



FILED

09-23-10

04:59 PM

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Central Valley Gas Storage, LLC)
for a Certificate of Public Convenience and) A. 09-08-008
Necessity for Construction and Operation of) (Filed August 19, 2009)
Natural Gas Storage Facilities.)
)
)

**MOTION OF CENTRAL VALLEY GAS STORAGE, LLC
TO STRIKE OUT-OF-TIME COMMENTS OF ENERLAND, LLC ON PROPOSED
DECISION OF ADMINISTRATIVE LAW JUDGE KENNEY**

Daniel McNamara
Vice President, General Counsel and
Secretary
Central Valley Gas Storage LLC
1844 Ferry Road
Naperville, IL 60563
Telephone: (630) 718-2981
Fax: (630) 399-7216
E-mail: dmcnama@Nicor.com

Christopher A. Schindler
Ruth M. Porter
Hogan Lovells US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
Telephone: (202) 637-5723
Fax: (202) 637-5910
E-mail: Christopher.Schindler@hoganlovells.com

Attorneys for Central Valley Gas Storage, LLC

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Central Valley Gas Storage, LLC)
for a Certificate of Public Convenience and) A. 09-08-008
Necessity for Construction and Operation of) (Filed August 19, 2009)
Natural Gas Storage Facilities.)
)
)
_____)

**MOTION OF CENTRAL VALLEY GAS STORAGE, LLC
TO STRIKE OUT-OF-TIME COMMENTS OF ENERLAND, LLC ON PROPOSED
DECISION OF ADMINISTRATIVE LAW JUDGE KENNEY**

I. INTRODUCTION

Pursuant to Rule 11.1 of the California Public Utilities Commission’s Rules of Practice and Procedure, Central Valley Gas Storage, LLC (“CVGS”) hereby moves to strike the Comments of Enerland, LLC on Proposed Decision of Administrative Law Judge Kenny (“Comments”) because Enerland, LLC (“Enerland”) failed to file its Comments within the comment period in accordance with Rule 14.3 and failed to show good cause for the Commission to excuse this failure. In addition, CVGS requests that the Commission shorten the time permitted for Enerland to respond to this motion from fifteen to two days. Finally, in the event the Commission denies this motion, CVGS requests that the Commission allow CVGS five days from the date it issues an order denying this motion to submit Reply Comments responding to the Enerland’s comments.

II. BACKGROUND

On August 19, 2009, CVGS filed an application with the Commission for a Certificate of Public Convenience and Necessity (“CPCN”) to construct and operate a natural gas storage facility, and on August 31, 2010, Administrative Law Judge (“ALJ”) Kenney issued a Proposed

Decision (“PD”) in this proceeding that would grant CVGS’s CPCN application. The same day, a notification of the PD’s filing and issuance was sent via electronic mail to all parties on the service list and a Notice of Availability for the PD was served on the service list via U.S. mail. The Commission also posted a copy of the PD on the Commission’s website in the electronic docket for this proceeding clearly indicating that “[o]pening comments . . . are due no later than September 20, 2010.” ^{1/} Southern California Gas Company (“SoCalGas”) filed timely comments on the PD on September 20, 2010, as required. Enerland, however, did not file its Comments on the PD until September 21, 2010.

III. THE COMMISSION SHOULD STRIKE ENERLAND’S COMMENTS BECAUSE ENERLAND FAILED TO COMPLY WITH THE COMMISSION’S TIMING RULES OR SHOW GOOD CAUSE FOR ITS FAILURE TO COMPLY

The Commission should strike Enerland’s Comments from the record in this proceeding because: (1) Enerland failed to file its Comments within the time-period specified in Rule 14.3 of the Commission’s Rules of Practice and Procedure; (2) Enerland had adequate notice of the deadline for submitting comments; (3) Enerland acknowledged the deadline in correspondence to the Commission; and, (4) Enerland failed to provide any basis for its failure to meet the deadline, much less show good cause for its failure to do so.

