

Decision **PROPOSED DECISION OF ALJ WILDGRUBE (Mailed 2/10/2016)****BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of Central Valley Gas Storage, LLC (U915G), AGL Resources Inc. and The Southern Company for Expedited Ex Parte Authorization to Transfer Ownership of Central Valley Gas Storage, LLC to The Southern Company.

Application 15-11-011
(Filed November 9, 2015)

**DECISION APPROVING CHANGE IN OWNERSHIP AND CONTROL OF
CENTRAL VALLEY GAS STORAGE, LLC****Summary**

This decision approves the application of Central Valley Gas Storage, LLC (Central Valley), AGL Resources Inc. (AGLR), and The Southern Company (Southern) (collectively, Joint Applicants) for a change in the ultimate ownership and control of Central Valley from AGLR to Southern. In addition to approving the proposed transfer, we conclude that the transactions underlying the transfer qualify for an exemption from the California Environmental Quality Act. Accordingly, additional environmental review is not required.

1. Procedural Background

In Decision (D.) 10-10-001, the Commission granted Central Valley Gas Storage, LLC (Central Valley), a certificate of public convenience and necessity (CPCN) for the construction and operation of an underground natural gas storage facility in Colusa County, including a 14.7-mile pipeline to connect with

Pacific Gas and Electric Company's (PG&E) natural gas transmission system. The CPCN was subject to certain conditions, including the requirement that Central Valley provide specified reports to Commission Staff and maintain \$50 million of general liability insurance per occurrence and in the aggregate. The Commission also authorized Central Valley, a new public utility under Public Utilities Code Sections 216 and 222, to charge market-based rates. Finally, D.10-10-001 certified the Mitigated Negative Declaration for the facility and pipeline and authorized the issuance of a Notice of Determination for the Project pursuant to the California Environmental Quality Act (CEQA).

On January 25, 2011, Central Valley, Nicor Inc. (Nicor), and AGL Resources Inc. (AGLR) filed Application (A.) 11-01-021. The application did not seek to transfer Central Valley's CPCN or modify the conditions imposed on Central Valley in D.10-10-001. Rather, it sought authorization for an indirect change in control of Central Valley as the result of a proposed merger between Nicor and AGLR. The Commission granted the application by D.11-05-030 and concluded that the transactions underlying the transfer qualified for an exemption from CEQA.

On August 23, 2015, AGLR and The Southern Company (Southern) executed a Merger Agreement which provides AGLR will become a wholly owned subsidiary of Southern.

On November 9, 2015, Joint Applicants filed the current application. Like Application (A.) 11-01-021, it does not seek to transfer Central Valley's CPCN or modify the conditions imposed on Central Valley in D.10-10-001. Rather, it seeks authorization for an indirect change in control of Central Valley as the result of a proposed merger between AGLR and Southern.

Wild Goose Storage LLC (Wild Goose) filed the only response to the application. Wild Goose is not opposed to the application and stated it only intends to actively participate in the proceeding if it raises issues of broad applicability to Wild Goose and the other California independent storage providers concerning the transfer of control pursuant to Public Utilities Code Section 854(a).

A duly noticed prehearing conference was held on January 14, 2016 and a scoping ruling was issued January 26, 2016. As agreed by the parties, no further briefing is needed.

2. Application 15-11-011

The Joint Applicants filed A.15-11-011 on November 9, 2015. Notice of the Application was first published in the Commission's Daily Calendar on November 19, 2015. The Application seeks authorization for an indirect change in control of Central Valley as the result of a proposed merger between AGLR and Southern.

2.1. The Applicants

Central Valley is a Delaware limited liability company and is duly registered to transact business in California. Its principal place of business is Lisle, Illinois.

Central Valley owns and operates an 11 billion cubic foot underground natural gas storage field within the Princeton Gas Field and a natural gas pipeline extending approximately 14.7 miles from the storage field to an interconnection with the metering station and PG&E's Line 400/401 gas transmission pipeline. Central Valley commenced commercial operation in March 2012.

