

construction in Connecticut and explained that the Connecticut disaster had caused a heightening of Enerland's concern about its own potential liability.

Mr. Larson emphasized that the presumption of need for Central Valley's project is premised on Central Valley accepting all the risks that its project presents. He noted that Central Valley, in fact, has not provided sufficient protection against such risks and that Enerland is justified in asking for better evidence of effective insurance of a magnitude sufficient to protect Enerland and other neighboring property owners against the risks presented by Central Valley's project.

In the course of their meeting, Mr. Larson furnished Mr. Tisdale a copy of the reply brief of Enerland, LLC, which was submitted for filing on April 23, 2010. A copy of that document is attached to this notice.

To obtain a copy of this notice, please contact:

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Respectfully submitted,

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April 29, 2010

CERTIFICATE OF SERVICE

I, Maura Bonal, hereby certify that on this date I will serve by electronic mail and by hand delivery, the foregoing **NOTICE OF EX PARTE COMMUNICATION** on the parties in Application 09-08-008, below:

By electronic mail:

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By hand delivery:

Hon. Timothy Kenney
Administrative Law Judge
California Public Utilities Commission
505 Van Ness Avenue, Room 5021
San Francisco, CA 94102

Executed this 29th day of April, 2010, in San Francisco, California.

/S/ MAURA BONAL

Maura Bonal

CALIFORNIA PUBLIC UTILITIES COMMISSION

Service Lists

PROCEEDING: A0908008 - CENTRAL VALLEY GAS S
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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Central Valley Gas Storage,)
LLC for a Certificate of Public Convenience)
and Necessity for Construction and)
Operation of Natural Gas Storage Facilities)
_____)

Application .09-08-008
(Filed August 19, 2009)

**REPLY BRIEF
OF ENERLAND, LLC**

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April 23, 2010

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

Application of Central Valley Gas Storage,)
LLC for a Certificate of Public Convenience)
and Necessity for Construction and)
Operation of Natural Gas Storage Facilities)
_____)

Application .09-08-008
(Filed August 19, 2009)

**REPLY BRIEF
OF ENERLAND, LLC**

In accordance with Rule 13.11 of the Commission's Rules of Practice and Procedure ("Rules") and the procedural schedule set by the Assigned Commissioner's Ruling and Scoping Memo ("Scoping Memo"), Enerland, LLC ("Enerland") hereby respectfully submits its reply brief addressing the above-captioned application of Central Valley Gas Storage, LLC ("Applicant" or "CVGS") for a Certificate of Public Convenience and Necessity authorizing it to construct and operate a natural gas storage field and associated pipelines and facilities in Colusa County, California. Enerland's reply brief responds to the opening brief of CVGS and is timely filed.

I. INTRODUCTION AND BACKGROUND

CVGS has asserted a "Presumptive Showing of Need" for its project based on its willingness to accept all of the financial risks associated with the project. CVGS Opening Brief, at 3. However, its conduct toward Enerland makes clear that CVGS is *not* willing to bear all of the financial risks associated with its project. To the contrary, CVGS has failed to provide adequate evidence of liability insurance or to indemnify Enerland or other underlying or neighboring property owners against the substantial risks of serious harm presented by the project.

In its opening brief, Enerland emphasized the hazards associated with the proposed natural gas project, as illustrated by recent disastrous accidents affecting natural

gas fired power plants and other natural gas facilities. Enerland explained the basis for its concern as an owner of interests in real estate, including the site of a 660 MW power generating station currently under construction, in the immediate vicinity of the proposed point of interconnection of the CVGS project with the Pacific Gas and Electric Company ("PG&E") gas transmission system. Enerland also explained its efforts to achieve meaningful assurance from CVGS that property owners such as CVGS would be adequately protected against the risks of catastrophic harm presented by the CVGS project and the lack of success of those efforts as of the time opening briefs were filed.

