayou's market power study for storage service defines the relevant product and geographic market, measures market share and concentration and evaluates other factors. For the purpose of its analysis, Black Bayou identifies the relevant product market as firm and interruptible storage services and interruptible hub services. The relevant geographic market for the storage facility is the Gulf Coast production region, which is readily accessible to the interstate pipelines to be connected to the Black Bayou facility.

25. The Commission uses the Herfindahl Hirschman Index (HHI) test to determine market concentration for gas pipeline and storage markets. The Alternative Rate Policy Statement states that a low HHI – generally less than 1,800 – indicates that sellers cannot exert market power because customers have sufficiently diverse alternatives in the relevant market.⁸ While a low HHI suggests a lack of market power, a high HHI – generally greater than 1,800 – requires a closer scrutiny in order to make a determination

⁶ *Enstor Houston Hub Storage and Transportation, LP*, 123 FERC ¶ 61,019 (2008); *Mississippi Hub, LLC*, 118 FERC ¶61,099 (2007); *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).

⁷ *Moss Bluff White Partners, L.P.*, 80 FERC ¶ 61,181 (1997); *Steuben Gas Storage Company*, 72 FERC ¶ 61,102 (1995), *order on compliance filing and denying reh'g*, 74 FERC ¶ 61,024 (1996).

⁸ *See*, Order No. 678 at P 55 (noting that the 1,800 HHI threshold level is not changed by the Order).

about a seller's ability to exert market power. Black Bayou's market power study shows HHI calculations of 1,157 for working gas capacity and 809 for peak day deliverability.⁹ These measures of market concentration are well below the Commission's threshold level of 1,800, indicating that Black Bayou would be unable to exert market power in the relevant market area after the construction of its proposed storage facilities.

26. Black Bayou is a new market entrant with no existing jurisdictional or non-jurisdictional operations in the natural gas pipeline or storage industry. Black Bayou's market power study identifies 57 gas storage fields in operation in the Gulf Coast region which are owned or controlled by 23 independent corporate entities (including Black Bayou). The largest entity owns about 24.7 percent of the total working gas storage capacity in the market, and the eight largest entities hold 81.1 percent of the total working gas capacity in the market. The remaining 15 entities each hold 3.6 percent or less of the market.¹⁰ The study also shows that the current combined market working gas capacity of all the storage facilities identified in Exhibit JRS-2 is 847,511 MMcf, including Black Bayou's proposed facilities, with Black Bayou controlling only 1.8 percent of storage working storage gas in the region. In addition, the study shows that Black Bayou's 1,200 MMcf/day of peak day deliverability will be only 4.7 percent of the region's total peak day deliverability of 25,563 MMcf/day. Thus, Black Bayou's aggregate share of the relevant storage market will be relatively small.

27. In addition, there are 20 storage projects in various stages of development in the Gulf Coast market. These projects represent an additional 228,820 MMcf of working gas capacity and 13,295 MMcf/day of peak day deliverability, expanding the market by 27 percent in working gas capacity and 52 percent in daily deliverability. To the extent these projects are fully developed, they will further reduce Black Bayou's market share.¹¹

⁹ See Exhibit I, Attachment Nos. 2 and 3 to the market power study designated as Exhibits JRS-2 (Working Gas Capacity) and JRS-3 (Peak Day Deliverability).

¹⁰ *Id.*

¹¹ See Exhibit I, Attachment No 5 to the market power study designated as Exhibit JRS-5 (Storage Facilities Under Development in Louisiana, Texas and Mississippi).

Based on the above, we conclude that the barriers to entry to storage markets in the relevant geographic areas are low.¹²

28. Traditionally, in evaluating whether shippers of an applicant seeking market-based rate authority for interruptible wheeling service could obtain the same services from alternative providers the Commission has used a matrix, referred to as a “bingo-card,” which identifies all possible interconnections for pipelines attached to a hub and indicates whether good alternatives exist.¹³ Black Bayou also analyzed alternative paths for shippers seeking interruptible hub services, consistent with Commission requirements for parties seeking market-based rate authority for hub services, and particularly wheeling. Noting that there is limited information available, given that its storage project is not yet in service,¹⁴ Black Bayou identified alternative bi-directional interconnects for pipelines at its proposed location, and the resulting matrix, or “bingo-card,” demonstrated that at least one alternative path exists for every possible interconnect combination.¹⁵

29. We acknowledge the lack of available information regarding the planned Kinder Morgan pipeline, and the number of associated bi-directional or uni-directional interconnections. Therefore, we find that Black Bayou’s modified bingo-card analysis is

¹²The Commission has found in numerous cases that there are no significant barriers to entry in the natural gas storage market in the Gulf Coast region. *See, e.g., Enstor Houston Hub Storage and Transportation, LP*, 123 FERC ¶ 61,019 (2008); *Port Barre Investments, L.L.C. d/b/a Bobcat Gas Storage*, 116 FERC ¶ 61,052 at P 25 (2006); *Katy Storage and Transportation, L.P.*, 106 FERC ¶ 61,145, at P 19 (2004).

¹³ *See, e.g., Enstor Houston Hub Storage and Transportation, LP*, 123 F.E.R.C. ¶ 61,019 (2008) at P 34; *PetroLogistics Natural Gas Storage, LLC*, 122 F.E.R.C. ¶ 61,193 (2008) at P 17; *Golden Triangle Storage, Inc.*, 121 F.E.R.C. ¶ 61,313 (2007) at P 32; *MoBay Storage Hub, Inc.*, 117 F.E.R.C. ¶ 61,298 (2006) at P 32; and, *BGS Kimball Gas Storage, LLC, Bluewater Gas Storage, LLC*, 117 F.E.R.C. ¶ 61,122 (2006) at P 30.

