

Decision 12-07-021 July 12, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application by SACRAMENTO NATURAL GAS STORAGE, LLC, for a Certificate of Public Convenience and Necessity for Construction and Operation of Natural Gas Storage Facilities and Requests for Related Determinations.

Application 07-04-013
(Filed April 9, 2007)

(See Attachment A for Appearances)

**DECISION DENYING SACRAMENTO NATURAL GAS STORAGE, LLC'S
APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY TO CONSTRUCT AND OPERATE A GAS STORAGE FACILITY**

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Attachment A - Appearances

DECISION DENYING SACRAMENTO NATURAL GAS STORAGE, LLC'S APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT AND OPERATE A GAS STORAGE FACILITY

1. Summary

This decision denies Application 07-04-013 (Application), Sacramento Natural Gas Storage, LLC's request for a certificate of public convenience and necessity to construct and operate the Sacramento Natural Gas Storage Facility (Proposed Project) to provide natural gas storage services at market-based rates. This decision certifies the environmental impact report (EIR) for the Proposed Project.

The decision denies the Application after weighing the need for competitive gas storage services as well as the factors set forth in Public Utilities Code (Pub. Util. Code) § 1001, *et. seq.*, § 963(b)(3),¹ and considering the EIR.

Pub. Util. Code § 1001, *et. seq.* requires the Commission to find that present or future public convenience and necessity requires the construction of the requested utility facilities prior to granting such a request. Pub. Util. Code § 963(b)(3) mandates that the Commission place the safety of the public and gas corporation employees as its "top priority." The EIR prepared for the Proposed Project identifies three significant environmental impacts that cannot be mitigated to less than significant levels: (1) the potential hazards involving the leakage of gas after re-pressurization of the Florin Gas Field for gas storage; (2) potential impacts to groundwater quality resulting from gas field operation and maintenance; and (3) construction activities at the wellhead site that would

¹ Enacted by Senate Bill 705 (Ch. 522, Stats. 2011).

temporarily increase local noise levels. The impacts that may result from gas leakage or migration have the potential to be catastrophic and long term.

In weighing the need for the Proposed Project, the Commission finds that unavoidable environmental impacts of the Proposed Project and its safety risks outweigh the benefits of the Proposed Project.

2. Background

2.1. Overview of the Application and the Proposed Project

Sacramento Natural Gas Storage, LLC (SNGS or Applicant), is a California limited liability company. SNGS filed Application (A.) 07-04-013 (Application) for a certificate of public convenience and necessity (CPCN) to construct and operate the Sacramento Natural Gas Storage Facility (Proposed Project), including ancillary pipelines and other components required to provide natural gas storage services at market-based rates.

In addition, the Application requests that the Commission waive the requirements of Rule 3.1(f) of the Commission's Rules of Practice and Procedure (Rules), and determine that SNGS's financing of the Proposed Project is exempt from the requirements of Public Utilities Code (Pub. Util. Code) § 818 and § 851² and the Commission's competitive bidding rules (Competitive Bidding Rule).³

² All statutory references are to the Public Utilities Code unless otherwise indicated.

³ SNGS filed under seal information on the economic feasibility of the Proposed Project, pursuant to Rule 3.1(f), and financial, budget, contract, and appraisal information in connection with the Proposed Project, pursuant to Rule 3.1(g), and a motion for confidential treatment of this information.

The September 12, 2008 amendment to the Application requests that the Commission complete and certify an environmental impact report (EIR).⁴

The Proposed Project includes (1) an underground natural gas storage reservoir; (2) a wellhead site; (3) a control center and compressor station site; (4) a buried 16-inch interconnection pipeline (approximately 1.4 miles long) between the wellhead and compressor site; and (5) a 16-inch buried interconnection pipeline (approximately 0.8 mile long) between the compressor site and Sacramento Municipal Utility District (SMUD) Line 700, which will provide, via leased capacity, an interconnection with the Pacific Gas & Electric Company's (PG&E's) Line 400/401.

The Proposed Project would utilize a depleted natural gas reservoir (the Florin Gas Field) located partly within the City of Sacramento (City) and partly within an adjacent unincorporated area of the County of Sacramento (County).

The Florin Gas Field underlies approximately 379 acres of surface land, is approximately 3,800 feet underground, and is capped by a dome-shaped shale formation ranging in thickness from 150 to 300 feet. (Reference Exhibit (Ref. Exh.) B, Vol.2 at B-2, B-9 to B-10.) Between 1977 and 1987, more than 8 billion cubic feet (bcf) of natural gas was extracted from the Florin Gas Field by Proctor and Gamble, Venada National, TXO Production Company and Union Oil Company. After production ended, five extraction wells and three non-producing wells were abandoned under the supervision of the California

⁴ On July 16, 2007, SNGS filed a supplement to the Proponent's Environmental Assessment (PEA) included with the Application. On October 9, 2007, and on September 12, 2008, SNGS amended the Application to propose modifications to the pipeline construction and interconnections described in the Application, and revised the estimate of construction costs.

Department of Conservations, Division of Oil, Gas and Geothermal Resources (DOGGR).

Approximately two thirds of the surface area overlying the Florin Gas Field contains residential parcels (717 parcels); approximately one quarter of the overlying surface area contains commercial or industrial parcels (43 parcels); and the remainder of the overlying surface area is owned by the City (11 parcels).⁵ The zoning classifications of the land overlying the Florin Gas Field are primarily residential and industrial, with a small amount zoned commercial and agricultural-open space. The zoning classification of the land where Proposed Project facilities (wellhead site and compressor station) will be located is industrial. (Ref. Exh. B, Vol. 2 at D.8-13.)

The wellhead site would include up to six injection/withdrawal wells, one water disposal well and one observation well. Up to 8 bcf of natural gas would be injected, of which approximately 7.5 bcf would be working gas and the remainder would be cushion gas. The control center and compressor station would be located approximately one mile from the proposed wellhead site on a five-acre parcel situated within the Florin Depot Industrial Park (Depot Park), an industrial park at the former site of the Sacramento Army Depot.

The pipelines connecting the wellhead and compressor sites, and connecting the compressor site and SMUD Line 700, would be placed, for the most part, in existing power easements and within or parallel to Union Pacific

⁵ August 4, 2009, SNGS Response in Opposition to Consumer Protection and Safety Division (CPSD) Motion, Attachment E (Schneider Declaration, Exhibit A), and Application at 8.

Railroad or utility rights of way. All surface facilities and equipment would be located within the City limits.

2.2. Procedural Background

SNGS filed the Application on April 9, 2007. Notice of the Application appeared in the Commission's April 16, 2007 Daily Calendar.

In Resolution (Res.) ALJ 176-3191, dated May 3, 2007, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were needed.

On May 16, 2007, the Division of Ratepayer Advocates (DRA) and Lodi Gas Storage, LLC (Lodi) filed responses to the Application. On May 29, 2007, PG&E filed a protest to the Application, a motion to accept late-filed protest, and a motion for party status.⁶

On September 14, 2007, the Avondale Glen-Elder Neighborhood Association (AGENA) filed a motion for party status, and on December 13, 2007, the City filed a motion for party status.⁷ On January 24, 2008, AGENA filed a protest and motion to accept late-filed protest.⁸

⁶ The June 5, 2007 Administrative Law Judge (ALJ) ruling granted PG&E's motion for party status, and the June 12, 2007 ALJ ruling granted PG&E's request to late file the protest. The June 12 ruling treated the May 4, 2007 Wild Goose Storage LLC (Wild Goose) motion to intervene as a motion for party status, and granted the motion. The September 14 ALJ ruling granted, in part, the July 20, 2009 the CPSD motion for, among other things, party status. The January 11, 2010 ALJ ruling denied Southern California Gas Company's December 4, 2009 motion for party status.

⁷ The October 11, 2007 ALJ ruling granted AGENA's request. The December 27, 2007 ALJ ruling granted the City's request.

⁸ The February 20, 2008 ALJ ruling granted AGENA's motion. On May 22, 2008, AGENA filed its Notice of Intent to Claim Compensation for its participation in this

Footnote continued on next page

A prehearing conference was held on May 9, 2008, where representatives of SNGS, AGENA, the City, DRA, Lodi, PG&E, and Wild Goose were in attendance.

On July 25, 2008, the assigned Commissioner and ALJ issued a joint scoping memo and ruling (Scoping Memo). The Scoping Memo affirmed the Commission's preliminary findings in Res. ALJ 176-3191 that the category for this proceeding is ratesetting and that hearings are necessary.

Evidentiary hearings on non-environmental/CPCN issues were held on October 20 and 21, 2008. On November 18, 2008, parties filed opening briefs on non-environmental issues, and reply briefs were filed on November 25, 2008. AGENA, City, DRA, and SNGS participated in hearings and filed briefs.

On April 8, 2009, the Commission's Energy Division released the Draft EIR (DEIR). On April 28, 2009, the Energy Division held an informational meeting on the DEIR to respond to questions and provide information regarding the analysis and conclusions presented in the DEIR.⁹

In addition, on April 28, 2009, the Commission held the first of two public participation hearings (PPHs) in Sacramento in the vicinity of the Proposed Project (April 28 PPH). The April 28 PPH was held in conjunction with the Energy Division's public informational meeting on the DEIR, and provided the public an opportunity to comment on non-environmental issues and on the DEIR. Due to public confusion and access impediment caused by SNGS's action,

proceeding. The August 18, 2008 ALJ ruling preliminarily determined that AGENA was eligible to seek an award of intervenor compensation.

⁹ The public, including parties to this proceeding, were also provided an opportunity to submit written comments on the DEIR through the environmental review process.

the Commission held a second PPH on October 27, 2009, in Sacramento in the vicinity of the Proposed Project.¹⁰

On January 21, 2010, the assigned Commissioner and ALJ issued an amended scoping memo and ruling (Amended Scoping Memo), requesting comments from parties on the issues that should be considered in any supplemental evidentiary hearings needed after issuance of the Final EIR (FEIR).¹¹

On June 10, 2010, the Energy Division released the FEIR. On July 13, 2010, the assigned Commissioner and ALJ issued the second amended scoping memo (Second Amended Scoping Memo) scheduling supplemental evidentiary hearings to address the economic feasibility of the environmentally superior gas field alternatives identified in the FEIR (Alternative Gas Fields).

Pursuant to the Second Amended Scoping Memo, on July 23, 2010, SNGS served direct supplemental testimony addressing the economic feasibility of the Alternative Gas Fields. No party served rebuttal supplemental testimony, and no party requested cross examination of SNGS's witnesses.

¹⁰ The September 14, 2009 ALJ ruling granted, in part, the July 20, 2009 CPSD motion for a new PPH and the July 20, 2009 CPSD motion for party status, and denied the July 20, 2009 CPSD motion for the Commission to revise the Scoping Memo and issue an order to show cause to SNGS for violations of Rule 1.1 of the Commission's Rules of Practice and Procedure. CPSD's involvement in this proceeding was limited to its involvement in the July 20, 2009 motions, and CPSD's party status was limited to preserving its appeal rights with regard to the disposition of the July 20, 2009 motions. Among SNGS's actions that caused the Commission to hold a second PPH was a notice it distributed to the public prior to the first PPH and its failure to coordinate with the Commission's Public Advisor's Office about a meeting it held at the same facility on the same date as the first PPH.

The September 10, 2010, ALJ ruling determined that evidentiary hearings were not needed on the economic feasibility of the Alternative Gas Fields, directed SNGS to submit additional evidence to assist the Commission determine the economic feasibility of the Alternative Gas Fields, and provided parties an opportunity to comment on SNGS's response. On September 20, 2010, SNGS filed its response with additional information (Additional Evidence), and on September 30, 2010, AGENA filed comments on the Additional Evidence.¹²

On October 25, 2010, the assigned Commissioner and ALJ issued the third amended scoping memo (Third Amended Scoping Memo), granting, in part, the July 27, 2010 AGENA motion for reconsideration of the Second Amended Scoping Memo.

Pursuant to the Third Amended Scoping Memo, supplemental evidentiary hearings on the issue of need for the Proposed Project were held on January 10 and 11, 2011. Post-hearing supplemental briefs were filed on February 7, 2011 by AGENA and SNGS, and supplemental reply briefs were filed on

¹¹ On June 21, 2010, AGENA, City, PG&E, and SNGS submitted comments. On June 28, 2010, AGENA and SNGS submitted reply comments.

¹² SNGS concurrently filed a confidential version of the Additional Evidence and a motion to file under seal portions of the confidential version. SNGS did not provide parties with access to the confidential version of the Additional Evidence. On September 24, 2010, AGENA filed a motion for disclosure of the confidential version of the Additional Evidence and a motion to modify the schedule. On September 27, 2010, AGENA filed a response in opposition to the SNGS motion to file under seal, and on September 30, 2010, AGENA filed a request to file supplemental rebuttal testimony. On November 1, 2010, AGENA filed supplemental comments on the Additional Evidence. The October 21, 2010 ALJ ruling granted, in part, SNGS's motion to file materials under seal; granted AGENA's motion for disclosure; granted, in part, AGENA's motion to modify the proceeding schedule; and denied AGENA's request to for permission to file supplemental rebuttal testimony.

February 18, 2011 by AGENA, the City and SNGS. No oral argument was held, and the proceeding was submitted upon the filing of reply briefs.

The April 29, 2011 ALJ ruling directed SNGS to prepare reference exhibits, and set aside submission to receive those exhibits and to receive the October 11, 2010 electronic mail (e-mail) message to the ALJ from Darryl Gruen, Commission Staff Attorney (Ref. Exh. C). The proceeding was re-submitted on May 5, 2011.

In July 2011, the Energy Division prepared an addendum to the FEIR (Addendum) in response to comments related to the FEIR made in the parties' supplemental briefs and supplemental reply briefs. The July 25, 2011 ALJ ruling set aside submission to admit into the record the Addendum as Ref. Exh. G, and the proceeding was re-submitted on July 25, 2011 upon the receipt of Ref. Exh. G.

The February 17, 2012 ALJ ruling set aside submission to take official notice of recently-enacted legislation, including the Natural Gas Pipeline Safety Act of 2011, concerning natural gas regulation and adding sections to the Public Utilities Code.

3. Standard of Review and Governing Law

3.1. Burden of Proof

As the Applicant, SNGS must demonstrate a need for the Proposed Project for the Commission to issue the CPCN.¹³ The applicant has the burden of affirmatively establishing the reasonableness of all aspects of its application. (D.06-05-016 at 7.) The preponderance of the evidence is generally the default

¹³ Decision (D.) 06-11-018 at 22 ["The Commission has long held that the applicant carries the burden of proof in a certification proceeding, and we reiterate those determinations today."].

standard in civil and administrative law cases and we apply that standard in this decision. California Administrative Hearing Practice, 2d Edition (2005) at 365.

3.2. The CPCN and the California Environmental Quality Act (CEQA) Processes

Two different regulatory schemes define this Commission's responsibilities in reviewing SNGS's request for the approval of this Application. First, §§ 1001, *et seq.*, require that before SNGS can construct the Proposed Project, the Commission must grant a CPCN on the grounds that the present or future public convenience and necessity require or will require construction of the Proposed Project. Second, Public Resources Code §§ 21000, *et seq.*, require that the Commission, as lead agency for the Proposed Project, prepare an EIR assessing the environmental effects of the Proposed Project for the Commission's use in considering the request for a CPCN. D.90-09-059, 37 CPUC2d 413, 421.

To administer the Commission's dual responsibilities under the Public Utilities Code and Public Resources Code, the proceeding was bifurcated into a review of non-environmental/CPCN issues and an environmental review pursuant to CEQA. This was done to avoid confusion and unnecessary duplication of efforts while ensuring a complete record on all issues germane to the Application.

The environmental and non-environmental parts of the proceeding converged when the FEIR was submitted for certification by the Commission, and, at that time, became part of the proceeding record. After the FEIR was submitted, a further record was developed on the economic feasibility of the Alternative Gas Fields, and supplemental evidentiary hearings were held to further consider need for the Proposed Project.

3.2.1. Section 1001, et seq.

The Public Utilities Code requires the Commission to determine that a project is necessary before granting a CPCN. Also, before granting a CPCN, the Commission considers the financial impacts of a project on the utility's ratepayers and shareholders. The Commission reviews the expected project costs, and for those projects estimated to cost more than \$50 million the Commission sets the maximum amount that can be spent by the utility on a project without seeking further Commission approval.

The Gas Storage Decision (D.93-02-013) and subsequent decisions modified some of these requirements as they apply to competitive independent gas storage service applicants under the Commission's policy for competitive markets. These modifications are discussed more fully below.

In addition, § 1002 requires the Commission to consider the following factors in determining whether or not to grant a CPCN: (1) community values; (2) recreational and park areas; (3) historical and aesthetic values, and (4) influence on the environment.

3.2.2. CEQA

CEQA requires the lead agency to prepare an EIR when there is substantial evidence that a project may have a significant effect on the environment. The lead agency is the governmental body with primary authority over a proposed project which, for this Application, is this Commission.

In preparing the EIR, the lead agency must consider alternatives to the project, including the alternative of no project at all ("no project" alternative (NPA)). The lead agency must identify all significant and potentially significant impacts of the project, must identify the mitigation measures available to lessen those impacts, and must determine whether those mitigation measures would

reduce the impacts to less than significant levels. The lead agency cannot approve the project until it has certified that the EIR is complete.