Enerland's concerns were addressed in the opening brief of CVGS, but not in a constructive way. Rather than address Enerland's concerns on their merits, CVGS chose to launch an *ad hominem* attack on Robert Mussetter, Enerland's managing member and a former Commissioner of the California Energy Commission ("CEC"), and to submit as an exhibit to its brief a "Certificate of Insurance" on the same day that document was first delivered to counsel for Enerland. The attack on Mr. Mussetter's good faith is unseemly. The so-called Certificate of Insurance is of minimal value. The whole approach taken by CVGS in its opening brief discredits the Applicant in this proceeding and casts serious doubt upon its qualifications to undertake a major energy project involving serious risk of catastrophic harm.

II. ISSUES

- A. The Efforts of CVGS, in Its Opening Brief, to Attack Enerland and to Create an Illusion of Protection Against Risk Leave Serious Doubt About the Qualifications of CVGS to Construct and Operate a Gas Storage Project Presenting Public Safety Concerns That Have Yet to Be Resolved.

Rather than seriously address the safety concerns Enerland has raised, CVGS discounts them, attacks Enerland's credibility, and purports to provide evidence of insurance against the risks that it has already discounted. These efforts present

grounds for serious doubt about the qualifications of CVGS to construct and operate a gas storage and pipeline project presenting unresolved safety risks.

1. CVGS's attack on Enerland's good faith fails to recognize the substantial changes of circumstances over the years since Enerland was seeking to bring energy projects to its Colusa County property.

CVGS attempts to paint Enerland's expressions of grave concern about the safety risks presented by the CVGS project as "a transparent attempt to gain leverage in connection with negotiations for a 30-foot right-of-way easement." CVGS Opening Brief, at 5. There is no basis for this claim. While it is true that CVGS has yet to demonstrate good faith in its meager gestures toward initiating discussion of terms for obtaining access and use of Enerland's property, the potential for garnering a fair compensation from an easement agreement is not what motivates Enerland's participation in this proceeding. Enerland is genuinely concerned about the risks of serious harm presented by CVGS's plan to interconnect its new pipeline with PG&E's Line 400/401A in the immediate vicinity PG&E's Colusa Power Plant. The Commission should share that concern and so, frankly, should CVGS.

Rather than seriously address Enerland's safety concern, CVGS attacks Enerland and Robert Mussetter, its managing member, for what Enerland perceives to be an inconsistent past effort to move energy projects onto Enerland property. As evidence of such inconsistency, CVGS cites Mr. Mussetter's correspondence with CEC staff in 2003 in support of re-routing the proposed Ruby Pipeline to serve the Colusa County power plant site on Enerland's property and Enerland's participation, also in 2003, in the CEC's Walnut Energy Center proceeding. CVGS Opening Brief, at 5-7.

CVGS fails to recognize the substantially changed circumstances of the present project as compared to those under consideration in 2003. For one thing, there is now a nearly completed 660 MW power generating station on Enerland's property, in close proximity to the point at which CVGS plans to have its pipeline

interconnect with PG&E's Line 400/401A. Considering the PG&E gas transmission facilities and four high-voltage electric transmission lines in the same vicinity, Enerland conservatively estimates that the potential loss in the event of a catastrophic natural gas accident at or near that interconnection point is in the range of one billion dollars.

Another major change of circumstances since 2003 is a heightened sensitivity to the risk of such catastrophic events. The Kleen Energy disaster that occurred in Middletown, Connecticut just as the parties were preparing for the prehearing conference in this case, discussed in detail in Enerland's opening brief, was a shocking reminder of the hazards presented by construction activities involving natural gas. The Commission should not merely understand Enerland's concern in that regard. The Commission should share that concern.

2. The certificate of insurance on which CVGS relies provides no comfort to Enerland and should give the Commission no confidence in the claim of CVGS to be bearing all the financial risks associated with its project.