AGLR is a Georgia corporation headquartered in Atlanta, Georgia. AGLR's principal business is the distribution of natural gas through public utility

operating companies in seven states. Through its non-utility subsidiaries, AGLR also is involved in several other businesses, including: retail natural gas marketing to end-use customers; natural gas asset management and related logistics activities for certain of its utilities and nonaffiliated companies; natural gas storage arbitrage and related activities; and the development and operation of high-deliverability natural gas storage assets.

Southern is an Atlanta-based public utility holding company currently providing electric utility service through four state-regulated operating companies in Alabama, Florida, Georgia and Mississippi.

2.2. The Proposed Transaction

Joint Applicants seek Commission authorization for a change in the ultimate ownership and control of Central Valley from AGLR to Southern as a result of an agreement and plan of merger between Southern, AMS Corp., and AGLR (the Merger Agreement).

Since receiving its CPCN, Central Valley has been a subsidiary of Nicor Energy Venture Company. At the time the CPCN was granted, Nicor Energy Venture Company was a wholly-owned subsidiary of Nicor, Inc. Following the merger approved by D. 11-05-030, Nicor Energy Venture Company became a subsidiary of Ottawa Acquisition LLC, which in turn is a subsidiary of AGLR.

Under the current Merger Agreement, Southern will acquire AGLR by purchasing all of its common stock. AMS Corp., a wholly-owned subsidiary of Southern, will be merged into AGLR, with AGLR the surviving corporation. Upon completion of the merger, although AGLR will continue to exist as a distinct corporate entity, it will no longer be a publicly traded company. Instead, AGLR will be a wholly-owned first-tier corporate subsidiary of Southern.

Central Valley's position within AGLR's corporate structure will remain unchanged.

Central Valley will continue to be a wholly owned subsidiary of Nicor Energy Venture Company, a wholly owned subsidiary of Ottawa Acquisition LLC, which in turn is a subsidiary of AGLR. The sole change will be that AGLR will be a wholly owned subsidiary of Southern.

2.3. Requested Authority

The Joint Applicants submit their application pursuant to Public Utilities Code Section 854.

California Public Utilities Code Section 854(a) requires authorization from the Commission before a company may "merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state . . ." The purpose of this and related sections is to enable the Commission to review proposed transactions and to take action in the public interest, as a condition of the transfer, before any transfer of public utility authority is consummated.¹ Absent prior Commission approval, § 854(a) provides the transaction is "void and of no effect."

2.4. Compliance With Rule 3.6

California Public Utilities Commission Rules of Practice and Procedure, Rule 3.6² sets forth requirements for an application to acquire or control a utility. The application complies with those requirements.

The most recent Annual Report to Shareholders, proxy statement, and financial statements from the Annual Report on Form 10-K for AGLR are attached to the application as Exhibit 3, Exhibit 4, and Exhibit 5, respectively. The most recent Annual Report to shareholders, proxy statement, and financial

¹ See *San Jose Water Co.* (1916) 10 CRC 56.

² Title 20, California Code of Regulations.

statements from the Annual Report on Form 10-K for Southern are attached to the application as Exhibit 6, Exhibit 7, and Exhibit 8, respectively.

A copy of the Agreement and Plan of Merger is submitted with the Application as Exhibit 9. Pursuant to the terms of the Merger Agreement and subsequent to obtaining all applicable regulatory approvals, Southern will acquire AGLR by purchasing its common stock at a price of \$66 per share. To finance this purchase, Southern plans to issue approximately \$3 billion in new Southern equity between now and the end of 2019 and to issue approximately \$5 billion in new debt at the Southern level.