The lead agency cannot approve a project that has significant environmental impacts unless those impacts can be feasibly mitigated or avoided by a project alternative, or alternatively such impacts are found to be acceptable due to overriding concerns.¹⁴ If the EIR concludes that a project will have a significant impact on the environment even after all reasonable mitigation measures are applied, any CPCN that is granted must be accompanied by a statement of overriding considerations explaining why the project should still be approved. The authorization that is finally issued must be conditioned on completion of any adopted mitigation measures.

4. Summary of Parties' Positions

This section briefly summarizes the positions of those parties who participated in the October 2008 and January 2011 evidentiary hearings.¹⁵

4.1. SNGS

SNGS states that the Proposed Project is responsive to California's energy policies recognizing the continuing need for increased natural gas storage capacity. SMUD's interest in becoming an anchor customer of SNGS, according to SNGS, demonstrates the need for the Proposed Project at the proposed location. SNGS states that the Proposed Project is uniquely situated to reinforce

¹⁴ Public Resource Code § 21002; CEQA Guidelines §§ 15091, 15092.

¹⁵ As noted above, CPSD was granted limited party status to pursue its July 20, 2009 motions and to preserve its appeal rights with regard to the disposition of those motions, but did not otherwise actively participate in this proceeding.

the reliability of PG&E's services to non-core customers, and help relieve constraints on SMUD's gas supply system.

SNGS states that the Proposed Project satisfies all § 1002(a) factors, and that most property owners in the area support the Proposed Project. According to SNGS, the Proposed Project will not interfere with the continued use of parks or recreational areas, and is consistent with the historical and aesthetic values characterizing the surrounding area, including the historical gas production from the Florin Gas Field and the current industrial uses of the Depot Park.

4.2. AGENA

AGENA states that it is not opposed to the idea of natural gas storage, in general, but contends that there is not a specific need for the Proposed Project at the proposed location, given the potential risks associated with it. According to AGENA, locating the Proposed Project in a community of predominately low-income persons of color creates the perception of environmental injustice in the community.

AGENA asserts that there is strong community opposition to the Proposed Project, and that the Proposed Project is contrary to community, park and recreation, and historic values of the area. AGENA argues the Proposed Project will have negative economic, environmental, and other effects on the community. AGENA contends that the Proposed Project will decrease local property values and the availability of homeowners' insurance, and that the actual and perceived environmental risks created by the Proposed Project will degrade the livability of the primarily residential area.

AGENA asserts that SMUD has adequate resources and contingency plans to satisfy its natural gas needs for the foreseeable future. According to AGENA, energy from developing renewable sources, energy efficiency programs, and

pending or recently completed gas transmission and storage projects will increase the supply of natural gas and gas storage capacity available to SMUD, and these developments eliminate any need for the Proposed Project.

4.3. City

The City states that it wants to ensure that the public safety and environmental issues raised by the Application are thoroughly and completely considered, but does not explicitly take a position for or against the Application. The City raises concerns about the burden the Proposed Project will place on the City's public safety and emergency response resources, and asserts the EIR improperly defers mitigation measures that address this concern. The City disputes SNGS's claim that the City has informally agreed to use storage lease income to maintain and improve Danny Nunn Park, and questions the quality of SNGS's analysis of the Proposed Project's economic benefits.

The City sought to join the Commission as co-lead for CEQA purposes and for the City to have the opportunity to act on all required City approvals necessary to construct the Proposed Project prior to the Commission issuing a CPCN.¹⁶

4.4. DRA

DRA states that it generally supports the development of independent gas storage operations in California and supports the Application, including SNGS's requests to charge market-based rates for its storage services and for exemption

¹⁶ The Scoping Memo determined that the Commission would not join the City as co-leads for the CEQA review of the Proposed Project, and would not hold any draft decision in abeyance until the City completed its own hearings.

from the requirements of § 818 and § 851 and the Competitive Bidding Rule in connection with financing the Proposed Project.

DRA requests that SNGS be required to file annual reports detailing its operations, including: 1) the capacity of the facilities (i.e., total inventory, injection and withdrawal rights); 2) average monthly inventory in storage, injections, and withdrawals; 3) daily operating records; 4) firm capacity under contract, on a monthly and annual basis; 5) interruptible capacity sold, on a monthly and annual basis; and 6) annual safety report describing all safety-related incidents. DRA and SNGS reached agreement on reporting requirements and on exemptions from the requirements of § 818 and § 851 and the Competitive Bidding Rule.

4.5. PG&E

Although PG&E protested the Application, it did not actively participate in the proceeding except to confirm that it and SNGS resolved all interconnection issues related to the Proposed Project. As discussed below, on January 9, 2009, SNGS and PG&E filed a stipulation resolving all issues PG&E raised in its protest.

5. Consideration of § 1001 Factors

Pursuant to § 1001, a CPCN applicant must demonstrate that the present or future public convenience and necessity require or will require construction and operation of a proposed project. To decide if public convenience and necessity require the construction of this Proposed Project, the Commission assesses the need for gas storage facilities, considers if SNGS has the financial resources and technical expertise to construct and operate a gas storage facility, and considers if the Proposed Project will be constructed and operated in a way

that protects the safety of workers, the public, and the environment. We first consider need for the Proposed Project.

5.1. Need for Proposed Project

The Proposed Project meets the requirements of the Commission's policy, established in the Gas Storage Decision, for the construction and operation of competitive gas storage facilities but does not meet the factors the Commission must consider to protect the public's safety.

The Gas Storage Decision determined that, for new facilities dedicated to core customers, the Commission would rigorously test for need.¹⁷ However, D.93-02-013 concluded that the Commission should not be in the business of testing storage projects serving noncore customers for need as long as all of the risk of unused new capacity resides with the builders and users of the new facilities, including the risk that actual costs of expansion may exceed cost estimates used in planning.

Thus, pursuant to the Commission's gas storage policy, the only showing of need required under § 1001, *et seq.*, regarding demand for a competitive gas storage facility is a showing that the storage utility and its customers agree to expanded storage service.

SMUD¹⁸ and SNGS have entered into a 20-year agreement for gas storage services to be provided by the Proposed Project.¹⁹ This 20-year gas storage

¹⁷ D.93-02-013 at 127 and Finding of Fact No. 37.

¹⁸ SMUD is a noncore customer. As defined in PG&E's tariffs, "Noncore End-Use Customers are typically large commercial, industrial, cogeneration, wholesale or electric generation Customers who meet the usage requirements for service under a noncore rate schedule and who have executed a Natural Gas Service Agreement. Electric Generation, Enhanced Oil Recovery, Cogeneration, and Refinery Customers with

Footnote continued on next page

agreement satisfies the showing of need required by the Commission's gas storage policy.

However, the Gas Storage Decision acknowledges that other statutory requirements will affect implementation of that policy. In this proceeding, the other statutory requirements that apply are the safety mandates of Pub. Util. Code § 963 and CEQA considerations of the Public Resources Code and Title 14 of the California Administrative Code, § 15000 *et seq.*

Pub. Util. Code § 963 requires the Commission make public and utility employee safety our top priority. We do not take this obligation lightly. The EIR has analyzed various safety issues and concluded that the project results in significant threats to public safety if gas migrates from the gas storage field. As such we must consider the following.

There is a possibility that stored gas could migrate to the surface through or around the cap rock, either through existing fractures or faults or other discontinuities in the cap rock. (Ref. Exh. B, Vol. 2 at D.6-25.) If gas migrates to the surface, it could contaminate the groundwater aquifer or accumulate in

historical or potential annual use exceeding 250,000 therms per year or rated generation capacity of five hundred kilowatts (500 kW), or larger, are permanently classified as Noncore End-Use Customers." See Cal. P.U.C. Sheet No. 21978-G, Gas Rule No. 1 Definitions (http://www.pge.com/tariffs/tm2/pdf/GAS_RULES_1.pdf).

Pursuant to Rule 13.9 and California Evidence Code § 452(b), we take official notice of PG&E Gas Rule No. 1 - Definitions (Schedule Cal. P.U.C. Sheet No. 21978-G, (http://www.pge.com/tariffs/tm2/pdf/GAS_RULES_1.pdf)).

¹⁹ Exhibit AGENA-14 is a draft copy of the Gas Storage Services Agreement between SMUD and SNGS. A copy of the executed Amended and Restated Gas Storage Services Agreement between SMUD and SNGS, dated October 2, 2008, is included as Exhibit B to SNGS's Supplemental Opening Brief.

structures and become an asphyxiant health hazard or explosive. (Ref. Exh. B, Vol. 2 at D.6-23.)

Migrating gas could enter structures or other confined spaces to create concentrated gas in structures that could become a health hazard or explosive. Gas could concentrate within confined spaces such as manholes or utility bunkers and potentially asphyxiate a person entering the space. Fugitive gas migrating near the surface could accumulate under impervious and semi-pervious pavement or concrete slabs underlying structures, streets, or parking lots and could migrate laterally within underlying porous materials such as gravel/sand layers beneath slabs, gravel/sand road base, or within the gravel/sand material used to provide bedding for pipelines and trenches. (Ref. Exh. B, Vol. 2 at D.6- 23.) As such it would become a latent threat to public health, which could become an apparent hazard instantly and destructively.

If gas were to migrate into the aquifer the aquifer would become contaminated. This contamination could be substantial requiring a prolonged period of remediation and impacting the water quality of a major potable aquifer. (Exh. B, Vol. 2 at D.7-23.)

Gas migration could occur as the result of (1) degradation of cap rock due to cyclic loading associated with the gas storage process; (2) failure of the cap rock due to hydraulic fractures; (3) damage to the cap rock due to historical reservoir production; (4) gas migration through preexisting faults due to gas injection pressure changes; (5) gas seepage through the cap rock; or (6) lateral spreading of gas along the edges of the reservoir. (Ref. Exh. B, Vol. 2 at D.6-25 to D.6-27.)

The pressure within the gas field at the projected storage capacity may exceed pressures of the original gas field by almost eight percent, but would

remain within the standard industry practice. (Ref. Exh. B at D.6-25.) Cyclic loading and unloading of the reservoir is not likely to degrade the cap rock. (Ibid). However, these conclusions have not been objectively demonstrated through laboratory testing. In addition, without a long-term data collection process we do not know if stored gas could seep from the edges of the reservoir through lateral spreading under pressures that exceed the original reservoir pressure.

Although mitigation measures would mitigate for any possible release of natural gas by requiring depressurization of the reservoir when monitoring equipment detects gas, it would take time to remediate the effects of any gas migration after gas is detected and the reservoir is depressurized. In addition, contamination of the aquifer could impact the water quality of a major potable aquifer and require a prolonged period of remediation. Thus the potential impact remains significant, unavoidable and unacceptable.

This Commission must balance these safety risks against the need for the project. As stated, Pub. Util. Code § 1001 is satisfied by the existence of a gas storage contract between SMUD and SNGS. But given the significant risks to public safety we have taken an expanded look at the question of need, specifically as it relates to reliability. SMUD relies upon PG&E's gas transmission system to support its gas-fired power plants. (SNGS-5 at 1-3.) If gas deliveries to SMUD's power plants are disrupted, SMUD may have insufficient power to meet customer load and would have to implement curtailments and/or purchase electricity from other sources (TR 382:25-384:5; SNGS-45 at 5.) SMUD's use of the Proposed Project is essentially a contingency plan should it suffer an interruption or curtailment of gas service from PG&E or a problem on SMUD's own pipelines, particularly at the Sacramento River and

Deep Water Ship Chanel crossings. However, such an interruption or curtailment is unlikely as evident by the evidentiary record. (TR 393:18-21; AGENA-34, Exhibit A at 6-7.) SNGS also acknowledged that the probability of a gas supply interruption is low. (SNGS, Opening Brief at 7.)

Not only is the risk of interruption and curtailment from PG&E small, but only about a third of SMUD's gas supply is subject to PG&E's Gas Rule 14, which governs curtailment. (SNGS-5.) The rest is delivered on lines that SMUD co-owns. (SNGS-5.) Moreover, there is no evidence to show if a catastrophic act of nature, such as a large-scale earthquake, shut down PG&E's pipelines that the Proposed Project would not also be equally impacted. As such, the Proposed Project is not a guarantee against every impact that may cause a gas supply interruption and curtailment.

Should a gas curtailment or interruption occur, SMUD does have 200 megawatts (MW) of demand-side management capability that is currently used for emergencies or for mitigating delays in transmission or generation projects. (AGENA-45, Exhibit O at 6.) SMUD's participation in the Western Electricity Coordinating Counsel, and SMUD's membership in the Northwest Power Pool and the Transmission Agency of Northern California, may mitigate the risk of electricity service disruption. (AGENA-48 at 9-17.) In addition, continued development of demand-side management capacity, alternative renewables and stored energy sources to meet peak electricity demand will also alleviate these concerns. SMUD is committed to having 25% of its energy come from renewable energy sources by 2025. (AGENA-4.)

While we do not dismiss the risk of electricity shortages due to gas delivery curtailments, we find the risk of gas curtailments or interruption to be small. We understand that, while the risk of curtailment or an interruption is

small, it could result in significant impacts on the users of SMUD's gas-fired electricity. But we also understand that, while the risk of gas migration from the Proposed Project is small, the results of such migration could be deadly, catastrophic and long-term. Additionally, we acknowledge that the Commission and the California Energy Commission have generally recognized that gas storage capacity benefits the state. However, this policy does not mean that we are to disregard our obligations to public safety and the substantive mandates of the Public Resource Code. In fact, the Commission's own Energy Action Plan explicitly states that the Commission's energy policy must take into account environmental factors. Our denial of this application based on safety and environmental considerations is consistent with this policy. We also note that since A.07-04-013 was filed, the Commission has approved CPCNs for several new gas storage fields.²⁰

Because, as discussed below, the EIR has determined that the Proposed Project will have unavoidable environmental impacts, the Commission may not approve the Proposed Project unless it first determines, based on substantial evidence, that social, technological, or other benefits of the Proposed Project outweigh its unavoidable environmental risks.²¹

²⁰ D.09-10-035 approved Gill Ranch Storage Project. D.10-12-025 approved the Wild Goose Storage Phase 3 expansion project. D.10-10-001 approved the Central Valley Gas Storage project. In addition, the Tricor Ten Section HUB, LLC storage project was approved by the Federal Energy Regulatory Commission (FERC) on September 30, 2011 (Docket No. CP-09-432-000).

²¹ The applicant in A.98-11-012 leading to D.00-05-048 objected to the scope of that proceeding requiring the applicant to make a showing of need, given the Commission's gas storage policy. In addressing this objection, D.00-05-048 states "if [the applicant] only relies on the Gas Storage Decision for a presumptive showing of need, it may be difficult for the Commission to determine whether or not there is evidence to support a

Footnote continued on next page

Despite the Proposed Project's consistency with the Commission's competitive gas storage policy, the risk of unavoidable, significant environmental impacts of the Proposed Project require us to deny the Proposed Project. State policy requires that the Commission place the safety of the public and utility employees as the top priority.²² The environmental and safety risks created by the Proposed Project are excessive and out of proportion to the possible benefits. Therefore, SNGS should not be granted a CPCN to construct and operate the Proposed Project because the unavoidable environmental risks and significant safety concerns of the Proposed Project are too great.

5.2. Financial and Technical Qualifications of Applicant

We also consider whether an applicant has the financial resources and technical expertise to construct and operate a gas storage facility, and conclude that SNGS does. SNGS is a California limited liability company. SNGS submitted with the Application a consolidated balance sheet and income

finding of overriding consideration, if necessary, with respect to the EIR that CEQA requires in this case. In short, in some instances, a fuller showing of need may be necessary to the extent required by law." (6 CPUC3rd 230 at 241 (Footnote omitted)). As a result, the applicant made a showing of need, and D.00-05-048 relied on that showing to support the decision's statement of overriding consideration.

D.02-07-036 in A.01-06-029 (citing D.00-05-048) states that establishing conformance with § 1002, establishing a basis for a finding of overriding consideration, or in connection with eminent domain under § 625, are examples where a fuller showing of need may be necessary. The applicant in that proceeding, too, made a showing of need, and D.02-07-036 at 8-9 relied on the applicant's showing to support that decision's statement of overriding consideration.

²² Section 963(b)(3).

statement for CNGS and SNGS that show SNGS has the financial resources to construct and operate the Proposed Project.²³

SNGS has the technical expertise to construct and operate a gas storage facility. The current officers of SNGS are Jim Fossum, Chairman of the Board of Members; and Donald B. Russell, President. Fossum was involved in the development of the Lodi Gas Storage Facility, which obtained a CPCN in D.00-05-048. Russell has managed natural gas storage facilities in the Gulf Coast region and participated in the development of three natural gas storage projects under the regulatory jurisdiction of the FERC.

6. Consideration of § 1002 Factors

As stated above, § 1002 requires the Commission to consider the following factors in determining whether to grant a CPCN:

- (1) Community values;
- (2) Recreational and park areas;
- (3) Historical and aesthetic values; and
- (4) Influence on the environment.

SNGS asserts the Proposed Project satisfies all § 1002(a) factors, and that the Proposed Project has the support of most property owners in the Proposed Project area.