Ever since Enerland became active in this proceeding, the Applicant, CVGS, has claimed to offer liability insurance as its response to Enerland's safety concerns. At the prehearing conference held February 10, 2010, ALJ Kenney encouraged the parties to meet and confer in this regard. In its opening brief, Enerland noted that discussions had been held, promises made, but no resolution achieved. Specifically, CVGS had not "followed through in any concrete way on its commitment to provide evidence of adequate insurance coverage." Enerland Opening Brief, at 5.

CVGS addressed this issue in its opening brief by asserting that it will be covered by the corporate insurance policies of its parent company, Nicor, Inc. ("Nicor"), and by attaching to its brief a Certificate of Insurance "for comprehensive general liability coverage in the amount of \$35 million," which was delivered to counsel for Enerland a few hours before the brief was filed. CVGS Opening Brief, at 10 and Exhibit 3.

The purported Certificate of Insurance is a very questionable document. It does not extend any insurance coverage to Enerland or any other third party. Enerland is not named as an “additional insured,” and the Certificate states that it “does not confer rights to the certificate holder.” The document purports only to certify the coverage provided by an entity called “Associated Electric & Gas Services Ltd” to an entity named as “Central Valley Gas.” See CVGS Opening Brief, Exhibit C. Nicor is not mentioned at all.

The certified coverage is limited to “EXCESS / UMBRELLA COVERAGE” up to \$35 million and is subject to a self-insured retention (“SIR”) of \$2 million. *Id.* A self-insured retention is a tricky provision that the International Risk Management Institute, Inc., has defined and described as follows:

Self-insured Retention (“SIR”): A dollar amount specified in an insurance policy (usually a liability insurance policy) that must be paid by the insured before the insurance policy will respond to a loss. SIRs typically apply to both the amount of the loss and related costs, e.g., defense costs, but some apply only to amounts payable in damages, e.g., settlements, awards, and judgments. An SIR differs from a true deductible in at least two important ways. Most importantly, a liability policy's limit stacks on top of an SIR while the amount of a liability insurance deductible is subtracted from the policy's limit. As contrasted with its responsibility under a deductible, the insurer is not obligated to pay the SIR amount and then seek reimbursement from the insured; the insured pays the SIR directly to the claimant.¹

What this means is that the policy CVGS claims to have in force appears to provide protection, at best, only to the extent that CVGS already has incurred **and paid** costs exceeding \$2 million. If CVGS fails to pay costs resulting from its liability – or is unable to do so due to insolvency – the excess/umbrella insurance policy appears to be useless and of no value either to CVGS or to any injured party. Moreover, the Certificate of Insurance indicates that the self-insured retention applies only to personal and advertising injury – and not to property damage. This strongly implies that the excess/umbrella coverage is equally limited – and so would provide **no protection whatsoever** for the

¹ <http://www.irmi.com/online/insurance-glossary/terms/s/self-insured-retention-sir.aspx>

approximately \$1 billion value of utility plant assets in the immediate vicinity of the proposed point of interconnection between the CVGS project and PG&E's natural gas transmission system. And, of course, the umbrella coverage is limited to \$35 million, an inadequate amount.

On April 16, 2010, counsel for Enerland directed a series of information requests regarding the Certificate of Insurance to counsel for CVGS. These included questions about the qualifications of the purported insurer, the effects of the self-insured retention, the willingness of CVGS to endorse the policy to show Enerland as an additional named insured, and the willingness of Nicor, the parent company of CVGS, to provide a guarantee to cover the liabilities of CVGS. Shortly before noon on April 23, 2010 (the day this brief is being filed), CVGS provided a partial response to Enerland's information requests. This response included a new Certificate of Insurance (attached to this reply brief as Exhibit A), apparently intended to replace the previous one. The new Certificate indicates that the self-insured retention is not limited to personal and advertising injury but may have a broader scope, implying that the excess/umbrella coverage offered by the policy also may be broader in scope. Also, the CVGS response indicates, contrary to the Certificate, that the named insured is Nicor rather than Central Valley Gas and that Nicor "is responsible for paying the first \$2 million on a claim, not Central Valley." Only once the \$2 million Nicor pays is exceeded, will the insurer provide coverage to CVGS.

