

Decision 08-04-033 April 10, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Lodi Gas Storage, L.L.C., Western Hub Properties L.L.C., and WHP Acquisition Company, LLC, to Transfer Control of Lodi Gas Storage, L.L.C. to WHP Acquisition Company, LLC, Which Will Occur Indirectly as a Result of the Purchase of Western Hub Properties L.L.C. by WHP Acquisition Company, LLC, Pursuant to Public Utilities Code Section 854(a) and of Lodi Gas Storage, L.L.C. for Approval of a Secured Long-Term Financing Pursuant to Public Utilities Code Sections 816, 817, 818, 823 and 851.

Application 01-09-045
(Filed September 28, 2001)

Joint Application of Lodi Gas Storage, L.L.C. (U-912-G), Western Hub Properties L.L.C. and WHP Acquisition Company II, L.L.C. for Expedited *Ex Parte* Authorization to Transfer Western Hub Properties' Control of Lodi Gas Storage, L.L.C. to WHP Acquisition Company II, L.L.C. Through the Sale of Western Hub Properties' 50% Interest in Lodi Holdings, L.L.C. to WHP Acquisition Company II, L.L.C., Pursuant to Public Utilities Code Section 854(a).

Application 05-08-031
(Filed August 24, 2005)

**ORDER GRANTING MOTION FOR CONSOLIDATION OF APPLICATIONS
AND PETITIONS FOR MODIFICATION OF DECISIONS 03-02-071
AND 05-12-007 PURSUANT TO A SETTLEMENT
APPROVED IN DECISION 08-01-018**

Summary

In this decision, we grant two separate motions to consolidate Applications (A.) 01-09-045 and A.05-08-031, motions that were filed on February 14, 2008 by

Lodi Gas Storage, L.L.C. (LGS). In addition to these motions, we grant two petitions for modification that LGS filed along with the motions to consolidate. The first petition for modification requests the deletion of Ordering Paragraph (OP) 3(c) from Decision (D.) 03-02-071 (the decision that granted A.01-09-045), and the second petition seeks the deletion of OP 3(b) from D.05-12-007 (the decision that granted A.05-08-031). As explained below, LGS's agreement to file these petitions for modification was a condition of the settlement that we recently approved in D.08-01-018, and granting the petitions is consistent with the policy discussion in that decision.

Procedural Background

As LGS explains in its petitions for modification,¹ the OPs that LGS is seeking to delete were imposed in decisions that approved the separate transfers of two 50% interests in LGS's owner, Lodi Holdings, L.L.C. (Lodi Holdings), from the original owner of Lodi Holdings, Western Hub Properties, LLC (Western Hub), to two new owners, WHP Acquisition Company, LLC (WHP I) and WHP Acquisition Company II, L.L.C. (WHP II). The first 50% transfer was approved in D.03-02-071, and the second 50% transfer was approved in D.05-12-007. As noted in the latter decision, WHP I and WHP II were both wholly-owned subsidiaries of partnerships managed by a Boston firm, ArcLight Capital Partners, L.L.C., and the practical effect of the two transfers was "to bring Lodi Holdings and LGS under unified control and management." (D.05-12-007, p. 2.)

¹ The petitions to modify D.03-02-071 and D.05-12-007 each state in footnote 1 that apart from different captions, the two petitions are identical to each other.

In its petitions for modification, LGS gives the following explanation of how the OPs it is now seeking to delete initially came about:

“LGS was originally granted a Certificate of Public Convenience and Necessity in D.00-05-048 to construct and operate the Lodi Gas Storage Facility. LGS was originally owned by [Western Hub]. In D.00-05-048, the Commission found that LGS did not have market power and, as such, permitted LGS to charge market-based rates.

“In A.01-09-045, LGS requested authority to transfer control of a 50% interest in LGS to [WHP I]. Although the Application was unopposed, the Commission discussed perceived changes in the natural gas storage market and, referencing a similar requirement adopted for Wild Goose Storage, Inc. (‘Wild Goose’) in D.02-07-036, imposed similar reporting requirements in D.03-02-071, on LGS [in OP 3(c)].