AGENA asserts the Proposed Project is contrary to the community values of fairness, equal opportunity, and equal treatment under the law. AGENA contends that the Proposed Project will substantially decrease property values,

²³ SNGS filed under seal the consolidated balance sheet and income statement for California Natural Gas Storage (which used to own SNGS) and SNGS, and a motion for confidential treatment of that information.

and is not consistent with park and recreational values in the area. AGENA also asserts that the actual and perceived safety and other environmental risks created by the Proposed Project will degrade the livability of the primarily residential area.

6.1. Consistency with Community Values

Given that we are denying the application on other grounds, we do not need to determine if the project is consistent with community values. However, we recognize the strong opinions the community holds regarding the Proposed Project and we give considerable weight to the views of the local community. The record shows that the local community is divided about the Proposed Project.

AGENA states that its members and those of the South East Village Neighborhood Association voted to oppose the Proposed Project. AGENA presents testimony that, according to AGENA, shows that there is strong community opposition to the Proposed Project.

SNGS recommends that AGENA's opposition to the Proposed Project be disregarded because, according to SNGS, AGENA does not represent the organization as a whole or the broader community in the Proposed Project area. We will not disregard AGENA's opposition to the Proposed Project.

Community values can be measured in many ways.

The Commission heard from 70 members of the public at the April 28 and October 27 PPHs. Twenty five people spoke in favor of the Proposed Project (36 percent), 39 spoke against the Proposed Project (56 percent), and six took neutral or ambiguous positions (nine percent). The Commission received 114 letters or copies of letters to other public officials, including copies of 38 letters to the Sacramento Mayor or to Sacramento City Council members.

Thirty letters expressed opposition to the Proposed Project (26 percent), 83 letters were in support of the Proposed Project (73 percent), and one letter does not clearly state a position.

The number of signed leases is an indicator of community support for the Proposed Project. As of August 1, 2009, SNGS has storage lease agreements with 556 property owners (72 percent). (Schneider Declaration, Exhibit A.)

AGENA provides written opposition to the Proposed Project in the testimony of nine property owners or residents that live in or near the Proposed Project area. (AGENA-22 through AGENA-30.)

We also consider the views of the elected representatives of the area when assessing the views of the local community regarding the consistency of the Proposed Project with community values because we believe they are speaking on behalf of their constituents. (D.00-05-048, as modified by D.00-08-024, at 28.)

AGENA submitted letters from four elected officials representing residents in the Proposed Project area, including letters to Commissioner Simon from State Senator Darrell Steinberg, U.S. Congresswoman Doris Matsui, and a joint letter from Sacramento County Supervisors Jimmie R. Yee and Don Nottoli. (AGENA-22, Exhibits A, H, and I, respectively.)

Senator Steinberg states that protecting community values in the area is of critical importance to him and the community, and expresses confidence that AGENA accurately reflects the community's interests. Congresswoman Matsui states that natural gas is essential to the state's energy needs but neighborhood leaders have concerns about storing natural gas beneath homes and schools, and about the risks of exposure to noxious or carcinogenic chemicals and explosion if gas were to migrate from the storage facility. Senator Steinberg and Congresswoman Matsui urge the Commission to carefully consider AGENA's

and community residents' concerns, but neither takes an explicit position in favor of or opposed to the Proposed Project.

Sacramento County Supervisors Jimmie R. Yee and Don Nottoli object to placing a natural gas storage facility in an urban residential area because they believe the resulting negative perceptions of health, safety and welfare are incompatible with community values. Supervisors Yee and Nottoli state that the Proposed Project would negatively impact how safe people feel in their homes, schools and parks and within the community generally. Supervisors Yee and Nottoli acknowledge the importance of natural gas and the benefits of storage facilities, but contend facilities like the Proposed Project are inherently inconsistent with urban residential communities.

In conclusion, public input at the PPHs and in written correspondence to the Commission reflects a divided community. A portion of the community and some of their elected officials oppose the Proposed Project. However, a portion also support the Proposed Project. The public comments are consistent with the record evidence of community support for and against the Proposed Project.

6.2. Recreational and Park Areas

The Proposed Project is not inconsistent with recreational and park uses because no above-ground facilities would be located in any park or recreational area, and the Proposed Project would not, aside from construction noise impacts, interfere with the continued use of parks or recreational areas.²⁴

²⁴ Portions of pipeline segments 1 and 2 traverse lands previously designated as "Parks-Recreation-Open Space," but which are now designated as "Industrial," pursuant to the Fruitridge Broadway Community Plan adopted on March 3, 2009. (Ref. Exh. B, Vol. 2 at D.8-7, D.8-13 and D.8-15.)

The closest above-ground facility to any park or recreational area is the proposed wellhead site located across Power Inn Road within view of the park on a parcel zoned for industrial use. (Ref. Exh. B, Vol. 2 at D.8-8, D.13-10.) SNGS would erect a decorative masonry wall on the south and west sides of the wellhead site to shield the wellhead site from public view. (Ref. Exh. B, Vol. 2 at D.13-18.)

Sacramento County Zoning Code, § 301-19, requires oil and gas well sites to be located at least 1,000 feet from the boundary of property zoned for residential, interim residential, interim estate, or recreational.²⁵ The wellhead site is immediately adjacent to Danny Nunn Park. (Ref. Exh. B, Vol. 2 at D.8-58.) However, section § 301-19 of the Sacramento County Zoning Code does not apply to the proposed wellhead site because the wellhead site would be located entirely within the City.

Aside from temporary construction-related impacts (e.g., significant noise, traffic, dust), the Proposed Project would not interfere with use of the park or other recreation areas.

6.3. Historical and Aesthetic Values

The Proposed Project area is comprised of a mix of residential and industrial land uses that developed contemporaneously. The Proposed Project would be located in an area that has historically been and is currently zoned for a mix of residential and industrial uses, and a small amount of land zoned commercial and agricultural-open space. (Ref. Exh. B, Vol. 2 at D.8-14, D.8-15.) All

²⁵ On January 11, 2011, the ALJ took official notice of Sacramento County Zoning Code § 301-19 (Oil and Gas Well Locational Criteria). (TR 495:3-9.)

above-ground facilities of the Proposed Project would be located in areas zoned for industrial uses. (Ref. Exh. B, Vol. 2 at D.8-8.)

Historically, homes were built directly across the street from gas wells located in the park during the time that gas production was underway. DOGGR records show that (1) a natural gas well was placed into production, on or about September 3, 1982, and was not abandoned until September 12, 1988; (2) a natural gas well was placed into production, on or about November 30, 1983, and was not abandoned until January 6, 1986. The City of Sacramento subdivision map, recorded on or about April 19, 1984 shows construction and occupation of nearby homes occurred in 1984 and 1985.²⁶

The land across Power Inn Road from residential housing is zoned for industrial and heavy commercial/warehouse land uses, and includes Depot Park, formerly the Sacramento Army Depot, established in 1945 to store and repair U.S. Army communications equipment. (Ref. Exh. B, Vol. 2, Figure D.8-3a.)

The Commission has previously found that gas storage operations that replace gas production activities are consistent with the historical values of an area. (D.06-03-012 at 29.) In short, the Proposed Project is consistent with the

²⁶ On January 11, 2011, the ALJ took official notice of the April 19, 1984 City of Sacramento subdivision map for South Country Estates Unit No. 2, and the City of Sacramento report of construction permit activity in 1984 and 1985 for homes built in the South Country Estates Unit No. 2 residential subdivision. (TR 496:13-22.) However, the record is not clear that official notice was taken of the latter. Therefore, pursuant to Rule 13.9 and California Evidence Code § 452(b), we take official notice of the City of Sacramento report of construction permit activity in 1984 and 1985 for homes built in the South Country Estates Unit No. 2 residential subdivision.

prior and current land uses of the area, and is consistent with the historical and aesthetic values of the area.

6.4. Influence on the Environment

Pursuant to § 1002, the Commission has a responsibility to include, among other things, “influence on the environment” in our consideration of a request for a CPCN. (D.90-09-059, 37 CPUC2d at 453.) Influence on the environment is a factor under § 1002 but is primarily considered in the EIR process, so that the parties would not duplicate their efforts on this Public Utilities Code requirement that overlaps with CEQA requirements.

The following sections discuss the environmental review process conducted for the Proposed Project, and consider the Proposed Project’s influence on the environment.

In summary, we find the Proposed Project to have three significant environmental impacts that cannot be mitigated to less than significant levels: (1) the potential hazards involving the leakage of gas after re pressurization of the Florin Gas Field for gas storage; (2) potential impacts to groundwater quality resulting from gas field operation and maintenance; and (3) construction activities at the wellhead site that would temporarily increase local noise levels. The impacts that may result from gas leakage or migration have the potential to be catastrophic and long term.

7. The Environmental Review Process

Following is a summary of the actions taken in connection with the environmental review of the Proposed Project, in accordance with General Order (GO) 131-D and CEQA.

Pursuant to GO 131-D, SNGS included its PEA with the Application. The Energy Division and its consultants reviewed the PEA, and, in October 2007,

determined that the Application required an EIR.²⁷ As a result, the Energy Division initiated an EIR scoping process. The scoping process for the EIR²⁸ included (1) publication of a Notice of Preparation (NOP) and Notice of Public Scoping Meetings, (2) public scoping meetings and meetings with agencies to solicit comments from affected public agencies and members of the public, and (3) preparation of a Scoping Report to summarize scoping comments.

On November 16, 2007, the Commission published the NOP for the EIR for a 30-day review period.²⁹ Public notification of the NOP for the Proposed Project and scoping meetings included a newspaper announcement³⁰ and the mailing of the NOP and public notices. The distribution and contents of the NOP are detailed in Section A.5 of the EIR. (Ref. Exh. B at A-9 through A-12.)

The content of the EIR reflects input by government officials, agencies, non-governmental organizations, and concerned members of the public during the EIR scoping period following the Commission's publication of the NOP. Responses from these agencies and individuals helped to determine relevant

²⁷ Dudek, Impact Sciences, Condor Country Consulting, EDM Services, Inc., and Golden State Environmental were the consultants that assisted the Energy Division in the EIR's preparation.

²⁸ The term "EIR" is used generally to refer to the DEIR, the FEIR, and the Addendum to the FEIR. Specific reference is made to each document (DEIR, FEIR, or Addendum) when necessary.

²⁹ The NOP provided a general description of the Proposed Project and a summary of the main regulations and permit conditions applicable to its development and operation.

³⁰ Notice for the public scoping meeting was published in the Sacramento Bee on November 16, 2007.

environmental issues associated with the Proposed Project. Section A.5 of the EIR summarizes the activities occurring during the public review process.

On April 3, 2008, the Energy Division notified SNGS that the Application was deemed complete for purposes of CEQA compliance.³¹ On April 8, 2009, the Energy Division released the DEIR and Notice of Availability. The Energy Division initially accepted written comments on the DEIR through May 25, 2009, but subsequently extended the comment period to June 22, 2009.³²

Comment letters on the DEIR were received from 12 public agencies and officials; six community groups, non-profit organizations, and private organizations; nine individuals; and SNGS. Those comments and the Commission's responses to those comments are contained in Ref. Exh. B, Vol. 1.

On April 28, 2009, the Energy Division held a public meeting on the DEIR to (1) provide individuals an opportunity to learn about the DEIR and the status of the Proposed Project, (2) make Energy Division staff available to answer questions prior to the close of the DEIR comment period, and (3) permit the public to comment on the DEIR in lieu of submitting written comments. The

³¹ On April 23, 2008, the Energy Division, its consultants, and the City's Planning Department staff held a follow-up meeting at the City's Planning Division Offices to discuss the City's concerns with the Proposed Project pursuant to the City's scoping comments. The meeting participants also discussed the role of the City as a Responsible Agency for the Proposed Project, and tentatively determined that the City would use the Commission-prepared EIR for the City's permitting process.

³² On May 4, 2009, the Energy Division issued a notice of availability extending the comment period to June 22, 2009.

public meeting was held in the vicinity of the Proposed Project, concurrent with the April 28 PPH.³³

On June 10, 2010, the Energy Division released the FEIR. On July 8, 2010, the DEIR and FEIR were received into the record as Reference Exhibits A and B, respectively.³⁴

As noted above, the Energy Division prepared the Addendum in response to comments on the FEIR made in the parties' supplemental briefs and supplemental reply briefs. On July 25, 2011, the Addendum was admitted into the record as Ref. Exh. G.

8. The EIR

CEQA requires the lead agency to prepare an EIR when there is substantial evidence that a project may have a significant effect on the environment. The EIR informs the Commission and the public in general of the environmental impacts of the Proposed Project and alternatives.

The EIR evaluates the environmental impacts that would be expected to result from the construction and operation of the Proposed Project, and provides recommended mitigation measures that, if adopted, would avoid or minimize the identified significant environmental impacts.

³³ During the April 28 PPH and the October 27 PPH, the Commission heard comments from the public on the Proposed Project, including comments on the DEIR. Comments on the DEIR that were made during the PPHs are included in the EIR. (Ref. Exh. B, Vol. 1, Section E.)

³⁴ Pursuant to the Third Amended Scoping Memo, parties were permitted in supplemental briefs to challenge the conclusions or recommendations in the EIR, the adequacy of the EIR, or the EIR's compliance with CEQA.

The EIR also identifies alternatives to the Proposed Project that could avoid or minimize significant environmental impacts associated with the Proposed Project, including the NPA, evaluates the environmental impacts associated with these alternatives, and determines the environmentally superior alternative.

The lead agency must identify all significant and potentially significant impacts of the project, must identify the mitigation measures available to lessen those impacts, and must determine whether those mitigation measures would reduce the impacts to less than significant levels.

The lead agency cannot approve a project that has significant environmental impacts unless those impacts can be feasibly mitigated or avoided by a project alternative, or alternatively such impacts are found to be acceptable due to overriding concerns. If the EIR concludes that a project will have a significant impact on the environment even after all reasonable mitigation measures are applied, any CPCN that is granted must be accompanied by a statement of overriding considerations explaining why the project should still be approved. The authorization that is finally issued must be conditioned on completion of any adopted mitigation measures.

The lead agency cannot approve the project until it has certified that the EIR is complete. The lead agency must certify that (1) the EIR was completed in compliance with CEQA; (2) the lead agency reviewed and considered the EIR prior to approving the project or a project alternative; and (3) the EIR reflects the lead agency's independent judgment.

8.1. Unavoidable Significant Impacts of Proposed Project

The EIR identifies significant impacts in three categories that cannot be avoided or substantially lessened (referred to as “Class 1 impacts”). These categories are: (1) hazardous materials, public health and safety; (2) hydrology and water quality; and (3) noise.

The significant and unavoidable impacts are (1) the potential hazards involving the leakage of gas after re-pressurization of the Florin Gas Field for gas storage, (2) potential impacts to groundwater quality resulting from gas field operation and maintenance, and (3) construction activities at the wellhead site that would temporarily increase local noise levels. All other significant impacts to environmental resources can be mitigated to a level that is less than significant if the SNGS’s proposed measures (APMs) and other mitigation measures recommended in the EIR are implemented. Table ES 1 of Ref. Exh. B summarizes the impacts from and mitigation measures for the Proposed Project.

The significant and unavoidable impacts resulting from gas migration would not necessarily occur as the result of the Proposed Project. But, if these potential impacts do occur, the consequences could be substantial and unacceptable – including loss of life and long term contamination of a drinking waters source.

There is a possibility that gas could migrate to the surface from around or through the cap rock, either through existing fractures or faults or other discontinuities in the cap rock. (Ref. Exh. B, Vol. 2 at D.6-25.) If gas migrates to the surface, it could contaminate the groundwater aquifer or accumulate in

structures and become an asphyxiant health hazard or explosive.³⁵ (Ref. Exh. B, Vol. 2 at D.6-23.) Migrating gas could enter structures or other confined spaces to create concentrated gas in structures that could become a health hazard or explosive. Gas could concentrate within confined spaces such as manholes or utility bunkers and potentially asphyxiate a person entering the space. Fugitive gas migrating near the surface could accumulate under impervious and semi-pervious pavement or concrete slabs underlying structures, streets, or parking lots and could migrate laterally within underlying porous materials such as gravel/sand layers beneath slabs, gravel/sand road base, or within the gravel/sand material used to provide bedding for pipelines and trenches. (Ref. Exh. B, Vol. 2 at D.6- 23.)

Gas migration could occur as the result of (1) degradation of cap rock due to cyclic loading associated with the gas storage process; (2) failure of the cap rock due to hydraulic fractures; (3) damage to the cap rock due to historical reservoir production; (4) gas migration through preexisting faults due to gas injection pressure changes; (5) gas seepage through the cap rock; or (6) lateral spreading of gas along the edges of the reservoir. (Ref. Exh. B, Vol. 2 at D.6-25 to D.6-27.)

The Florin Gas Field reservoir is contained by a shale cap rock, 150 to 300 feet thick, that has held the gas originally contained within the Florin Gas Field without substantial leakage. (Ref. Exh. B, Vol. 2 at D.6-24.) While the potential for gas migration through the cap rock is remote, experts disagree on

³⁵ Natural gas is comprised primarily of methane, and is colorless, odorless, and tasteless. Methane is not toxic, but is classified as a simple asphyxiate, possessing a slight inhalation hazard.

whether any unidentified faults are located within the Florin Gas Field. (Ref. Exh. B, Vol. 2 at D.5-8 and D.6-26.)