A. Enerland failed to Comply with the Commission’s Timing Rule.

Enerland’s Comments were untimely because they were not filed until after the deadline for filing comments pursuant to Rule 14 of the Commission’s Rules of Practice and Procedure had already passed. Rule 14.3(a) of the Commission’s Rules of Practice and Procedure states that “[p]arties may file comments on the Proposed or Alternate Decision within 20 days of the date of service on the parties.” As discussed above, ALJ Kenney issued the PD in this

^{1/} Electronic Docket Card, Docket No. A.09.08.008, *available at* <http://docs.cpuc.ca.gov/published/proceedings/A0908008.htm> (last accessed Sept. 22, 2010).

proceeding on August 31, 2010 and served all parties with an electronic notice of that issuance the same day. Consequently, in accordance with Rule 14.3(a), comments on ALJ Kenney's PD were due on September 20, 2010. Enerland, however, did not file its Comments until September 21, 2010. Therefore, in filing its Comments, Enerland plainly failed to meet the deadline specified by Rule 14.3(a).

B. Enerland had Adequate Notice of the Deadline for Submitting Comments.

Enerland failed to file its Comments in a timely manner despite having adequate notice of the deadline. Enerland acknowledged in its Comments that the PD was issued in this proceeding on August 31, 2010, ^{2/} and did not allege that there was any defect in service of that document. In addition, Enerland acknowledged the 20-day time limit to Administrative Law Judge Econome prior to issuance of the PD. Specifically, prior to the issuance of the PD, CVGS requested that all parties to this proceeding consent to shortening the time period for submitting comments on the pending PD from 20 to 12 days pursuant to Rule 14.6(b). In its e-mail response to that request, Enerland objected to shortening the time period for submitting comments because "a shortening of the 20-day period for comments on the Proposed Decision would be prejudicial to Enerland." ^{3/} Thus, Enerland was certainly aware of the 20-day time period for submitting comments pursuant to Rule 14.

C. Enerland Failed to Acknowledge that Its Comments were Untimely Much Less Show Good Cause for Missing the Deadline.

The Commission should strike Enerland's Comments because Enerland failed to show good cause for the Commission to excuse it from missing the filing deadline. As a general matter, the Commission has the power to excuse non-compliance with its procedural rules in

^{2/} Comments of Enerland, LLC on Proposed Decision of Administrative Law Judge Kenney at 1, Docket No. A.09-08-008 (filed Sept. 21, 2010).

^{3/} E-mail from Martin Mattes to Judge Econome, et al. (Aug. 25, 2010). A copy of this e-mail is provided herewith as Appendix A to this motion.

instances where a party shows good cause for its non-compliance. ^{4/} The Commission, however, has failed to excuse a Party's failure to comply with a deadline in instances where, as here, the party fails to offer any legitimate explanation for its tardiness. ^{5/} On the one hand, Enerland employs Commission rules to its advantage in refusing to acquiesce to a proposal to shorten the time period for comments, yet repeatedly ignores the rules when it is to its advantage – filing an untimely protest in this proceeding at the outset and now submitting comments late with no explanation. Fundamental fairness and lack of good cause support a rejection of Enerland's late-filed Comments. Accordingly, the Commission should strike Enerland's Comments from the record in this proceeding.

IV. THE COMMISSION SHOULD SHORTEN THE TIME PERMITTED FOR ENERLAND TO RESPOND TO THIS MOTION AND PROVIDE CVGS FIVE DAYS TO RESPOND TO ENERLAND'S COMMENTS IN THE EVENT THE COMMISSION DENIED CVGS'S MOTION TO STRIKE

To ensure that this issue is resolved well in advance of the Commission's consideration of the PD on October 14, 2010, CVGS requests that the Commission shorten the time allotted for Enerland to respond to this motion from fifteen to two days. Moreover, in the event the Commission denies this motion to strike Enerland's Comments, CVGS requests the Commission to allow CVGS five days from date that the motion is denied to respond to the substance of Enerland's Comments. Finally, given that responses to this Motion would be due on the day Reply Comments are due (at least for those Comments that were timely filed), CVGS requests confirmation as soon as practicable that Reply Comments addressing Enerland's concerns (should Enerland's Comments ultimately be accepted) are not due until after the Commission rules on this Motion.