¹⁴ See Exhibit I, Testimony of Julie R. Solomon, pages 14 and 15.

¹⁵ See Exhibit I, Attachment No 4 to the market power study designated as Exhibit JRS-4. Black Bayou has only two planned physical interconnections: (1) Transco; and (2) the planned Kinder Morgan pipeline. The bingo-card analysis was modified by examining all of the interconnections that Transco has with pipelines in the Gulf Coast region.

a reasonable indication that good alternatives exist for shippers to obtain interruptible wheeling service. Therefore, consistent with Black Bayou's findings, we agree that because Black Bayou is located within the major production, transportation and storage area in the Gulf Coast: (1) there exists a large number of alternatives available to shippers on pipelines interconnected with Transco (16 bi-directional and 61 uni-directional),¹⁶ and ultimately with Kinder Morgan; and (2) Black Bayou will be unable to exercise market power for hub services.

3. Conclusion

30. In sum, we find that Black Bayou's market power study demonstrates that its proposed storage facilities will be in a highly competitive production area where numerous storage and interruptible hub service alternatives exist for potential customers. We also find that Black Bayou's prospective market shares for storage and hub services are low and that market area HHIs are mitigated by Black Bayou's small market share and the availability of competing services. Thus, we conclude that Black Bayou will lack market power. Further, Black Bayou's proposal for market-based rates is unopposed. For these reasons, we will approve Black Bayou's request to charge market-based rates for firm and interruptible storage and interruptible hub services, including wheeling service.

31. Nevertheless, Black Bayou 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) Black Bayou adds storage capacity beyond the capacity authorized in this order; (b) an affiliate increases storage capacity; (c) an affiliate links storage facilities to Black Bayou; or (d) Black Bayou, or an affiliate, acquires an interest in, or is acquired by, an interstate pipeline connected to Black Bayou. Since these circumstances could affect its market power status, Black Bayou 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 Black Bayou.¹⁷

¹⁶ The 15 pipelines having bi-directional interconnections with Transco in the Gulf Coast region are listed in Exhibit I, Attachment No. 6 to the market power study designated as Workpapers to Exhibit JRS-4.

¹⁷ See, e.g., *Copiah County Storage Company*, 99 FERC ¶ 61,316 (2002); *Egan Hub Partners, L.P.*, 99 FERC ¶ 61,269 (2002).

The Commission also reserves the right to require an updated market power analysis at any time.¹⁸

B. Waivers of Filing, Reporting and Accounting Requirements

32. In light of its request for authority to charge market-based rates and the fact that Black Bayou has no pre-existing facilities, Black Bayou requests that the Commission waive sections 157.6(b)(8) and 157.20(c)(3) of the Commission's regulations. These sections require the submission of information necessary for the Commission to make an up-front determination of the appropriate rate treatment for Black Bayou's storage project, and require the filing of updated cost data after new facilities are placed into service.

33. Black Bayou also requests that the Commission waive the filing requirements of sections 157.14(a)(13), (14), (16), and (17), which require Black Bayou to submit Exhibits K (Cost of Facilities), Exhibit L (Financing), Exhibit N (Revenues, Expenses, and Income), and Exhibit O (Depreciation and Depletion), since Black Bayou is seeking authority to charge market-based rates and these exhibits are required for cost-based rate authority. For the same reasons, Black Bayou requests waiver of the accounting and annual reporting requirements under Part 201 (accounting and reporting requirements of Uniform System of Accounts) and sections 260.1 and 260.2 (filing of annual reports in FERC Form Nos. 2 and 2-A) of the Commission's regulations.

34. Similarly, Black Bayou requests waiver of the requirement pertaining to straight fixed-variable rate design set forth in sections 284.7(e) and 284.10 of the Commission's regulations, also as being inapplicable to market-based rates. Finally, Black Bayou requests waiver of the filing requirement contained in section 157.14(a)(10) to submit total gas supply data (Exhibit H), as being inapplicable to natural gas storage services. Black Bayou states that its customers will supply their own gas for storage.

35. The cost-related information required by the above-described regulations is not relevant in light of our approval of market-based rates for Black Bayou's storage and hub services, including wheeling service. Thus, consistent with our findings in previous

¹⁸ See *Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141, at P 40 (2005). We note that in Order No. 678 the Commission chose not to impose a requirement that storage providers granted market-based rates file updated market power analysis every five years.

orders,¹⁹ we will grant Black Bayou's request for waiver of the regulations requiring cost-based rate related information. We will also grant a waiver of section 157.14(a)(10) requiring an applicant to submit gas supply data, which is inapplicable to storage operations.

36. In addition, the Commission grants the requested waiver of the requirement to file an annual report (Form Nos. 2 and 2-A), contained in sections 260.1 and 260.2 of the regulations, except for the information necessary for the Commission's assessment of annual charges.²⁰ Black Bayou is required to file pages 520 and 520A of Form No. 2-A, reporting the gas volume information which is the basis for imposing an Annual Charge Adjustment (ACA) charge.²¹

C. Tariff Provisions

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

1. Segmentation

38. Section 284.7(d) of the Commission's regulations provides that an interstate pipeline must permit a shipper to make use of the firm capacity for which the shipper has contracted by segmenting that capacity into separate parts for the shipper's own use, or for the purpose of releasing that capacity to replacement shippers to the extent that segmentation is operationally feasible. Black Bayou requests waiver of the Order No. 637 segmentation requirements in section 284.7(d), contending that segmentation is not feasible since it will not be offering stand-alone transportation services, but rather all transportation service will be provided as part of the storage/hub services offered.