The pressure within the gas field at the projected storage capacity may exceed pressures of the original gas field by almost eight percent, but would remain within the standard industry practice. (Ref. Exh. B at D.6-25.) Cyclic loading and unloading of the reservoir is not likely to degrade the cap rock. (Ibid). However, these conclusions have not been objectively demonstrated through laboratory testing.

In addition, without a long-term data collection process we do not know if stored gas could seep from the edges of the reservoir through lateral spreading under pressures that exceed the original reservoir pressure.

If gas were to migrate into the aquifer the aquifer would become contaminated. This contamination could be substantial requiring a prolonged period of remediation and impacting the water quality of a major potable aquifer. (Exh. B, Vol. 2 at D.7-23.)

Although mitigation measures would mitigate for any possible release of natural gas by requiring depressurization of the reservoir when monitoring equipment detects gas, it would take time to remediate the effects of any gas migration after gas is detected and the reservoir is depressurized. In addition, contamination of the aquifer could impact the water quality of a major potable aquifer and require a prolonged period of remediation. Thus, the potential impact remains significant and unavoidable.

Although there is information to conclude that the leakage of gas into the overlying groundwater aquifer or to the ground surface is unlikely to occur, there is insufficient information to conclude categorically that stored gas migration to the overlying groundwater aquifer or ground surface would not

occur. (Ref. Exh. B at D.6-27.) Even though the risk of gas leakage is low, the consequences of such leakage in a populated area could be catastrophic. Therefore, these impacts remain significant and unavoidable, and present an unacceptable risk to the public.

Regarding the significant construction impact, development of the wellhead site would take approximately three months to complete, and would include drilling of up to six wells for gas injection and withdrawal, water disposal, and one observation well. (Ref. Exh. B, Vol. 2 at D.9 8.) Even with mitigation measures in place noise created during drilling operations would exceed the City of Sacramento's nighttime noise standards and, therefore, is considered a significant impact. (*Ibid.*) This is because well drilling would produce noise at the nearest receptor that exceeds standards, and must be conducted without interruption on a 24-hour, seven-day-a-week basis to preserve the integrity of the well bore. However, because the wells would each take approximately eight days to drill, the significant impacts from noise are temporary.

Other impacts would be less than significant impacts, with mitigation incorporated, in the areas of aesthetics, air quality, biological resources, cultural resources, geology and soils, land use planning, population and housing, public services and utilities, transportation and traffic, and visual resources.

Pursuant to CEQA a lead agency shall not approve a project for which there are significant unavoidable effects. (CEQA Guidelines § 15092 (b).) A lead agency shall also balance applicable economic, legal, social, technological, or other benefits against a project's unavoidable environmental risks, to determine if such risks are acceptable. (CEQA Guidelines § 15093(a).)

As discussed above, § 963(b)(3) requires, among other things, that the Commission “place safety of the public and gas corporation employees as the top priority.” The Commission is obligated to take all reasonable and appropriate actions necessary to carry out the safety priority policy.³⁶ We conclude that the Proposed Project’s unavoidable environmental impacts present unacceptable safety risks to the public and it is a reasonable action for the Commission to deny this application.

8.2. Alternatives to the Proposed Project

CEQA requires that an environmentally superior alternative be identified among the alternatives analyzed in the EIR. The environmentally superior alternative is the alternative found to have an overall environmental advantage compared to the other alternatives based on the impact analysis in the EIR.

Eighteen alternatives in addition to the NPA were considered in the screening process. These include six alternative storage site locations within Sacramento County and various combinations of these alternative storage sites; alternative storage sites outside the Sacramento area; seven project design alternatives as identified by SNGS for the Proposed Project; and three alternatives to natural gas storage.

As a result of the alternatives screening process, in addition to the NPA, three alternative gas field locations (the Snodgrass Slough Gas Field, the Freeport Gas Field, and the Thornton Gas Field (collectively, the Alternative Gas Fields,) and three project design alternatives (i.e., alternative pipeline routes between the proposed wellhead site and proposed compressor station) were evaluated in the

³⁶ Section 963(b)(3).

EIR. Below, we separately discuss the three project design alternatives and the three gas field alternatives evaluated in the EIR.

The NPA is environmentally superior to the Proposed Project because, if no project is constructed, all environmental impacts associated with the construction and operation of the Proposed Project would be eliminated. However, the NPA would not meet most of the objectives of the Proposed Project.

8.2.1. Environmentally Superior Alternatives

Because the NPA is identified as environmentally superior to the Proposed Project, CEQA requires the EIR to also identify an environmentally superior alternative among the other alternatives. (CEQA Guidelines § 15126.6(e)(2).) The EIR identifies the Snodgrass Slough Gas Field as the environmentally superior alternative, and two other gas fields (Freeport and Thornton) as environmentally superior to the Florin Gas Field.

As to the project design alternatives, the EIR finds that each of the three alternative pipeline routes between the proposed wellhead site and proposed compressor station have Class 1 impacts similar to those of the Proposed Project. Other impacts of the three pipeline alternatives are slightly greater or slightly less than those of the Proposed Project.

The EIR does not find any of the alternative pipeline routes environmentally superior to the Proposed Project. The Proposed Project's Class 1 impacts cannot be avoided or substantially lessened by any of the three alternative pipeline routes evaluated in the EIR. Therefore, we do not adopt any of the project design alternatives.

As to the Alternative Gas Fields evaluated in the EIR, each has one or more Class 1 impacts. However, because of their less populated settings, the

consequences of the Class 1 impacts identified for the Alternative Gas Fields are less than those of the Proposed Project. Therefore, the Alternative Gas Fields are environmentally superior to the Proposed Project.

In particular, the Alternative Gas Fields' impacts on hydrology and water quality are similar to the Proposed Project due to the possible migration of gas into the groundwater aquifer. However, the potential consequences resulting from migration of gas into the aquifer and the potential for adverse health effects, flash fires, or explosions resulting from migration of gas to the surface for the Alternative Gas Fields are less than that of the Proposed Project because the Alternative Gas Fields are located in less populated and less built up areas and fewer people would be at risk. Similarly, noise impacts would be less than significant because the Alternative Gas Fields are located in less populated areas.³⁷

9. Economic Feasibility of Alternative Gas Fields

Pursuant to CEQA, we may not approve a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless we make written findings for each of those significant effects, including, among other things, whether there are specific economic, legal, social, technological, or other considerations which make infeasible the mitigation measures or project alternatives identified in the EIR. (CEQA Guidelines § 15091.) Although we are denying this application we have analyzed the

³⁷ Table ES-2 of Ref. Exh. B is a summary comparing the environmental impacts that would potentially occur for the Proposed Project with the three alternative pipeline routes and the Alternative Gas Fields. Table ES-3 of Ref. Exh. B summarizes the unavoidable significant impacts for the Proposed Project and alternatives.

feasibly of the gas field alternatives to see if other options are available. The following analyzes the economic feasibility of the Alternative Gas Fields, and explains why the Alternative Gas Fields are not economically feasible.

The record contains sufficient evidence to independently determine the economic feasibility and potential profitability of the Alternative Gas Fields without profit and loss projections for the Proposed Project.³⁸

The estimated costs of financing development of the Alternative Gas Fields are reasonable and, as detailed below, so are the assumptions and methodologies used.³⁹

9.1. Assumptions and Methodology

The financing costs are based on the loan amount at an eight percent interest rate. The financing costs differ because the estimated costs of developing the Proposed Project and the Alternative Gas Fields differ.

We have used base revenue estimates for the Alternative Gas Fields on rates for Firm Storage Service because the price charged for Firm Storage Service

³⁸ Potential storage revenues are shown in SNGS-36 at 5. The storage capacities in bcfs of the Alternative Gas Fields and the Proposed Project are shown in the Additional Evidence, Exhibit B. The maximum potential revenue from each of the Alternative Gas Fields (and the Proposed Project) can be determined by multiplying the annual potential storage revenue per bcf by the estimated bcf storage capacity for each gas field. The potential profitability of each of the Alternative Gas Fields can be determined by comparing the maximum potential revenue from each of the Alternative Gas Fields to the costs for each. Cost information for each of the Alternative Gas Fields is shown in Ref. Exhs. D, E and F (based SNGS-38, Exhibit B, and Additional Evidence, Exhibit D, as modified by this decision and discussed below).

³⁹ The profitability of the Proposed Project is not relevant to determining the economic feasibility of the Alternative Gas Fields. However, we may require cost information for the Proposed Project to ensure the reasonableness of the cost estimates for the Alternative Gas Fields in order to determine their economic feasibility

is higher than that for Preferred Interruptible Storage and Interruptible (As-Available) Storage.⁴⁰

We have estimated storage revenues by multiplying the full working storage capacity (in bcf) at each of the Alternative Gas Fields by the current market price per bcf for Firm Storage Service. (SNGS-38 at 2-3, 8, and 13.) This analysis reasonably estimates the maximum attainable revenue for each of the Alternative Gas Fields for their estimated working capacities.

The cost analysis of the Thornton Gas Field for a “partial build-out” is consistent with the alternative described and recommended in the EIR, and is reasonable. Development of this gas field would involve constructing facilities similar to those required for the Proposed Project, plus a seven-mile, 16-inch-diameter interconnect pipeline extending through primarily rural areas from the gas field to SMUD’s pipeline system.

As discussed below, we revise SNGS’s estimate of engineering and permitting costs⁴¹ and the construction contingency fund amount for each of the Alternative Gas Fields. As revised, the assumptions and methodology used to develop the cost estimates and financial projections for the Alternative Gas Fields are reasonable.

⁴⁰ Additional Evidence, Exhibit D (filed under seal).

⁴¹ Engineering/Permitting costs include costs for engineering and design activities, costs associated with ongoing and anticipated permitting activities (including Commission proceedings), legal costs, operating costs of SNGS (including general administrative and overhead costs), costs of community outreach activities, and an operating contingency allowance for unexpected conditions and events associated with these activities (operating contingency allowance).

SNGS's analysis includes an estimate of \$20 million, for the Proposed Project and for each of the Alternative Gas Fields, for engineering and permitting costs (Engineering/Permitting), such as engineering and design activities, costs associated with ongoing and anticipated permitting activities (including Commission proceedings), legal costs, operating costs of SNGS (including general administrative and overhead costs), costs of community outreach activities, and an operating contingency allowance for unexpected conditions and events associated with these activities.

We make two revisions to the Engineering/Permitting cost estimates to ensure they are reasonable. These revisions are discussed below and shown in Ref. Exh. D.⁴²

First, we reduce the estimated costs for Commission proceedings and related activities for the Snodgrass Slough and Thornton Gas Fields by \$0.46 million each to make those costs for each of the Alternative Gas Fields the same as estimated for the Proposed Project.⁴³ The Commission proceedings and related activities undertaken in connection with the Application have taken substantially more time and involved more hearings and other activities than other competitive gas storage applications. We do not expect any Commission proceedings involving the Alternative Gas Fields to be more costly or time consuming than this proceeding because they will not be located in an area as populated as the Proposed Project.

⁴² The June 13, 2011 ALJ ruling granted SNGS's request to file under seal confidential portions of Ref. Exh. D.

⁴³ SNGS estimates the cost of Commission proceedings involving the Freeport Gas Field to be the same as that estimated for the Proposed Project.

Second, we revise the operating contingency allowance for each of the Alternative Gas Fields so it is the same percentage of Engineering/Permitting costs as that for the Proposed Project. It is not reasonable for the ratio of operating contingency allowance to Engineering/Permitting costs for each of the Alternative Gas Fields to differ from that for the Proposed Project.

This revision reduces the operating contingency allowance for the Snodgrass Slough and Freeport Gas Fields by \$0.3 million and \$2.0 million, respectively, and increases the operating contingency allowance for the Thornton Gas Field by \$0.5 million.

We apply the same methodology to the Alternative Gas Fields that is used to calculate the construction contingency costs for the Proposed Project⁴⁴ to ensure the estimates are reasonable.⁴⁵ This revision results in a decrease of \$2.1 million in construction contingency costs for the Snodgrass Slough Gas Field, a decrease of \$2.1 million for the Freeport Gas Field, and a decrease of \$2.2 million for the Thornton Gas Field.

9.2. Economic Infeasibility of Alternative Gas Fields

As revised, the assumptions and methodology used to develop the cost estimates and financial projections for the Alternative Gas Fields are reasonable. The revised cost estimates resulting from the revisions discussed above are

⁴⁴ SNGS estimates contingency costs related to construction and development (at ten percent of total facility and construction cost) as a separate line item from the operating contingency allowance included in Engineering/Permitting Costs.

⁴⁵ SNGS calculates the construction contingency for the Alternative Gas Fields as ten percent of the sum of total facility and construction costs, total land cost, and Engineering/Permitting costs. In contrast, SNGS calculates the construction contingency for the Proposed Project at ten percent of total facility and construction costs, only.

\$105.8 million, \$85.1 million, and \$188.1 million for the Snodgrass Slough, Freeport, and Thornton Gas Fields, respectively. These revised cost estimates are used in the financial analysis contained in Ref. Exh. E and summarized in Ref. Exh. F.

The financial projections for the Alternative Gas Fields, based on the revised cost estimates discussed above, demonstrate that none of the Alternative Gas Fields are economically feasible. The costs of the Alternative Gas Fields, compared to their potential profitability, are so great that an owner of a gas storage facility at any of the Alternative Gas Fields could never recover its investment, and no reasonably prudent person would proceed with the construction or development of the Snodgrass Slough, Thornton, or Freeport Gas Fields.

None of the Alternative Gas Fields will generate positive cash flows or net income, and the equity in each of the Alternative Gas Fields will decrease every year. The financial projections show cumulatively increasing negative cash flows for each of the Alternative Gas Fields, and corresponding increasing operating debt, through the first ten years of operations.

Table 1 displays the estimated annual cash flows for each of the Alternative Gas Fields through the first ten years of operations⁴⁶ (from Ref. Exh. E.) The annual cash flows after the first year of operation are - \$14.9 million, -\$13.5 million, and -\$18.3 million for the Snodgrass Slough, Freeport, and Thornton Gas Fields, respectively. The annual cash flows after

⁴⁶ The analysis assumes a two-year project development and construction period, with operations beginning in year three. (SNGS-38 at 1.)

ten years of operation are -\$41.2 million, -\$39.7 million, and -\$39.5 million for the Snodgrass Slough, Freeport, and Thornton Gas Fields, respectively.

Table 1			
Annual Cash Flows (000's)	Snodgrass Slough	Freeport	Thornton
Years 1 - 3	(14,895)	(13,532)	(18,340)
	(24,609)	(23,002)	(27,022)
Years 1 - 12	(41,242)	(39,704)	(39,454)

Table 2 displays the estimated net income for each of the Alternative Gas Fields through the first ten years of operations. Net income after the first year of operation is -\$9.04 million, -\$8.83 million, and -\$7.89 million for the Snodgrass Slough, Freeport, and Thornton Gas Fields, respectively. Net income after ten years of operation is -\$132.65 million, -\$133.97 million, and -\$93.96 million for the Snodgrass Slough, Freeport, and Thornton Gas Fields, respectively.

Table 2			
Net Income (000's)	Snodgrass Slough	Freeport	Thornton
Years 1 - 3	(9,036)	(8,826)	(7,887)
Years 1 - 7	(53,034)	(52,614)	(42,254)
Years 1 - 12	(132,645)	(133,966)	(93,960)

Table 3 displays the estimated equity balance for each of the Alternative Gas Fields through the first ten years of operations. The equity balances after ten years of operation are -\$114.13 million, -\$119.14 million, and -\$60.72 million for the Snodgrass Slough, Freeport, and Thornton Gas Fields, respectively.

Table 3			
Equity Balance (000's)	Snodgrass Slough	Freeport	Thornton
Years 1 - 3	9,481	5,997	25,354
Years 1 - 7	(34,517)	(37,791)	(9,013)
Years 1 - 12	(114,128)	(119,143)	(60,719)

The financial projections for the Snodgrass Slough Gas Field show that a gas storage facility at the Snodgrass Slough Gas Field would not produce a positive cash flow or net income, and equity in the Snodgrass Slough Gas Field will decrease every year. (Ref. Exh. E at 1-4.) Because the Snodgrass Slough Gas Field cannot produce a positive cash flow or net income, it is not capable of being constructed and operated in a successful manner within a reasonable amount of time. Compared to its potential profitability, the costs of constructing and operating the Snodgrass Slough Gas Field are sufficiently severe to render it impractical to proceed with its development. For these reasons, the Snodgrass Slough Gas Field alternative is economically infeasible.

The cost estimate for the Freeport Gas Field is only \$8.2 million higher than the cost estimate for the Proposed Project. However, because the Freeport Gas Field's storage capacity is only approximately 2.0 bcf, a gas storage facility at the Freeport Gas Field cannot produce sufficient revenue to generate a positive cash flow or net income, and equity in the Freeport Gas Field will decrease every year. (Ref. Exh.E at 6-9.)

Because the Freeport Gas Field cannot produce a positive cash flow or net income, it is not capable of being constructed and operated in a successful manner within a reasonable amount of time. Compared to its potential profitability, the costs of constructing and operating the Freeport Gas Field are sufficiently severe to render it impractical to proceed with its development. For these reasons, the Freeport Gas Field alternative is economically infeasible.