3. Discussion

3.1. Standard of Review

The standard generally applied by the Commission to determine if a transaction should be approved under § 854(a) is whether the transaction will be “adverse to the public interest.”³ While on occasion the Commission has also inquired whether a transfer will provide positive ratepayer benefits, this additional assessment cannot be applied readily to an entity like Central Valley, which is not a traditional investor-owned public utility with captive ratepayers. In fact, the Commission has not considered “ratepayer benefits” in its review of other change of control applications by independent gas storage providers.⁴

Public Utilities Code Section 854, subsections (b) and (c) do not apply to this transaction because, according to Joint Applicants, neither AGLR, Southern,

³ See, for example, *Quest Communications Corp.*, D.00-06-079, 2000 Cal. PUC LEXIS 645, *18. This is also the standard applied by D.03-06-069 (2002 CalPUC LEXIS 975), in which the Commission authorized the transfer of control to EnCana, and by D.05-12-007 (2005 CalPUC LEXIS 527), which authorized the transfer of a 50% interest in the parent of Lodi Gas Storage, L.L.C.

⁴ See, D.11-05-030 (2011 Cal. PUC LEXIS 284) and D.14-12-013 (2014 Cal. PUC LEXIS 587).

nor any of either company's affiliates has gross annual California revenues exceeding \$500 million.

3.2. The Proposed Transaction Is Not Adverse to the Public Interest

The Commission has previously expressed its intent to exercise its regulatory authority to review and approve proposals for a change in control of California's independent gas storage providers and stated:

We think it prudent public policy to review and approve changes in the ownership and control of certificated natural gas storage utilities, whether those changes occur directly, or indirectly through corporate intermediaries. Such review should help to ensure the continued economic viability of such utilities and to prevent market manipulations that may affect not only their own customers but also larger ratepayer groups.⁵

In this instance, Central Valley's proposed change in ownership is due to the proposed merger of AGLR and Southern. This proposed merger is not anticipated to have an impact on Central Valley's operations, and Central Valley will continue to be responsible for operating and maintaining safety and environmental oversight under its CPCN. After the transaction is completed, Central Valley will continue to hold the CPCN for its storage facility issued in D.10-10-001 and will continue to be bound by the terms and conditions of its CPCN.

The proposed indirect change of control will also not affect Central Valley, its customers nor the market place. Joint Applicants state:

Notwithstanding the indirect change in ownership, Central Valley will continue to operate as an independent natural gas storage provider subject to the jurisdiction of the Commission. In addition, the

⁵ D.05-12-005, 2005 Cal PUC LEXIS 527 quoting D.03-02-071, 2003 CalPUC LEXIS 133.

transaction will not result in the transfer of any certificates, assets or customers of Central Valley.⁶

Joint Applicants state that an affiliate of Central Valley, Sequent Energy Management (Sequent), has, since Central Valley's CPCN application filing and subsequent transfer of ownership to AGLR, entered into a small number of gas storage and gas transportation transactions on the West Coast.⁷ However, neither Southern nor its affiliates own gas storage facilities and pipeline assets in California or the West Coast, hold any firm natural gas storage capacity rights in California or the West Coast, or hold any natural gas transportation capacity in California.⁸ Therefore, the proposed transaction will have no significant impact on competition or the marketplace.

These transactions do not provide Sequent, Central Valley or any other affiliates with control of gas storage assets amounting to market power. In light of the foregoing, the merger will have no significant impact on competition in the relevant marketplace.

The application acknowledges the Commission required, by D.10-10-001, Central Valley to maintain \$50 million of general liability insurance per occurrence and in the aggregate (with certain inflation adjustments) and to obtain the insurance either directly or through Nicor. AGLR assumed this responsibility from Nicor, pursuant to the Commission's approval of Central Valley's transfer of ownership from Nicor to AGLR by D.11-05-030. Under the terms of the

⁶ Application at 2.

⁷ The application states Sequent has two storage contracts in California, one at PG&E's Citygate and the other at Southern California Gas Company's (SoCalGas) Citygate. Both are for 2 Bcf Maximum Storage Quantity, expiring March 31, 2016. Sequent also states it has a storage services master agreement with Central Valley but does not currently have any active storage transactions there. Along with being active in the daily interruptible transmission capacity market on PG&E's system, Sequent also holds transportation capacity on Kern River Gas Transmission with firm deliveries into SoCalGas' system at Kramer and Wheeler Ridge points, expiring April 30, 2018. In addition, Sequent delivers landfill gas into California.

⁸ Application at 11.

proposed transaction, Southern will replace AGLR as Central Valley's ultimate parent and, therefore, Southern shall replace AGLR as the responsible party and shall be authorized to obtain insurance on behalf of Central Valley.

Central Valley will benefit from Southern's combination with AGLR. The merger will combine two companies with complementary expertise and skill sets and will create a combined company with a more geographically diverse footprint. The overall size of the combined company and Southern Company's strong financial position is anticipated to be beneficial to AGLR and Central Valley. The Joint Applicants anticipate the combined company will have the financial resources to enable Central Valley to continue to meet all of its capital needs and to continue providing provide safe and reliable services to California customers.

Finally, the merger will have no adverse impact on safety. Central Valley will continue to function as an independent natural gas storage provider and the existing operating staff will continue to oversee day-to-day activities. Operations will remain consistent with current safety standards and Central Valley's Revised Natural Gas System Operator Safety Plan.

The change of ownership and control may be completed and future operations conducted with the assurance that it is not adverse to the public interest. The Merger Agreement is essentially a "paper" transaction which can be accomplished without any effect on Central Valley's operations and without a significant impact on competition in the relevant marketplace. Central Valley will continue to operate as an independent natural gas storage provider subject to the jurisdiction of the Commission in the same manner it does today. Therefore, the transaction is not adverse to the public interest.

4. California Environmental Quality Act Compliance

Under to the California Environmental Quality Act (CEQA)⁹ and Rule 2.4 of the Commission's Rules of Practice and Procedure, we are required to consider the environmental consequences of projects that are subject to our discretionary approval.

We acknowledge that in some cases, it is possible that a change of ownership and/or control may alter an approved project, result in new projects, or change facility operations in ways that have an environmental impact. However, Joint Applicants state that the transaction at issue involves the indirect transfer of ownership of Central Valley as a result of the proposed merger. This transfer of ownership will not result in any direct or indirect change in the environment. Further, Joint Applicants note that Central Valley will continue to be obligated to operate its storage facility in the manner approved in D.10-10-001 and comply with all environmental conditions imposed in its CPCN and the Mitigated Negative Declaration.¹⁰

We conclude that under these circumstances, the proposed project qualifies for an exemption from CEQA pursuant to § 15061(b)(3) of the CEQA guidelines¹¹ as it can be seen with certainty that the project will have no significant impact upon the environment. Therefore, the Commission need perform no further environmental review for this application.

5. Conclusion

We find that the Application should be approved. This approval does not modify in any way the terms and conditions associated with the CPCN granted to Central Valley in D.10-10-001. However, once indirect ownership and control

⁹ Public Resources Code § 21000 *et seq.*

¹⁰ See Application at 12-14.

¹¹ Title 14, California Code of Regulations, § 15000 *et seq.*

of Central Valley is transferred from AGLR to Southern, Southern shall assume responsibility for all obligations imposed on Nicor in D.10-10-001, including the requirement to obtain, if Central Valley cannot, an insurance policy to provide \$50 million (as adjusted) of general liability insurance coverage on behalf of Central Valley.

6. Categorization and Need for Hearing

In Resolution ALJ 176-3368, the Commission preliminarily determined the category of this proceeding to be ratemaking, and that a hearing was not necessary. We affirm that categorization.

7. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Eric Wildgrube is the assigned Administrative Law Judge in this proceeding.

8. Comments on Proposed Decision

As provided by Rule 14.3 of our Rules of Practice and Procedure and Pub. Util. Code § 311(g)(1), the proposed decision of the Administrative Law Judge in this matter was mailed to the parties on ~~_____~~ [February 10, 2016](#). Comments [to the proposed decision](#) were ~~not~~ filed ~~on _____~~, and ~~reply~~ ~~comments were filed on _____~~ by ~~_____~~.

Findings of Fact

1. Central Valley is a Delaware limited liability company and is duly registered to transact business in California. Its principal place of business is Lisle, Illinois.
2. Central Valley was issued a CPCN in D.10-10-001.
3. The Application seeks authorization for an indirect change in control of Central Valley as the result of a proposed merger between AGLR and Southern.

4. Neither AGLR, Southern, nor any of either company's affiliates has gross annual California revenues exceeding \$500 million.

5. Central Valley is a wholly-owned subsidiary of Nicor Energy Venture Company, which is a wholly owned subsidiary of Ottawa Acquisition LLC, which is a wholly owned subsidiary of AGLR.

6. On August 23, 2015, AGLR and Southern executed a Merger Agreement which provides AGLR will become a wholly owned subsidiary of Southern.

7. Under the Agreement and Plan of Merger, Central Valley will become an indirect wholly-owned subsidiary of Southern.

8. The proposed transfer will result in the change of ownership and control of Central Valley but will not result in the transfer of any certificates, assets or customers. Central Valley will continue to be bound by the terms and conditions prescribed by the Commission in D.10-10-001.

9. The proposed transfer will not result in any change to the services provided by Central Valley, or to the rates or terms and conditions under which services are provided.

10. The proposed transaction is not anticipated to have an impact on Central Valley's operations.

11. Neither Southern nor any of its subsidiaries own gas storage facilities or pipeline assets in California or the West Coast.

12. The proposed transaction will have no significant impact on competition or the marketplace.

13. The proposed transaction will not have an adverse effect on the public interest.

14. The proposed transaction will have no adverse impact on safety.

15. Central Valley will continue to operate as an independent natural gas storage provider subject to the jurisdiction of the Commission.

16. This change of ownership and control will have no significant effect on the environment since Central Valley will continue to be operated as previously authorized by this Commission, including all environmental mitigation measures and all monitoring requirements and restrictions imposed in D.10-10-001.

Conclusions of Law

1. Central Valley is subject to the Commission's jurisdiction and will continue to be subject to jurisdiction of the Commission in the same manner as it is today.

2. Public Utilities Code Section 854(a) provides that no person or corporation shall merge, acquire, or directly or indirectly control a public utility organized and doing business in California without first securing authorization from the Commission.

3. The transaction proposed constitutes a change of control, within the meaning of Public Utilities Code Section 854.

4. The standard generally applied by the Commission to determine if a transaction should be approved under Section 854(a) is whether the transaction will be "adverse to the public interest."

5. The Application should be granted under Public Utilities Code Section 854(a).

6. Public Utilities Code Section 854, subsections (b) and (c) do not apply to this transaction.

7. Central Valley should continue to be bound by the terms and conditions imposed on it as part of the CPCN granted in D.10-10-001.

8. Upon completion of the proposed transaction, Southern should be authorized to replace AGLR as the responsible party who may obtain the general insurance required in D.10-10-001 on behalf of Central Valley.

9. This change of control qualifies for an exemption from CEQA under CEQA guidelines § 15061(b)(3) and therefore, additional environmental review is not required.

10. The preliminary determinations in Resolution ALJ 176-3368 should be confirmed.

O R D E R

IT IS ORDERED that:

1. The Application of Central Valley Gas Storage, LLC, AGL Resources Inc. and The Southern Company for a change in the ultimate ownership and control of Central Valley Gas Storage, LLC, from AGL Resources Inc. to The Southern Company is approved pursuant to Public Utilities Code Section 854.

2. Central Valley Gas Storage, LLC, and its owners shall continue to be bound by all terms and conditions of Central Valley Gas Storage, LLC,'s certificate of public convenience and necessity, as granted by Decision 10-10-001.

3. Upon completion of the proposed merger of AGL Resources Inc. and The Southern Company, The Southern Company shall be authorized to obtain the general insurance required in Decision 10-10-001 on behalf of Central Valley Gas Storage LLC.

4. The authority granted by this Order shall expire if not exercised within one year from the effective date of this Order.

5. Application 15-11-011 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

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