“Subsequently, LGS filed A.05-08-031 requesting authority to transfer the remaining 50% interest in LGS held by [Western Hub] to [WHP II]. In D.05-12-007, the Commission approved that transfer of control and incorporated the reporting obligations from D.03-02-071 in [OP] 3(b). Other than changes of the names of the new owners, this [OP] substantively repeated the language from D.03-02-071.” (Petitions for Modification, pp. 2-3.)

In A.07-07-025, which LGS and other applicants filed in Summer 2007, the applicants sought authority to transfer 100% of LGS to a new owner, Buckeye Gas Storage LLC (Buckeye). As explained in D.08-01-018 (which approved the settlement reached in A.07-07-025), Buckeye is owned by Buckeye Partners, L.P., a publicly-traded entity on the New York Stock Exchange (NYSE). Buckeye Partners, L.P. is a partnership, the general partner of which is also owned by another entity listed on the NYSE. As D.08-01-018 noted, the stated purpose of the transfer was to give LGS “long-term financial stability and capital for expansion plans” by transferring ownership to a publicly-traded company with

access to lower-cost capital, a move that would also provide a return on investment to the investors who had participated in the partnerships managed by ArcLight Capital Partners, L.L.C.

The OPs that LGS is now moving to delete require LGS to report to the Commission on changes in the gas storage market that might be relevant to the issue of market power, the absence of which was – as noted above -- the justification for granting LGS the authority to charge market-based rates, rather than rates set by the Commission. For example, OP 3(c) in D.05-12-007 requires LGS to:

“Provide prompt disclosure of the following changes in status that reflect a departure from the characteristics the California Public Utilities Commission has relied upon in approving market-based pricing for LGS: (i) the purchase by LGS of natural gas facilities, transmission facilities, or substitutes for natural gas, such as liquefied natural gas facilities; (ii) an increase in the storage capacity or in the interstate or intrastate transmission capacity held by affiliates of LGS’s ultimate parents, ArcLight Energy Partners Fund I, L.P. (ArcLight Fund I) and ArcLight Energy Partners Fund II, L.P. (ArcLight Fund II), or their respective successors; or (iii) a merger or other acquisition involving ArcLight Fund I or ArcLight Fund II, or their respective affiliates or successors, and any other entity that owns gas storage or transmission facilities, or facilities that use natural gas as an input, such as electric generation.”

The reason LGS is seeking to be relieved of this reporting requirement is that it is now subject to an even broader reporting requirement imposed as a result of the settlement entered into with the Division of Ratepayer Advocates (DRA) in A.07-07-025. Condition 3 of that settlement - which is set forth in full in Appendix A to D.08-01-018 - requires LGS to begin reporting, on the first April 30 or October 31 that occurs at least 30 days after the issuance of a

Commission decision approving the deletion of OP 3(b) from D.03-02-071 and OP 3(c) from D.05-12-007, a broad array of information:

“Semi-annually, on April 30 and on October 31, [LGS] shall report to the Director of the Commission’s Energy Division, with a copy to [DRA], the following information about transactions which are not already subject to Sections 852 and 854 of the Public Utilities Code: (a) the identity of any affiliate that directly or indirectly has acquired or has made an investment resulting in a controlling interest or effective control, whether direct or indirect, in an entity in California or elsewhere in Western North America that produces natural gas or provides natural gas storage, transportation or distribution services; and (b) the identity of any affiliate that directly or indirectly has acquired or has made an investment resulting in a controlling interest or effective control, whether direct or indirect, in an entity in California or elsewhere in Western North America that generates electricity, or provides electric transmission or distribution services. Information reported pursuant to subsections (a) and (b) shall include the nature (including name and location) of the asset acquired or in which the investment was made, and the amount of the acquisition or investment. For the purposes of this Condition, the following definitions apply: ‘affiliate’ means any direct or indirect parent entity of [LGS], any entity controlled by [LGS] whether directly or indirectly, any entity under common control with [LGS] by a direct or indirect parent entity (e.g. any subsidiary of any [LGS] parent entity); and ‘Western North America’ is defined to mean, in addition to California, the states of Oregon, Washington, Arizona, New Mexico, Texas, Nevada, Colorado, Wyoming and Utah, as well as the provinces of British Columbia and Alberta in Canada and the State of Baja California Norte in Mexico.”²

² In addition to the substantive reporting requirement quoted above, Condition 3 of the settlement requires LGS to file the petitions for modification seeking the deletion of OPs 3(b) and 3(c) within 30 days after issuance of a Commission decision approving the