The revised cost estimate for the Thornton Gas Field is \$2.5 million lower than the SNGS estimate, but even at this lower cost a gas storage facility at the Thornton Gas Field would not produce a positive cash flow or net income, and equity in the Thornton Gas Field will decrease every year. (Ref. Exh.E at 11-14.)

Because the Thornton Gas Field cannot produce a positive cash flow or net income, it is not capable of being constructed and operated in a successful manner within a reasonable amount of time. Compared to its potential profitability, the costs of constructing and operating the Thornton Gas Field are sufficiently severe to render it impractical to proceed with its development. For these reasons, the Thornton Gas Field alternative is economically infeasible.

10. Adequacy of the EIR

The EIR is legally adequate. The following addresses parties' arguments concerning the adequacy of the EIR.

10.1. Consistency With Prior Commission EIRs

SNGS argues the assessment of the risk of gas migration is not based on substantial evidence, and is unprecedented and unwarranted. According to SNGS, the risk of gas leakage is so remote as to be negligible. SNGS recommends that the Commission reject the EIR's findings concerning these Class 1 impacts.

As discussed above, although the potential for gas to migrate to the overlying groundwater aquifer or to the surface is low, the consequences of such a gas release in a populated area could be catastrophic, and in this Commission's judgment unacceptable. Therefore, it is reasonable to conclude that the potential impact of a gas release remains significant and unavoidable.

The EIR's conclusion that the Proposed Project will result in Class 1 impacts is reasonable and consistent with prior decisions addressing independent gas storage applications.

10.2. Significance of Noise Impacts

SNGS argues the EIR erroneously concludes that the construction of the Proposed Project will result in significant and unavoidable noise impacts. SNGS

asserts that, although the FEIR states that the closest noise receptor will be approximately 200 feet from the wellhead site, the drilling rig (the loudest source of nighttime noise) will be approximately 450 feet from the closest noise receptor. As a result, according to SNGS, the noise level at distance of 400 feet will be 50 decibels using the A-weighted filter network (dBA), and, therefore, the EIR overstates the significance of this impact. SNGS raised this issue in comments on the DEIR, and contends that the EIR's response erroneously states that (1) the drilling rig will be 300 feet from the closest noise receptor, and (2) other noise producing activities will occur throughout the wellhead site.

The Addendum revises Response D2-45 to state that a noise level of approximately 64 dBA will occur at a distance of 450 feet from the closest potential drill rig site to the closest residence (building), and this noise level will result in a significant noise impact during nighttime operation.

10.3. Project Objectives and Adequacy of Alternatives Analysis

AGENA argues the analysis of alternatives is inadequate because, according to AGENA, the EIR improperly relies on SNGS' narrow project objectives. As a result, according to AGENA, the EIR fails to consider a reasonable range of Alternatives.

The EIR properly relies on a clearly written statement of project objectives, pursuant to CEQA Guidelines § 15124(b). The EIR considers a reasonable range of alternatives that would feasibly attain most of the basic objectives of the Proposed Project but avoid or substantially lessen the significant effects of the Proposed Project, and evaluates the comparative merits of the alternatives, consistent with CEQA Guidelines § 15126.6(a).

10.4. Adequacy of Environmental Setting Description

AGENA argues the EIR fails to provide information needed for a meaningful analysis of the NPA because the EIR does not discuss supply, demand, and potential for disruption of natural gas supply when discussing the environmental setting in Sacramento County.

CEQA requires an EIR to include a description of “the physical environmental conditions in the vicinity of the project”. (CEQA Guidelines § 15125(a).) CEQA defines “environment” to mean “the physical conditions that exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance.” (CEQA Guidelines § 21060.5.) “Environment”, as defined by CEQA, does not include “economic” conditions such as the demand for or supply of natural gas, or the potential for disruption of the supply of natural gas.⁴⁷ Therefore, we reject AGENA’s argument that the EIR should have discussed natural gas supply issues.

The EIR adequately describes the physical environmental conditions in the vicinity of the Proposed Project for each area identified in the CEQA Guidelines § 21060.5 definition of “environment.”

10.5. Adequacy of the Alternatives Analysis

AGENA argues a meaningful quantitative and comparative evaluation of the Alternative Gas Fields is not possible because the EIR does not provide comparative data on the geology of each Alternative Gas Field reservoir,

⁴⁷ Merriam-Webster’s Collegiate Dictionary (Tenth Edition, 2001) defines “economic” to mean “of, relating to, or based on the production, distribution, and consumption of goods and services.”

including inferred and confirmed faults, accelerations or other seismic parameters, and the number of abandoned wells at each alternative reservoir; the number of people living within a 0.5-mile buffer around each of the Alternative Gas Fields; and the residential population, employee population, and traffic counts in areas surrounding each of the Alternative Gas Fields.

The EIR provides sufficient information about the major characteristics and significant environmental effects of each Alternative Gas Field to allow meaningful evaluation, analysis, and comparison with the Proposed Project. The significant effects of the Alternative Gas Fields are discussed, albeit in less detail than the significant effects of the Proposed Project.

It is not necessary to conduct analyses of all aspects of the Alternative Gas Fields at the same level of detail as was done for the Proposed Project because the EIR provides sufficient information to determine that the Alternative Gas Fields are environmentally superior to the Proposed Project, and are technically and legally feasible.

10.6. Adequacy of the “No Project” Analysis

AGENA argues the EIR assumes without basis that (1) the NPA could result in significant impacts to utilities and service systems in the event of disruption of the PG&E natural gas pipelines 400/401; (2) SMUD and PG&E may be required to implement curtailment of non-essential energy use and may run out of natural gas at some locations; and 3) such curtailment would reduce the potential ability to meet the demand for natural-gas-generated electricity in the Sacramento area.

Contrary to AGENA’s argument, there is substantial evidence that if there would be a disruption of PG&E’s gas transmission lines, PG&E may be required to implement curtailments that ultimately may impact SMUD’s ability to meet

the demand for electricity in the Sacramento area. (SNGS-45 at 5.) Therefore, the EIR's environmental impact analysis of the NPA is reasonable.

10.7. Revisions to the System Safety and Risk of Upset Report

The System Safety and Risk of Upset Report, included as Appendix B to Ref. Exh. B, was revised in response to comments on the DEIR. AGENA argues the revised report must be re-circulated and made available for public review and comment because it contains significant new information, and because, according to AGENA, the EIR's revised report contradicts the DEIR's System Safety and Risk of Upset Report.

The EIR does not require recirculation as a result of revisions made to the System Safety and Risk of Upset Report included as Appendix B-1 to the FEIR because the EIR does not disclose significant new information⁴⁸ and because the DEIR was adequately informative to permit meaningful public review and comment on the substantial adverse environmental effects of the Proposed Project.

10.8. Qualitative and Quantitative Aggregate Risk Analysis

AGENA argues the EIR fails to discuss and establish a significance threshold for aggregate risk of fatality when the DEIR states such threshold exists.

The EIR does not establish a significance threshold for aggregate risk of fatality, but this does not make the EIR inadequate. In response to comments on

⁴⁸ The revised report concludes that the analyzed impacts are less significant than originally estimated in the DEIR's report.

the DEIR, the EIR accurately states that no threshold for aggregate risk has been developed, and appropriately deletes discussion of the qualitative and quantitative aggregate risk analysis contained in the DEIR.

10.9. Alleged Failure to Analyze a Significant Impact Identified in System Safety and Risk of Upset Report

AGENA argues the EIR fails to analyze the significant individual risk at the well site discussed in the System Safety and Risk of Upset Report.

Contrary to AGENA's argument, the EIR adequately identifies and analyzes the individual risk at the well site discussed in the appendices and concludes that, with mitigation, the potential impact of individual risk at the well site is less than significant. (Ref. Exh. B at D.6-29.)

10.10. Storage of Methyl Mercaptan at the Wellhead Site

AGENA argues the EIR is inadequate because it fails to discuss and analyze revisions to the EIR that allow storage of methyl mercaptan at the wellhead site.

However, the EIR as supplemented by the Addendum adequately discusses and analyzes the storage of methyl mercaptan at the wellhead site. Specifically, the Addendum states that the accidental release of methyl mercaptan at the wellhead may result in a significant impact, but the impact would be reduced to less than significant levels by limiting the amount of methyl mercaptan that may be stored at the site, and by requiring the methyl mercaptan to be stored and used in a specialized structure to reduce public exposure, pursuant to Mitigation Measure HAZ-1ciii. (Ref. Exh. G at 3.)

10.11. Potential Hazards Posed by Existing Abandoned Wells

AGENA argues the EIR fails to adequately respond to comments regarding the potential hazards posed by existing abandoned wells. AGENA asserts DOGGR's well abandonment standards in place at the time of abandonment of existing wells were not developed to permit re-pressurization for gas storage. AGENA argues, even if measures are implemented to ensure abandoned wells meet DOGGR requirements, the abandoned wells continue to pose a significant risk.

There is no substantial evidence that gas wells abandoned in accordance with DOGGR requirements pose a significant risk. The evidence on the rate of leakage of abandoned wells in oil fields is not relevant to leakage rates for abandoned wells in gas fields, does not identify the failure rate of abandoned wells in gas fields such as the Florin Gas Field, or state that the failure rate of abandoned wells in gas fields is similar to that of abandoned wells in oil fields.⁴⁹ The evidence discussing well leaks at abandoned oil and gas wells does not identify the percentage of leaking abandoned wells that are in gas fields as compared to abandoned wells that are in oil fields or oil/gas fields.⁵⁰

⁴⁹ Ref. Exh. B, Vol.1, Part 1, Comment D2-252 at 306 (*"Environmental Hazards Posed by the Los Angeles Basin Urban Oilfields: An Historical Perspective of Lessons Learned"*, Section titled "Environmental Hazards of Oil Well Leaks").

⁵⁰ Ref. Exh. B, Vol.1, Part 1, Comment D2-253, (*An Appraisal of Underground Gas Storage Technologies and Incidents, for the Development of Risk Assessment Methodology*) at 115-116. Section 9.5.3 of the document discusses, among other things, old and abandoned wells as a major potential source of leakage, "particularly so in [California] oil fields, especially in the Los Angeles region."

The EIR adequately addresses comments concerning impacts related to the integrity of abandoned wells because the EIR specifies that, if approved, DOGGR will require an examination of each plugged well during the well permitting process and will require remediation of any issues prior to storage of gas.

10.12. Construction and Operation of Monitoring Wells

AGENA argues the EIR provides no support for the conclusion that construction and operation of monitoring wells will not result in any significant impacts. The EIR adequately addresses the impacts of construction and operation of monitoring wells and finds no significant and unavoidable impacts.⁵¹

10.13. Development of Additional Pipelines for Storage Customers

AGENA argues the EIR fails to consider the environmental impacts associated with the development of additional pipelines for storage customers because, according to AGENA, it is foreseeable that SNGS will construct additional pipelines to connect customers directly to the Proposed Project.

However, the potential environmental impacts associated with serving customers other than SMUD are not reasonably foreseeable, and as purely speculative should not be considered in the EIR, consistent with CEQA Guidelines § 15064(d). There are no requests at this time from potential customers other than SMUD for the Proposed Project's storage services. (SNGS-9 at 5.)

⁵¹ Ref. Exh. B, Vol. 1, Part 2, Responses to B5-120, B5-140, B5-236, B5-273, and B5-397, respectively.

10.14. Chemical Makeup of Existing Gas in the Florin Gas Field

AGENA argues the EIR is inadequate because it does not discuss and analyze the chemical makeup of the existing gas within the Florin Gas Field. AGENA asserts that the best evidence of the likely composition of gas within the Florin Field is data from nearby gas fields, which, according to AGENA, demonstrates the presence of certain dangerous hydrocarbons.

However, according to the Addendum, a dry gas field is defined as a gas field that produces hydrocarbons containing less than 1.6 percent of propane, butane, and pentane. There is substantial evidence that the Florin Gas Field is a “dry” gas field that produced natural gas containing only 0.03 percent of propane, butane, and pentane. (Ref. Exh. G at 2, 5.)

10.15. Storage of Natural Gas Liquids at the Wellhead Site

AGENA argues the EIR fails to analyze the impacts associated with storage of natural gas liquids at the wellhead site. AGENA states that natural gas liquids frequently contain significant quantities of ethane, propane, butane, pentane, carbon dioxide, nitrogen, helium, and H₂S, and, as a result, could pose potentially significant impacts that have not been sufficiently analyzed. AGENA argues information concerning the amount and rate of natural gas liquids and produced water withdrawn from the reservoir is needed to understand potential risks associated with these tanks, and to properly evaluate the likelihood and quantity of excess natural gas liquids and produced water that may need to be trucked to a disposal site.

However, the EIR adequately addresses the impacts associated with storage of natural gas liquids at the wellhead site. As discussed above, there is substantial evidence that the Florin Gas Field is a “dry” gas field.

10.16. Adequacy of Mitigation Plans

AGENA and the City argue the FEIR improperly defers the development of mitigation measures required to reduce the Proposed Project's health and safety impacts.

Because this decision denies the Proposed Project and does not adopt the Mitigation Monitoring, Compliance, and Reporting Plan (MMCRP), it is not necessary to address this issue. However, even if we were to adopt the MMCRP, it would not be improperly deferred mitigation for the following reasons.

Practical considerations prevent the full development at this time of several plans in connection with adopted mitigation measures. In particular, other state and local agencies require the plans, are responsible for overseeing proposed activities addressed by the plans, and must participate in the development of those plans. The Applicant cannot begin developing plans that are within those agencies' purview until after the Applicant presents a Commission-approved project to those agencies.

The Addendum clarifies various mitigation measures to specify the performance standards to be met by each of the plans that must be developed. (Ref. Exh G at 8-20.) The proposed mitigation measures for these pending plans would ensure that, once developed, each of the plans would satisfy our specified performance criteria to mitigate identified impacts.

10.17. Cumulative Health and Safety Impacts

AGENA argues the EIR fails to provide a meaningful discussion of the Proposed Project's cumulative health and safety impacts. However, the EIR discusses and discloses any and all cumulative impacts in each resource area, along with any required mitigation. AGENA's arguments regarding future traffic and population are not tied to any specific project but are mere assertions

of speculative impacts due to non-existing present projects and unknown and not reasonably foreseeable future projects, and as such do not show legal error.

10.18. Response to Comments Proposing Potentially Feasible Mitigation Measures

AGENA argues Greenberg's comments on the DEIR propose three mitigation measures to further reduce the health and safety impacts of the Proposed Project's pipeline segments, and that the EIR fails to respond to those comments. However, the EIR adequately responds to comments that allegedly propose potentially feasible mitigation measures to further reduce the impacts of the Proposed Project's pipeline segments.

The EIR determined that the potential health and safety impacts of the Project's pipeline segments are less than significant. Further mitigation of less-than-significant impacts is not required.

10.19. Geographic Scope of Health and Safety Impacts

AGENA argues the EIR fails to properly define the geographic scope of the Proposed Project's significant and unavoidable health and safety impacts, and that the EIR does not adequately respond to the comments of Robertson, Greenberg, and Shlemon. However, the EIR adequately responds to the comments of Greenberg, Robertson, and Shlemon, and explains in sufficient detail the reasons why specific comments and suggestions were not accepted.

Robertson's comment (Comment B5-291) points to the Yaggy gas storage facility in Hutchinson Kansas to argue the Proposed Project would pose a risk of fire, explosion, and/or groundwater contamination within "a several mile radius" from the Florin Reservoir.

The EIR adequately responds to Robertson by acknowledging that the FEIR considers the potential impacts associated with the storage of natural gas

within the Florin Gas Field to be significant and unavoidable. The EIR's response to Comment B5-291 explains that Robertson's allegation relies on an example of a facility using a salt cavern for gas storage, and that salt caverns have different geologic characteristics than gas fields.

The EIR's responses to Comments B5-304 through B5-308 explain in detail the reasons it disagrees with Shlemon's comments.

10.20. Disclosure of Significant Disagreements among Experts

AGENA argues the EIR fails to properly disclose significant disagreements among experts concerning (1) the likelihood of natural gas escaping from the Florin Gas Field through potential faults, and (2) whether there is sufficient vertical permeability within the storage reservoir to withstand anticipated injection pressures. As to the latter point, Robertson asserts vertical permeability of the storage reservoir is less than 25 feet because, according to Robertson, the storage reservoir is comprised of two gas sands separated by a thin shale layer about 10 feet thick.

However, the EIR adequately discloses the main points of significant disagreement among experts concerning the risk of natural gas escaping from the Florin Gas Field through faults. In particular, the EIR states:

No active faults have been mapped within the Proposed Project area and it is not crossed by any Alquist-Priolo Earthquake Fault Zone. It should be noted that there is a disagreement among experts whether faulting occurs within the area.⁵²

⁵² Ref. Exh. B, Vol. 2 at D.5-8. *See also*, responses to Comments A7-22, A10-21, B5-162, B5-294, B5-307, B5-506, B5-507, and D2-21.

Also, the Addendum clarifies the text for Impact HAZ-2a to describe the disagreement concerning the vertical permeability of the storage reservoir. The Addendum states that the Ryder Scott gas injection computer model indicated there is vertical permeability through 250 feet of the storage reservoir and did not reveal the existence of shale barriers below the field's cap rock that would impede vertical gas flow, and notes Robertson's disagreement with this analysis. (Ref. Exh. G at 3-4.)

10.21. Injection Pressure Required to Displace Water

AGENA argues the EIR fails to address Robertson's assertion that gas would have to be injected into the Florin Gas Field at such a high pressure that it would fracture the cap rock and lead to a release of gas.

However, the EIR adequately addresses Robertson's assertion that the cap rock is unable to withstand the pressures at which gas would have to be injected into the Florin Gas Field to displace a 250-foot column of water. Robertson significantly errs in estimating that 15,600 pounds per square inch (psi) is required. Correction of Robertson's error shows that 108 psi is needed to displace a 250-foot column of water in the reservoir.

10.22. Laboratory Testing of Cap Rock Core Samples

AGENA argues the EIR errs by not requiring laboratory testing, including strength testing of the cap rock core samples, prior to project construction and re-pressurization of the Florin Gas Field. Because this decision denies the Proposed Project and does not adopt the MMCRP, it is not necessary to address this issue.

However, even if we were to adopt the MMCRP, it would not be in error because the EIR requires, prior to allowing the storage of natural gas, the DOGGR to monitor and approve the laboratory testing of cores of the cap rock

structure within the range of the projected gas storage pressures to determine the permeability, strength, and other properties of the cap rock. (Ref. Exh. B, Mitigation Measure Haz-2ai.)

10.23. Discussion of the Potable Water Aquifer

AGENA argues the EIR fails to disclose the amount of water currently extracted from the groundwater basin that may be impacted by the Proposed Project, the number of people that rely on this water supply, and the potential extent of the contamination in the event of an accident. However, the EIR discloses sufficient information to evaluate whether the Proposed Project may have a significant environmental impact on groundwater,⁵³ and concludes that the potential impacts are significant and unavoidable.

10.24. Existing Contaminated Groundwater and Remediation Efforts

AGENA argues the EIR fails to adequately discuss existing contaminated groundwater and associated remediation efforts.

The EIR states that groundwater in the Proposed Project area has been contaminated with trichloroethylene and is currently undergoing groundwater

⁵³ The EIR states that the Proposed Project is located within the Sacramento River Hydrologic Region and the Sacramento Valley Groundwater Basin; that the Sacramento Valley Groundwater Basin underlies an area of approximately 5,000 square miles from Tehama County in the north to Solano and Sacramento counties in the south; that annual runoff in the Sacramento River Hydrologic Region averages about 22.4 million acre feet (maf), and that municipal, industrial, and agricultural supplies to the region are about 8 maf, with groundwater providing about 2.5 maf of that total. The EIR further discloses that the groundwater in the area of the Proposed Project has been contaminated with trichloroethylene and is currently undergoing ground water pumping as a portion of the remediation at the former Sacramento Army Depot. (Ref. Exh. B, Vol. 2 at D.7-1.)

pumping as a part of the groundwater remediation at the former Sacramento Army Depot. The EIR further states that an inadvertent release of drilling mud could potentially mix with contaminated groundwater associated with groundwater remediation. The Addendum provides additional information concerning the proximity of the Proposed Project's facilities to remediation wells, and confirms that the Proposed Project would not disrupt or impact the groundwater remediation efforts. We find the EIR's treatment of these issues to be adequate for purposes of CEQA.⁵⁴

10.25. Feasible Mitigation to Further Reduce Water Quality Impacts

AGENA argues the EIR fails to address what AGENA describes as AGENA's recommended mitigation measures to further reduce the Proposed Project's significant and unavoidable water quality impacts. In its comments on the DEIR, AGENA recommends, among other things, that (1) SNGS be required to post a bond to cover the cost of remediating any groundwater contamination, and (2) the Proposed Project be permanently shut down if groundwater contamination is discovered after the Proposed Project commences. However, we find that the EIR is not deficient with respect to either of these recommendations.

⁵⁴ When responding to comments, lead agencies need only respond to significant environmental issues and need not provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR. (CEQA Guidelines § 15204(a).)

Requiring SNGS to post a bond in the event that the water basin becomes contaminated is not a mitigation measure because the requirement would not mitigate the impacts of groundwater contamination.⁵⁵

Pursuant to a CEQA impact-to-mitigation-nexus analysis, requiring the Proposed Project to permanently shut down in the event of groundwater contamination is disproportionate to the impact being mitigated, and would be unreasonable. However, under our Pub. Util. Code mandate to make safety our top priority we find the groundwater contamination risk disproportionately large compared to the benefits of the Proposed Project.

10.26. Analysis of Potential for Cross-Contamination of Aquifers

AGENA argues (1) the EIR fails to meaningfully respond to comments concerning the potential toxicity of the drilling mud to be used at the Proposed Project, (2) the potential for drilling to cause cross-contamination of aquifers or contamination of aquifers by the drilling mud, and (3) the EIR fails to include enforceable mitigation measures to address such impacts.

In response to comments on the DEIR, the EIR was revised to clarify that, regardless of any innate toxicity that drilling mud may have, the drilling mud could become contaminated if it comes into contact with contaminated groundwater, oils, or chemicals during drilling. (Ref. Exh. B, Vol. 2 at D.6-17.) The EIR states that drilling mud must meet the requirements of DOGGR and other agencies for non-toxicity. (Ref. Exh. B, Vol. 1, Part 2 at B5-85.)

⁵⁵ Parties had an opportunity to address in evidentiary hearings in the CPCN portion of the proceeding any issues concerning liability insurance, surety bonds or performance bonds and similar indemnification requirements. (Scoping Memo at 23.)

However, because this decision denies the Proposed Project and does not adopt the MMCRP, it is not necessary to further address this issue. Yet, even if we were to adopt the MMCRP, it would not be in error because the plan contains enforceable mitigation measures to address the potential for drilling to cause cross-contamination of aquifers or contamination of aquifers by the drilling mud.

For example, Mitigation Measure H-8b (1) requires groundwater monitoring wells at the wellhead site to monitor water quality in both the shallow and deeper aquifers, (2) establishes a groundwater quality baseline prior to any drilling activities, and (3) if hydrocarbon levels above baseline are detected, to suspend gas storage activities and depressurize the reservoir until the source of the contamination is found and corrected.

The Addendum adds text to the discussion of Impact H-5 to make clear that the use of casings and sealing of the casings would prevent interaction with contaminated groundwater during drilling of gas wells. (Ref. Exh. G at 4.)

10.27. Compliance with City's Zoning Code

AGENA asserts the Proposed Project's wellhead site is a "fuel storage yard," as defined by Sacramento City Code § 17.16.010, and that Sacramento City Code § 17.24.050 prohibits fuel storage yards within 1,000 feet of residential properties. Based on this assertion, AGENA argues that the EIR fails to disclose an inconsistency between the Proposed Project and local land use policy, and that the EIR fails to consider this asserted inconsistency as a factor in determining whether the Proposed Project may cause a significant effect on the environment.

However, the Proposed Project, and the wellhead site, in particular, is not a “fuel storage yard”, as defined by Sacramento City Code § 17.16.010.⁵⁶ “Fuel storage yard” means “portions of properties where flammable and combustible liquids and gases are received by tank vessels, pipe lines, tank cars or tank vehicles, and are stored above ground, blended in bulk, or compressed, for the purpose of distributing such liquids by tank vessels, pipelines, tank cars, tank vehicles, or containers.” (Sacramento City Code § 17.16.010.)

Natural gas would not be stored above ground at the Proposed Project, and neither methyl mercaptan nor natural gas liquids will be “blended in bulk, or compressed, for the purpose of [distribution] by tank vessels, pipelines, tank cars, tank vehicles, or containers.” The EIR adequately considers consistency between the Proposed Project and local land use policy as a factor in determining whether the Proposed Project may cause a significant effect on the environment.

10.28. Consistency with City’s General Plan

AGENA argues the Proposed Project is prohibited by Land Use Policy 7.2.7 of the City of Sacramento’s General Plan due to its proximity to residential and employment uses.

The Proposed Project’s wellhead site is a utility facility to be located in an area designated as “Employment Center (Low Rise).” The City of Sacramento 2030 General Plan allows quasi-public uses, including utility facilities, in areas designated as Employment Center Low Rise. City of Sacramento 2030 General Plan, Land Use Element at 2-100. Land Use Policy 7.2.7 of the City of

⁵⁶ The April 27, 2011 ALJ ruling took official notice of Sacramento City Codes § 17.16.010 and § 17.24.050.

Sacramento 2030 General Plan applies to “industrial uses,” but not to quasi-public uses, such as utility facilities.⁵⁷

10.29. Consistency with Employment Center Land Use Designation

AGENA argues the purpose of the Employment Center designation is to generate employment. According to AGENA, the Proposed Project is inconsistent with this purpose because only three employees are needed to operate and maintain the Proposed Project and no employees would regularly work at the wellhead site.

The Proposed Project is consistent with the Sacramento Zoning Code Employment Center designation. The purpose of the employment center zone is “to provide a flexible zone for primarily employment generating uses in a pedestrian friendly setting with ample private and/or public open space. The employment center zone also provides the opportunity for a variety and mix of supporting uses, including support retail, residential and light industrial.” (Sacramento City Code § 17.56.010.)⁵⁸ The Employment Center zone allows “industrial or manufacturing that occurs entirely within an enclosed building or an enclosed outdoor area with appropriately landscaped setbacks.” (Sacramento 2030 General Plan at 2-100.)

The Proposed Project is an allowed use within the Employment Center zone.

⁵⁷ The April 27, 2011 ALJ ruling took official notice of the Land Use Element of the City of Sacramento 2030 General Plan.

⁵⁸ Pursuant to Rule 13.9 and California Evidence Code § 452(b), we take official notice of Sacramento City Code, § 17.56.010 (Employment Center Zone, Purpose).

10.30. Consistency with City's Land Use Goal LU 7.1

AGENA argues the wellhead site does not comply with the minimum floor-to-area ratio (FAR) specified in the City of Sacramento 2030 General Plan Goal LU 7.1. However, we find that the Proposed Project is consistent with the City of Sacramento 2030 General Plan minimum FAR requirements because the Proposed Project would normally conduct a substantial amount of its operations outdoors.

Resolution No. 2010-692, adopted by the Sacramento City Council on November 30, 2010, amended the Sacramento 2030 General Plan by adding Policy LU 1.1.13 to permit development at less than the required FAR.⁵⁹ In particular, Policy LU 1.1.13 states that, where a discretionary permit is required, a development with a FAR that is less than the required minimum may be deemed consistent with the General Plan if the use involves no building or by its nature normally conducts a substantial amount of its operations outdoors. (Sacramento City Council Resolution No. 2010-692 at 3.)

10.31. Analysis of the Impacts Associated with Abandonment

AGENA argues the EIR fails to adequately address the impacts associated with abandonment of the Proposed Project. According to AGENA, the abandonment process could result in significant construction-related impacts, such as the noise, traffic, and air quality impacts associated with the initial construction of the Proposed Project. However, we find that the EIR adequately

⁵⁹ Pursuant to Rule 13.9 and California Evidence Code § 452(b), we take official notice of Sacramento City Council Resolution No. 2010-692, adopted November 30, 2010, and Exhibit A attached thereto adding Policy LU 1.1.13 to the City of Sacramento 2030 General Plan.

addresses the environmental impacts associated with abandonment of the Proposed Project because lead agencies may limit discussion of effects that are not potentially significant to a brief explanation as to why those effects are not potentially significant.

The EIR concludes that abandonment of the Proposed Project would not result in any new significant impacts beyond those described for construction and operation of the Proposed Project.⁶⁰ The only environmentally significant noise impact associated with the initial construction of the Proposed Project would be noise created during drilling operations. Because no wells would be drilled in connection with abandonment of the Proposed Project, there would be no significant impacts associated with abandonment of the Proposed Project.

10.32. Consistency with the City's Water Quality Protection Goal

AGENA argues the EIR fails to adequately consider the Proposed Project's consistency with the City of Sacramento's Water Quality Protection Goal because the EIR considers only construction-related impacts but not operations-related impacts of the Proposed Project. However, we find that the EIR adequately addresses the Proposed Project's consistency with the City of Sacramento 2030 General Plan, Environmental Resources Goal 1.1 (Water Quality Protection Goal). The Addendum adds text to the "Consistency Determination" discussion on Table D-8.5 to clarify that construction and operation of the Proposed Project is consistent with the City's Water Quality Protection Goal. Ref. Exh. G at 5-6.

⁶⁰ The EIR states that the abandonment process will include (1) cleaning and abandonment of pipelines in place, (2) depressurization of the reservoir, (3) removal of surface structures, and 4) plugging and abandonment of the wells pursuant to DOGGR regulations. (Ref. Exh. B, Vol. 2, Response to Comment B5-17.)

10.33. Consistency with the City’s Policy on High Impact Uses

AGENA argues the Proposed Project is a high-impact use that will place an environmental burden on the local community, and that the EIR fails to adequately respond to the concern that the Proposed Project is inconsistent with the City of Sacramento’s policy to avoid concentrating high-impact uses in minority neighborhoods.

The EIR adequately addresses the Proposed Project’s consistency with the City of Sacramento’s policy to avoid concentrating high-impact uses in minority neighborhoods. The EIR states that the Proposed Project would not displace existing uses.

Because the adjacent residential neighborhood coexisted with the Florin Gas Field when it was an operating gas field, the Proposed Project is a compatible land use that would not result in land use changes and would not disproportionately degrade minority or low income communities. The Proposed Project would not generate disproportionately large environmental impacts such as pollution, noise, or traffic, and therefore, is not a “high-impact use,” as defined by the City of Sacramento 2030 General Plan.

10.34. Alleged Failure to include a Stable and Finite Project Description

AGENA argues the EIR fails to include a stable and finite project description because, according to AGENA, the EIR (1) was expanded to allow the storage of methyl mercaptan at the wellhead site, (2) discloses that the tanks described as “H₂O tanks” in the DEIR will store natural gas liquids, and (3) discloses that the pipeline to be constructed by the Proposed Project is located within a High Consequence Area. We disagree.

Responses to comments may take the form of a revision to the DEIR. The text revisions such as those above made in response to comments on the DEIR do not change the project description.

10.35. Availability of Studies and Reports Prepared for the EIR during the Public Comment Period

AGENA argues the Commission failed to make studies and reports prepared for the EIR available to the public during the public comment period. We disagree.

The majority of technical information relied upon in preparing the EIR was incorporated directly into the text of the EIR. Other technical reports and data were attached to the EIR as appendices. Additional general background and reference materials were listed at the end of each resource area discussion with sufficient citations to aid the public in locating generally available public information.

10.36. Alleged Failure to Proceed in a Manner Required by Law

AGENA argues the Commission failed to proceed in a manner required by law⁶¹ because, according to AGENA, on September 28, 2010, the Energy Division informed AGENA it may not submit additional comments and evidence on the

⁶¹ AGENA asserts that Public Resources Code § 21177(a) requires a lead agency to permit interested parties to submit evidence of CEQA noncompliance at any time prior to the close of the public hearings on the project. To the contrary, Public Resources Code § 21177(a) does not apply to lead agencies but rather to parties. It provides that “No action or proceeding may be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination.” (Public Resources Code § 21177(a).)

EIR. AGENA points to ambiguous informal communications with staff to support its argument. AGENA's argument lacks merit.

Formal guidance was provided to the public through the notices issued in connection with the environmental review of the Proposed Project. In particular, the May 4, 2009 Notice of Availability of the DEIR required written comments on the DEIR to be postmarked and received no later than June 22, 2009. Rejecting additional comments and evidence on the EIR after that date was appropriate.

Formal guidance to parties in the scoping memos issued in this proceeding provided an opportunity to make arguments concerning any alleged errors in or adequacy of the EIR in supplemental briefs.⁶² AGENA and other parties have taken this opportunity, and this section of this decision addresses parties' arguments concerning alleged errors in and adequacy of the EIR.

11. Mitigation Monitoring, Compliance and Reporting Program

Because this decision does not approve the Proposed Project, there is no need to adopt the MMCRP that is included as Section G of Ref. Exh. B.⁶³

12. Certification of the EIR

The Commission hereby certifies the Sacramento Natural Gas Storage Project EIR, State Clearinghouse No. 2007112089.⁶⁴

⁶² Parties must address issues related to the EIR and environmental issues through the Commission CEQA process. (Scoping Memo at 21-22.) Parties may address in briefs any challenges they may have to the conclusions or recommendations in the EIR, or challenges to the adequacy of the EIR or the EIR's compliance with CEQA. (Amended Scoping Memo at 5.)

⁶³ The MMCRP describes the mitigation measures, specifically details how each mitigation measure would be implemented, and includes information on the timing of implementation and monitoring requirements.

⁶⁴ The EIR consists of the DEIR, the FEIR, and the Addendum.

CEQA Guidelines § 15120 through § 15132 require the EIR to contain specific information. The various elements of the EIR satisfy these CEQA requirements.

Volume 1 of the EIR contains the comments and recommendations received on the DEIR, individual responses to these comments, and a list of persons, organizations, and public agencies commenting on the DEIR. Volume 2 of the EIR consists of the DEIR, revised in response to comments and other information received. The Addendum clarifies the EIR, but does not identify any new significant environmental effects or make any revisions that increase the severity of previously identified significant effects.

