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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Wild Goose Storage, LLC to Amend its Certificate of Public Convenience and Necessity to Expand and Construct Facilities for Gas Storage Operations (U911G).

Application 09-04-021
(Filed April 24, 2009)

ADMINISTRATIVE LAW JUDGE'S RULING GRANTING, IN SUBSTANTIAL PART, MOTION TO FILE CONFIDENTIAL MATERIALS UNDER SEAL

Summary

This ruling authorizes all but two pages of Exhibit E to the application of Wild Goose Storage, LLC, to be filed under seal for two years. The two pages not sealed contain no confidential information and consist of the first page of Exhibit E, which is the title page for the financial statements at issue, and the next page in order, a statement by the auditors that divulges no financial information.

Discussion

By motion filed April 24, 2009, Wild Goose Storage, LLC (Wild Goose), an independent provider of natural gas storage services, asks the Commission to file Exhibit E to its application under seal. Exhibit E contains the audited financial statements of its parent company, Niska GS Holdings I, L.P. (Niska GS), a privately held corporation, together with the following two pages: the first page of Exhibit E, which is the title page for the financial statements at issue, and the next page in order, a statement by the auditors that divulges no financial

information. On October 29, 2010, by e-mail in response to my e-mail inquiry that day, counsel for Wild Goose confirms that the title page and auditors' statement are not confidential.

The financial statements consist of the Niska GS consolidated balance Sheets (as of March 31, 2008 and 2007), the consolidated statements of earnings (for the year ended March 31, 2008 and for the period May 12, 2006 - March 31, 2007), the consolidated statements of cash flows (for the year ended March 31, 2008 and for the period May 12, 2006 - March 31, 2007), and the notes to these consolidated financial statements.

Wild Goose contends "[i]f not protected by seal, this information could permit competitors of Niska GS and Wild Goose to gain an undue commercial advantage by obtaining proprietary information" (Motion at 2.)

Wild Goose also states:

Niska GS is a privately held corporation. Therefore, unlike publicly traded corporations, it is not required to publicly report financial information of this nature to the Securities and Exchange Commission or otherwise to make such financial information public. As a result, the commercially sensitive information contained in Appendix E has not previously been disclosed to the public and is not available for public review elsewhere. In addition, investors have made investments in Niska GS with the understanding and expectation that financial information of this type will not be publicly disclosed. (*Id.*)

Public Utilities Code Section 583, the Commission's General Order (GO) 66-C (and other statutes cited there), and various decisions of this Commission govern public disclosure of information furnished to the Commission as part of an application process. Generally, in the absence of an express legal ban or a recognized, contravening harm, state policy supports public disclosure.

Wild Goose recognizes that GO 66-C, Section 2.2(b) expressly allows protection of “reports, records, and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage.” Wild Goose reasonably contends that given the privately held nature of the Niska GS corporate structure, protection from disclosure should extend to its parent in order to avoid competitive harm. Further, as Wild Goose observes, GO 66-C, Section 2.8 authorizes protection of confidential information obtained from an entity other than the utility “where the disclosure would be against the public interest.”

At this time, given the competitive nature of the independent gas storage industry in California, together with the other factors Wild Goose has cited that support nondisclosure, the financial records of Niska GS should be placed under seal. Accordingly, Wild Goose’s motion should be granted, in substantial part, and all of Exhibit E should be placed under seal except the following two pages: the first page of Exhibit E, which is the title page for the financial statements at issue, and the next page in order, a statement by the auditors that divulges no financial information. Wild Goose should file and serve these two pages on or before November 19, 2010. The filing should be titled “Response to November 3, 2010 Administrative Law Judge Ruling.”

IT IS RULED that:

1. Wild Goose Storage, LLC’s (Wild Goose) April 24, 2009 motion for leave to file confidential material under seal, is granted in substantial part, and all of Exhibit E to the application is placed under seal except the following two pages: the first page of Exhibit E, which is the title page for the financial statements at issue, and the next page in order, a statement by the auditors that divulges no financial information. Wild Goose should file and serve these two pages on or

before November 19, 2010. The filing should be titled "Response to November 3, 2010 Administrative Law Judge Ruling."

2. The financial information placed under seal pursuant to ruling paragraph 1, above, shall remain sealed for a two-year period from the date of this ruling. During this period, this financial information shall not be made accessible or be disclosed to anyone other than Commission staff except on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge, which order shall be entered only after notice to Joint Applicants and an opportunity to be heard.

3. If Wild Goose Storage, LLC (Wild Goose) believes that the financial information placed under seal, pursuant to ruling paragraph 1, above, should be granted protection beyond two years, Wild Goose may file a motion stating the justification for further withholding the material from public inspection or for such other relief as the Commission Rules may then provide. The motion shall be filed no later than 45 days before the expiration of this ruling.

Dated November 3, 2010, at San Francisco, California.

/s/ JEAN VIETH
Jean Vieth
Administrative Law Judge