¹⁹ 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 p. 62,473 (2001) and 99 FERC ¶ 61,269, at p. 62,142 (2002).

²⁰ However, we will require Black Bayou to maintain sufficient records of cost and revenue data consistent with the Uniform System of Accounts should the Commission require Black Bayou to produce this report in the future.

²¹ See *Wyckoff Gas Storage Co., LLC*, 105 FERC ¶ 61,027, at P 65 (2003).

39. We have found in several proceedings that the requirements of section 284.7(d) do not apply to pipelines engaged solely in natural gas storage and not providing stand-alone transportation services.²² Since Black Bayou is such a storage provider, the requirements of section 284.7(d) do not apply to Black Bayou. Other tariff provisions related to segmentation, such as the allocation of primary point rights in segmented release and within-the-path scheduling, also do not apply to Black Bayou.

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

40. Black Bayou requests a generic waiver of the shipper must have title policy for any off-system capacity it may acquire in the future to enable it to use that capacity to transport natural gas owned by other parties in connection with its storage or hub services. Section 29 of the General Terms and Conditions (GT&C) of Black Bayou's pro forma tariff²³ states that Black Bayou will only use such off-system capacity, and will only provide service to customers on the acquired capacity pursuant to its open-access tariff and subject to its rates.

41. Black Bayou's off-system capacity statement implements the Commission's policy with respect to pipelines' acquisition of off-system capacity. In *Texas Eastern Transmission Corporation (TETCO)*,²⁴ the Commission found that pipelines no longer need to obtain prior approval to acquire capacity on another pipeline, provided the acquiring pipeline has filed tariff language specifying that it will only transport for others on off-system capacity pursuant to its tariff provisions and rates. Black Bayou's proposed tariff language is consistent with the requirements set forth in *TETCO*. Therefore, we accept Black Bayou's tariff language and grant waiver of the shipper must have title policy, with the following clarification. Because Black Bayou has proposed only to offer firm and interruptible storage and interruptible hub services, and does not propose to offer any transportation services other than storage and hub services, Black Bayou may only use capacity obtained on other pipelines in order to render the services set forth in its tariff. That is, Black Bayou may not use capacity on other pipelines to transport gas which will not physically or contractually enter its storage facility unless and until it has received Commission authorization to provide such transportation

²² See, e.g., *Bobcat Gas Storage*, 116 FERC ¶ 61,052, at P 37 (2006); *Pine Prairie Energy Center, LLC*, 109 FERC ¶ 61,215, at P 44 (2004); *Egan Hub Partners, L.P.*, 98 FERC ¶ 61,284 (2002); *Clear Creek Gas Storage Company*, 96 FERC ¶ 61,071 (2001).

²³ Original Pro Forma Sheet No. 191.

²⁴ 93 FERC ¶ 61,273 (2000), *reh'g denied*, 94 FERC ¶ 61,139 (2001).

services. Furthermore, Black Bayou's authorized use of the *TETCO* waiver to provide storage service shall be limited to the geographic area covered by Black Bayou's market study.²⁵

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

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

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

3. Transmission Provider Standards of Conduct

44. Black Bayou requests waiver of the requirements set forth in Part 358 of the Commission's regulations. In Part 358 of its regulations, the Commission adopted new standards of conduct to ensure that transmission providers cannot extend their market power over transmission by giving energy affiliates unduly preferential treatment.²⁶ As set forth in section 358.3(a)(3) of the Commission's regulations, the Commission, in Order No. 2004-A, granted a request "to generically exempt from the definition of "Transmission Provider" natural gas storage providers authorized to charge market-based

²⁵ See *Starks Gas Storage, L.L.C.*, 111 FERC ¶ 61,105, at P 55 (2005).

²⁶ *Standards of Conduct for Transmission Providers*, Order No. 2004, 68 Fed. Reg. 69,134 (December 11, 2003), FERC Stats. & Regs. ¶ 31, 155 (2003), *order on reh'g*, Order No. 2004-A, 69 Fed. Reg. 23,562 (April 29, 2004), Stats. & Regs. ¶ 31,161 (2004).

rates that are not interconnected with the jurisdictional facilities of any affiliated interstate natural gas pipeline, have no exclusive franchise area, no captive ratepayers and no market power.”

45. Black Bayou states that it is not interconnected with affiliated “Transmission Providers.” As a result, Black Bayou states that it qualifies for the exemption granted to natural gas storage providers. The Commission finds that Black Bayou is exempt from the transmission provider standards since it is not interconnected with any affiliated pipeline, has no captive ratepayers, and has been found to lack market power.

4. Right of First Refusal

46. Black Bayou does not provide for a contractual right of first refusal (ROFR) to renew a customer’s firm service agreement. The Commission does not require a storage service provider to include a provision that permits negotiation of a contractual ROFR, and has accepted storage service provider tariffs that do not include such a provision.²⁷ Accordingly, we accept Black Bayou’s proposal to provide service under Rate Schedule FSS without the option of negotiating a contractual ROFR.