Footnote continued on next page

As we stated in approving this condition in D.08-01-018, the requirement that LGS report more broadly on “acquisitions by itself or its affiliates of investments in natural gas production, storage, transportation or distribution, or in electric generation, transmission or distribution” is reasonable, because the markets to which these reporting requirements pertain “are apparently becoming more concentrated,” even though it was the perceived absence of market power that originally persuaded us to grant LGS the authority to charge market-based rates for its services. (D.08-01-018, p. 22.) We also note that in its petitions for modification here, LGS has sought only the deletion of OP 3(b) from D.03-02-071 and OP 3(c) from D.05-12-007, just as Condition 3 requires.

In view of the facts that (1) the filing of these petitions for modification was part of the settlement agreed to in A.07-07-025, (2) LGS has filed petitions for modification seeking only the relief specified in Condition 3 of that settlement, and (3) we have previously concluded that the broader reporting requirements imposed by Condition 3 confer a benefit, we will grant the two petitions for modification that LGS has filed. In addition, we will grant LGS’s motions to consolidate A.01-09-045 and A.05-08-031, since (1) both of these proceedings are being reopened solely for the purpose of dealing with the petitions for modification, and (2) granting the motion to consolidate will obviate the need for issuing two decisions.

Waiver of Comments on Proposed Decision

As explained above, this Proposed Decision (PD) grants the relief requested in an uncontested matter. Under Rule 14.6(c)(2) of the Rules of

settlement, and limits the relief that may be sought in the petitions to the deletion of these two OPs.

Practice and Procedure, the Commission may waive the otherwise applicable 30-day period for public review and comment of a PD in such circumstances, and it is appropriate to grant such a waiver here.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner in A.01-09-045, and John A. Bohn is the assigned Commissioner in A.05-08-031. A. Kirk McKenzie is the assigned Administrative Law Judge (ALJ) for both proceedings.

Findings of Fact

1. In D.03-02-071, in which the transfer of a 50% interest in the parent of LGS was approved, the Commission ordered in OP 3(b) that LGS must report on changes in the characteristics of the gas storage market that had been relied upon in granting LGS market-based pricing authority. These changes included increases in LGS' own storage capacity and facilities, as well as acquisitions and mergers involving LGS's ultimate parents.

2. In D.05-12-007, in which the transfer of the other 50% interest in the parent of LGS was approved, the Commission ordered in OP 3(c) that LGS must continue to report on changes in the characteristics of the gas storage market that had been relied upon in granting LGS market-based pricing authority.

3. In D.08-01-018, the Commission approved a settlement between the joint applicants and DRA containing five conditions, the third of which broadened LGS's obligation to report on changes in the gas storage market that had been imposed by OP 3(b) of D.03-02-071 and OP 3(c) of D.05-12-007.

4. As part of the third condition of the settlement approved in D.08-01-018, LGS agreed to file petitions for modification seeking the deletion of OP 3(b) from D.03-02-071 and OP 3(c) from D.05-12-007.

Conclusions of Law

1. LGS' motions for consolidation of A.01-09-045 and A.05-08-031 should be granted, because (a) these proceedings are being reopened solely for the purpose of dealing with the petitions for modification described above, and (b) granting the motions to consolidate will permit the issuance of a single decision covering both dockets, rather than two, essentially identical decisions in the two separate dockets.

2. The petitions for modification filed by LGS on February 14, 2008, which petitions seek the deletion of OP 3(b) from D.03-02-071 and the deletion of OP 3(c) from D.05-12-007, should be granted, because these petitions are consistent with the requirements of the settlement approved in D.08-01-018.

O R D E R

IT IS ORDERED that:

1. The motions to consolidate Application (A.) 01-09-045 and A.05-08-031, which motions were filed on February 14, 2008 by Lodi Gas Storage, L.L.C. (LGS), are hereby granted.

2. The petitions for modification filed by LGS on February 14, 2008, which petitions seek the deletion of Ordering Paragraph (OP) 3(b) from Decision (D.) 03-02-071, and the deletion of OP 3(c) from D.05-12-007, are hereby granted.

3. A.01-09-045 and A.05-08-031 are closed.

This order is effective today.

Dated April 10, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH

JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners