

Decision 16-06-014 June 9, 2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Lodi Gas Storage, L.L.C. (U912G), Buckeye Gas Storage LLC, Buckeye Partners, L.P., BIF II CalGas (Delaware) LLC and Brookfield Infrastructure Fund II for Expedited Ex Parte Authorization to Transfer Control of Lodi Gas Storage, L.L.C. to BIF II CalGas (Delaware) LLC Pursuant to Public Utilities Code Section 854(a).

Application 14-09-001
(Filed September 3, 2014)

And Related Matter.

Application 15-08-005
(Filed August 3, 2015)

DECISION APPROVING OWNERSHIP TRANSFER OF WILD GOOSE GAS STORAGE, LLC AND APPROVING IN PART, THE REQUEST TO REMOVE THE RESTRICTION ON COMMUNICATION BETWEEN AFFILIATES OF LODI GAS STORAGE, L.L.C. AND WILD GOOSE GAS STORAGE, LLC

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DECISION APPROVING OWNERSHIP TRANSFER OF WILD GOOSE GAS STORAGE, LLC AND APPROVING IN PART, THE REQUEST TO REMOVE THE RESTRICTION ON COMMUNICATION BETWEEN AFFILIATES OF LODI GAS STORAGE, L.L.C. AND WILD GOOSE GAS STORAGE, LLC

Summary

This decision grants, subject to specified terms and conditions, the application of Wild Goose Gas Storage, LLC (Wild Goose), Carlyle/Riverstone Energy Partners III, L.P. (C/R Energy Partners III), and Brookfield Infrastructure Fund II GP, LLC (BIF II GP) (Joint Applicants) for the transfer of control of Wild Goose, an independent natural gas storage provider in California, from its current owner, C/R Energy Partners III, to BIF II GP through the purchase and sale of 100% of the outstanding limited liability interests in Wild Goose. Pursuant to Public Utilities Code Section 854(a),¹ we authorize the transfer of ownership of Wild Goose in accordance with the terms and conditions as set forth below.

We also grant in part and deny in part, subject to specified terms and conditions, the petition to modify Decision 14-12-013 submitted by Brookfield Infrastructure Fund II, Brookfield Infrastructure Fund II CalGas, and Lodi Gas Storage, L.L.C. (Lodi) (Joint Petitioners). The Joint Petitioners seek to remove a condition originally imposed in Decision 08-01-018 and affirmed in Decision 14-12-013 that prevents Lodi, and any related entity, from sharing “sensitive market information” and identified providers of external services with Wild Goose or any entity related to Wild Goose. Joint Petitioners failed to justify why the Commission should lift the entire restriction on the sharing of sensitive

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

market information between Lodi and Wild Goose or the restriction on the sharing of the delineated external service providers.

Joint Petitioners have justified a limited change to allow both Lodi and Wild Goose to share “sensitive market information” with BIF II GP and other affiliated entities, as long as protocols are in place to ensure such information is not shared between Lodi and Wild Goose. Accordingly, we modify the restriction in Condition 4 that prevents Lodi, or any entity related to Lodi, from sharing “sensitive market information” with entities related to Wild Goose. We retain the portions of Condition 4 that prevent Lodi from sharing such information with Wild Goose and that prevent entities related to Lodi from sharing such information with Wild Goose.

1. Background

Carlyle/Riverstone Energy Partners III, L.P. (C/R Energy Partners III) is seeking to sell its ownership interest in Wild Goose Gas Storage, LLC (U911G) (Wild Goose) to Brookfield Infrastructure Fund II GP, LLC (BIF II GP). Application (A.) 15-08-005 was submitted on August 3, 2015 by Wild Goose, C/R Energy Partners III and BIF II GP, collectively the Joint Applicants, for Commission approval to transfer control of Wild Goose from C/R Energy Partners III to BIF II GP (Wild Goose Application or Application) pursuant to Public Utilities Code Section (Pub. Util. Code §) 854(a).

The Joint Applicants state that after the transfer of control is completed, Wild Goose will continue to operate as an independent natural gas storage provider. The Certificates of Public Convenience and Necessity (CPCN) held by Wild Goose will not be transferred and no natural gas storage customer will be transferred to another entity. Wild Goose will continue to operate pursuant to the authority granted by the Commission in Decision (D.) 97-06-091 (granting

Wild Goose a CPCN for construction and operation of the Wild Goose facility), D.02-07-026, D.10-12-025, and D.13-06-017 (all three amending the Wild Goose CPCN for all three additional project components). Wild Goose will continue to be subject to the reporting requirements of D.02-07-026 and D.06-11-019, as modified by D.07-10-001.

According to the Joint Applicants, the proposed transaction will be accomplished through the merger of Niska Storage Partners and Swan Merger Sub, and the simultaneous acquisition of Niska Storage Partners' managing member units by Swan Holdings LP. At the conclusion of these transactions, BIF II GP will indirectly own Wild Goose, as well as Niska Storage Partners' other storage related assets.² No change is proposed for Wild Goose's assets, liabilities, management, or operations, and no utility property will be transferred.

Concurrently with the filing of the Wild Goose Application, on August 3, 2015, Lodi Gas Storage, L.L.C. (U912G) (Lodi), Brookfield Infrastructure Fund II (BIF II), and Brookfield Infrastructure Fund II CalGas (BIF II CalGas)³ (collectively Joint Petitioners) filed a Petition to Modify D.14-12-013 (Petition to Modify) to eliminate the requirement that prohibits Wild Goose and Lodi from sharing sensitive market information or external providers of identified services. The Joint Petitioners claim that operation of Lodi and Wild Goose as an integrated storage hub offers many synergies, but relief from the conditions adopted in D.14-12-013 is required to take advantage of those efficiencies.

² These storage assets include AECO Hub™, a 154 Bcf facility in Alberta, Canada, and Salt Plains, a 13 billion cubic feet (Bcf) facility in Oklahoma, USA, as well as ownership interests in Starks, a 27 Bcf facility under development in Louisiana, and Sundance Gas Storage, a 70 Bcf facility under development in Alberta. Application at p. 10. *See also*, D.06-11-019 at pp. 5-9.

³ BIF II CalGas owns the Lodi facility and is itself owned by BIF II and BIF II GP.

1.1. Description of Joint Applicants and Joint Petitioners

1.1.1. Wild Goose

Wild Goose is a Delaware Limited Liability Company authorized to conduct business in California. Wild Goose is an independent natural gas storage provider in California with combined operations of approximately 75 Bcf of total capacity. At present, Wild Goose's peak operating injection capacity is 525 million cubic feet per day (MMcf/d) and peak operating withdrawal capacity is 950 MMcf/d. In D.97-06-091, the Commission granted Wild Goose a CPCN to develop, construct, and operate an underground natural gas storage facility and ancillary pipeline interconnected to Pacific Gas and Electric Company's (PG&E's) Line 167 Sacramento Valley Local Transmission System, located in Butte County, California. Wild Goose sought and received authority in D.02-07-036 to expand the authorized capacity of the storage facility and construct an approximate 25 mile pipeline to interconnect to PG&E's Line 400 backbone transmission system. Wild Goose sought to further expand its injection and withdrawal capacity and expand to its current 75 Bcf capacity through D.10-12-025 and D.13-06-017. In issuing the CPCN, the Commission authorized Wild Goose, as a new public utility under Pub. Util. Code § 216, to develop, construct, and operate an underground natural gas storage facility and to provide firm and interruptible storage service in California.

1.1.2. C/R Energy Partners III

C/R Energy Partners III is a Delaware limited partnership with its principal business address in New York City, New York. C/R Energy Partners III is one of a series of investments funds established by the joint venture between the Carlyle Group and Riverstone Holdings LLC. C/R Energy Partners III controls the investments funds (Carlyle/Riverstone Global Energy

and Power Fund III, L.P. and Carlyle/Riverstone Global Energy and Power Fund II, L.P.) which own a controlling interest in Niska Storage Partners.

Niska Storage Partners has a 99% ownership interest in Niska GS Holdings, I, LP, which is the indirect parent of Wild Goose.

Niska Gas Storage Management, LLC and Niska Sponsor Holdings Cooperatief, U.A. (C/R Energy Partners III has a 99% ownership interest in both entities) have a combined 54.76% ownership interest in Niska Storage Partners.

1.1.3. BIF II GP and BIF II CalGas

BIF II GP is a Delaware limited liability company with its designated address in Houston, Texas. BIF II GP is the general partner of a series of private capital funds, that in conjunction with Brookfield Infrastructure Partners, L.P. (BIP), a publicly traded limited partnership controlled by Brookfield Asset Management, Inc. (BAM), indirectly owns infrastructure projects in locations domestically and internationally, including Lodi.

BIF II GP is the general partner of each of the Brookfield Infrastructure Funds II-A (CR), L.P., Brookfield Infrastructure Fund II-A, L.P., Brookfield Infrastructure Fund II-B, L.P., Brookfield Infrastructure Fund II-C, L.P., Brookfield Infrastructure Fund II-D, L.P., and Brookfield Infrastructure Fund II-D (CR), L.P. (collectively the BIF II Funds). Together with BIP, the BIF II Funds, through their indirect interest in Swan Merger Sub, will indirectly hold 100% of Wild Goose upon completion of the Transaction contemplated by the Merger Agreement. Together with BIF II GP, the BIF II Funds own BIF II CalGas, which was formed for the sole purpose of holding all interests in Lodi.

BIF II GP is an indirect subsidiary of BAM, which is a global asset manager, focused on property, renewable power, infrastructure assets and

private equity. BAM is a publicly traded company listed on the Toronto Stock Exchange, New York Stock Exchange, and Euronext Amsterdam. BAM indirectly owns interests in and manages companies regulated as public utilities under the Federal Power Act and companies owning qualifying facilities, as well as interests in interstate natural gas pipelines and electric transmission companies in New England and Tennessee.

BIF II GP formed the limited partnership of Swan Holdings, LP to acquire 100% ownership of Niska Storage Partners. Swan Merger Sub is a wholly owned subsidiary of Swan Holdings, LP. Swan Merger Sub was created for the sole purpose of merging Niska Storage Partners with Swan Merger Sub.

1.1.4. Lodi

Lodi is a Delaware limited liability company with its principal place of business in Houston, Texas. Lodi is an independent natural gas storage provider in California with combined operations of approximately 46 Bcf of total capacity and 34 Bcf of working capacity. In D.00-05-048 the Commission granted Lodi a CPCN to develop, construct, and operate an underground natural gas storage facility and ancillary pipeline (i.e., the Lodi Gas Storage Facility (Lodi Facility) in San Joaquin County, approximately three miles northeast of the City of Lodi. Lodi constructed and currently operates the Lodi Gas Storage Facility. In issuing the CPCN, the Commission authorized Lodi, as a new public utility under Pub. Util. Code § 216, to provide firm and interruptible gas storage services in California at market-based rates. In D.14-12-013, the Commission approved the transfer of control over Lodi to BIF II CalGas.

2. Issues before the Commission

In addition to having to determine if the proposed transfer of control of Wild Goose is in the public interest, the Commission must determine if the

current prohibition on Wild Goose and Lodi sharing commercially sensitive market information and external providers of certain identified services should continue. The Commission must also determine if the transfer of control will maintain or improve the financial condition of Wild Goose. The Commission must also determine what effect the transfer of control will have on competition in the provision of natural gas storage services. Given the stated intent of applicants to operate Wild Goose and Lodi as an integrated storage hub, should the Commission require BIF II GP to operate the facilities separately until the Commission determines they may be operated as an integrated hub. The Commission must also examine if the transfer of control will have any safety concerns or considerations.

Joint Applicants and Joint Petitioners must also show how they have complied with the California Environmental Quality Act (CEQA). Public Resources Code § 21080 et seq., known as CEQA, may require environmental review of projects that are subject to the Commission's discretionary approval. A change of ownership will not result in a project subject to CEQA unless such a change of ownership or control may result in a physical change to the environment by altering an existing project, resulting in new projects, or changing facility operations.

2.1. Procedural Matters

Notice of this Application appeared in the Commission's Daily Calendar on August 12, 2015. Pursuant to Rule 7.1 of the Commission's Rules of Practice and Procedure (Rules), in Resolution ALJ 176-3362, dated August 27, 2015, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. On September 2, 2015, Central Valley Gas Storage L.L.C. (Central Valley Gas Storage) filed a

timely Response to the Application. On September 11, 2015, Gill Ranch Storage, PG&E, Shell Energy North America (US), L.P. (Shell Energy), and Southern California Gas Company (SoCalGas) filed timely Responses to the Application.

Of the Respondents, only SoCalGas supported Commission approval of the Application without qualifications. The other parties expressed concerns about the potential consolidation of Wild Goose with Lodi under the common ownership of BIF II GP and raised issues for the Commission to address in the Commission's decision on the application. Central Valley Gas Storage is concerned that this proceeding could raise issues of broad applicability that could affect it or other independent storage providers. Gill Ranch Storage, LLC (Gill Ranch Storage) is concerned that it may be affected by the matters raised in the Application and Petition to Modify.⁴ Gill Ranch Storage requests the Commission to evaluate whether continuing the existing conditions and reporting requirements are sufficient to ensure common ownership of Wild Goose and Lodi does not have adverse competitive impacts, or if new conditions and reporting requirements are needed. Gill Ranch Storage proposes that if the Commission approves the transfer of control of Wild Goose, it should hold this proceeding open and direct parties to submit comments within two years of the decision to allow the Commission to review the effects of the transfer of control.⁵

⁴ Response of Gill Ranch Storage, LLC to Joint Application for Transfer of Control of Wild Goose Storage, LLC (U-911-G) Pursuant to Public Utilities Code Section 854(a) at 2, filed September 11, 2015; Response of Gill Ranch Storage, LLC to Petition of Brookfield Infrastructure Fund II, Brookfield Infrastructure Fund II CalGas and Lodi Gas Storage L.L.C. (U912G) for Modification of Decision 14-12-013 at 1-2, filed September 2, 2015.

⁵ Response of Gill Ranch Storage, LLC to Joint Application for Transfer of Control of Wild Goose Storage, LLC (U-911-G) Pursuant to Public Utilities Code Section 854(a) at 4.

Shell Energy would condition the transfer of control by requiring Wild Goose and Lodi continue to operate separately, including day-to-day management, operations, marketing, and accounting, and that they not be allowed to share commercially sensitive information. Such conditions would continue until the Commission approves a new application by Wild Goose and Lodi to operate the two storage entities and a single integrated storage hub. PG&E supports the transfer of control based upon the understanding it has reached with Wild Goose and BIF II GP. PG&E submitted a Stipulation with its Response that addresses PG&E's concerns regarding the transfer of control and the lifting of the current prohibition on sharing information between Wild Goose and Lodi (PG&E Stipulation). PG&E represents the stipulation prevents BIF II GP from operating Wild Goose and Lodi as an integrated hub without first detailing the terms and conditions of those hub operations and obtaining Commission authority to operate as an integrated hub.

Central Valley Gas Storage and Gill Ranch Storage submitted Responses to the Petition to Modify expressing concerns similar to those they raised in their Responses to the Wild Goose Application.

Pursuant to Rule 7.4 of the Commission's Rules of Practice and Procedure, on December 1, 2015, Administrative Law Judge (ALJ) Robert Haga issued a Ruling consolidating applications as the Wild Goose Application and the Petition to Modify covered related and overlapping topics. No party requested the Commission hold an evidentiary hearing.

The Joint Applicants filed a reply to the Responses on September 21, 2015. The Joint Applicants would have the Commission reject the conditions offered by Gill Ranch Storage and Shell Energy. The Joint Applicants state that the conditions proposed by Gill Ranch Storage and Shell Energy would negatively

impact the public interest benefits of the transfer of control or establish additional and duplicative Commission processes to address hypothetical concerns. The Joint Applicants further claim that they will not be able to design a joint/amended tariff(s) without being able to share market-sensitive information, including facility performance data, customer specific information and marketing information prior to filing for approval from the Commission of its future Hub Integration Application. The Joint Applicants noted that as part of their Stipulation with PG&E that they will meet with PG&E prior to filing any Hub Integration Application to discuss the terms and conditions of such integration, and they offered to extend such an agreement to Shell Energy or any other stakeholder expressing interest. The Joint Applicants believe the request of Gill Ranch Storage is redundant and an inefficient use of Commission resources.

A Prehearing Conference was held on December 8, 2015, to set the scope and schedule for the proceeding. At the Prehearing Conference, the Joint Applicants and Shell Energy notified ALJ Haga that they had reached an agreement on a stipulation that would address Shell Energy's concerns with the transfer of control (Shell Energy Stipulation). ALJ Haga directed the Joint Applicants and Shell Energy to submit the stipulation by December 10, 2015, and ordered that any party seeking to comment on either the Shell Energy Stipulation or the PG&E Stipulation must do so by December 18, 2015. Only the Joint Applicants submitted comments on December 18, 2015.

During the Prehearing Conference, Gill Ranch Storage reiterated the concerns that the transaction, which would result in the consolidation of the two largest independent natural gas storage providers in California, would be consistent with state policy promoting competition in natural gas storage.

On February 26, 2016, a Joint Scoping Memo was issued by the assigned Commissioner and ALJ setting forth the issues to be considered and the schedule for the proceeding. The Joint Scoping Memo confirmed the preliminary categorization of this proceeding as ratesetting and designated ALJ Haga as the Presiding Officer for this proceeding.

On May 6, 2016, ALJ Haga granted the Motion to File Confidential Documents Under Seal submitted by the Joint Applicants coincident with the Application on August 3, 2015. The designated confidential documents, identified as Exhibits C, F, I, K, and N, will remain under seal until May 6, 2018.

3. Proposed Transfer of Control of Wild Goose

3.1. Description of the Transfer

This application represents the latest transfer of the ownership interests in Wild Goose since it received its initial CPCN nearly 20 years ago.⁶ In this transaction, all of the limited liability company interests in Wild Goose are currently controlled by C/R Energy Partners III. Upon approval of the Commission, BIF II GP will assume control of those limited liability company interests and control of Wild Goose, as well as Niska Storage Partners' other storage related assets outside of California. The total value of the merger transaction, including assets outside of California, is approximately \$911,926,000.

Swan Holdings, LP will acquire all equity units held by non-managing members of Niska Storage Partners, at a per unit purchase price of \$4.225. There were approximately 37,988,724 outstanding common units, equating to a total value of approximately \$160,502,359. These common units are held by Niska Gas

⁶ See D.01-05-029, D.03-06-069, and D.06-11-019 as modified by D.06-11-023, D.07-03-047, and D.07-10-001.

Sponsor Holdings Cooperatief U.A. and public investors. In addition, Swan Holdings, LP will acquire the ownership interests of Niska Gas Storage Management, LLC, which is the managing member of Niska Storage Partners, for a total of \$7,497,641. After those acquisitions are complete, there will no longer be any publically held equity interests in any of the Niska entities. Finally, by operation of law through the merger, Swan Holdings, LP assumes Niska's outstanding debt and capital lease obligations valued at approximately \$743,926,000 at the time of the filing of the application.

After the Commission approves the transfer of control and the transaction closes, Wild Goose's day-to-day operations in California will continue to be overseen by the existing field and operations teams. Key individuals charged with the oversight and management of Niska and Wild Goose are expected to remain after closing of the transaction. Wild Goose operations will remain consistent with the standards required to maintain the safety of its workers and the surrounding community, and local environment.

BIF II GP plans to leverage Niska's operating history to integrate and incorporate best practices throughout its operated gas storage portfolio, including the Lodi facilities. Ultimately, by combining the management and operations of Niska and Lodi, BIF II GP hopes to explore the opportunity to operate Wild Goose and Lodi as an integrated hub, similar to Niska's AECO Hub in Alberta, Canada, where two facilities are physically separate but act as one natural gas storage hub. BIF II GP believes a hub-based model will enhance operational reliability and safety and potentially expand service offerings to its customers.

3.1.1. Description of the PG&E Stipulation

PG&E's support for the Wild Goose Application is based on the understanding that the transfer of control of Wild Goose is the first step toward the eventual integrated operations of the Wild Goose and Lodi storage facilities, but that BIF II GP will not begin operating the Wild Goose and Lodi facilities as an integrated hub without first detailing the terms and conditions of those hub operations and requesting further authority from the Commission. PG&E agrees that operating the Wild Goose and Lodi storage fields as one integrated storage hub will provide a number of opportunities for increased reliability of the natural gas system in California. PG&E, Wild Goose, and BIF signed the Stipulation confirming their understanding, along with other provisions that address PG&E's operational concerns regarding the Wild Goose Application pending BIF's submittal of detailed terms and conditions of hub operations to the Commission.

In the PG&E Stipulation, BIF II GP agreed to seven actions in return for PG&E's support of the application to transfer control of Wild Goose to BIF II GP:

- (1) Continue to operate Wild Goose and Lodi as they are currently operated until the Commission grants authority to operate them as an integrated hub;
- (2) Develop the terms, conditions, and procedures to operate the facilities as an integrated hub within 18 months of the Commission's approval for the transfer of control of Wild Goose;
- (3) Meet and discuss with PG&E the potential operation of operating the facilities as an integrated hub at least 45 days before filing an application with the Commission for such authority;
- (4) Not engage in inventory transfers between Lodi and Wild Goose before receiving Commission authority to operate as an integrated hub;
- (5) Conduct daily operational calls with the PG&E Gas Transmission Control Center regarding injection and

withdrawal plans for the Wild Goose, Sherman Island, and Kirby Hills facilities; (6) Make reasonable efforts to accommodate PG&E requests for Facilities flow allocation on the PG&E system; and (7) Meet and discuss tariff changes proposed by PG&E as they pertain to the Redwood Path Allocation and other operational issues at BIF II GP's storage facilities.

3.1.2. Description of the Shell Energy Stipulation

The agreement of Shell Energy to not oppose the Wild Goose Application is based on many of the same issues addressed in the PG&E Stipulation, in particular the process required for hub integration. Three of the first four points of Shell Energy Stipulation can also be found in the PG&E Stipulation. Shell Energy adds a provision to ensure prices, including fuel rates, will remain separate until the Commission approves the integrated hub authority. In addition, the Shell Energy Stipulation adds three specific provisions regarding the marketing of services and execution of contracts prior to the Commission providing authorization to operate the Wild Goose and Lodi facilities as an integrated hub. Wild Goose, Shell Energy, and BIF II GP signed the Stipulation memorializing their agreement on December 8, 2015. Shell Energy agreed to not oppose the Wild Goose Application, but retained its rights to evaluate and challenge any future application to establish an integrated hub and/or future Wild Goose or Lodi tariff changes.

In the Shell Energy Stipulation, BIF II GP agreed to seven actions in return for Shell Energy agreeing to not oppose the application to transfer control of Wild Goose to BIF II GP: (1) Continue to operate Wild Goose and Lodi as they are currently operated until the Commission grants authority to operate them as an integrated hub; (2) Keep products and prices, including fuel rates, differentiated until the Commission grants authority to operate Wild Goose and

Lodi as an integrated hub; (3) Develop the terms, conditions, and procedures to operate the facilities as an integrated hub within 18 months of the Commission's approval for the transfer of control of Wild Goose; (4) Meet and discuss with Shell Energy the potential operation of operating the facilities as an integrated hub at least 45 days before filing an application with the Commission for such authority; (5) Keep separate personnel for each of the following: (a) marketing of Firm Storage Services, as defined in the Wild Goose tariff; (b) marketing of Firm Storage Services, as defined in the Lodi tariff; and (c) Wild Goose Short-Term Storage Services and Lodi Interruptible Storage Services, as each of these services is defined in the existing respective tariffs; (6) Firm Storage Service contracts submitted to a common management team (at the vice president level) cannot reveal the identity of the customer until after it is executed; and (7) Procedures will be put in place to prevent sharing of information between marketing personnel at Wild Goose and Lodi, and will specifically restrict the exchange of customer name and terms and conditions under negotiation.

4. Petition to Modify to Remove Limitation on Sharing of Sensitive Market Information and External Market Providers between Wild Goose and Lodi

Decision 14-12-013 granted the application of Buckeye Gas Storage, BIF II and BIF II CalGas for the transfer of control of Lodi to BIF II CalGas, subject to a number of conditions. Among other things, the conditions prohibit Lodi, and any related entity, from sharing "sensitive market information" or identified external services with Wild Goose or any entity related to Wild Goose. The Petition to Modify requests removal of the prohibition against sharing information and services in order to realize the benefits of common ownership and control of Wild Goose and Lodi by BIF II GP, commonly referred to as Condition 4.

Decision 14-12-013 continued the conditions originally placed upon Lodi in D.08-01-018. The fourth condition originally adopted in D.08-01-018 pertains directly to the sharing of information between Lodi and Wild Goose. While that condition was adopted pursuant to a settlement, the decision indicates it was adopted to address any “lingering nexus” that might exist from the then-recent ownership stake that C/R Energy Partners III had in Lodi Gas and its controlling ownership of Wild Goose. The issue that condition was seeking to address was the question raised in the protest of the Division of Ratepayer Advocates that if Lodi and Wild Goose were operated together they could exercise control of more than 50% of the Northern California gas storage market. The Office of Ratepayer Advocates did not participate in this proceeding and has not expressed an opinion about continuing Condition 4.

5. Discussion

5.1. Public Interest Standard of Review

Pub. Util. Code § 701 provides the Commission the authority to supervise and regulate every public utility in the State, including Wild Goose and Lodi, and provides the Commission authority to exercise regulatory oversight over the Merger Agreement submitted by the Joint Applicants. The Merger Agreement proposed by Joint Applicants whereby Brookfield Infrastructure will acquire control of Wild Goose constitutes a change of control, within the meaning of Pub. Util. Code § 854, and is subject to Commission jurisdiction.

In requesting Commission approval of the proposed transactions, Applicants concede that any time a public utility authority in California is transferred the transaction falls within the meaning of Section 854. The purpose of Section 854 is to require the Commission to review and establish necessary conditions on the transfer of a public utility authority in California. To approve

the proposed transaction, the Commission must find the proposal meets the public interest standard that the Commission has historically applied pursuant to Section 854.

The Commission has broad discretion to determine if it is in the public interest to authorize a transaction pursuant to Section 854. Typically, the Commission has required an applicant to show that the proposed transaction is “not adverse to the public interest.”⁷ The Commission has also required applicants to show that the proposed transaction is “in the public interest,”⁸ such as that is required for all transactions subject to review under Sections 854(b) and 854(c). Sections 854(b) and 854(c) do not expressly apply to the instant transaction because, according to the Joint Applicants, neither Wild Goose nor the other parties to the proposed transfer of control have gross annual California revenues exceeding U.S. \$500 million. Even when Sections 854(b) and 854(c) do not expressly apply to a transaction, the Commission has used the criteria set forth in those statutes to provide context for its public interest assessment.⁹ The Commission has been inclined to evaluate applications like the proposed transfer of control of Wild Goose both under the basic § 854(a) standard of review and this heightened standard.¹⁰ Given California policies surrounding energy

⁷ See for example, D.08-01-018 at pp. 19-20 (approving the transfer of control over Lodi Gas Storage at the holding company level), citing D.07-05-061 at 24.

⁸ See D.11-06-032 at p. 12, D.10-10-017 at 11, and D.07-05-031 at 3.

⁹ See D.03-06-069 at pp. 10-11 (In evaluating a 2003 Wild Goose Storage Application under Section 854(a), the Commission has discretion to consider the criteria set forth in Sections 854(b) and (c) if it is inclined to do so.). See also D.07-05-061 at 20.

¹⁰ See D.08-01-018 at p. 21, D.07-05-061 at 31-32, D.05-12-007 at 6, *citing*, San Jose Water Co. (1916) 10 CRC 56.

resources and natural gas storage,¹¹ and the potential impact on the competitive market for storage services in California,¹² Joint Applicants and Joint Petitioners must show that the relief requested is in the public interest.

5.2. The Application to Transfer Control of Wild Goose Should Be Approved Subject to Conditions

The terms of the September 10, 2015, Stipulation among Wild Goose, BIF II GP, and PG&E (PG&E Stipulation) should be approved and adopted by the Commission. The PG&E Stipulation is set forth in Appendix 2 of this decision. The Motion for acceptance of the December 8, 2015, Stipulation among Wild Goose, BIF II GP and Shell Energy (Shell Energy Stipulation) should be granted, and the terms of the Shell Energy Stipulation should be approved and adopted by the Commission. The Shell Energy Stipulation is set forth in Appendix 3 of this decision.

Based on the facts at issue here, and in view of the terms of the PG&E Stipulation and the Shell Energy Stipulation, we conclude that the Joint Applicants' proposed transfer of control is in the public interest and should be approved. Accordingly, we approve the application subject to compliance with the two stipulations and continuation of existing conditions.

Joint Applicants state the transfer of control will provide Wild Goose with long-term financial stability through the ownership of BIF II GP. After the transfer of control is completed, Wild Goose will continue to operate as an

¹¹ Stats. 1992, Ch. 1337.

¹² See, for example, D.00-06-079 at 14, citing Union Water Co. of California, 19 CRC 199, 202 (1920), mentioning several factors: economical and financial feasibility; purchase price; value of consideration exchanged; efficiencies and operating costs savings; improved financial flexibility).

independent natural gas storage provider subject to the jurisdiction of this Commission. Wild Goose's operations will continue unchanged, subject to all conditions previously ordered by the Commission. The transaction will not result in the transfer of any certificates, assets, or Wild Goose customers.

Wild Goose will continue to operate "consistent with the standards required to maintain the safety of its workers and the surrounding community, as well as the local environment." (Application at p. 11.)

Central Valley Gas Storage expressed a general concern that the proceeding could have broad implications for the transfer of control of other natural gas storage companies. Central Valley Gas Storage did not expand upon its general concern with comments on the stipulations and did not provide any specific concern about the scope of the issues considered in the proceeding. The decision has been narrowly tailored to address the issues specific to Wild Goose and Lodi and addresses the concern expressed by Central Valley Gas Storage.

The request of Gill Ranch Storage to hold this proceeding open for two years after approving the transfer of control is rejected as it is both unfair to the applicants and unworkable both practically and procedurally. Gill Ranch Storage expresses concerns about how the common ownership of Wild Goose and Lodi might impact the natural gas storage market in California. However, Gill Ranch Storage expresses those concerns in general terms, and the countervailing evidence provided by the Joint Applicants shows that the natural gas storage market is just one means for delivery of natural gas resources in California. Gill Ranch Storage provided no evidence that the common ownership of Lodi and Wild Goose will harm the competitive market for storage. In addition, Joint Applicants point to the other various sources for natural gas

supply including flowing supply, secondary markets, other storage fields and core storage.

In addition, the remedy proposed by Gill Ranch Storage is not fair to the Joint Applicants. The practical impacts on the Joint Applicants and the Commission would be significant if we wait two years to take additional comments on the transaction. It is not clear from the request of Gill Ranch Storage how the Joint Applicants could be expected to proceed if the final decision of the Commission isn't actually final. Gill Ranch Storage did not identify any Commission Rules or precedent that supports the request to re-evaluate the transaction within two years of the final decision. The proposal would have the Commission effectively relitigate this case in two years, which in addition to the numerous legal and procedural challenges such action would take, taking more than 18 months to decide the case is discouraged in statute.¹³ However, should a factual dispute arise in the future, there are means to obtain relief under the Commission's Rules of Practice and Procedure. (*See, e.g.,* Article 4, Complaints; Article 16, Rehearing, Modification and Time to Comply.) As Gill Ranch Storage does not raise a specific concern with the transfer of control, the request of Gill Ranch Storage to set forth a process to take further comment on this transaction within two years of the decision is denied.

Joint Applicants' showing on the public interest impacts of the change of control discusses compliance with most of the public interest criteria enumerated in § 854(c). Wild Goose has employed the same useful strategy when it sought authority for the change of control to the EnCana Corporation and again from

¹³ Pub. Util. Code § 1701.5.

the EnCana Corporation to C/R Energy Partners III. On both occasions the Commission noted that “consideration of these criteria ensures assessment of a broad spectrum of important public interest concerns and provides a good gauge of the public interest under § 854(a).” (D.06-11-019, p. 15, *citing* D.03-06-069, pp. 10-11.)

5.3. Competition in the Provision of Natural Gas Storage Services will not be Harmed as Long as Existing and New Conditions are Met

With respect to the competitive implications of the transfer of control to BIF II GP, the Joint Applicants provide a Market Power Report (Market Power Report or Report) with quantitative and qualitative components to explain why there should be no concern about the potential for market manipulation and thus no adverse competitive impact if the same entity controls both Lodi and Wild Goose. (Application Exhibit L.) However, the Market Power Report fails to properly define the geographic market or justify the geographic market it chose. By using a broad geographic market, the Joint Applicants showing is inadequate to prove that there should be no concerns about the potential for market manipulation. Thus, we cannot determine the competitive impact on the common control of Lodi and Wild Goose based on the Market Power Report alone.

Joint Applicants have failed to meet their burden to show that the combination of Lodi and Wild Goose under a common owner will maintain or improve competition in the provision of natural gas storage services. However, based on the lack of specificity provided in the Responses submitted by Central Valley Storage and Gill Ranch Storage along with the conditions specified in the PG&E and Shell Energy Stipulations that the combination of Lodi and Wild

Goose under the common control of BIF II GP will not harm competition, we conclude that the proposed transaction will not harm competition in the provision of natural gas storage services. Thus, the application may be approved as long as we maintain the existing conditions on Lodi and Wild Goose and enact the conditions agreed to in the PG&E and Shell Energy Stipulations.

The Joint Applicants' analysis hinges on the acceptance of the market definitions used in the Market Power Analysis (Application Exhibit L) it submitted with its Application. Both Gill Ranch Storage and Shell Energy expressed concerns about common ownership over more than 50% of the independent natural gas storage facilities in Northern California. To counter those concerns, Joint Applicants would have the Commission use the same definition we used in D.07-12-019 (*Opinion Regarding Proposed Changes to Natural Gas Operations and Service Offerings*) which defined the relevant product market as non-core storage in addition to "flowing supply, secondary markets, other storage fields and core storage."¹⁴ We see no reason to deviate from that market definition in this case. In that case, the Commission rejected the use of cost-based rate caps, in part through the acceptance of evidence that the relevant product market was not concentrated in Southern California. However, in this case we are dealing with two facilities located in Northern California. Joint Applicants propose that we define the geographic market as the entire state of California and point to D.07-12-019 for precedent. However, that Decision focused exclusively on Southern California and it does not establish the entire state as the geographic market in analyzing competition for the delivery of natural gas. Joint

¹⁴ D.07-12-019 at 84.

Applicants did not provide any other arguments, precedent, or evidence to support its use of the entire state as the appropriate geographic market.

Joint Applicants' Market Power Report shows that if BIF II GP controls both Lodi and Wild Goose it will not be able to exert market power over the delivery of natural gas to customers in California. The Report shows that the combination of Lodi and Wild Goose will not create a concentrated market when looking at the entire state. The Report identifies a pre-transaction Herfindahl-Hirschman Index of 1,396.55 and a post-transaction HHI of 1,433.55, a change of 36.80 points.

The Herfindahl-Hirschman Index (HHI) is a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$).¹⁵

The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.¹⁶

The Market Power Report compares the calculated HHI and its potential change through the combination of Wild Goose and Lodi using the merger

¹⁵ U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines § 5.3 (issued August 19, 2010), available at <http://www.ftc.gov/os/2010/08/100819hmg.pdf>.

¹⁶ *Id.*

guidelines issued by the U.S. Department of Justice and the Federal Trade Commission.¹⁷ Those federal agency merger guidelines classify a market as “unconcentrated” when the HHI is below 1,500, and that mergers with an HHI increase of less than 100 points are “unlikely to have adverse competitive effects and ordinarily require no further analysis.”¹⁸ Both of those are true for the Report.

The Market Power Report also analyzes the transaction under the Federal Regulatory Commission (FERC) merger guidelines.¹⁹ Under the FERC guidelines, if the HHI is below 1,800, FERC assumes that there is limited market concentration with less potential for any participant to exercise significant market power, such a market is considered “moderately concentrated.”²⁰ For a moderately concentrated market, an HHI change of more than 100 is presumed to create or enhance market power. Again, neither threshold is implicated in the Report.

However, Joint Applicants provide no support, nor any rationale for why the appropriate geographic market is the entire state of California. Without such a showing, the weight we can give the Market Power Report is limited. If we had the HHI analysis just for Northern California, or if we had a reasonable showing that all of California is the appropriate geographic market, then we would be able to give the Market Power Report more weight. Without such a

¹⁷ *Id.*

¹⁸ *Id.* at 18-19.

¹⁹ *Analysis of Horizontal Market Power under the Federal Power Act*, 138 FERC ¶ 61,109 (2012), available at www.ferc.gov/whats-new/comm-meet/2011/031711/E-5.pdf.

²⁰ See D.07-12-019, pp. 84-85.

showing we cannot conclude that the common control over Lodi and Wild Goose will maintain or improve competition in the provision of natural gas storage services.

The Joint Applicants state that Commission approval of this application will “allow the opportunity to explore operating Wild Goose and Lodi as an integrated hub.” (Application at p. 12). However, the Joint Applicants do not request authority to combine the operation of Lodi and Wild Goose into an integrated storage hub. As noted above, a significant clarification made by the PG&E and Shell Energy Stipulations is that the Lodi and Wild Goose facilities will continue to operate separately until they obtain Commission approval to operate as an integrated hub.

In addition to agreeing to the conditions set forth in the PG&E and Shell Energy Stipulations, Wild Goose does not seek to be released from any of the reporting conditions the Commission has imposed upon it in prior decisions and we have no reason at this time to cancel those requirements. This includes extending the affiliate reporting requirements adopted in D.06-11-019 to include all of the Brookfield businesses. Given the number and breadth of the energy and power industry businesses in which Brookfield and its investment funds, subsidiaries, and affiliates are involved, we require Wild Goose to continue the reporting requirements adopted in D.06-11-019.

We reiterate that unless and until modified, all terms and conditions of D.97-06-091, D.02-07-036, and D.06-11-019 will continue to apply to Wild Goose. Likewise, Wild Goose must continue to operate in conformance with its filed tariff and with any subsequent amendments of that tariff. Thus, based on the continued separate operation of the facilities, continuation of the existing conditions on Lodi and Wild Goose, and the imposition of the new conditions

agreed to in the PG&E and Shell Energy Stipulations, we conclude that the combination of Lodi and Wild Goose under a common owner will not harm competition.

With the adoption of the Safety Policy Statement of the California Public Utilities Commission on July 10, 2014, the Commission has, among other things, heightened its focus on the potential safety implications of every proceeding. Wild Goose has committed that its operations will remain consistent with the standards required to maintain the safety of its workers and the surrounding community, and local environment. In addition, given the significant global investments in the energy by BIF and its affiliates, Joint Applicants indicate that they intend to leverage the best safety practices from all of the BIF II GP affiliates to ensure Wild Goose continues to operate safely. Wild Goose must continue to adhere to all relevant safety rules and regulations.

5.4. The Petition to Modify D.14-12-013

5.4.1. Petitioners' Failed to Show that the Modification is in the Public Interest

The Petition to Modify requests removal of the fourth condition of a Stipulation between Lodi and the Office of Ratepayer Advocates that constrains the relationship between Lodi and Wild Goose (Condition 4). Condition 4 specifically limits the sharing of sensitive market information and external market providers of identified services between Lodi and Wild Goose. In the event any sharing inadvertently occurs, it must be reported to the Commission. The basis for the Petition to Modify is that if the Wild Goose Application is approved, then BIF II GP would control both Lodi and Wild Goose. Petitioners claim that the sharing of information and external services is necessary to realize the potential operating efficiencies of the facilities. Both the Application and the

Petition to Modify posit that common ownership of Lodi and Wild Goose will not adversely affect competition in the gas storage market and the potential for collusive behavior does not exist. However, the Petition to Modify fails to provide citations to the record in the proceeding or to matters that may be officially noticed, and does not provide a declaration or affidavit to support new or changed facts. (Rule 16.4(b)). Thus, there are no new or changed facts to consider in evaluating the Petition to Modify.

As explained above, Joint Petitioners bear the burden of showing that it is in the public interest to allow a single entity to control more than 50% of the independent natural gas storage operations in Northern California. As A.15-08-005 and A.14-09-001 have been consolidated, we are able to consider the Market Power Report submitted as part of the Wild Goose Application. As discussed above, that Market Power Report uses a broad geographic market and Joint Applicants did not provide a showing with respect to competition in the provision of natural gas storage services in Northern California. As such, Joint Petitioners' showing is also inadequate to prove that there should be no concerns about the potential for market manipulation and thus no adverse competitive impact on the common control of Lodi and Wild Goose. Accordingly, Joint Petitioners have failed to show that the entire relief requested is in the public interest.

However, Joint Petitioners have convinced us that a limited change is permissible to allow both Lodi and Wild Goose to share "sensitive market information" with BIF II GP and other affiliated entities, as long as protocols are in place to ensure such information is not shared between Lodi and Wild Goose. Accordingly, we remove the restriction in Condition 4 that prevents Lodi, or any entity related to Lodi, from sharing "sensitive market information" with entities

related to Wild Goose. We retain the portions of Condition 4 that prevent Lodi and entities related to Lodi from sharing such information with Wild Goose. Through this modification we retain the core provision that drove the settlement between Lodi and the Office of Ratepayer Advocates that Lodi cannot share sensitive market information with Wild Goose, but allow their now common owner access to the information so that it can analyze and prepare an application for an integrated hub.

Accordingly, we strike from the first line of the second paragraph of Condition 4 the words “and any entity related to Lodi Gas Storage L.L.C.” We also strike from the second and third line of that paragraph “any entity exercising direct or indirect control over.” By removing those words, the first provision of the second paragraph of Condition 4 now reads:

Lodi Gas Storage, L.L.C.: (a) shall not share Sensitive Market Information regarding Lodi Gas Storage, L.L.C. with Wild Goose Storage LLC or with any other entity in which such sharing could reasonably result in the direct or indirect disclosure of Sensitive Market Information regarding Lodi Gas Storage, L.L.C. to Wild Goose Storage, LLC;

By rewording Condition 4 in this manner we allow Lodi to share sensitive market information with BIF II GP and related entities and require BIF II GP and those entities to ensure protections are in place that will prevent that sensitive market information from being transmitted to Wild Goose. Direct sharing of sensitive market information between Lodi and Wild Goose remains prohibited.

5.4.2. The Rationale Provided by Petitioners to Modify D.14-12-013 is not Clear and not Substantiated

Without actual facts in the record, the unsupported and vague statements of the Joint Petitioners are not persuasive. The Petition to Modify states that

BIF II GP intends to integrate operations of Wild Goose and Lodi to maximize the operating efficiencies between the facilities and proceeds to extoll the virtues of such integration. However, Joint Petitioners provide no explanation of what sensitive market information or external market providers of identified services would be necessary to achieve any benefit of such integration. Joint Petitioners do not explain why removal of the restriction is necessary to operate the two storage fields efficiently and prepare an application for an integrated hub facility combining both storage fields. Joint Petitioners do not even provide examples of the type of information or external market providers that they are currently restricted from sharing for the Commission to consider whether the continuation of the constraint is necessary.

The Petition to Modify says that maintaining Condition 4 would prevent the successful integration of Lodi and Wild Goose, but then it fails to explain how Condition 4 is a barrier to integrating the operations of Lodi and Wild Goose. As was made clear in the PG&E and Shell Energy Stipulations, additional Commission action is needed to allow integrated hub operations, and the Petitioners fail to explain why the restrictions of Condition 4 could not be fully considered in that additional Commission action.

The Petition to Modify cites the Market Power Report to support its request (Wild Goose Application Exhibit L). That Market Power Report attempts to show that common ownership of Lodi and Wild Goose will not adversely affect competition in the relevant market, and thus the potential for collusive behavior does not exist. However, the conditions adopted in D.08-01-018 and reiterated in D.14-12-013, including Condition 4, were put in place to address the potential common ownership of Wild Goose and Lodi. Now we are approving the actual common ownership of Wild Goose and Lodi. Petitioners must provide

better justification to remove a restriction put in place to prevent potential collusion when the facts that led to the imposition of the restriction are becoming a reality. We have fully considered the Market Power Report and determine that in using a broad geographic market the Joint Petitioners did not provide a showing with respect to competition in the provision of natural gas storage services in Northern California. As such, Joint Petitioners showing is also inadequate to prove that there are no concerns about the potential for market manipulation and thus no adverse competitive impact on the common control of Lodi and Wild Goose. Accordingly, the Market Power Report alone is insufficient justification to remove the restrictions contained in Condition 4.

5.4.3. The Commission is not being Asked to Approve an Integrated Storage Hub and Consideration of Removal of the Entire Restriction is Premature

The Joint Applicants state that BIF II GP proposes to operate Wild Goose and Lodi as “one integrated storage hub.” However, other than this statement, it was not clear whether the Joint Applicants were seeking Commission approval in the Wild Goose Application to operate Wild Goose and Lodi in such an integrated fashion, or if the BIF II GP intends to seek such approval after the Commission considers this application and the related Petition to Modify. In other words, Joint Applicants did not specify what Lodi or Wild Goose needed from the Commission to maximize the operating efficiencies between the facilities.

It was only through the PG&E Stipulation, the Shell Energy Stipulation, and the Joint Applicants’ Comments on those Stipulations that the Joint Applicants have made it clear that they intend to continue operating the two facilities separately until such time as an integrated hub proposal is

approved by the Commission. The two stipulations state that the Joint Applicants will operate Lodi and Wild Goose as two distinct storage facilities and will not jointly market their firm storage services. The two stipulations state that all parties will have an opportunity to participate in and comment upon the development of Brookfield's future application for approval of an integrated storage hub consisting of both fields.

The comments on those stipulations is the first place that the Joint Petitioners state they are seeking to eliminate Condition 4 in order for BIF II GP to have access to the information it needs to operate the two storage fields efficiently and to prepare its application for an integrated hub facility combining both storage fields. Based on the arguments and facts presented the Joint Petitioners would have grounds for tailoring Condition 4 to allow BIF II GP to have access to sensitive market information based on the changed circumstances. But the Joint Petitioners are seeking to remove the Commission's restriction on the sharing of sensitive market information between Lodi and Wild Goose. They have not carried their burden to show that it is in the public interest to remove the entire restriction.

Further, there is no explanation or showing as to why the Commission should remove the second part of Condition 4, prohibiting the sharing of external providers of financial planning services, regulatory affairs, lobbying, legal, and/or risk management personnel where such sharing might directly or indirectly disclose sensitive market information regarding Lodi to Wild Goose. Absent any explanation or facts upon which to base removing such a condition, the Joint Petitioners' request on this point is denied. Accordingly, we retain the portion of Condition 4 that prevents the sharing of external providers of financial

planning services, regulatory affairs, lobbying, legal, and/or risk management personnel.

The Joint Petitioners' comments make three claims that on their face appear compelling but upon examination are not persuasive. The first is that the common ownership, control, and management of both Lodi and Wild Goose would be seriously compromised if Condition 4 isn't removed. However, the Joint Petitioners' comments do not explain how Condition 4 has any impact on BIF II GP's ownership, control, or management. In fact, there is compelling evidence in the Wild Goose Application to justify transferring control to BIF II GP that undermines this claim. For example, the Wild Goose Application states that BIF II GP's ownership of Wild Goose will ensure the continued financial stability of existing facilities. Further, the Wild Goose Application is careful to explain that change of control is in the public interest given the commitments made in the application and the existing conditions and reporting obligations previously required of Wild Goose or Niska entities that will transfer to the new owners. The Wild Goose Application also makes claims for how the integrated operation of Lodi and Wild Goose will be even more beneficial, but that is not the relief sought by the Joint Applicants and thus is not relevant to the matter before us.

The second assertion made in the Joint Petitioners' comments is that continuing Condition 4 will delay or prevent benefits and efficiencies that BIF II GP would bring to the gas storage market. The Joint Petitioners' comments then proceed to explain that without sensitive market information from Lodi and Wild Goose, BIF II GP cannot create a streamlined management and administrative structure for both providers. The Joint Petitioners' comments fail to explain how sensitive market information, information defined as that

which, if disclosed, would disadvantage the natural gas storage customer, has any impact on management and administrative structure. In short, the Joint Petitioners' comments make two assertions without any supporting facts or explanation, and as such they are not persuasive.

The third assertion is that the two stipulations would restrict the types of data shared and prevent harm to customers by coordinated marketing or operation of the two storage fields. However, when looking at the types of data that will be restricted by the stipulations, we can determine the new restrictions in the stipulations on sharing of data do not cover all of the types of data contained in Condition 4. Condition 4 defined "Sensitive Market Information" as:

Any information which would customarily be considered by a natural gas storage customer to be sensitive or proprietary, which is not available to the public, or which, if disclosed, would subject a natural gas storage customer to risk of competitive disadvantage or other business injury. This includes, but is not limited to: contractual capacity rights, actual customer injection and/or withdrawal data (including forecast/future price, historical price, contractual valuation data, costs, when injection and/or withdrawal occurs and how much natural gas is involved), both as to individual customers and in aggregate.

There are no new restrictions in the PG&E Stipulation that could be characterized as restricting the sharing of sensitive market information. The Shell Energy Stipulation does contain two restrictions that could be characterized as limiting the sharing of sensitive market information. First, the Shell Energy Stipulation specifically restricts customer identity for Firm Storage Service contracts submitted to a common management team (at the vice president level) until after it is executed. Second, the Shell Energy Stipulation requires BIF II GP to establish procedures to prevent sharing of information between marketing

personnel at Wild Goose and Lodi, and to specifically restrict the exchange of customer name and terms and conditions under negotiation. These restrictions are much narrower than those already in place in Condition 4. For example, the Shell Energy Stipulation largely covers information sharing prior to contract execution. The procedures to prevent sharing of information between marketing personnel by its own terms will be limited as it doesn't cover any other personnel at either facility.

The Joint Petitioners' comments do provide a good explanation for how the two stipulations will restrict data shared between Wild Goose and Lodi and should prevent customers from being disadvantaged by coordinated marketing or operation of the two fields while they are being operated independently. Accordingly, as noted above, the Joint Petitioners' comments do provide a reasonable explanation with factual support to tailor Condition 4 to allow BIF II GP to have access to sensitive market information. The Joint Petitioners' comments do not provide any support for removing the restriction in Condition 4 that restricts the sharing of "external providers of financial planning services, regulatory affairs, lobbying, legal, and/or risk management personnel." Joint Petitioners have failed to justify why the Commission should lift its restriction on the sharing of sensitive market information between Lodi and Wild Goose or the restriction on the sharing of the delineated external service providers. Accordingly, the Petition to Modify is denied in part.

5.5. CEQA

Under CEQA and Rule 2.4, we must consider the environmental consequences of projects subject to our discretionary approval. (Public Resources Code § 21080.) 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, as the Wild Goose Application states, the change of ownership at issue here will result in no direct or indirect change in the environment or change in previously reviewed and approved construction and operation criteria for the Wild Goose facility. We concur, for a number of reasons. The Wild Goose gas storage facilities will continue to be developed and operated as previously authorized by this Commission. All environmental mitigation measures contained in the certified EIR will continue to apply, and all monitoring requirements and restrictions imposed in D.97-06-091, D.02-07-036, and D.10-12-025, which certified these EIRs, will continue. Therefore, the proposed project qualifies for an exemption from CEQA pursuant to § 15061(b)(3)(1) of the CEQA guidelines and the Commission need perform no further environmental review (*see* CEQA Guidelines § 15061(b)(3)(1).)

6. Conclusion

The request of Wild Goose, C/R Energy Partners III, and BIF II GP to transfer control of Wild Goose from CR Energy Partners III to BIF II GP through the merger of Niska Gas Storage Partners, LLC with Swan Merger Sub, LLC is approved, subject to the terms and conditions adopted herein. It does not appear the public will be harmed by the transaction and the public may benefit from the transfer of control.

The request of Lodi, BIF II, and BIF CalGas to modify D.14-12-013 is approved in part and denied in part. Appendix 1 of this decision sets forth the modified conditions adopted in D.14-12-013 pursuant to D.08-01-018.

7. Reduction of Comment Period

The proposed decision of ALJ Robert W. Haga in this matter was mailed to the parties in accordance with Section 311 of Public Utilities Code. Pursuant to Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, all parties stipulated to a reduction of the 30-day comment period. Comments were filed May 31, 2016 by Joint Applicants C/R Energy Partners III, Wild Goose, and BIF II GP.

8. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Robert W. Haga is the assigned ALJ in this proceeding.

Findings of Fact

1. Wild Goose is a natural gas storage provider in California that was granted a CPCN to provide firm and interruptible storage service in California at market-based rates.
2. Lodi is an independent natural gas storage provider in California that was granted a CPCN to provide firm and interruptible storage service in California at market-based rates.
3. Wild Goose constructed and currently operates the Wild Goose Gas Storage Facility (Wild Goose Facility) in Butte County.
4. Lodi constructed and currently operates the Lodi Facility in San Joaquin and Sacramento counties.
5. Niska Storage Partners has a 99% ownership interest in Niska GS Holdings, I, LP, which is the indirect parent of Wild Goose.
6. C/R Energy Partners III owns approximately 54% of Niska Storage Partners and thus controls Wild Goose.

7. BIF II GP formed the limited partnership of Swan Holdings, LP to acquire 100% ownership of Niska Storage Partners.

8. Swan Holdings, LP, created Swan Merger Sub as a wholly owned subsidiary for the sole purpose of merging Niska Storage Partners with Swan Merger Sub.

9. Together with BIP, the BIF II Funds, through their indirect interest in Swan Merger Sub, will indirectly hold 100% of Wild Goose upon completion of the Transaction contemplated by the Merger Agreement.

10. On June 14, 2015, Niska Storage Partners, Niska Gas Storage Management, L.L.C., Niska Sponsor Holdings Cooperatief U.A. (all three entities under the indirect ownership of C/R Energy Partners III), Swan Holdings LP and Swan Merger Sub, LLC (each entity under the indirect ownership of BIF II GP) entered into an Agreement and Plan of Merger and Membership Interest Transfer Agreement (Merger Agreement).

11. The Merger Agreement results in (i) the merger of Niska Storage Partners and Swan Merger Sub, and (ii) Swan Holdings, LP owning all of Niska Storage Partner's managing member units.

12. The Merger Agreement results in the transfer of control over Wild Goose from C/R Energy Partners III to BIF II GP.

13. After the transfer, Wild Goose will continue to operate as a limited liability company owned in full by BIF II GP, and hold the CPCN for the Wild Goose Facility. All operating and management functions will be transitioned to BIF II GP.

14. Closing of the transaction to transfer control of Wild Goose is conditioned upon Commission approval of the Wild Goose Application, as specified in the Merger Agreement, Section 9(d).

15. The proposed transfer of control of Wild Goose from C/R Energy Partners III to BIF II GP will result in a change of ownership of Wild Goose, but will not result in the transfer of any certificates, assets, or customers of Wild Goose.

16. Joint Applicants' public interest showing discusses many of the criteria listed in § 854(c), even though no party to this transaction has gross annual California revenues of \$500 million or more.

17. Together with BIF II GP, the BIF II Funds own BIF II CalGas which is the owner of Lodi.

18. A.14-09-001 and A.15-08-005 were consolidated pursuant to Rule 7.4.

19. Wild Goose, BIF II GP, and Pacific Gas and Electric Company (PG&E) entered into a stipulation (PG&E Stipulation) which was submitted as part of PG&E's response to the application on September 11, 2015.

20. The PG&E Stipulation is attached as Appendix 2 of this decision.

21. Wild Goose, BIF II GP, and Shell Energy entered into a stipulation (Shell Energy Stipulation) and filed a motion for its approval on December 10, 2015.

22. The Shell Energy Stipulation is attached as Appendix 3 of this decision.

23. By using a broad geographic market, the Joint Applicants' showing is inadequate to prove that there should be no concerns about the potential for market manipulation and thus no adverse competitive impact on the common control of Lodi and Wild Goose.

24. Granting the Wild Goose Application subject to compliance with the terms and conditions of both the PG&E Stipulation and the Shell Energy Stipulation is in the public interest.

25. Lodi and Wild Goose will continue to be operated as separate facilities.

26. The transfer of control of Wild Goose proposed by the Joint Applicants will provide Wild Goose with long-term financial stability and infuse new investment capital to support energy infrastructure facilities.

27. The change of control over Wild Goose should leave its service quality and management quality unimpaired.

28. Wild Goose has committed that its operations will remain consistent with the standards required to maintain the safety of its workers and the surrounding community, and local environment.

29. This decision does not authorize any new construction, changes to the operations of Wild Goose or other entity, or changes in the use of existing assets and facilities. The decision will not have a significant impact on the environment.

30. The change of control over Wild Goose is a project subject to environmental review pursuant to CEQA, but because the project qualifies for an exemption, no further review needs to be done.

31. There will be no change in Wild Goose's day-to-day operations following the transfer of control and operations in California will continue to be overseen by the existing field and operations teams.

32. Wild Goose will continue to provide safe and reliable operation of underground natural gas storage facility and ancillary pipeline service for its customers in the same manner as before the transfer of control.

33. Continued operation of Wild Goose's gas storage facilities supports the Commission's goal of investors building utility natural gas storage in California.

34. All costs associated with securing the necessary approvals to transfer control of Wild Goose to Brookfield Infrastructure Fund II, including any and all implementation costs and any and all costs associated with the formation of

Swan Merger Sub, LLC, and merger of Niska Gas Storage Partners, LLC with Swan Merger Sub, LLC will be borne by Wild Goose owners, and Wild Goose will not seek to recover any portion thereof in rates.

35. No party established the existence of material, disputed facts that require evidentiary hearing.

Conclusions of Law

1. Wild Goose is an independent natural gas storage provider regulated as a public utility by this Commission.

2. Lodi is an independent natural gas storage provider regulated as a public utility by this Commission.

3. The Merger Agreement proposed by Joint Applicants whereby Brookfield Infrastructure will acquire control of Wild Goose constitutes a change of control, within the meaning of Pub. Util. Code § 854, and is subject to Commission jurisdiction.

4. Pub. Util. Code § 701 provides the Commission the authority to supervise and regulate every public utility in the State, including Wild Goose and Lodi, and provides the Commission authority to exercise regulatory oversight over the Merger Agreement submitted by the Joint Applicants.

5. The change of control over Wild Goose should be approved under § 854(a) subject to reporting requirements designed to ensure that the Commission has sufficient information to monitor its affiliates' acquisition of or investment in electric and natural gas entities and assets located in California and Western North America.

6. Because no party to the transfer of control has California revenues exceeding \$500 million, § 854(b)(3) is inapplicable. Section 854(b)(3) requires the

Commission to seek an opinion on competitive impacts from the California Attorney General if revenues reach this threshold.

7. Authorization from the Commission under Pub. Util. Code § 851 is not required because the transfer of control does not contemplate the sale, lease, assignment, mortgage or other disposition or encumbrance of utility property.

8. Joint Applicants and Joint Petitioners must show that the relief requested is in the public interest.

9. Modifying Condition 4 adopted in D.08-01-018 and reiterated in D.14-12-013 is in the public interest.

10. Following the change of control, Wild Goose must continue to be bound by the terms of its CPCN, by all requirements and conditions mandated in D.97-06-091, D.02-07-036, and D.06-11-009, as modified by D.07-10-001, as modified by subsequent Commission decisions, and by the tariff filed with the Commission, as approved and subsequently modified by any approved amendments.

11. The Commission should deny the request of Gill Ranch Storage to set forth a process to take further comment on this transaction within two years of the decision.

12. Joint Applicants have failed to meet their burden to show that the combination of Lodi and Wild Goose under a common owner will maintain or improve competition in the provision of natural gas storage services.

13. The Commission should consider the competitive impacts on the geographic market in Northern California for the purposes of analyzing the competitive impacts of the proposed transfer of control.

14. The terms of the September 10, 2015 Stipulation among Wild Goose, Brookfield Infrastructure Fund II GP, and Pacific Gas and Electric Company

(PG&E Stipulation), as set forth in Appendix 2 of this decision should be approved.

15. The Motion for acceptance of the December 8, 2015 Stipulation among Wild Goose, Brookfield Infrastructure Fund II GP and Shell Energy (Shell Energy Stipulation), as set forth in Appendix 3 of this decision should be granted, and the terms of the Shell Energy Stipulation should be approved.

16. The application may be approved as long as we maintain the existing conditions on Lodi and Wild Goose and enact the conditions agreed to in the PG&E and Shell Energy Stipulations.

17. The restriction in Condition 4 that prevents Lodi, or any entity related to Lodi, from sharing “sensitive market information” with entities related to Wild Goose should be removed.

18. The portions of Condition 4 adopted in D.08-01-018 and reiterated in D.14-12-013 that prevent Lodi from sharing “sensitive market information” directly with Wild Goose and prevent entities related to Lodi from sharing such information with Wild Goose should be retained.

19. Joint Petitioners have failed to justify why the Commission should lift its restriction on the sharing of the delineated external service providers.

20. This transfer of control qualifies for an exemption from CEQA under CEQA Guidelines § 15061(b)(3)(1) and therefore, additional environmental review is not required.

21. The change of ownership control of Wild Goose should not occur until the Joint Applicants comply with the terms and conditions as specified in Appendices 2 and 3 and in the Ordering Paragraphs of this decision.

O R D E R

IT IS ORDERED that:

1. The Application of Wild Goose Storage, LLC (Wild Goose), Carlyle/Riverstone Energy Partners III, L.P., and Brookfield Infrastructure Fund II GP, LLC (collectively, Joint Applicants) to transfer control of Wild Goose from Carlyle/Riverstone Energy Partners III, L.P. to Brookfield Infrastructure Fund II GP, LLC through the merger of Niska Gas Storage Partners, LLC with Swan Merger Sub, LLC is approved pursuant to Public Utilities Code Section 854, subject to the terms and conditions set forth in Ordering Paragraphs 1-4 and 6-13 of this decision.
2. All costs associated with securing the necessary approvals to transfer control of Wild Goose Storage, LLC (Wild Goose) to Brookfield Infrastructure Fund II, including any and all implementation costs and any and all costs associated with the formation of Swan Merger Sub, LLC, and merger of Niska Gas Storage Partners, LLC with Swan Merger Sub, LLC shall be borne by Wild Goose owners, and Wild Goose shall not seek to recover any portion thereof in rates.
3. The terms and conditions of the September 10, 2015 Stipulation among Wild Goose Storage, LLC, Brookfield Infrastructure Fund II GP, LLC and Pacific Gas and Electric Company (PG&E Stipulation), attached as Appendix 2 of this decision, are adopted.
4. The Motion filed on December 10, 2015 for acceptance of the December 8, 2015 Stipulation among Wild Goose Storage, LLC, Brookfield Infrastructure Fund II GP, LLC and Shell Energy North America (US), L.P. (Shell Energy Stipulation), attached as Appendix 3 of this decision, is hereby granted. The terms and conditions of the Shell Energy Stipulation, attached as Appendix 3, are

adopted.

5. The request to set forth a process to take further comment on this transaction within two years of this decision is denied.

6. Wild Goose Storage, LLC (Wild Goose) and its owners shall continue to be bound by all terms and conditions of Wild Goose's certificate of public convenience and necessity, as granted by Decision (D.) 97-06-091 and modified by subsequent decisions of the Commission, including D.02-07-036, D.06-11-009, as modified by D.07-10-001, and by the tariff filed with the Commission, as approved and subsequently modified by any approved amendments.

7. The transfer of control qualifies for an exemption from the California Environmental Quality Act (CEQA) under CEQA Guidelines § 15061(b)(3)(1) and therefore, additional environmental review is not required.

8. Lodi Gas Storage, L.L.C., Wild Goose Storage, LLC, and Brookfield Infrastructure Fund II GP, LLC shall comply with its continuing duty to the reporting required in affiliate transactions prescribed by the Commission in Decision (D.) 03-02-071, D.06-11-019, and D.05-12-007, except as modified by D.08-04-033, and the conditions in D.08-01-018, as expressly set forth as Appendix 1 of D.14-12-013.

9. Lodi Gas Storage, L.L.C. (U912G) (Lodi), Brookfield Infrastructure Fund II, and Brookfield Infrastructure Fund II CalGas shall continue to comply with all terms except Condition 4 of the Joint Stipulation attached as Appendix 2 of Decision 14-12-013.

10. Lodi Gas Storage, L.L.C. (U912G) (Lodi), Brookfield Infrastructure Fund II, and Brookfield Infrastructure Fund II CalGas shall continue to be bound by all terms and conditions of the Lodi certificate of public convenience and necessity, as granted by Decision (D.) 00-05-048 and modified by D.04-05-034, including the

requirements therein for a performance or security bond.

11. Lodi Gas Storage, L.L.C. (U912G) (Lodi), Brookfield Infrastructure Fund II, and Brookfield Infrastructure Fund II CalGas shall also continue to be bound by the conditions previously identified in Decision (D.) 06-03-012 (granting Lodi a certificate of public convenience and necessity for construction and operation of the Kirby Hills Facility), as amended in D.08-02-035.

12. The Petition to Modify Decision (D.) 14-12-013 filed on August 3, 2015, is approved in part and denied in part. Appendix 1 of this decision sets forth the modified conditions adopted in D.14-12-013 pursuant to D.08-01-018.

13. The authority granted by this decision authorizing the transfer of control of Wild Goose Gas Storage, LLC from Carlyle/Riverstone Energy Partners III, L.P. to Brookfield Infrastructure Fund II GP, LLC through the merger of Niska Gas Storage Partners, LLC with Swan Merger Sub, LLC shall expire if not exercised within one year from the effective date of this decision.

14. Application 14-09-001 and Application 15-08-005 are closed.

This order is effective today.

Dated June 9, 2016, San Francisco, California.

MICHAEL PICKER
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
LIANE M. RANDOLPH
Commissioners

A.14-09-001, A.15-08-005 ALJ/RWH/lil

APPENDIX 1

Adopted Conditions on Approval of A.14-09-001 and
A.15-08-005 Pursuant to D.08-01-018

ALJ/TRP/jt2

Date of Issuance 12/9/2014

Decision 14-12-013 December 4, 2014

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Lodi Gas Storage, L.L.C. (U912G), Buckeye Gas Storage LLC, Buckeye Partners, L.P., BIF II CalGas (Delaware) LLC and Brookfield Infrastructure Fund II for Expedited Ex Parte Authorization to Transfer Control of Lodi Gas Storage, L.L.C. to BIF II CalGas (Delaware) LLC Pursuant to Public Utilities Code Section 854(a).

Application 14-09-001
(Filed September 3, 2014)

**DECISION APPROVING OWNERSHIP TRANSFER OF
LODI GAS STORAGE L.L.C.**

Summary

We hereby grant, subject to specified terms and conditions, the application of Lodi Gas Storage, L.L.C. (LGS), Buckeye Gas Storage, LLC (Buckeye), Buckeye Partners, LLC, BIF II CalGas (Delaware) LLC, and Brookfield Infrastructure Fund (BIF II) (Joint Applicants). The Joint Applicants seek approval for the transfer of control of LGS, an independent natural gas storage provider in California, from its current owner, Buckeye, to BIF II CalGas through purchase and sale of 100% of the outstanding limited liability interests in LGS. Pursuant to Pub. Util. Code

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§ 854(a),¹ we authorize the transfer of ownership of LGS in accordance with the terms and conditions as set forth below.

1. Procedural Matters

Notice of this Application appeared in the Commission's Daily Calendar on September 10, 2014. Pursuant to Rule 7.1, in Resolution ALJ 176-3342, dated September 11, 2014, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. One protest was filed by the Office of Ratepayer Advocates (ORA) on October 10, 2014. The Joint Applicants filed a reply to ORA's protest on October 20, 2014.

A protest was filed by ORA on October 10, 2014. In accordance with Rule 2.6(a) of the Commission's Rules of Practice and Procedure (Rules), ORA's Protest was timely filed. In accordance with Rule 7.2(a), ORA requested that a prehearing conference (PHC) be set. ORA indicated that it would request to meet with the Joint Applicants, so that, hopefully, the Parties could informally resolve ORA's concerns without the need for an evidentiary hearing.

Joint Applicants filed a reply to ORA's protest on October 20, 2014, arguing that ORA's concerns had already been addressed in the application, and that ORA offers no justification for convening a PHC or holding evidentiary hearings.

On October 16, 2014, ORA met and conferred with Joint Applicants by teleconference and, over the subsequent week, reached agreement to informally resolve their differences by entering into a Joint Stipulation.

¹ Unless otherwise specified, all subsequent code references herein are to the Public Utilities Code.

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On October 31, 2014, ORA and the Joint Applicants (the Stipulating Parties) met with the assigned Administrative Law Judge (ALJ) by teleconference to inform him of their plan to file a Joint Stipulation. On November 3, 2014, ALJ issued a ruling setting November 7, 2014, for filing a motion for approval of the Joint Stipulation.

On November 7, 2014, the Stipulating Parties filed a motion for approval of an All-Party Joint Stipulation. Under the terms of the Joint Stipulation, as set forth in Appendix 2 of this decision, the Stipulating Parties agree that no Prehearing Conference is necessary because the Joint Stipulation resolved the issue raised by ORA's Protest. The Stipulating Parties also request waiver of the comment period under Rule 14.3 for the Proposed Decision if the terms of the Joint Stipulation were approved.

As discussed below, we conclude that the Joint Application can be resolved by approving and adopting the terms of the Joint Stipulation. No PHC or further proceedings are necessary to decide this matter. Conducting a PHC or holding evidentiary hearings would not be a productive use of time and resources. We confirm the preliminary determinations as to category and that no hearings are necessary.

2. Description of Lodi Gas Storage, L.L.C. (LGS)

LGS is a Delaware limited liability company with its principle place of business in Houston, Texas. LGS is an independent natural gas storage provider in California with combined operations of approximately 46 billion cubic feet (Bcf) of total capacity and 34 Bcf of working capacity. In Decision (D.) 00-05-048, the Commission granted LGS a certificate of public convenience and necessity (CPCN) to develop, construct, and operate an underground natural gas storage facility and ancillary pipeline, (i.e., the Lodi Facility), located in San Joaquin

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County, approximately three miles northeast of the City of Lodi. LGS constructed and currently operates the Lodi Gas Storage Facility. In issuing the CPCN, the Commission authorized LGS, as a new public utility under Pub. Util. Code § 216 and § 222,² to provide firm and interruptible gas storage services in California at market-based rates.

3. Proposed Transfer of Control of LGS

This application represents the latest in a series of transfers in recent years of the ownership interests in LGS. All of the limited liability company interests in LGS are currently owned by Buckeye, a Delaware limited liability company with its principle place of business in Houston, Texas, and which was formed for the sole purpose of holding all interests in LGS. Buckeye, in turn, is wholly owned by Buckeye Partners, which owns and operates petroleum terminals in several states. BIF II CalGas is an affiliate of Brookfield Infrastructure Fund II GP (BIF II GP) formed for the sole purpose of holding all interests in LGS.

On July 25, 2014, Buckeye and BIF II CalGas executed a Purchase and Sale Agreement (PSA) whereby BIF II CalGas will acquire control of LGS subject to Commission approval of the instant application. Pursuant to the PSA, BIF II CalGas will acquire LGS via the purchase of all outstanding limited liability company interests in LGS. Upon completion of the transaction, LGS will be the only asset owned by BIF II CalGas.

After the transfer, LGS will continue to operate as a limited liability company owned in full by BIF II CalGas, and to hold the CPCN for the

² § 222 defines a “gas corporation” as “every corporation or person owning, controlling, operating, or managing any gas plant for compensation within this state...” § 221 defines “gas plant” as including all real estate, fixtures, and personal property, owned, controlled, operated, or managed in connection with or to facilitate, among other things, gas storage.

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Lodi Facility. All operating and management functions will be transitioned to BIF II CalGas.

Closing of the transaction is conditioned upon Commission approval of the Joint Application, as specified in the PSA, Section 7.1(b). The PSA was made public with filing before the Securities and Exchange Commission on July 20, 2014, although the schedules and exhibits to the PSA contain confidential information filed under seal.³ Given the seasonal nature of demand for gas storage facilities and related injection and withdrawal cycles, Joint Applicants argue that Commission approval of this Application in late 2014 or very early 2015 (and the resulting ability of Joint Applicants to close this transaction) will allow LGS' prospective new owners to efficiently transition control and provide the same level of service to current and future LGS customers.

4. Surety or Performance Bond Obligations

In its filed Protest, ORA claimed that the Joint Applicants' intentions are unclear with respect to continuing to honor the previously adopted performance bond obligations imposed on LGS to cover the costs of meeting its obligations under its CPCN, set forth in D.00-05-048, Conclusion of Law 7 and Ordering Paragraph 5 as amended in D.04-05-034. The surety bond amount was initially set at \$20 million. In D.04-05-034, the amount of the surety or performance bond was reduced from \$20 million to \$10 million after construction of Lodi was complete and initial operation had commenced. The Commission further stated that the surety amount should be:

³ Pursuant to ALJ Ruling dated October 21, 2014, Joint Applicant's motion to file confidential documents under seal was granted.

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[A]djusted annually for inflation from the date of issuance of Decision 00-05-048, May 18, 2000, to cover the costs of meeting LGS' obligations under this CPCN.⁴

ORA, in its protest, also referenced a letter agreement dated September 24, 2010 between LGS, ORA, and the California Farm Bureau Federation and San Joaquin Farm Bureau Federation (collectively the Farm Bureau), with a copy thereof attached to its Protest (Letter Agreement). The Letter Agreement was executed as a settlement of issues in Application (A.) 09-06-011.⁵ ORA highlights section II, paragraph 5, page 3 of the Letter Agreement, as follows

The Settling Parties agree that neither they nor any of their successors, assigns or affiliates will in any future state or federal administrative or judicial proceeding, directly or indirectly seek to eliminate or modify the surety bond condition as originally ordered in D.00-05-048 and modified by D.04-05-034.

ORA questions whether, after the proposed ownership transfer is completed, the LGS performance bond obligation will continue to be honored by the new owner of LGS. Joint Applicants state that LGS will continue to be bound by the terms and conditions prescribed by the Commission in D.00-05-048.

ORA, however, did not find this obligation specifically accepted and adopted as a condition of the proposed transfer. ORA thus questions whether the proposed transfer of control is reasonable, consistent with the law, and in the public interest.

Joint Applicants, in reply to ORA's Protest, deny that there is a lack of clarity regarding the intent to continue the performance bond required as a

⁴ D.04-05-034 at 15-16.

⁵ In A.09-06-011, Lodi Gas Storage, LLC asked the Commission to authorize replacement of the required \$10 million surety bond with a parental guaranty in the same amount.

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condition in D.00-05-048 and as subsequently modified in D.04-05-034. In the text of the Application, Joint Applicants expressly commit that LGS will continue to be bound by all conditions imposed in D.00-05-048. Joint Applicants affirm the specific obligations regarding the continuation of the performance bond in the PSA attached as Exhibit 8 to the Joint Application.

To further address ORA's concerns, attached to Joint Applicants' Reply is a declaration of Darren Soice, Vice President of BIF II. The declaration affirms that the above-referenced performance bond requirement will be honored after transfer of control and acknowledges that the Letter Agreement, as highlighted by ORA, will continue to bind LGS and its affiliates, including BIF II CalGas and BIF II.

Given that the bond requirement is a condition of D.00-05-048, Joint Applicants' commitments and representations affirm the intent of BIF II CalGas to honor LGS's obligation to maintain a performance bond. The terms of the PSA incorporate the continuation of the existing performance bond (issued by RLI Group in favor of the Commission), or a comparable bond acceptable to the Commission, as an express condition to the closing of the transaction. The second sentence of Section 6.10(b) provides a "backstop" in the event that BIF CalGas II is unable to obtain a substitute bond before closing that is acceptable to the Commission, and would require that the existing performance bond be left in place at and after closing. BIF CalGas II would then be obligated to reimburse and indemnify Buckeye for the cost of maintaining that bond for the duration of its existence

5. Terms of Joint Stipulation

Following the receipt of Joint Parties' Response to ORA's Protest, Joint Parties and ORA subsequently entered into a Joint Stipulation which called for

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additional commitments on the part of Joint Applicants. Since ORA is the only party to respond to the application, the Joint Stipulation constitutes agreement among all parties to the proceeding. On November 7, 2014, the Stipulating Parties filed a joint motion for acceptance of the Joint Stipulation. The terms of the Joint Stipulation resolved ORA's objections to granting the application with no need for a PHC or further hearings. The Joint Stipulation in its entirety is set forth in Appendix 2 of this decision. In addition to incorporating the commitments previously made by Joint Applicants as set forth in the original application, and in the previously referenced Declaration of Darren Soice, the Joint Stipulation required the following further commitments:

- a) Before the transfer of control is completed, BIF II CalGas and BIF II will have in effect a security or performance bond as ordered in D.00-05-048, Conclusion of Law 7 and Ordering Paragraph 5, and in an amount as required by D.04-05-034.
- b) The Joint Applicants must maintain documentation of the security or performance bond ordered in this proceeding.

6. Public Interest Standard of Review

Public Utilities Code § 854 (a) requires Commission authorization before a company may “merge, acquire, or control . . . any public utility organized and doing business in this state” The purpose of this and related statutes is to enable the Commission, before any transfer of public utility authority is consummated, to review the situation and take such action (as a condition of approving the transfer) as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

The Commission has broad discretion to determine whether a particular transaction is in the public interest and should be approved under § 854. As noted in D.03-02-071, § 854 does not define the term “control,” and the

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Commission has not promulgated regulations defining this term in connection with a percentage of stock ownership. As a result, some of our decisions have held that where there is a change in the form of ownership but no change in the actual control of a public utility, § 854 is inapplicable and the application should be dismissed. However, we also noted in D.03-02-071 that in “diverse fact situations where a public utility owner has either transferred or proposed to transfer a 50% interest in the utility, or has acquired a 50% interest in another utility, the Commission has asserted jurisdiction to review the transaction under § 854 and has approved or disapproved the transfer.”⁶

7. Discussion

Based on the facts at issue here, and in view of the terms of the Joint Stipulation, we conclude that Joint Applicants’ proposed transfer of control is in the public interest and should be approved. Accordingly, we approve the application subject to compliance with the Joint Stipulation. As noted by Joint Applicants, the transfer of control will provide LGS with long-term financial stability and will infuse new investment capital to support energy infrastructure facilities. All of LGS’s current storage capacity is fully subscribed and storage capacity is needed. Continued operation and growth in existing facilities supports the Commission’s goal of investors building utility natural gas storage in California.

After the ownership transfer is completed, LGS will continue to operate as an independent natural gas storage provider subject to the jurisdiction of this Commission. The transaction will not result in the transfer of any certificates,

⁶ D.03-02-071 at 11.

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assets or LGS customers. LGS will continue to be bound by the terms and conditions prescribed in D.00-05-048 and in D.06-03-012, (granting LGS a CPCN for the Kirby Hills facility) as amended in D.08-02-035. LGS will continue to be subject to the reporting required in affiliate transactions prescribed by the Commission in D.03-02-071 and D.05-12-007, except as modified by D.08-04-033. In D.08-01-018, the transfer of control of LGS to Buckeye was approved subject to five conditions that were adopted as part of a negotiated settlement which, among other things, required Lodi's owners to undertake all reasonable steps to ensure that Lodi has sufficient capital to provide safe and reliable service going forward.

For purposes of the proposed transfer, Joint Applicants agree that LGS will to continue to be bound by the conditions adopted in D.08-01-018. BIF II CalGas and BIF II agree to accept the obligations imposed in such decision upon the Buckeye companies. We adopt these conditions as terms of approval of the Joint Application, as previously adopted in D.08-01-018, as set forth in Exhibit 10 of the application and attached hereto as Appendix 1.

Since the transfer in control, subject to the conditions imposed herein, will not cause any change in the services to be provided by LGS, or to the rates or terms and conditions of service, there will be no adverse effect on the public interest from the transfer.

8. California Environmental Quality Act (CEQA)

Under CEQA and Rule 17.1, we must consider the environmental consequences of projects subject to our discretionary approval. (Pub. Resources Code § 21080.) 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.

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However, as the Joint Application states, the change of ownership at issue here will result in no direct or indirect change in the environment or change in previously reviewed and approved construction and operation criteria for the Lodi facility. In issuing a CPCN for the Lodi Facility, the Commission conducted a full environmental review and certified the Environmental Impact Report (EIR) for adoption. The Lodi Facility will continue to be developed and operated as previously authorized by this Commission. All environmental mitigation measures contained in the certified EIR will continue to apply, and all monitoring requirements and restrictions imposed in D.00-05-048, which certified the EIR, will continue.

The Commission has previously held that such a transfer of control, under such conditions as proposed here, either does not constitute a “project” within the meaning of CEQA or qualifies for an exemption from CEQA. We find that the proposed transfer of control at issue in this application is not a “project” within the meaning of CEQA. As a result, CEQA does not apply for purposes of acting upon the Joint Applicants’ proposed transfer of control.

9. Waiver of Comments on the Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

10. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

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Findings of Fact

1. LGS is a natural gas storage provider in California that was granted a CPCN to provide firm and interruptible gas storage services in California at market-based rates.
2. LGS constructed and currently operates the Lodi Gas Storage Facility (Lodi Facility) in San Joaquin and Sacramento counties.
3. All of the limited liability company interests in LGS are currently owned by Buckeye, a Delaware limited liability company formed for the sole purpose of holding all interests in LGS.
4. BIF II CalGas is an affiliate of Brookfield Infrastructure Fund II GP (BIF II GP) formed for the sole purpose of holding all interests in LGS.
5. On July 25, 2014, Buckeye and BIF II CalGas executed a PSA whereby BIF II CalGas would acquire control of Lodi Gas Storage subject to Commission approval.
6. After the transfer, LGS will continue to operate as a limited liability company owned in full by BIF II CalGas, and hold the CPCN for the Lodi Facility. All operating and management functions will be transitioned to BIF II CalGas.
7. Closing of the transaction to transfer control of LGS is conditioned upon Commission approval of the Joint Application, as specified in the PSA, Section 7.1(b).
8. The proposed transfer of control of LGS from Buckeye to BIF II CalGas will result in a change of ownership of LGS, but will not result in the transfer of any certificates, assets, or customers of LGS.
9. Joint Applicants expressly commit that LGS will continue to be bound by all conditions imposed in D.00-05-048 whereby the Commission granted LGS a

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CPCN to develop, construct, and operate an underground natural gas storage facility and ancillary pipeline, located in San Joaquin County. Joint Applicants also affirm the specific obligations regarding the continuation of the performance bond in the PSA attached as Exhibit 8 to the Joint Application.

10. The declaration of Darren Soice, Vice President of BIF II affirms that the performance bond requirement previously imposed on LGS will be honored after transfer of control and that the Letter Agreement executed in A.09-06-011 will continue to bind LGS and its affiliates, including BIF II CalGas and BIF II.

11. Joint Applicants entered into a Joint Stipulation with the Office of Ratepayer Advocates, as set forth in Appendix 2 of this decision, and filed a motion for its approval on November 7, 2014.

12. In addition to the provisions previously set forth in Joint Applicants' reply to the Protest of the Office Ratepayer Advocates, the Joint Stipulation also provides that:

- a. Before the transfer of control is completed, BIF II CalGas and BIF II will have in effect a security or performance bond as ordered in D.00-05-048, Conclusion of Law 7 and Ordering Paragraph 5, and in an amount as required by D.04-05-034 (at 15-16).
- b. The Joint Applicants maintain documentation of the security or performance bond ordered in this proceeding.

13. Based on adoption of the terms of the Joint Stipulation, as set forth in Appendix 2 of this decision, the Office of Ratepayer Advocates supports granting the proposed transfer of ownership control of Lodi Gas Storage, with no need for a prehearing conference, or further hearings, and with a waiver of comment period on the Proposed Decision.

14. Granting the Joint Application subject to compliance with the terms and conditions of the Joint Stipulation is in the public interest.

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15. The transfer of control of LGS proposed by Joint Applicants will provide LGS with long-term financial stability and infuse new investment capital to support energy infrastructure facilities.

16. All of LGS's current storage capacity is fully subscribed and storage capacity is needed. Continued operation and growth in LGS's gas storage facilities supports the Commission's goal of investors building utility natural gas storage in California.

Conclusions of Law

1. The PSA proposed by Joint Applicants whereby BIF II CalGas will acquire control of LGS constitutes a change of control, within the meaning of Pub. Util. Code § 854, and is subject to Commission jurisdiction.

2. Joint Applicants' request for authority to transfer of control of LGS, as proposed in A.14-09-011, should be granted, subject to the terms and conditions of the Joint Stipulation filed November 7, 2014, and as set forth in the Ordering Paragraphs of this decision.

3. Based on the terms and conditions adopted in this decision, approving the proposed transfer of control of LGS is in the public interest.

4. Following the change of control, LGS should continue to be bound by the terms of its CPCN, by all the requirements and conditions mandated in D.00-05-048 as modified by D.04-05-034, and by the tariff filed with the Commission, as approved and subsequently modified by any approved amendments.

5. The preliminary determinations in Resolution ALJ 176-3342 as to the category and need for hearings in this proceeding should be confirmed. No prehearing conference and no evidentiary hearings are required.

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6. The Joint Motion for acceptance of the All-Party Joint Stipulation, as set forth in Appendix 2 of this decision should be granted, and the terms of the Joint Stipulation should be approved.

7. This change of control proposed by Joint Applicants does not constitute a project as defined under CEQA Guidelines § 1506(b)(3)(1) and the change of control will have no adverse environmental effects. Therefore, no additional environmental review in connection with this application is required.

8. The change of ownership control of LGS should not occur until Joint Applicants comply with the terms and conditions as specified in Appendices 1 and 2 and in the Ordering Paragraphs of this decision.

O R D E R

IT IS ORDERED that:

1. The Application of Lodi Gas Storage, L.L.C. (LGS), Lodi Gas Storage, Buckeye Gas Storage, LLC (Buckeye), Buckeye Partners, LLC (Buckeye Partners), BIF II CalGas (Delaware) LLC, and Brookfield Infrastructure Fund (BIF II) (collectively, Joint Applicants) to transfer control of LGS from Buckeye to BIF II CalGas through the purchase and sale of 100% of the outstanding limited liability interests in LGS is approved pursuant to Pub. Util. Code § 854, subject to the terms and conditions set forth in the Ordering Paragraphs of this decision.

2. The motion filed November 7, 2014, for acceptance of the All-Party Joint Stipulation, attached as Appendix 2 of this decision, is hereby granted. The terms and conditions of the All-Party Joint Stipulation, attached as Appendix 2, are hereby approved and adopted.

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3. As a condition of approval of Application 14-09-001, Lodi Gas Storage, L.L.C. (LGS), Lodi Gas Storage, Buckeye Gas Storage, LLC (Buckeye), Buckeye Partners, LLC (Buckeye Partners), BIF II CalGas (Delaware) LLC, and Brookfield Infrastructure Fund (BIF II) (collectively, Joint Applicants) shall comply with the terms of the Joint Stipulation attached as Appendix 2. Joint Applicants shall be bound by all terms and conditions of the LGS certificate of public convenience and necessity, as granted by Decision (D.) 00-05-048 and modified by D.04-05-034, including the requirements therein for a performance or security bond. Joint applicants shall also be bound by the conditions previously identified in D.06-03-012 (granting LGS a certificate of public convenience and necessity for construction and operation of the Kirby Hills Facility), as amended in D.08-02-035. LGS will continue to be subject to the reporting required in affiliate transactions prescribed by the Commission in D.03-02-071 and D.05-12-007, except as modified by D.08-04-033, and the conditions in D.08-01-018, and as expressly set forth as Appendix 1 of this decision.

4. Application 14-09-001 is closed.

This order is effective today.

Dated December 4, 2014, at San Francisco, California.

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
MICHAEL PICKER
Commissioners

A.14-09-001 ALJ/TRP/jt2

APPENDIX 1

Adopted Conditions on Approval of Application 14-09-011

Pursuant to Decision 08-01-018

APPENDIX 1

**Adopted Conditions on Approval of D.14-09-001 Pursuant to D.08-01-018
(As set forth in Exhibit 10 of Joint Splication)**

Condition 1:

Brookfield Infrastructure Fund GP II LLC, Brookfield Infrastructure Fund II-A (CR), L.P., Brookfield Infrastructure Fund II-A, L.P., Brookfield Infrastructure Fund II-B, L.P., Brookfield Infrastructure Fund II-C, L.P., Brookfield Infrastructure Fund II-D, L.P., Brookfield Infrastructure Fund II-D (CR), L.P., BIP BIF II US Holdings (Delaware) LLC, BIF II CalGas Holding (Delaware) LLC, BIF II CalGas Carry (Delaware) LLC, BIF II CalGas (Delaware) LLC and any successors, shall take all steps reasonably necessary to ensure that Lodi Gas Storage, L.L.C. has capital sufficient to provide safe and reliable service.

Condition 2(a):

Lodi Gas Storage, L.L.C. shall maintain its corporate records at the utility level, make such records available to the Commission pursuant to California Public Utilities Code Section 314, and shall make available utility officers, employees and agents as required by California Public Utilities Code Section 314(a).

Condition 2(b):

The books and records of Brookfield Infrastructure Fund II-A (CR), L.P., Brookfield Infrastructure Fund II-A, L.P., Brookfield Infrastructure Fund II-B, L.P., Brookfield Infrastructure Fund II-C, L.P., Brookfield Infrastructure Fund II-D, L.P., Brookfield Infrastructure Fund II-D (CR), L.P., BIP BIF II US Holdings (Delaware) LLC, BIF II CalGas Holding (Delaware) LLC, BIF II CalGas Carry (Delaware) LLC, BIF II CalGas (Delaware) LLC, Brookfield Infrastructure Fund GP II LLC, and any successors, shall be made available to the Commission upon request by the Commission, its employees or its agents.

Requests for production made by the Commission's employees or agents shall be deemed presumptively valid, material and relevant. Any objections to such requests shall be timely raised before the administrative law judge or assigned commissioner to the proceeding in which such objections arise or before another administrative law judge or commissioner if the request is made outside request is neither reasonably related to any issue within the Commission's jurisdiction nor reasonably calculated to result in the discovery of such material. The officers and employees of the abovementioned entities shall be available to appear and testify in Commission proceedings concerning Lodi Gas Storage, L.L.C., as necessary or required.

Condition 3:

Semi-annually, on April 30 and on October 31, Lodi Gas Storage, L.L.C. shall report to the Director of the Commission's Energy Division, with a copy to the Division of Ratepayer Advocates, 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 Lodi Gas Storage, L.L.C., any entity controlled by Lodi Gas Storage, L.L.C. whether directly or indirectly, any entity under common control with Lodi Gas Storage, L.L.C. by a direct or indirect parent entity (e.g. any subsidiary of any Lodi Gas Storage, L.L.C. 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.

The reporting requirement in the previous paragraph shall take effect on the April 30th or October 31st following, by at least one month, the issuance of a Commission Decision granting a modification in D.03-02-071 by the deletion of Ordering Paragraph 3(c) and in D.OS-12-007 by the deletion of Ordering Paragraph 3(b). Lodi Gas Storage, L.L.C. shall file such Petition for Modification within 30 days of the effective date of any Commission decision in which the previous paragraph is imposed on Lodi Gas Storage, L.L.C. and shall be limited to the deletion of the above-referenced provisions.

Condition 4:

For purposes of Condition 4:

"Sensitive Market Information" means: Any information which would customarily be considered by a natural gas storage customer to be sensitive or proprietary, which is not available to the public, or which, if disclosed, would subject a natural gas storage customer to risk of competitive disadvantage or other business injury. This includes, but is not limited to: contractual capacity rights, actual customer injection and/or withdrawal data (including forecast/future price, historical price, contractual valuation data, costs, when injection and/or

withdrawal occurs and how much natural gas is involved), both as to individual customers and in aggregate.

Lodi Gas Storage, L.L.C.: (a) shall not share

Sensitive Market Information regarding Lodi Gas Storage, L.L.C. with

Wild Goose Storage, LLC or with any other entity in which such

sharing could reasonably result in the direct or indirect disclosure of Sensitive Market

Information regarding Lodi Gas Storage, L.L.C. to Wild Goose Storage, LLC; (b) shall not

share external providers of financial planning services, regulatory affairs, lobbying, legal, and/or

risk management personnel with Wild Goose Storage, LLC or any entity exercising direct or

indirect control over Wild Goose Storage, LLC, except in situations in which the sharing of

external resources would not result in the direct or indirect disclosure of Sensitive Market

Information regarding Lodi Gas Storage, L.L.C. to Wild Goose Storage, LLC; and (c) to the

extent that any sharing of Sensitive Market Information prohibited by (a) and (b) of this

Condition nevertheless occurs, shall promptly report to the Commission the nature of any such

sharing.

Condition 5:

For purposes of Condition 5:

"Lodi Gas et. al." means Brookfield Infrastructure Fund GP II LLC, Brookfield Infrastructure Fund II-A (CR), L.P., Brookfield Infrastructure Fund 11-A, L.P., Brookfield Infrastructure Fund 11-B, L.P., Brookfield Infrastructure Fund 11-C, L.P., Brookfield Infrastructure Fund 11-D, L.P., Brookfield Infrastructure Fund II-D (CR), L.P., BIP BIF II US Holdings (Delaware) LLC, BIF II CalGas Holding (Delaware) LLC, BIF II CalGas Carry (Delaware) LLC, BIF II CalGas (Delaware) LLC, and any successors, any entity controlled by Lodi Gas Storage, L.L.C.

whether directly or indirectly, or entity under the direct or indirect control of Brookfield Infrastructure Fund GP II LLC, Brookfield Infrastructure Fund II-A (CR), L.P., Brookfield Infrastructure Fund II-A, L.P., Brookfield Infrastructure Fund li-B, L.P., Brookfield Infrastructure Fund II-C, L.P., Brookfield Infrastructure Fund li-D, L.P., Brookfield Infrastructure Fund II-D (CR), L.P., BIP BIF II US Holdings (Delaware) LLC, BIF II CalGas Holding (Delaware) LLC, BIF II CalGas Carry (Delaware) LLC, BIF II CalGas (Delaware) LLC (and any successors).

"Commonality of Interest" means the existence of: (a) any individual(s) or entity/entities having direct or indirect control over Lodi Gas et. al. while at the same time having direct or indirect control over Wild Goose Storage, LLC; (b) any individual(s) employed by Lodi Gas et. al. while at the same time employed by Wild Goose Storage LLC or any entity exercising direct or indirect control over Wild Goose Storage, LLC; or (c) any individual(s) on a board within Lodi Gas et. al. while at the same time serving on the board of any entity exercising direct or indirect control over Wild Goose Storage, LLC.

Lodi Gas et. al. assert that approval of this transaction shall not result in a Commonality of Interest. Lodi Gas et. al. shall not permit, without prior Commission approval, any Commonality of Interest to occur subsequent to approval of this transaction and shall promptly report to the Commission the nature of such interest if such Commonality of Interest nevertheless occurs.

(End of Appendix 1)

APPENDIX 2

All-Party Joint Stipulation

Appendix 2

ALL-PARTY JOINT STIPULATION

In A.14-09-001, the Office of Ratepayer Advocates (ORA) and the Joint Applicants¹ hereby jointly and severally stipulate to the following:

1. On September 3, 2014, in the above captioned proceeding pursuant to California Public Utilities Code § 854, subdivision (a) the Joint Applicants applied for Commission authorization to transfer control of LGS from Buckeye to BIF II CalGas.
2. Included with their filing was a copy of the executed Purchase and Sale Agreement (PSA), which set forth the terms and conditions by which BIF II CalGas will acquire control of LGS.
3. The Application states that LGS will continue to be bound by Commission Decision (D.) 00-05-048 (granting LGS a Certificate of Public Convenience and Necessity (CPCN) for construction and operation of the Lodi Facility),

¹ The term “Joint Applicants” mean the following parties:

- Lodi Gas Storage L.L.C. (LGS);
- Buckeye Gas Storage LLC (Buckeye);
- Buckeye Partners L.P. (Buckeye Partners);
- BIF II CalGas (Delaware) LLC (BF II CalGas); and
- Brookfield Infrastructure Fund II (BIF II).

as amended by D.06-03-012 (granting LGS a CPCN for construction and operation of the Kirby Hills Facility) and subsequent decisions.

4. On October 10, 2014, ORA protested and requested an evidentiary hearing, because the Joint Applicants did not explicitly state in a publicly available filing that they would comply with the security or performance bond requirement ordered by D.00-05-048, in Conclusion of Law 7 and Ordering Paragraph 5, and D.04-05-034 (amending the amount of the requisite Bond Condition). Further, according to the Protest, a letter agreement dated September 24, 2010 (Letter Agreement), among LGS, ORA, the California Farm Bureau Federation, and the San Joaquin Farm Bureau Federation, also obligated the Joint Applicants to meet the bond requirement, as follows:

The Settling Parties agree that neither they nor any of their successors, assigns, or affiliates will in any future state or federal administrative or judicial proceeding, directly or indirectly seek to eliminate or modify the surety bond condition as originally ordered in D.00-05-048 and modified by D.04-05-034.²

5. The Joint Applicants' Reply (dated October 20, 2014) explicitly recognizes the bond requirement ordered by D.00-05-048 and does not directly or indirectly seek to eliminate it. The Reply identified provisions in the PSA which specifically obligated BIF CalGas II, as the proposed buyer of LGS, to have a bond in place at closing of the proposed transfer.
6. The Reply further presented as Exhibit 1 the Declaration of Darren Soice, Vice President of BIF II, which (i) affirmed that the performance bond requirement would be honored after the proposed transfer of control; and (ii) acknowledged that the terms of the Letter Agreement will continue to bind LGS and its affiliates, including BIF II CalGas and BIF II.

² Ltr Agreemt at 3 (sec. II, para. 5).

7. On October 16, 2014, the Stipulating Parties met and conferred by teleconference and in the following week mutually agreed to informally resolve their differences by filing a Joint Stipulation.
8. On October 31, 2014, the Stipulating Parties met with assigned ALJ Pulsifer by telephone to inform him of their plan to file a Joint Stipulation and the accompanying Motion.
9. On November 3, 2014, ALJ Pulsifer issued a Ruling setting November 7, 2014, for the filing of the Motion and Joint Stipulation.
10. THEREFORE based on foregoing and the record to date, ORA and Joint Applicants have now resolved their differences and further agree to file a Joint Motion with a Joint Stipulation attached to request the following of the Commission:
 - 10.1. A Prehearing Conference should not be held because the issue raised by ORA's Protest has been resolved by the Joint Stipulation.
 - 10.2. The Commission should waive the comment period of thirty days under Rule 14.3, if the Commission grants the Motion and thereby accepts the Joint Stipulation.
 - 10.3. In any Commission Decision approving A.14-09-001, the Commission should incorporate by reference as if fully stated in the Decision, (i) the Letter Agreement dated September 24, 2010; and (ii) the Declaration by Darren Soice, Vice President of BIF II (Exhibit 1 of the Reply), in which the Letter Agreement is acknowledged by BIF II CalGas and BIF II, and the commitment is stated by BIF II CalGas and BIF II to have a security or performance bond in place at the time of closing of the transfer of control, in accordance with D.00-05-048 and D.04-05-034.
 - 10.4. Before the transfer of control is completed, BIF II CalGas and BIF II will have in effect a security or performance bond as ordered in

D.00-05-048, Conclusion of Law 7 and Ordering Paragraph 5, in an amount as required by D.04-05-034.³

- 10.5. The Joint Applicants must maintain documentation of the security or performance bond ordered in this proceeding.

WHEREFORE, ORA and the Joint Applicants by and through their attorneys who are so duly authorized, have signed this Joint Stipulation on November 7, 2014, as shown below.

[Signature page follows next.]

³ See *LGS*, D.04-05-034, 2004 Cal. PUC LEXIS 265, *15–16.

Respectfully submitted,

By: /s/ JAMES W. MCTARNAGHAN
James W. McTarnaghan

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Dated: November 7, 2014

By: /s/ KATY MORSONY
Evelyn Kahl
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**Attorneys for BIF II CalGas (Delaware)
LLC and Brookfield Infrastructure
Fund II**

(End of Appendix 2)

APPENDIX 2

Wild Goose, Brookfield Infrastructure Fund II GP,
and Pacific Gas and Electric Company Stipulation

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Joint Application of Wild Goose Storage, LLC
Carlyle/Riverstone Energy Partners III, L.P. and Brookfield
Infrastructure Fund II GP for Expedited *Ex Parte*
Authorization to Transfer Control of Wild Goose Storage, LLC
(U-911-G) to Brookfield Infrastructure Fund GP II, LLC
Pursuant to Public Utilities Code § 854(a)

Application 15-08-005
(Filed August 3, 2015)

**STIPULATION AMONG WILD GOOSE STORAGE, LLC, BROOKFIELD INFRASTRUCTURE
FUND II GP AND PACIFIC GAS AND ELECTRIC COMPANY**

Brookfield Infrastructure Fund II GP (BIF), Wild Goose Storage, LLC (Wild Goose) and Pacific Gas and Electric Company (PG&E) (jointly, the Parties) stipulate as follows:

WHEREAS, granting the Joint Application will result in ownership, control and common management of Wild Goose and Lodi Gas Storage, LLC (Lodi) by Brookfield Infrastructure Fund II GP (BIF);

WHEREAS, to facilitate common ownership, control and management of Wild Goose and Lodi, Brookfield Infrastructure Fund II CalGas and Lodi jointly filed a Petition for Modification of Decision 14-12-013 (Petition for Modification) requesting removal of the prohibition on information sharing between Lodi and Wild Goose;

WHEREAS, joint ownership of Wild Goose and Lodi creates an opportunity to operate the two storage facilities as an integrated hub, which could provide benefits to Wild Goose and Lodi customers and to PG&E's pipeline system;

WHEREAS, the benefits of integrated hub operations will not be realized immediately upon Commission approval of the Application because the existing prohibition on information sharing between Lodi and Wild Goose prevents full development of necessary terms, conditions and procedures at the present time and because the implementation of the hub will require changes to tariffs or customer contracts or both;

WHEREAS, the Parties intend to ensure that the granting of the Application and the Petition for Modification will not create new operational risks that are not otherwise present in the operation of the two storage facilities today;

IT IS THEREFORE STIPULATED AND AGREED by the Parties:

1. BIF will continue to operate Lodi and Wild Goose as they have previously been operated, subject to the terms and conditions of any Commission order granting the Application and the Petition for Modification, unless and until BIF requests any further authority necessary to facilitate the integrated hub and the Commission grants such authority.
2. BIF will develop and request Commission approval of the terms, conditions and procedures necessarily to realize the benefits of the integrated hub within eighteen (18) months of a final, non-appealable decision approving the Application.
3. BIF will meet with PG&E to discuss the potential operation of Wild Goose and Lodi as an integrated hub not fewer than 45 days prior to requesting any Commission authority necessary for hub operation and will submit the request as a formal application unless otherwise agreed by the Parties or required by the Commission.
4. BIF will not engage in inventory transfers between Lodi and Wild Goose unless and until it receives any Commission authority necessary to operate the facilities as an integrated hub.
5. BIF will engage in daily operational calls with PG&E Gas Transmission Control Center between 6:30 a.m. and 7:00 a.m. Pacific Time and will provide a preliminary forecast, for each of Wild Goose, Sherman Island, and Kirby Hills (Facilities), of injections and withdrawals for the current gas day and the next gas day, which each of the parties recognize may change as a result of customers' daily service elections and operational constraints of the Facilities.
6. BIF will, to the extent consistent with Wild Goose and Lodi tariffs, customer agreements, and prudent operating practices, make reasonable efforts to accommodate reasonable PG&E requests for Facilities flow allocations on the PG&E system.
7. At PG&E' request, BIF will meet with PG&E to discuss, and will in good faith evaluate, tariff changes proposed by PG&E as they pertain to Redwood Path Allocation and other operational issues concerning BIF's storage Facilities.
8. PG&E will support the Joint Application for transfer of control of Wild Goose to BIF.

Dated: September 10, 2015

By: _____ /s/
Darren Soice

Senior Vice President,
Brookfield Infrastructure
Fund II GP

By: _____ /s/
Steve Whelan

Director, Wholesale
Marketing and Business
Development, Gas System
Operations
Pacific Gas and Electric
Company

By: _____ /s/
Jason Dubchak

Vice President, Niska Gas
Storage Partners LLC on
behalf of Wild Goose
Storage, LLC

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APPENDIX 3

Wild Goose, Brookfield Infrastructure Fund II GP, and
Shell Energy North America (US), L.P. Stipulation

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Joint Application of Lodi Gas Storage, L.L.C. (U912G), Buckeye Gas Storage LLC, Buckeye Partners, L.P., BIF II CalGas (Delaware) LLC and Brookfield Infrastructure Fund II for Expedited Ex Parte Authorization to Transfer Control of Lodi Gas Storage, L.L.C. to BIF II CalGas (Delaware) LLC Pursuant to Public Utilities Code Section 854(a).

Application 14-09-001
(Filed September 3, 2014)

Joint Application of Wild Goose Storage, LLC Carlyle/Riverstone Energy Partners III, L.P. and Brookfield Infrastructure Fund II GP for Expedited *Ex Parte* Authorization to Transfer Control of Wild Goose Storage, LLC (U-911-G) to Brookfield Infrastructure Fund GP II, LLC Pursuant to Public Utilities Code § 854(a)

Application 15-08-005
(Filed August 3, 2015)

MOTION OF WILD GOOSE STORAGE, LLC, CARLYLE/RIVERSTONE ENERGY PARTNERS III, L.P., BROOKFIELD INFRASTRUCTURE FUND II GP AND LODI GAS STORAGE L.L.C. TO CONSIDER THE SHELL STIPULATION

Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), Wild Goose Storage, LLC (Wild Goose), and Carlyle/Riverstone Energy Partners III, LP, and Brookfield Infrastructure Fund II GP and Lodi Gas Storage L.L.C. (Joint Parties) request the Commission's consideration of the December 8, 2015, Stipulation among Wild Goose Storage, LLC, Brookfield Infrastructure Fund II GP (Brookfield) and Shell Energy North America (US), L.P. (Shell Stipulation), attached as Exhibit A. The Shell Stipulation addresses concerns raised in the Response of Shell Energy North America (US), L.P. by limiting the sharing of certain marketing information sharing between Wild Goose and Lodi Gas Storage (Lodi) and committing Brookfield to a dialogue with Shell in advance of seeking authority to integrate the two facilities into a single hub.

Shell's concerns center on the common ownership and control of Wild Goose and Lodi by Brookfield that will result from the Commission's approval of the Application. Noting existing conditions on information sharing between these two facilities, adopted most recently in

D.14-12-013, Shell requests that the Commission require “the two storage utilities to conduct their businesses separately” unless and until Brookfield seeks and the Commission approves integration of the facilities into an integrated hub.¹ In particular, Shell requests “separate marketing of storage capacity and services.”² Further, Shell requests that “if and when the Applicants herein decide to seek Commission approval to operate the two storage entities as a single integrated storage hub, the Applicants should be required to file a formal application with the Commission requesting this authority.”³

The Joint Applicants point out in their reply to Shell and other intervenors that complete separation of the Wild Goose and Lodi operations may prevent realization of the public interest benefits of the transfers of control.⁴ The benefits of acquisition rest, in part, on increased organization efficiency. Requiring complete ongoing separation would ignore efficiencies gains in “streamlining processes, staffing and operational synergies and the reduction of duplicative general management and administrative burdens.”⁵ The benefits of this acquisition also include the potential to combine the two facilities into a single integrated hub, maximizing benefits for customers and better supporting PG&E’s operations.⁶ To develop an integrated hub will require a cross-facility perspective, including an understanding of how customers use the two facilities today. As the Joint Applicants’ Reply explains, if Wild Goose and Lodi are precluded from sharing certain market sensitive information, developing an application for approval of an integrated hub would not be feasible.⁷

¹ Shell Response at 5-6.

² *Id.* at 5.

³ *Id.* at 6.

⁴ Joint Applicants’ Reply to Responses to Joint Application for Transfer of Control of Wild Goose Storage LLC Pursuant to Public Utilities Code Section 854(a) (filed Sept. 21, 2015) (Joint Applicants’ Reply) at 3-4.

⁵ *Id.* at 3.

⁶ Joint Application for Transfer of Control of Wild Goose Storage LLC Pursuant to Public Utilities Code Section 854(a) at 12.

⁷ Joint Applicants’ Reply at 4.

The Shell Stipulation, together with the Stipulation among Wild Goose, Brookfield and Pacific Gas and Electric Company,⁸ balances the concerns raised by Shell with the interests of the Joint Parties. First, the two stipulations address Shell’s concerns regarding the process required for hub integration. The PG&E Stipulation requires Brookfield to seek Commission approval of its right to operate Wild Goose and Lodi as an integrated hub; it obligates Brookfield to seek authority through a formal application, unless PG&E agrees to or the Commission otherwise requires an alternative procedure.⁹ The Shell Stipulation also requires that Brookfield “will meet with Shell to discuss the potential operation of Wild Goose and Lodi as an integrated hub not fewer than 45 days prior to requesting any Commission authority necessary for hub operation.”¹⁰

Second, the Shell Stipulation addresses Shell’s concern regarding the marketing of services pending integration through three measures. It provides:

- ✓ “Wild Goose and Lodi will have separate personnel for each of the following three categories: (1) the marketing of Firm Storage Services, as defined in the Wild Goose Storage tariff; (2) the marketing of Firm Storage Services, as defined in the Lodi tariff; and (3) Wild Goose Short-Term Storage Services and Lodi Interruptible Storage Services, as each of these services is defined in the existing Wild Goose and Lodi tariffs.” (¶5);
- ✓ Brookfield “will put in place procedures to prevent sharing of information between Wild Goose Firm Storage Services marketing personnel and Lodi Firm Storage Services marketing personnel regarding Firm Storage Services contract negotiations with their respective customers. Specifically, Wild Goose and Lodi Firm Storage Services marketing personnel may not exchange the name of any customer with which they are negotiating or the terms and conditions under negotiation.” (¶5)
- ✓ “Firm Storage Service contracts with a customer submitted to management for approval may be submitted to a common management team (at the vice president level), except that the identity of the customer will not be revealed to the common management team or vice president until after the contract has been executed.” (¶5)

⁸ PG&E’s Response to Joint Application (Sept. 11, 2015) , Attachment A, Stipulation among Wild Goose Storage, LLC, Brookfield Infrastructure Fund II GP and Pacific Gas and Electric Company (PG&E Stipulation).

⁹ PG&E Stipulation, ¶¶1-3.

¹⁰ Shell Stipulation, ¶4.

Based on these concessions by Brookfield and Wild Goose, Shell agrees not to oppose the Application or request additional conditions on the Commission's approval. (¶7)

For these reasons, the Joint Parties request that the Commission consider and incorporate the conditions identified in the Shell Stipulation in its approval of the Application.

By: /s/ Michael B. Day
Michael B. Day

By: /s/ Evelyn Kahl
Evelyn Kahl

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**Attorneys for Brookfield Infrastructure Fund
GP II, LLC, and Lodi Gas Storage LLC**

December 10, 2015

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Joint Application of Lodi Gas Storage, L.L.C. (U912G),
Buckeye Gas Storage LLC, Buckeye Partners, L.P., BIF II
CalGas (Delaware) LLC and Brookfield Infrastructure Fund II
for Expedited Ex Parte Authorization to Transfer Control of
Lodi Gas Storage, L.L.C. to BIF II CalGas (Delaware) LLC
Pursuant to Public Utilities Code Section 854(a).

Application 14-09-001
(Filed September 3, 2014)

Joint Application of Wild Goose Storage, LLC
Carlyle/Riverstone Energy Partners III, L.P. and Brookfield
Infrastructure Fund II GP for Expedited *Ex Parte*
Authorization to Transfer Control of Wild Goose Storage, LLC
(U-911-G) to Brookfield Infrastructure Fund GP II, LLC
Pursuant to Public Utilities Code § 854(a)

Application 15-08-005
(Filed August 3, 2015)

**STIPULATION AMONG WILD GOOSE STORAGE, LLC, BROOKFIELD
INFRASTRUCTURE FUND II GP AND
SHELL ENERGY NORTH AMERICA (US), L.P.**

Brookfield Infrastructure Fund II GP (BIF), Wild Goose Storage, LLC (Wild Goose) and Shell Energy North America (US), L.P. (Shell) (jointly, the Parties) stipulate as follows:

WHEREAS, granting the Joint Application will result in ownership, control and common management of Wild Goose and Lodi Gas Storage, LLC (Lodi) by Brookfield Infrastructure Fund II GP (BIF);

WHEREAS, to facilitate common ownership, control and management of Wild Goose and Lodi, Brookfield Infrastructure Fund II CalGas and Lodi jointly filed a Petition for Modification of Decision 14-12-013 (Petition for Modification) requesting removal of the prohibition on information sharing between Lodi and Wild Goose;

WHEREAS, joint ownership of Wild Goose and Lodi creates an opportunity to operate the two storage facilities as an integrated hub, which could provide benefits to Wild Goose and Lodi customers;

WHEREAS, the benefits of the integrated hub will not be realized immediately upon Commission approval of the Application because the existing prohibition on information sharing between Lodi and Wild Goose prevents full development of necessary terms, conditions and procedures and because the implementation of the hub will require changes to tariffs or customer contracts or both;

WHEREAS, neither Wild Goose nor Lodi has proposed changes to the product offerings or pricing structures specified in their existing tariffs as a part of the Application;

WHEREAS, the products and prices for each facility are, in part, a function of each facility's physical characteristics and cost structure;

WHEREAS, Shell seeks assurance that the granting of the Application and the Petition for Modification will not reduce the differentiation in product offerings and pricing between Wild Goose and Lodi pending Commission approval of an application by BIF to establish an integrated hub;

IT IS THEREFORE STIPULATED AND AGREED by the Parties:

1. BIF will continue to operate Lodi and Wild Goose as they have previously been operated, subject to the terms and conditions of any Commission order granting the Application and the Petition for Modification, unless and until BIF requests any further authority necessary to facilitate the integrated hub and the Commission grants such authority.
2. Products and prices, including fuel rates, will remain differentiated unless and until BIF requests any further authority necessary to facilitate the integrated hub and the Commission grants such authority.
3. BIF will develop and request Commission approval of the terms, conditions and procedures necessary to realize the benefits of the integrated hub within eighteen (18) months of a final, non-appealable decision approving the Application.
4. BIF will meet with Shell to discuss the potential operation of Wild Goose and Lodi as an integrated hub not fewer than 45 days prior to requesting any Commission authority necessary for hub operation.
5. WHEREAS, upon Commission approval of the transfer of control and closure of the transaction, Wild Goose and Lodi will have separate personnel for each of the following three categories: (1) the marketing of Firm Storage Services, as defined in the Wild Goose Storage tariff; (2) the marketing of Firm Storage Services, as defined in the Lodi tariff; and (3) Wild Goose Short-Term Storage Services and Lodi Interruptible Storage Services, as each of these services is defined in the existing Wild Goose and Lodi tariffs. BIF will retain separate personnel for each of these purposes pending Commission approval of the establishment of an integrated hub. During this period, any Firm Storage Service contracts with a customer submitted to management for approval may be submitted to a common management team (at the vice president level), except

that the identity of the customer will not be revealed to the common management team or vice president until after the contract has been executed.

6. BIF will put in place procedures to prevent sharing of information between Wild Goose Firm Storage Services marketing personnel and Lodi Firm Storage Services marketing personnel regarding Firm Storage Services contract negotiations with their respective customers. Specifically, Wild Goose and Lodi Firm Storage Services marketing personnel may not exchange the name of any customer with which they are negotiating or the terms and conditions under negotiation.
7. Shell will not oppose the Joint Application for transfer of control of Wild Goose to BIF and will not request any conditions to a decision in this Joint Application proceeding, but retains its right to evaluate and challenge any application by BIF to establish an integrated hub or any future Wild Goose or Lodi tariff changes.

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