In accordance with CEQA Guidelines § 15090, the Commission, as lead agency for the Proposed Project, certifies that:

- (1) The EIR has been completed in compliance with CEQA;
- (2) The EIR was presented to the Commission, and the Commission has received, reviewed, and considered the information contained in the EIR and hearing documents prior to denying the Proposed Project; and
- (3) The EIR reflects the Commission's independent judgment and analysis.

We find that the EIR is a comprehensive, detailed, and complete document that discusses clearly the advantages and disadvantages of the environmentally superior alternatives, the Proposed Project, and other alternatives.

We find that the EIR is a competent and comprehensive informational tool, as CEQA requires it to be. The quality of the information in the EIR is such that we are confident of its accuracy. We have considered the information in the EIR in denying the Proposed Project.

Accordingly, we certify and adopt the EIR in its entirety, and incorporate it by reference in this decision.

13. Other Requests and Proposals

Because this decision denies the Application, it is not necessary to address SNGS's requests and proposals concerning (1) liability insurance, bonds, and other indemnifications; (2) the interconnection arrangements stipulated to by SNGS and PG&E⁶⁵; (3) SNGS's request for approval of market-based tariffs for services; (4) SNGS's request for exemption from the requirements of § 818 and § 851; and (5) SNGS's request for exemption from the requirements of the Competitive Bidding Rule.

14. Request for Confidential Treatment

We grant, in part, SNGS's request for confidential treatment of its financial information for a period of two years from the effective date of this decision.⁶⁶

The financial information for which protection is granted is:

- (i) Sheet 1 of Attachment B to the Motion for Protective Order, titled "California Natural Gas Storage, LLC (Parent) and Sacramento Natural Gas Storage, LLC (Wholly Owned Subsidiary) Consolidated Balance Sheet at March 31, 2007";
- (ii) Sheet 2 of Attachment B to the Motion for Protective Order, titled "California Natural Gas Storage, LLC (Parent) and Sacramento Natural Gas Storage, LLC (Wholly Owned

⁶⁵ On January 9, 2009, SNGS and PG&E filed a stipulation resolving all issues PG&E raises in its protest to the Application (SNGS/PG&E Stipulation).

⁶⁶ On April 9, 2007, SNGS filed a motion for leave to file confidential materials under seal (Motion for Protective Order). SNGS requests that the financial, budget, contract and appraisal information filed as Attachment B (Exhibit 5) to the Motion for Protective Order be filed under seal and accorded confidential treatment as provided by GO 66-C.

Subsidiary) Consolidated Statement of Income for the Period from January 1 to March 31, 2007”;

- (iii) Sheet 3 of Attachment B to the Motion for Protective Order, titled “California Natural Gas Storage, LLC (Parent) and Sacramento Natural Gas Storage, LLC (Wholly Owned Subsidiary) Notes to the Consolidated Financial Statements at March 31, 2007”; and
- (iv) Sheet 4 of Attachment B to the Motion for Protective Order, titled “Sacramento Natural Gas Storage, LLC Project Financing [sic] Plan Summary.”

We deny SNGS’s request for confidential treatment of the remainder of the documents contained in Attachment B to the Motion for Protective Order. SNGS has already publicly disclosed the document titled, “Florin Gas Field Storage Rights Rental Report Sacramento County, California for California Natural Gas Storage, LLC” (Rental Report), and Exhibits 1 through 9 attached thereto, and, as a result, has waived any right to confidential protection of this information.⁶⁷

We have granted requests for protection of the confidential materials in the past. We normally grant such requests for a period of two years, and will do so here. During that period the information must not be made accessible or disclosed to anyone other than the Commission staff except on the further order

⁶⁷ See SNGS-14 (Exhibit A to Direct Testimony of Harold W. Bertholf, dated September 5, 2008). SNGS-14 is an updated version (dated June 1, 2007) of the document that SNGS seeks to protect (dated January 1, 2007), and, except for minor revisions, contains the same information. Except for minor differences, Exhibits 1 through 9 attached to the Rental Report are included in SNGS-14. In addition, Exhibit 1 attached to the Rental Report is a publicly available map of California Natural Gas Pipelines and Storage Facilities, and Exhibit 2 attached to the Rental Report is a publicly available street map of a portion of the City of Sacramento.

or ruling of the Commission, the assigned Commissioner, the assigned ALJ, or the ALJ then designated as Law and Motion Judge.

If SNGS believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion must be filed no later than one month before the expiration date.

15. Comments on Alternate Proposed Decision

The alternate proposed decision of Commissioner Florio in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on May 24, 2012 by SNGS and AGENA, and reply comments were filed on May 29, 2012 by SNGS and AGENA. The Comments have been considered and appropriate changes have been made.

16. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Richard Smith is the assigned ALJ in this proceeding.

Findings of Fact

1. SNGS filed A.07-04-013 for a certificate of public convenience and necessity to construct and operate the Proposed Project, including ancillary pipelines and other components required to provide natural gas storage services at market-based rates.
2. Notice of the Application appeared in the Commission's April 16, 2007 Daily Calendar.
3. The Proposed Project includes (1) an underground natural gas storage reservoir; (2) a wellhead site; (3) a control center and compressor station site;

(4) a buried 16-inch interconnection pipeline between the wellhead and compressor site (approximately 1.4 miles long); and (5) a 16-inch buried interconnection pipeline between the compressor site and SMUD Line 700 (approximately 0.8 mile long), which will provide, via leased capacity, an interconnection with PG&E's Line 400/401.

4. The Proposed Project will utilize a depleted natural gas reservoir (the Florin Gas Field) located partly within the City of Sacramento and partly within an adjacent unincorporated area of the County of Sacramento.

5. Approximately two-thirds of the surface area overlying the Florin Gas Field contains residential parcels (717 parcels); approximately one-quarter of the overlying surface area contains commercial or industrial parcels (43 parcels); and the remainder of the overlying surface area is owned by the City (11 parcels).

6. All surface facilities and equipment would be located within the City limits.

7. The Energy Division determined that the Application requires an EIR, and initiated an EIR scoping process in October 2007.

8. On April 8, 2009, the Energy Division released the DEIR and Notice of Availability and initially accepted written comments on the DEIR through May 25, 2009, but subsequently extended the comment period to June 22, 2009.

9. On June 10, 2010, the Energy Division released the FEIR.

10. The Energy Division prepared an addendum to the FEIR (Addendum) in response to comments on the FEIR made in the parties' supplemental briefs and supplemental reply briefs.

11. The EIR consists of the DEIR, the FEIR, and the Addendum.

12. The EIR was presented to the Commission, and the Commission received, reviewed, and considered the information contained in the EIR and hearing documents prior to denying the Proposed Project.

13. The EIR is a comprehensive, detailed, and complete document that discusses clearly the advantages and disadvantages of the environmentally superior alternatives, the Proposed Project, and other alternatives.

14. The EIR identifies significant impacts in three categories that cannot be avoided or substantially lessened. These categories are: (1) hazardous materials, public health and safety; (2) hydrology and water quality; and (3) noise.

15. The impacts identified in the EIR as significant and unavoidable are (1) the potential impact from gas leaking from the gas reservoir after re-pressurization of the Florin Gas Field for gas storage, (2) potential impacts to groundwater quality resulting from gas field operation and maintenance, and (3) construction activities at the wellhead site that would temporarily increase local noise levels.

16. There is a possibility that gas could migrate to the surface from around or through the cap rock, either through existing fractures or faults or other discontinuities in the cap rock.

17. If gas migrates to the surface, it could contaminate the groundwater aquifer or accumulate in structures and become an asphyxiant health hazard or explosive.

18. Migrating gas could concentrate within confined spaces such as manholes or utility bunkers and potentially asphyxiate a person entering the space.

19. Fugitive gas migrating near the surface could accumulate under impervious and semi-pervious pavement or concrete slabs underlying structures, streets, or parking lots and could migrate laterally within underlying porous materials such as gravel/sand layers beneath slabs, gravel/sand road base, or within the

gravel/sand material used to provide bedding for pipelines and trenches.

(Ref. Exh. B, Vol. 2 at D.6- 23.)

20. Contamination of the aquifer could impact the water quality of a major potable aquifer and require a prolonged period of remediation.

21. Gas migration could occur as the result of (1) degradation of cap rock due to cyclic loading associated with the gas storage process; (2) failure of the cap rock due to hydraulic fractures; (3) damage to the cap rock due to historical reservoir production; (4) gas migration through preexisting faults due to gas injection pressure changes; (5) gas seepage through the cap rock; or (6) lateral spreading of gas along the edges of the reservoir.

22. The pressure within the gas field at the projected storage capacity may exceed pressures of the original gas field by almost eight percent, but would remain within the standard industry practice.

23. While cyclic loading and unloading of the reservoir is not likely to degrade the cap rock, these conclusions have not been objectively demonstrated through laboratory testing.

24. Although mitigation measures would mitigate for any possible release of natural gas by requiring depressurization of the reservoir when monitoring equipment detects gas, it would take time to remediate the effects of any gas migration after gas is detected and the reservoir is depressurized.

25. The EIR determined that, with mitigation incorporated, approval of the Proposed Project would result in less than significant impacts in the areas of air quality, biological resources, cultural resources, geology and soils, land use planning, population and housing, public services and utilities, transportation and traffic, and visual resources.

26. In addition to the “no project” alternative, three alternative gas field locations (the Snodgrass Slough Gas Field, the Freeport Gas Field, and the Thornton Gas Field; collectively, the Alternative Gas Fields) and three alternative pipeline routes between the proposed wellhead site and proposed compressor station as identified by SNGS for the Proposed Project were fully evaluated in the EIR.

27. The Class 1 impacts identified in the EIR for the Proposed Project cannot be avoided or substantially lessened by any of the three alternative pipeline routes evaluated in the EIR.

28. Each of the Alternative Gas Fields has one or more Class 1 impacts.

29. The potential consequences of the Class 1 impacts identified for the Alternative Gas Fields are less than those of the Proposed Project because the Alternative Gas Fields are located in less populated areas and fewer people would be at risk.

30. The EIR recommends the Snodgrass Slough Gas Field as the environmentally superior alternative.

31. The annual cash flows after the first year of operation are -\$14.9 million, -\$13.5 million, and -\$18.3 million for the Snodgrass Slough, Freeport, and Thornton Gas Fields, respectively, and the annual cash flows after ten years of operation are -\$41.2 million, -\$39.7 million, and -\$39.5 million for the Snodgrass Slough, Freeport, and Thornton Gas Fields, respectively.

32. Net income after the first year of operation is -\$9.04 million, -\$8.83 million, and -\$7.89 million for the Snodgrass Slough, Freeport, and Thornton Gas Fields, respectively, and net income after ten years of operation is -\$132.65 million, -\$133.97 million, and -\$93.96 million for the Snodgrass Slough, Freeport, and Thornton Gas Fields, respectively.

33. The equity balances after ten years of operation are -\$114.13 million, -\$119.14 million, and -\$60.72 million for the Snodgrass Slough, Freeport, and Thornton Gas Fields, respectively.

34. There are no requests at this time from potential customers other than SMUD for the Proposed Project's storage services.

35. A "dry" gas field is a gas field with natural gas containing not more than 1.6 percent of certain produced hydrocarbons (ethane, propane, butane, and pentanes).

36. The Florin Gas Field is a "dry" gas field that produced natural gas containing 0.03 percent of produced hydrocarbons.

37. Natural gas would not be stored above ground at the Proposed Project, and neither methyl mercaptan nor natural gas liquids will be blended in bulk, or compressed, for the purpose of distribution by tank vessels, pipelines, tank cars, tank vehicles, or containers.

38. Public safety is the Commission's top priority.

39. Denying the application is consistent with the requirement that the Commission place safety as its top priority.

40. The probability of a curtailment or interruption that would significantly reduce the supply of gas delivered to SMUD is small.

41. In the event that gas to SMUD is curtailed or interrupted, SMUD has alternatives if the Proposed Project is denied to effectively respond to electricity demand.

42. The impact to SMUD's electricity generation caused by a gas curtailment or interruption do not justify exposing the public to the significant, unavoidable safety risks of the Proposed Project.

Conclusions of Law

1. Pursuant to the Commission's gas storage policy, the only showing of need required under § 1001 regarding demand for a competitive gas storage facility is a showing that the utility and customers agree to expanded storage service.

2. The 20-year gas storage agreement between SMUD and SNGS satisfies the showing of need required by the Commission's gas storage policy.

3. Public Utilities Code § 963 applies to this proceeding.

4. Pursuant to Public Utilities Code § 963(b)(3) the safety of the public and gas corporation employees is the Commission's top priority.

5. Section 101-02 of the Sacramento County Zoning Code does not apply to the proposed wellhead site because the wellhead site would be located entirely within the City.

6. All above-ground facilities of the Proposed Project area would be located in areas zoned for industrial uses, including the compressor station that will be located at Depot Park.

7. It is reasonable to conclude that the potential impact of a gas release remains significant and unavoidable because the consequences of such a gas release in a populated area could be very high.

8. It is reasonable to conclude that the potential impact of a gas release remains significant and unavoidable because the consequences of such a gas release into the groundwater aquifer could be very high and long lasting.

9. The unavoidable environmental impacts of the Proposed Project present an unacceptable safety risk to the public.

10. The Alternative Gas Fields are environmentally superior to the Proposed Project.

11. The Alternative Gas Fields (Snodgrass Slough, Freeport, and Thornton Gas Fields) are economically infeasible because they cannot produce a positive cash flow or net income, and are not capable of being constructed and operated in a successful manner within a reasonable amount of time. Compared to their potential profitability, the costs of constructing and operating the Alternative Gas Fields are sufficiently severe to render it impractical to proceed with their development.

12. The costs of the Alternative Gas Fields, compared to their potential profitability, are so great that an owner of a gas storage facility at any of the Alternative Gas Fields could never recover its investment, and no reasonably prudent person would proceed with the construction or development of the Snodgrass Slough, Thornton, or Freeport Gas Fields.

13. The Addendum clarifies the EIR but does not identify any new significant environmental effects or make any revisions that increase in the severity of previously identified significant effects.

14. The EIR properly relies on a clear statement of project objectives, pursuant to CEQA Guidelines § 15124(b).

15. The EIR adequately describes the physical environmental conditions in the vicinity of the Proposed Project for each area identified in the CEQA Guidelines § 21060.5 definition of “environment.”

16. The EIR provides sufficient information about the major characteristics and significant environmental effects of each Alternative Gas Field to allow meaningful evaluation, analysis, and comparison with the Proposed Project.

17. It is not necessary to conduct analyses of all aspects of the Alternative Gas Fields at the same level of detail as was done for the Proposed Project because the EIR provides sufficient information to determine that the Alternative Gas

Fields are environmentally superior to the Proposed Project, and are technically and legally feasible.

18. The EIR's analysis of the NPA accurately discusses what would be reasonably expected to occur in the foreseeable future if the Proposed Project were not approved.

19. The EIR does not require recirculation as a result of revisions made to the System Safety and Risk of Upset Report because the EIR does not disclose significant new information, and because the DEIR was adequately informative to permit meaningful public review and comment on the substantial adverse environmental effects of the Proposed Project.

20. The EIR appropriately identifies and analyzes the individual risk at the well site discussed in the appendices.

21. The EIR adequately discusses and analyzes the storage of methyl mercaptan at the wellhead site.

22. The EIR adequately addresses comments concerning impacts related to the integrity of abandoned wells because the EIR specifies that, if approved, DOGGR will require an examination of each plugged well during the well permitting process and will require remediation of any issues prior to storage of gas.

23. The evidence on the rate of leakage of abandoned wells in oil fields is not relevant to leakage rates for abandoned wells in gas fields, does not identify the failure rate of abandoned wells in gas fields such as the Florin Gas Field, or show that the failure rate of abandoned wells in gas fields is similar to that of abandoned wells in oil fields.

24. The EIR adequately addresses the impacts of construction and operation of monitoring wells.

25. The potential environmental impacts associated with serving customers other than SMUD are not reasonably foreseeable, and should not be considered in the EIR.

26. Because no potential customer other than SMUD has requested the services offered by the Proposed Project, no customer location(s) or potential pipeline routes to the location(s) can be determined at this time, and without such information identification and evaluation of potential environmental impacts would be purely speculative.

27. The EIR adequately addresses the impacts associated with storage of natural gas liquids at the wellhead site.

28. The EIR adequately responds to comments that allegedly propose potentially feasible mitigation measures to further reduce the impacts of the Proposed Project's pipeline segments.

29. Further mitigation of less-than-significant impacts is not required.

30. The EIR adequately responds to the comments of Greenberg, Robertson, and Shlemon, and explains in sufficient detail the reasons why specific comments and suggestions were not accepted.

31. The EIR as revised by the Addendum adequately discloses the main points of significant disagreement among experts concerning the risk of natural gas escaping from the Florin Gas Field through faults.

32. The EIR adequately addresses Robertson's erroneous assertion that the cap rock is unable to withstand the pressures at which gas would have to be injected into the Florin Gas Field to displace a 250-foot column of water.

33. The EIR discloses sufficient information to evaluate whether the Proposed Project may have a significant environmental impact on groundwater.

34. The EIR adequately discusses existing contaminated groundwater and associated remediation efforts.

35. The Proposed Project, if approved, would not disrupt or impact the groundwater remediation efforts at the former Sacramento Army Depot.

36. The recommendation that SNGS be required to post a bond in the event that the water basin becomes contaminated is not a mitigation measure because such a requirement would not mitigate the impacts of groundwater contamination.