Neither the original Certificate of Insurance nor its replacement provides any substantial sense of security to Enerland. Even if Nicor's insurance provides some value to CVGS, it offers little if any protection to Enerland, either in the form of insurance or indemnification. The possible commitment by Nicor to stand behind its limited liability subsidiary is unsubstantiated and inconsistently described.

Enerland is seriously concerned by the inadequacy of the showing CVGS has provided on the insurance issue, and the lateness of the effort by CVGS to remedy that situation. The Commission should share these concerns.

B. Reporting Requirements.

Not addressed.

C. The Commission Should Not Adopt a Mitigated Negative Declaration Pursuant to CEQA for the Construction and Operation of the Central Valley Gas Storage Project Until Risks to Public Safety Have Been Sufficiently Mitigated.

On April 22, 2010, Enerland received notice that a draft Initial Study/Mitigated Negative Declaration ("IS/MND") for the CVGS project was available for review on the Commission's website for the project. The notice indicated that the public review period for the IS/MND would start on that date and that comments will be accepted until May 22, 2010.

As of this time, Enerland has had only minimal opportunity to review the IS/MND. Enerland notes that well over 100 pages of the IS/MND are devoted to safety issues but that the mitigation measures proposed to address hazards to the public do not appear designed to address the concerns Enerland has raised. Accordingly, it is premature to address in the present brief whether the proposed IS/MND should be approved. Enerland must again affirm, however, that the Commission should not adopt an MND with respect to the CVGS project until identified risks to public safety have been sufficiently mitigated, a goal that still has not been achieved.

III. CONCLUSION

For the reasons stated above and in its opening brief, Enerland respectfully urges the Commission not to grant a Certificate of Public Convenience and Necessity, adopt a Mitigated Negative Declaration, or otherwise authorize the CVGS project until

CVGS has provided clear and fully documented evidence that it has taken all appropriate steps to protect underlying and neighboring property owners and the public at large against the substantial risks of harm presented by its project, including adequate insurance and indemnification of those parties against potential liability for such harm.

Respectfully submitted,

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Attorneys for ENERLAND, LLC

April 23, 2010

EXHIBIT A



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/21/2010

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INSURED
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THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURER A: Associated Electric & Gas Services Ltd

INSURER B: N/A

INSURER C: Self Insured

INSURER D:

INSURER E:

NAIC #

N/A

6

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
C		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GENERAL AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC		06/30/2009	06/30/2010	EACH OCCURRENCE	\$ SIR 2,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
						MED EXP (Any one person)	\$
						PERSONAL & ADV INJURY	\$
						GENERAL AGGREGATE	\$ 2,000,000
						PRODUCTS - COMP/OP AGG	\$
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident)	\$
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN AUTO ONLY: EA ACC	\$
						AGG	\$
A		EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	X0061A1A09	06/30/2009	06/30/2010	EACH OCCURRENCE	\$ 35,000,000
						AGGREGATE	\$ 35,000,000
							\$
							\$
							\$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS	OTHER
						E.L. EACH ACCIDENT	\$
						E.L. DISEASE - EA EMPLOYEE	\$
						E.L. DISEASE - POLICY LIMIT	\$
		OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

CERTIFICATE HOLDER

CHI-002822747-02

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL **30** DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.
Mary Radaszewski

Mary Radaszewski

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

CERTIFICATE OF SERVICE

I, Jeannie Wong, hereby certify that on this date I will serve by electronic mail and by hand delivery, the foregoing corrected **REPLY BRIEF OF ENERLAND, LLC** on the parties in Application 09-08-008, below:

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By hand delivery:

Hon. Timothy Kenney
Administrative Law Judge
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San Francisco, CA 94102

Executed this 27th day of April, 2010 in San Francisco, California.

/S/ JEANNIE WONG
Jeannie Wong

CALIFORNIA PUBLIC UTILITIES COMMISSION
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FILER: CENTRAL VALLEY GAS STORAGE, LLC
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