5. Penalties

47. In the event a customer fails to withdraw gas at service termination or upon notice of service interruption, Black Bayou will dispose of such gas by auction and credit the net proceeds to the customer’s outstanding obligations. Black Bayou proposes to retain a customer’s gas improperly left in storage in two circumstances: (1) when gas is not withdrawn from storage by a firm customer prior to the expiration of the customer’s service agreement; or (2) when gas is not withdrawn from storage by an interruptible storage or parking customer following notice by Black Bayou that it must interrupt the customer’s service.

48. Rate Schedule FSS at section 8 provides that, on any day after the end of the service period, if the customer has not physically withdrawn its inventory, Black Bayou has the right to either negotiate with the customer to enter a new transaction on an interruptible basis, take title to the inventory, or a combination of both remedies. If Black Bayou elects to take title of the gas, the customer shall transfer title to Black Bayou free and clear of all liens, encumbrances and adverse claims of any kind, at a price per Dth

²⁷See *Windy Hill Gas Storage, LLC*, 119 FERC ¶ 61,291, at P 46 (2007) (*Windy Hill*).

equal to 75 percent of the Daily Reference Price for the month before such transfer of the customer's inventory. Likewise, under Rate Schedules ISS and IPS at section 2.4, if the customer fails to withdraw stored gas as requested by Black Bayou to meet firm commitments, unless customer is unable to withdraw its inventory because of an interruption of its service, Black Bayou may take title to all or any portion of the customer's inventory (as applicable to the amount requested for withdrawal) at a price per Dth equal to 75 percent of the Daily Reference Price for the month before such transfer, and will credit such proceeds to any amount owed by the customer to Black Bayou.

49. Third, under Black Bayou's Rate Schedule ILS, if a customer fails to replace gas advanced by Black Bayou to the customer at the agreed upon time, Black Bayou may purchase replacement gas and the customer shall pay Black Bayou the cost of the replacement gas. The cost of the replacement gas shall include the actual cost of replacement supplies and any costs or penalties incurred by Black Bayou or its customers as a result of the customer's failure to deliver replacement gas, plus all other costs incurred by Black Bayou to secure such replacement gas, including but not limited to third-party marketing fees, transportation by third-party pipeline companies, and all other costs for securing replacement gas. Under Black Bayou's interruptible loan service at section 2.5 of Rate Schedule ILS, if the customer fails to return the requested volumes, unless customers' injection service is interrupted, Black Bayou will have the right to treat the loaned quantities not returned as a sale of such quantities to customer at a price equal to a price per Dth equal to 125 percent of the Monthly Reference Price for the current month during such transaction.

50. For both a customer's failure to withdraw gas and failure to replace gas, Black Bayou uses the "Daily Reference Price" for pricing purposes. We find that Black Bayou's use of the daily price index for pricing purposes satisfies the criteria that the Commission established for inclusion of price indices in jurisdictional tariffs,²⁸ and is comparable to pricing indices approved for other storage service providers.²⁹

51. Order No. 637 permits pipelines to include transportation penalties to the extent necessary to prevent the impairment of reliable service. Likewise, the Commission has found such gas retention penalties applicable to storage services to be appropriate and

²⁸ See *Price Discovery in Natural Gas and Electric Markets*, 109 FERC ¶ 61,184, at Ordering Paragraph D (2004).

²⁹ *Windy Hill*, 119 FERC ¶ 61,291 at P 69.

consistent with the mandates of Order No. 637.³⁰ Further, the Commission has accepted similar gas retention proposals by other storage providers, stating that the retention of gas left in storage at the end of the withdrawal period is an operationally-justified deterrent to shipper behavior that could threaten the system or degrade service to firm shippers.³¹

52. As for the level of the penalty, Black Bayou proposes a less severe penalty or similar penalty compared to other storage providers. For this reason, we find the proposed provisions consistent with other tariffs for other storage service providers.³² Accordingly, we find that Black Bayou's gas retention and penalty proposals are consistent with Commission precedent.

6. Implementation of NAESB Standards

53. The Commission adopted, in Part 284 of its regulations, various standards for conducting business as promulgated by the North American Energy Standards Board (NAESB). These standards govern nominations, allocations, balancing, measurement, invoicing, capacity release, and mechanisms for electronic communication between pipelines and those with whom they do business. Black Bayou states that its pro forma tariff complies with the Commission's policies and the current NAESB standards³³ in a manner consistent with Commission precedent applying to natural gas companies engaging exclusively in the operation of storage facilities. Consistent with this precedent, Black Bayou requests that the Commission grant certain exemptions or waivers necessary to be deemed in compliance with applicable Commission requirements.

54. The Commission finds that Black Bayou's proposed service terms and conditions generally satisfy the Commission's regulations and policies, with the exceptions noted below. For this reason, the Commission directs Black Bayou to file actual tariff sheets consistent with the following directives at least 30 days but no more than 60 days, prior

³⁰ See *Pine Prairie Energy Center, LLC (Pine Prairie)*, 109 FERC ¶ 61,215, at P 46 (2004); and *Blue Lake Gas Storage Co.*, 96 FERC ¶ 61,164 (2001).

³¹ See *Tres Palacios Gas Storage, LLC*, 120 FERC ¶ 61,253, at P 58 (2007).

³² See *Windy Hill*, 119 FERC ¶ 61,291 at P 54-56; *Pine Prairie*, 109 FERC ¶ 61,215 at P 46; and *Blue Lake Gas Storage Co.*, 96 FERC ¶ 61,164, at 61,728-29 (2001).

³³ Black Bayou states that its tariff complies with Order No. 587-S wherein the Commission adopted Version 1.7 of the NAESB Standards and standards implementing gas quality requirements. Black Bayou commits to modifying its tariff before providing services to reflect the then-current NAESB standards, as adopted by the Commission.

to the commencement of its new services.³⁴ Further, we will grant the requested waivers, as discussed below, subject to Black Bayou, when it files its actual tariff sheets, filing a cross reference listing each required NAESB standard, identifying the specific location of each standard in the tariff, and noting whether it incorporated the standard verbatim or by reference. To the extent a NAESB standard does not apply because of unique system characteristics or other operational aspects, the Commission does not require requests for specific waivers of such standards.³⁵ However, in accordance with our ruling in *Trans-Union*, if circumstances change and a standard becomes applicable to Black Bayou's operations, then Black Bayou must file to modify its tariff to comply with the standard.

7. Imbalance Management

55. Section 284.12(b)(2)(iii) of the regulations requires that a pipeline having imbalance penalty provisions in its tariff must provide, to the extent operationally practicable, parking and lending or other services that permit its shippers to manage transportation imbalances. That provision likewise requires that a pipeline must provide its shippers the opportunity to obtain imbalance management services from other providers.

56. Black Bayou proposes to provide a variety of services that its customers will be able to use for imbalance management, including parking, lending, and wheeling. However, Black Bayou's proposed tariff does not include imbalance penalties. For this reason, Black Bayou contends it is not subject to the imbalance management requirements under this regulation. Consequently, Black Bayou requests an exemption from compliance with Order Nos. 587-G and 587-L regarding the netting and trading of imbalances, as well.

57. On September 29, 2000, the Commission clarified Order No. 587-L providing that pipelines that do not have imbalance penalties as part of their tariffs may request exemption from compliance with Order Nos. 587-G and 587-L.³⁶ Accordingly, we will

³⁴ Black Bayou is advised to ensure that page number references in its Table of Contents accurately correspond with referenced contents.

³⁵ See *Trans-Union Interstate Pipeline, L.P.*, 104 FERC ¶ 61,315, at P 20 (2003) (Trans-Union).

³⁶ *Standards for Business Practices of Interstate Natural Gas Pipelines, order granting clarification*, 92 FERC ¶ 61,266 (2000). See, e.g., *Bluewater Gas Storage, LLC*, 117 FERC ¶ 61,122, at P 52 (2006) (the Commission granted such an exemption for an independent gas storage operator).

grant Black Bayou's request. However, if Black Bayou seeks to impose imbalance penalties in the future, then it must comply with the Commission's policies and regulations regarding imbalance management services.

8. Regulatory Fees

58. Section 3 under all of the Rate Schedules (FSS, ISS, ILS, IPS, and IWS) addresses the customer's responsibility for regulatory fees and charges as provided under the respective rate schedules. The related rate sheets for Black Bayou's firm and interruptible services currently state that the customer will pay all taxes and similar assessments tied to these services. However, the rate sheets do not incorporate the appropriate language to encompass the regulatory fees applicable under section 3 of the rate schedules. Accordingly, Black Bayou must revise the rate sheets to reflect that in addition to all applicable taxes set forth in either the GT&C or the service agreement, the customer shall pay all other applicable surcharges, including, but not limited to, Annual Charge Adjustments (or ACA charges).

9. Operational Flow Orders (OFOs)

59. GT&C section 9.4 provides for an OFO penalty charge for each Dth of gas equal to an OFO Index Price calculated at five times the applicable Daily Reference Price, multiplied by the quantity of gas by which the customer deviated from the requirements of the OFO. However, it appears that Black Bayou does not provide a mechanism to credit such penalties. In accordance with Order No. 637, any penalty revenue collected by Black Bayou must be credited to those firm and interruptible customers that did not incur such penalty. Accordingly, Black Bayou must revise section 9 to provide for crediting of any OFO penalties collected and the mechanism it will use to calculate and distribute the appropriate credit. Further, Black Bayou must revise this section to reflect the filing requirements for the disbursement report and the interest calculated in accordance with section 154.501(d) of the Commission's regulations.

10. Creditworthiness Evaluations

60. GT&C section 31.1(b) states that Black Bayou will promptly provide notification, in writing, to a customer of Black Bayou's determination regarding such party's creditworthiness. If a customer is determined to not be creditworthy, Black Bayou will inform the customer in writing of the reason for such determination. In *Natural*, the Commission required that the written communication should be made within 10 days of

the determination.³⁷ Accordingly, we direct Black Bayou to revise section 31.1(b), to clarify when it intends to communicate its determination.

61. Further GT&C section 32 provides that Black Bayou will require an existing customer to provide it with additional performance assurance upon two business days' notice any time Black Bayou's recomputation of the market value of any quantities of gas loaned by Black Bayou increases by 10 percent or more. This provision conflicts with the Commission's creditworthiness collateral timeline policies.³⁸ Specifically, we found that shippers should have three business days to respond to the company's request to review its financial statements. Accordingly, we direct Black Bayou to revise section 32, to permit its customers three business days to respond to its request to review the customer's financial statements.

11. Warehouse Lien

62. GT&C Section 32.7 permits Black Bayou, as provided under UCC Article 7, to establish a lien on all gas received from a shipper in order to satisfy charges for storage and/or transportation, including, without limitation, all expenses necessary for the preservation of gas in all of the customer's inventories or reasonably incurred in the sale thereof. The location of the warehouse is the location of the underlying facilities servicing the Black Bayou facility. The Commission will accept this tariff provision as consistent with similarly approved proposals.³⁹

12. Miscellaneous

63. Black Bayou uses the phrase "at its sole discretion" in provisions under Rate Schedules FSS, ISS, IPS, and ILS which pertain to excess injections and withdrawals of gas. Black Bayou is directed to replace the phrase "at its sole discretion" with the phrase "with reasonable and nondiscriminatory discretion". This directive is consistent with Commission findings regarding similar tariff qualifications.⁴⁰

³⁷ *Natural Gas Pipeline Company of America*, 111 FERC ¶ 61,412, at P 10 (2005).

³⁸ *See Northern Natural Gas Co.*, 102 FERC ¶ 61,076 and *Tennessee Gas Pipeline Co.*, 102 FERC ¶ 61,075 (2003).

³⁹ *See, e.g., Windy Hill Gas Storage, LLC*, 115 FERC ¶ 61,218, at P 57; and *Mobay Storage Hub, LLC*, 117 FERC ¶ 61,298, at P 54 (2006), *citing Starks Gas Storage, LLC*, 111 FERC ¶ 61,105 (2005).

⁴⁰ *Freebird Gas Storage, LLC*, 111 FERC ¶ 61,054, at P 42 (2005).

D. Engineering

64. The Commission reviews the design capacity of proposed natural gas facilities to ensure that the design is appropriate and efficient. Commission staff completed an engineering analysis of the facility proposed for natural gas storage, including the design capacity of the proposed facility. Based on that analysis, we conclude that, if constructed in accordance with Black Bayou's application and implementation of the measures described in Appendix A to this order, the proposed storage facility is technically sound and well defined. The facilities are appropriately designed to provide a total of 20.8 Bcf of storage capacity (15 Bcf working gas and 5.8 Bcf cushion gas). Further, we conclude that the natural gas facilities proposed by Black Bayou are properly designed to withdraw up to 1,200 MMcf per day.

65. Based on the Commission's staff analysis, we conclude that the geological and engineering parameters for the underground natural gas salt cavern storage facilities proposed by Black Bayou are well defined. The analysis shows that Black Bayou's proposed cavern locations are well within the design criteria and confinement of the salt formation.

66. Because salt deforms plastically in relatively short time frames, caverns will shrink over time. As stated in *A Brief History of Salt Cavern Use*, large volume losses due to salt creep have occurred in natural gas storage caverns.⁴¹ Further, the Interstate Oil and Gas Compact Commission's *Hydrocarbon Storage in Mined Caverns* (IOGCC Report) states that monitoring to demonstrate cavern stability and successful hydrodynamic containment should be carried out throughout the life of the facility. In order to mitigate these concerns, Black Bayou shall conduct sonar surveys to monitor the cavern's size and shape to insure that salt creep does not potentially damage the integrity of the cavern, which may result in lost gas and reductions in storage capacity.

67. Additionally, the IOGCC Report states "[a]ll gaseous and/or liquid products injected into or withdrawn from the storage facility shall be metered using industry accepted standards. The measurements shall be counterchecked by product level measurement in the cavern (using the level versus volume curve)."⁴² Therefore, we will

⁴¹ Thomas, Robert and Gehle, Richard, *A Brief History of Salt Cavern Use*, Solution Mining Research Institute, 2000.

⁴² *Hydrocarbon Storage in Mined Caverns, A Guide for State Regulators*, Interstate Oil and Gas Compact Commission, 2000.

require Black Bayou to file an annual inventory verification study to assist in identification of potential problems with the storage facility.

E. Environment

68. On October 12, 2007, the Commission's staff issued a *Notice Of Intent To Prepare an Environmental Assessment For the Proposed Black Bayou Gas Storage Project and Request for Comments on Environmental Issues* (NOI).⁴³ The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. The NOI comment period ended on November 30, 2007. In response to the NOI, comments were filed by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service; the U.S. Department of the Interior, Fish and Wildlife Service; the Department of the Army, Galveston District, Corps of Engineers; the State of Louisiana, Department of Wildlife and Fisheries; and the Louisiana Department of Environmental Quality (LDEQ). These comments are addressed in the environmental assessment (EA) prepared by the Commission's staff for Black Bayou's proposal. The EA, which was issued and placed in the record in Docket No. CP07-451-000, *et al.*, on May 22, 2008, addresses geology and soils; water resources and wetlands; vegetation, wildlife, and fisheries; endangered and threatened species; land use; cultural resources; air quality and noise; and alternatives.

69. Based on the discussion in the EA, we conclude that if constructed, replaced, abandoned, or operated in accordance with Black Bayou's application and supplements, and the conditions in Appendix B to this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

70. 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 state or local cooperation between interstate pipelines and local authorities; this does not mean, however, that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or

⁴³ 72 FR 59,521 (Oct. 22, 2007).

operation of facilities approved by this Commission.⁴⁴ Any permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate.

F. Blanket Certificates

71. In Docket No. CP07-452-000, Black Bayou has applied for a Part 157, Subpart F blanket certificate. The Subpart F blanket certificate gives a natural gas company section 7 authority to automatically, or after prior notice, perform certain activities related to the construction, acquisition, abandonment, and replacement and operation of pipeline facilities. Because Black Bayou will become an interstate pipeline with the issuance of a certificate to construct and operate the subject facilities we will issue the requested Part 157, subpart F blanket certificate.

72. In Docket No. CP07-453-000, Black Bayou requests a Part 284, Subpart G blanket certificate in order to provide open-access storage, hub and wheeling services. Under a Part 284 blanket certificate, Black Bayou will not require individual authorizations to provide services to particular customers. Black Bayou filed a pro forma Part 284 tariff to provide its open-access services. Since a Part 284 blanket certificate is required for Black Bayou to offer these services, we will grant Black Bayou a Part 284 blanket certificate, subject to the conditions imposed herein.

G. Conclusion

73. For the reasons set forth herein, and subject to the conditions set forth below, we find that granting authorization under section 7(c) of the NGA for Black Bayou's proposal is required by the public convenience and necessity. Thus, we grant the requested authorizations to Black Bayou.

74. At a hearing held on June 19, 2008, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, as supplemented, submitted in support of the authorizations sought herein, and upon consideration of the record,

⁴⁴See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

The Commission orders:

(A) In Docket No. CP07-451-000, a certificate of public convenience and necessity is issued to Black Bayou under NGA section 7(c), authorizing the construction and operation of natural gas facilities in Cameron Parish, Louisiana, as more fully described in this order and in the application.

(B) In Docket No. CP07-452-000, a blanket certificate under subpart F of Part 157 of the Commission's regulations is issued to Black Bayou, authorizing it to construct and operate certain facilities, as defined in and under the terms and conditions of that section.

(C) In Docket No. CP07-453-000, a blanket certificate under Part 284 of the Commission's regulations is issued to Black Bayou authorizing it to provide open-access transportation and storage services.

(D) The certificate issued in Ordering Paragraph (A) is conditioned upon Black Bayou's compliance with all applicable Commission regulations under the Natural Gas Act, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c)(1) and (2), (e), and (f) of section 157.20 of the regulations.

(E) The facilities authorized in this order shall be constructed and made available for service by July 1, 2012, in accordance with section 157.20(b) of the Commission's regulations.

(F) The certificate issued in Ordering Paragraph (A) is conditioned upon Black Bayou's compliance with the engineering and environmental conditions set forth in Appendices A and B to this order.

(G) Black Bayou's request to charge market-based storage rates for firm and interruptible storage and interruptible hub and wheeling service is approved, as discussed in this order. Black Bayou's market power and market-based storage rates authority shall be subject to re-examination in the event that:

1. Black Bayou expands its storage capacity beyond the amount authorized in this proceeding;
2. Black Bayou acquires additional transportation facilities or additional storage capacity;

3. An affiliate provides storage or transportation services in the same market area or acquires an interest in another storage field that can link Black Bayou's facilities to the market area; or
4. Black Bayou or an affiliate acquires an interest in or is acquired by an interstate pipeline.

(H) Black Bayou is granted a waiver of section 157.14 of the Commission's regulations requiring submission of Exhibits H (total gas supply data), K (cost of facilities), L (financing), N (revenue-expenses-income), and O (depreciation and depletion); section 284.7(e) and 284.10 requiring reservation charges and the use of a straight fixed variable rate design; and the accounting and reporting requirements under Parts 201 and 260.2 of the Commission's regulations, which presume cost-based rates are being charged and collected, except for the information necessary for the Commission's assessment of annual charges. This waiver is subject to Black Bayou maintaining accounts and financial information of its storage facility consistent with generally accepted accounting principles.

(I) Black Bayou is granted a waiver of the Commission's "shipper must have title" policy as discussed in the body of this order, and subject to the conditions set forth herein.

(J) Black Bayou shall file actual tariff sheets not less than 30 days or more than 60 days that comply with the requirements contained in the body of this order, including the cross-reference to reflect the location of each NAESB standard in its tariff, and are otherwise consistent with its pro forma tariff in accordance with the NGA and Part 154 of the Commission's regulations prior to commencement of service.

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

(L) Black Bayou shall file, not less than 60 but not more than 90 days prior to commencing service, a statement affirming that the market power study is accurate based on current conditions. Should there be any changes in Black Bayou's market power for hub services, Black Bayou shall file a revised market power study.

(M) The authorizations issued in Ordering Paragraphs (A), (B), and (C) are conditioned upon Black Bayou's notifying the Commission's environmental staff by telephone, e-mail, or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Black Bayou.

Black Bayou 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

Engineering and Operating Conditions

This authorization includes the following conditions:

1. The maximum inventory of natural gas stored in Black Bayou's storage facility shall not exceed the certificated levels of 10.4 Bcf at 14.73 psia and 60° F for each cavern; the maximum gas storage shut-in stabilized pressure gradient of each cavern shall not exceed 0.90 psi/ft. The minimum pressure gradient shall be limited to 0.25 psi/ft.
2. The final gas storage operating capacity of each cavern, working gas capacity, cushion gas capacity, and the minimum pressure shall be determined after the facility's operating parameters are evaluated and filed with the Commission (include data and working papers to support the actual operating capacity determination).
3. Before commencing gas storage operations, Black Bayou shall:
 - (a) Conduct a Mechanical Integrity Test for the cavern before initiation of each well/cavern to natural gas storage, and file the results with the Commission;
 - (b) File with the Commission copies of the latest interference tracer surveys, or other testing or analysis on each cavern to verify the lack of communication between the caverns;
 - (c) Establish and maintain a subsidence monitoring network over the proposed caverns storage area; and,
 - (d) Assemble, test, and maintain an emergency shutdown system.
4. Twice annually, Black Bayou shall conduct a leak detection test during storage operations to determine the integrity of each cavern, well bore, casing and wellhead, and file the results with the Commission until one year after the storage inventory volume reaches or closely approximates the full authorized capacity, unless otherwise ordered by the Commission.
5. Each cavern's well will be periodically logged to check the integrity of each casing string. Additionally, every five years Black Bayou shall conduct sonar surveys of the caverns to monitor their dimensions and shape, including the cavern roof, and to estimate pillar thickness between openings throughout the storage operations, and file the results with the Commission.