37. The EIR adequately addresses the use of drilling mud and the potential for contaminating aquifers by the drilling mud.

38. The Proposed Project, and the wellhead site, in particular, would not be a "fuel storage yard", as defined by Sacramento City Code § 17.24.050.

39. The EIR adequately considers consistency between the Proposed Project and local land use policy as a factor in determining whether the Proposed Project may cause a significant effect on the environment.

40. The Proposed Project's wellhead site would be a utility facility to be located in an area designated as "Employment Center (Low Rise)."

41. The City of Sacramento 2030 General Plan allows quasi-public uses, including utility facilities, in areas designated as Employment Center Low Rise.

42. Land Use Policy 7.2.7 of the City of Sacramento 2030 General Plan applies to industrial uses but not to quasi-public uses, such as utility facilities.

43. The Proposed Project would be consistent with the Sacramento Zoning Code Employment Center designation.

44. The EIR adequately addresses the environmental impacts associated with abandonment of the Proposed Project because lead agencies may limit discussion

of effects that are not potentially significant to a brief explanation as to why those effects are not potentially significant.

45. The City of Sacramento 2030 General Plan Policy LU 1.1.13 provides that, where a discretionary permit is required, a development with a FAR at less than the required minimum may be deemed consistent with the General Plan if the use involves no building or by its nature normally conducts a substantial amount of its operations outdoors.

46. The Proposed Project would be consistent with the City of Sacramento 2030 General Plan minimum FAR.

47. The EIR adequately addresses the Proposed Project's consistency with the City of Sacramento 2030 General Plan, Environmental Resources Goal 1.1 (Water Quality Protection Goal).

48. The EIR adequately addresses the Proposed Project's consistency with the City of Sacramento's policy to avoid concentrating high-impact uses in minority neighborhoods.

49. Official notice should be taken of:

- (i) PG&E Gas Rule No. 1- Definitions (Schedule Cal. P.U.C. Sheet No. 21978-G,
(http://www.pge.com/tariffs/tm2/pdf/GAS_RULES_1.pdf));
- (ii) PG&E Gas Rule No. 14 - Capacity Allocation and Constraint of Natural Gas Service
(http://www.pge.com/tariffs/tm2/pdf/GAS_RULES_14.pdf);
- (iii) The 2007 IEPR (CEC-100-2007-008-CMF 2007 IEPR);
- (iv) Sacramento County Zoning Code, § 101-02 (Application of Code to County);
- (v) Sacramento City Council Resolution No. 2010-692, adopted November 30, 2010, and Exhibit A attached thereto adding Policy LU 1.1.13 to the City of Sacramento 2030 General Plan;

- (vi) Sacramento City Code § 17.20.010 (Established Zones) and § 17.56.010 (Employment Center Zone, Purpose); and
- (vii) The City of Sacramento report of construction permit activity in 1984 and 1985 for homes built in the South Country Estates Unit No. 2 residential subdivision.

50. The text revisions to the EIR made in response to comments on the DEIR do not change the project description.

51. Parties had an opportunity to submit comments and to make arguments concerning alleged errors contained in and the adequacy of the EIR, and the EIR's compliance with CEQA.

52. The EIR has been completed in compliance with CEQA.

53. The EIR reflects the Commission's independent judgment and analysis.

54. The quality of the information in the EIR is such that the Commission is confident of its accuracy, and the Commission has considered the information in the EIR in denying the Proposed Project.

55. SNGS's request for confidential treatment of its financial information should be granted, for a period of two years from the effective date of this decision: (i) Sheet 1 of Attachment B to the Motion for Protective Order, titled "California Natural Gas Storage, LLC (Parent) and Sacramento Natural Gas Storage, LLC (Wholly Owned Subsidiary) Consolidated Balance Sheet at March 31, 2007"; (ii) Sheet 2 of Attachment B to the Motion for Protective Order, titled "California Natural Gas Storage, LLC (Parent) and Sacramento Natural Gas Storage, LLC (Wholly Owned Subsidiary) Consolidated Statement of Income for the Period from January 1 to March 31, 2007"; (iii) Sheet 3 of Attachment B to the Motion for Protective Order, titled "California Natural Gas Storage, LLC (Parent) and Sacramento Natural Gas Storage, LLC (Wholly Owned Subsidiary) Notes to the Consolidated Financial Statements at March 31, 2007"; and

(iv) Sheet 4 of Attachment B to the Motion for Protective Order, titled “Sacramento Natural Gas Storage, LLC Project Financng [sic] Plan Summary.”

56. SNGS’s request for confidential treatment of the document titled, “Florin Gas Field Storage Rights Rental Report Sacramento County, California for California Natural Gas Storage, LLC” (Rental Report), and Exhibits 1 through 9 attached thereto, contained in Attachment B to the Motion for Protective Order should be denied because SNGS has already publicly disclosed this information, and, as a result, has waived any right to confidential protection of this information.

57. The Proposed Project should be denied because of its significant, unavoidable safety risks.

58. Application 07-04-013 should be closed.

59. The following Order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Application 07-04-013 is denied.
2. The Commission takes official notice of the following:
 - (i) Pacific Gas & Electric Company (PG&E) Gas Rule No. 1 - Definitions (Schedule Cal. P.U.C. Sheet No. 21978-G, (http://www.pge.com/tariffs/tm2/pdf/GAS_RULES_1.pdf));
 - (ii) PG&E Gas Rule No. 14 - Capacity Allocation and Constraint of Natural Gas Service, (http://www.pge.com/tariffs/tm2/pdf/GAS_RULES_14.pdf);
 - (iii) The 2007 Integrated Energy Policy Report (CEC-100-2007-008-CMF);
 - (iv) The 2011 Integrated Energy Policy Report, (CEC-100-2011-001-CMF);

- (v) Sacramento County Zoning Code, § 101-02 (Application of Code to County);
- (vi) Sacramento City Code § 17.20.010 (Established Zones) and § 17.56.010 (Employment Center Zone, Purpose);
- (vii) Sacramento City Council Resolution No. 2010-692, adopted November 30, 2010, and Exhibit A attached thereto adding Policy LU 1.1.13 to the City of Sacramento 2030 General Plan; and
- (viii) The City of Sacramento report of construction permit activity in 1984 and 1985 for homes built in the South Country Estates Unit No. 2 residential subdivision.

3. The Commission hereby certifies and adopts the Sacramento Natural Gas Storage Project Final Environmental Impact Report, State Clearinghouse No. 2007112089, as supplemented by the Addendum (EIR), and incorporates it by reference in this decision. In accordance with California Environmental Quality Act (CEQA) Guidelines § 15090, the Commission, as lead agency for the Proposed Project, certifies that:

- (i) The EIR has been completed in compliance with CEQA;
- (ii) The EIR was presented to the Commission, and the Commission has received, reviewed, and considered the information contained in the EIR and hearing documents prior to approving the Proposed Project; and
- (iii) The EIR reflects the Commission's independent judgment and analysis.

4. Sacramento Natural Gas Storage, LLC's (SNGS) request for confidential treatment of its financial information is granted, in part, for a period of two years from the effective date of this decision. During that period the information must not be made accessible or disclosed to anyone other than the 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. If SNGS believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion must be filed no later than one month before the expiration date. The financial information for which protection is granted is:

- (i) Sheet 1 of Attachment B to the Motion for Protective Order, titled "California Natural Gas Storage, LLC (Parent) and Sacramento Natural Gas Storage, LLC (Wholly Owned Subsidiary) Consolidated Balance Sheet at March 31, 2007";
- (ii) Sheet 2 of Attachment B to the Motion for Protective Order, titled "California Natural Gas Storage, LLC (Parent) and Sacramento Natural Gas Storage, LLC (Wholly Owned Subsidiary) Consolidated Statement of Income for the Period from January 1 to March 31, 2007";
- (iii) Sheet 3 of Attachment B to the Motion for Protective Order, titled "California Natural Gas Storage, LLC (Parent) and Sacramento Natural Gas Storage, LLC (Wholly Owned Subsidiary) Notes to the Consolidated Financial Statements at March 31, 2007"; and
- (iv) Sheet 4 of Attachment B to the Motion for Protective Order, titled "Sacramento Natural Gas Storage, LLC Project Financing [sic] Plan Summary."

5. Sacramento Natural Gas Storage, LLC's request for confidential treatment of the document titled, "Florin Gas Field Storage Rights Rental Report Sacramento County, California for California Natural Gas Storage, LLC" (Rental Report), and Exhibits 1 through 9 attached thereto, is denied.

6. Application 07-04-013 is closed.

This order is effective today.

Dated July 12, 2012, at San Francisco, California.

MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

I reserve the right to file a concurrence.

/s/ MARK J. FERRON
Commissioner

We reserve the right to file a dissent.

/s/ MICHAEL R. PEEVEY
Commissioner

/s/ TIMOTHY ALAN SIMON
Commissioner

ATTACHMENT A

Attachment A - Appearances

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<End of Attachment A>

**Concurrence of Commissioner Mark J. Ferron on Item 33/33a/33b (D.12-07-021)
Denial of Certificate of Public Convenience and Necessity
for Sacramento Natural Gas Storage**

In many ways, this decision was a close call, because we are evaluating two very small risks that are both difficult to quantify. On the one hand, the Sacramento Natural Gas Storage project would contribute to Sacramento Municipal Utility District's (SMUD) natural gas capacity needs, and thus provide some measure of increased reliability. On the other hand, as all three of decisions point out, there are significant, unavoidable environmental and safety risks to the existing Avondale Glen-Elder neighborhood and surrounding areas. These too are difficult to quantify or predict.

In all applications for a Certificate of Public Convenience and Necessity (CPCN), the burden of proof is on the applicant to demonstrate that the project is needed. In the past, this need has largely been **presumed** based on the 1993 Gas Storage Decision, which requires only that demand be demonstrated by the showing of an agreement between the storage utility and its customers for expanded storage service. However, given the severity of the risks of the proposed project and the relative health of today's statewide gas supply, I believe that we must go beyond this level of presumed need.

As both Commissioner Simon's and Commissioner Florio's alternates note, our responsibilities as the lead agency under CEQA require us to find "overriding considerations" that justify our approval of a project since there are significant and unavoidable impacts identified in the EIR. The justification for the approval of the Project in both the Proposed Decision and Alternate 33a is largely based on the local reliability for SMUD. While the Project no doubt would provide additional flexibility and reliability in the event of a curtailment of gas supplies, the probability of a curtailment is small. This storage facility may be quite desirable, but it clearly is not essential, and hence, in my view, there is no "overriding consideration" in favor of the project.

The final factor considered in Item 33b, which is absent from Items 33 and 33a, is the Commission's new responsibilities under Public Utilities Code 963(b)(3), which requires the Commission to consider the safety of the public and gas corporations as a "top priority." I believe that this is particularly relevant here, where the proposed project is located above a densely populated, residential neighborhood. To my knowledge such a location for a new facility is almost without precedent, and seems to be at variance with the gas industry's "best practice" from a safety perspective.

So in conclusion, I am voting today for Item 33b, which denies the application for a Certificate of Public Convenience and Necessity (CPCN) of Sacramento Natural Gas Storage, LLC. I have carefully considered this decision, and in the end, I am persuaded by the logic in Item 33b, which concludes that the environmental impacts and potential safety risks of the project outweigh the benefits. I agree with Commissioner Florio's decision, that the Commission does not have sufficient grounds to override the findings in the Environmental Impact Report, and on that basis, the project should be denied.

Dated July 12, 2012 in San Francisco.

/s/ MARK J. FERRON
Mark J. Ferron
Commissioner

Dissent of President Michael R. Peevey and Commissioner Timothy Alan Simon

By the Decision to deny the Sacramento Natural Gas Storage (SNGS) project, the majority overturned nearly 20 years of Commission policy not to regulate demand for independent non-core gas storage, especially in situations like SNGS where ratepayers are held harmless. CPUC Decision 93-02-013¹ concluded that the Commission should not be in the business of testing for need those new gas storage projects that serve non-core gas customers, as long as the risk of unused new capacity resides with the builders and users of the new facilities, including the risk that actual costs may exceed planning cost estimates.

The proposed project was needed to improve the reliability and operational flexibility of the Sacramento Municipal Utility District's (SMUD) energy system. SMUD and SNGS entered into a 20-year agreement for gas storage that would have been provided by the Proposed Project. To demonstrate its need, SMUD sent the Commission three letters expressly referencing their need for this project. Applicant SNGS clearly demonstrated, by way of the proceeding record, their right to a Certificate of Public Convenience and Necessity (CPCN), and this Commission should have let the City and County of Sacramento decide whether to allow the project. In not granting the CPCN, the majority abandoned the private sector/competitive model in favor of a heavy-handed regulatory intervention. This is an anti-business stance.

California imports more than 87 percent of its natural gas. California's reliance on imported natural gas leaves the state vulnerable to price shocks and supply disruptions². Reliability is the most important benefit of gas storage, and, in the event of an interruption in gas supply, local storage would have provided a critical backup. In

¹ D.93-02-013; 48 CPUC 2d 107. New Gas Storage program for the Unbundled Non-Core Storage Service.

² Integrated Energy Policy Report, 2009 at 33

addition to providing physical reliability, gas storage provides operational flexibility, a hedge against extreme prices, and the opportunity for price arbitrage.

The majority takes an expanded view of the question of need as it relates to reliability, and concludes that the project is a contingency plan for SMUD. This sets a bad precedent that undermines California's competitive gas storage policy, in which need is determined by the market. Our policy is that non-core gas storage decisions are a market function and not for the Commission to determine.

The majority also has a false understanding of gas storage and transmission system risk. The Final Environmental Impact Report³ (FEIR) concluded that the environmental risk of the project, that is, that gas would leak into the overlying groundwater aquifer, is unlikely to occur. The FEIR never concluded that gas migration to the overlying aquifer would never occur, but it was evident that gas migration to the Glen Elder aquifer is a remote possibility. Furthermore, if a migration were to occur, that migration would occur in geological time, on a scale of millions of years⁴. Using that FEIR conclusion to deny the SNGS project is "FEIR-abuse" and shows that the majority is willing to go far to halt a much-needed independent natural gas storage project for the state.

This raises the question of whether there should be a consistent, overriding policy on how the Commission should use a FEIR to grant or deny a CPCN when the FEIR clearly finds only a remote environmental impact and when the Commission is barred from inserting a necessity requirement for a non-core storage facility.⁵ The FEIR showed an environmental risk so small as to be inconsequential. There is a greater likelihood of harm from a Pacific Gas and Electric (PG&E) gas curtailment on a very hot, peak-demand day. Such a curtailment, resulting in a loss of air conditioning, would impose a high risk of health consequences for the elderly, medical baseline customers and people

³ SNGS Final Environmental Impact Report, Sections D.6-27 and D.7-23

⁴ Geological time is measured in millions of years, while human history is measured in hundreds and thousands of years. *Earth's Evolving Systems*. Martin, Ronald; Chapter 18, page 620, (2012, Jones & Barlett, Burlington, MA).

⁵ D. 92-03-013

A. 0704013, Decision 12-07-021

with limited mobility in the Sacramento area. The majority chose to ignore this higher relative risk and instead deny the project based upon de minimis risk, in effect discarding objectivity for emotion. This is evident in the reference to the 2010 San Bruno disaster as a "game changer," although what happened in San Bruno has no technical relevance to Sacramento.

There is a significant difference between the San Bruno pipeline and the SNGS project. The San Bruno pipes were installed in 1956 with what has been admitted by PG&E and found by the National Transportation Safety Board to be faulty welds and inadequate safety protocols. Pipeline installation requirements have greatly changed since that time. Installation material, procurement knowledge, and testing have improved substantially since 1956. Under national safety standards, all new pipes must have superior quality steel and go through post-construction pressure testing. Also, new pipes are easily identified and tested by their source, batch number, tracking number, plate, and code. Similarly, new transmission pipes are typically adaptable to advanced pipeline inspection tools.

We want to point out that the SNGS project would have been the model for pipeline safety and reliability. The Simon Alternate Proposed Decision approving the project (the Alternate) incorporated recently-enacted safety legislation signed by Governor Jerry Brown. Under the Simon Alternate, the abandoned Florin gas field, which remains unmonitored, would have been subject to ongoing monitoring by SNGS and stricter safety requirements. The majority imposed a standard by this decision that could jeopardize future market-based energy infrastructure projects, with no substantial showing of cause.

Under the Simon Alternate, the SNGS project would have been an excellent example of corporate social responsibility, since the developer would share profits with the local community. The project would have created 200 well-paid and largely unionized construction jobs and 15 full-time positions⁶. Additionally, the Alternate would have

⁶ Sacramento Natural Gas Storage Applications, pages 19-20.

A. 0704013, Decision 12-07-021

required pollution insurance and a surety bond, and encouraged scholarship opportunities for underserved applicants and corporate engagement with the local park services.

As California faces a difficult economy, granting a CPCN for new infrastructure that would have added jobs, increased the state's tax base, and improved energy reliability would have been the right public policy for California. The majority undoubtedly felt that they acted in the public interest. We believe they did the opposite.

For these reasons, we supported the Simon Alternate Proposed Decision and dissent from the majority decision.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey

President

/s/ TIMOTHY ALAN SIMON

Timothy Alan Simon

Commissioner

San Francisco, California Dated July, 2012