6. Black Bayou shall conduct an annual inventory verification study on each cavern, and file results with the Commission.
7. The Black Bayou Storage Project shall be operated in such a manner as to prevent gas loss or migration.
8. Black Bayou shall file with the Commission semi-annual reports (to coincide with the maximum and minimum storage pressures) 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° F, and pressures shall be stated in psia):
 - (a) The daily volume of natural gas injected into and withdrawn;
 - (b) The inventory of natural gas and shut-in wellhead pressure for each cavern at the end of each reporting period;
 - (c) The maximum daily injection and withdrawal rates experienced for the entire storage field during the reporting period; and, 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.
9. Black Bayou shall continue to file the above semi-annual reports in accordance with section 157.214 (c) of the Commission's regulations for a period of one year following the date facility operation at a maximum level is initiated.

APPENDIX B

Environmental Conditions

As recommended in the EA, this authorization includes the following condition(s):

1. Black Bayou 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. Black Bayou must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Project (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, Black Bayou 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, Black Bayou 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.

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

5. Black Bayou 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 the 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. Black Bayou shall employ at least one environmental inspector for the project. The environmental inspector(s) shall be:
 - a. responsible for monitoring and ensuring compliance with all mitigation measures required by this Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
 - d. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - e. responsible for maintaining status reports.

7. Black Bayou shall file updated status reports prepared by the environmental inspector with the Secretary on a **biweekly** basis until all construction and restoration activities are complete. On request, these status reports would also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. the current construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Black Bayou from other federal, state or local permitting agencies concerning instances of noncompliance, and Black Bayou's response.

8. Black Bayou must receive written authorization from the Director of the 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**, Black Bayou 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 Black Bayou 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. **Before demolition of the Diasu site**, Black Bayou shall consult with the Louisiana Department of Natural Resources and the Louisiana Department of Environmental Quality and other Federal hazardous waste agencies regarding the adequacy of their initial test results and file the agencies' correspondence with the Secretary. Further, **after demolition of the Diasu Oil and Gas Company site, and prior to start of construction of Black Bayou's proposed facilities**, Black Bayou shall file a soil and groundwater sampling and mitigation program, for the review and written approval of the Director of OEP that includes:
 - a. a description of how contamination soils and groundwater would be identified and tested;
 - b. procedures for remediation and disposal of contaminated soils, including transportation to identified, appropriately licensed landfills; mitigation for potential impacts on existing groundwater supplies;
 - c. additional testing that would be performed following removal of the Diasu facilities; and
 - d. documentation of consultation with appropriate agencies regarding the soil and groundwater sampling and mitigation program.
11. Black Bayou shall not receive electric service from Entergy Corporation's (Entergy) electric powerline **until**:

- a. the staff receives survey information on Entergy's electric powerline and comments from the U.S. Fish and Wildlife Service (USFWS) on federally listed and endangered species;
 - b. the staff completes formal consultation with the USFWS, if required;
 - c. Black Bayou files the results of the cultural resources review as well as the comments of the Louisiana State Historic Preservation Officer; and
 - d. Black Bayou has received written notification from the Director of OEP that it may receive service from Entergy.
12. **Prior to construction**, Black Bayou shall file with the Secretary for review and written approval by the Director of OEP, a horizontal directional drill (HDD) Frac-Out Plan which describes the specific measures Black Bayou would implement to stop and clean up an inadvertent release of drilling mud should one occur. Black Bayou should also describe the measures it would take to minimize the impact of its efforts in wetlands.
 13. **Prior to construction**, Black Bayou shall file with the Secretary for review and written approval by the Director of OEP, a HDD Contingency Plan which describes the measures Black Bayou would implement should an HDD fail.
 14. **Prior to construction**, Black Bayou shall file with the Secretary for review and written approval by the Director of OEP, a Final Spill Prevention, Control, and Countermeasure / Spill Prevention and Control Plan.
 15. Black Bayou shall not begin construction activities **until** the FERC completes essential fish habitat consultation with the National Marine Fisheries Service of the U.S. Department of Commerce's National Oceanic and Atmospheric Administration.
 16. **Prior to construction**, Black Bayou shall file with the Secretary for review and written approval by the Director of OEP, a Hazardous Materials Containment Plan. This Plan should specifically describe the containment structures and measures Black Bayou would implement to store materials in and within 100 feet of wetlands.
 17. **Prior to construction**, Black Bayou shall file with the Secretary for review and written approval by the Director of OEP, an Exotic and Invasive Species Control Plan.
 18. Black Bayou shall not begin construction **until** it files documentation with the Secretary indicating a determination has been made that the project is consistent with the Coastal Zone Management Act.

Black Bayou shall file a noise survey with the Secretary **no later than 60 days** after placing the Black Bayou Compressor Station in service. If the noise attributable to the operation of all of the equipment at the Black Bayou Compressor Station at full load exceeds an L_{dn} of 55 dBA at any nearby NSAs, Black Bayou should file a report on what changes are needed and should install the additional noise controls to meet the level **within 1 year** of the in-service date. Black Bayou should confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.