^{4/} See, e.g., *In re Biennial Resource Plan Update*, 45 CPUC 2d 274 (Aug. 11, 1992).

^{5/} See, e.g., *id.* (granting a motion to strike late-tendered comments in the absence of good cause shown).

V. CONCLUSION

For the foregoing reasons, CVGS respectfully requests that the Commission: (1) strike Enerland's Comments on ALJ Kenney's Proposed Decision in this proceeding; (2) shorten the time allotted for Enerland to respond to this motion from fifteen to two days; (3) provide CVGS five days to respond to the substance of Enerland's Comments in the event the Commission denies this motion to strike; and (4) confirm as soon as possible that Reply Comments concerning Enerland's late-filed Comments (if Enerland's Comments are allowed) would not be due until after the Commission rules on this Motion.

Respectfully submitted,

/s/

Christopher Schindler
Hogan Lovells US LLP
555 Thirteenth Street, N.W.
Washington, DC 20004
Telephone: (202) 637-5723
Fax: (202) 637-5910
E-mail: Christopher.Schindler@hoganlovells.com

Attorney for Central Valley Gas Storage, LLC

Dated: September 23, 2010

APPENDIX A

Schindler, Christopher A.

From: Mattes, Martin [mmattes@nossaman.com]
Sent: Wednesday, August 25, 2010 5:49 PM
To: Econome, Janet A.; Schindler, Christopher A.; SDPatrick@SempraUtilities.com; Rashid, Rashid A.; kts1@pge.com; jarmstrong@goodinmacbride.com; dcarroll@downeybrand.com; atrowbridge@daycartermurphy.com; P Villegas@SempraUtilities.com; mrw@mrwassoc.com; peteresposito@earthlink.net; JLSalazar@SempraUtilities.com; O'Hanlon, Neil R.; michael.alexander@sce.com; cem@newsdata.com; RegRelCPUCCases@pge.com; KJBh@pge.com; mike.ahmadi@Granitekey.com; Cadenasso, Eugene; Sabino, Pearlie Z.; Myers, Richard A.; Smith, Richard; Pocta, Robert M.; Kenney, Timothy
Cc: Gangopadhyay, Monisha; ALJ Central Files ID; Tisdale, Matthew
Subject: RE: Parties' Response to Requested Shortened Comment Period Necessary by Monday, August 30, 2010 5:00 PM PST; Central Valley Gas Storage (A.09-08-008) - shortened comment period request

Judge Econome -- Enerland, LLC, a party to A.09-08-008, does object to a shortening of the comment period on the pending Proposed Decision. Due to logistical issues affecting communications among persons who will be responsible for evaluating the Proposed Decision on behalf of Enerland and for developing Enerland's comments and also due to other concurrent obligations, a shortening of the 20-day period for comments on the Proposed Decision would be prejudicial to Enerland.

Respectfully,

Martin A. Mattes

Attorney at Law
 NOSSAMAN LLP
 50 California Street, 34th Floor
 San Francisco, CA 94111
 mmattes@nossaman.com
 T 415.398.3600 F 415.398.2438
 D 415.438.7273



From: Econome, Janet A. [mailto:janet.econome@cpuc.ca.gov]
Sent: Wednesday, August 25, 2010 2:42 PM
To: CASchindler@hhlaw.com; SDPatrick@SempraUtilities.com; Rashid, Rashid A.; kts1@pge.com; jarmstrong@goodinmacbride.com; Mattes, Martin; dcarroll@downeybrand.com; atrowbridge@daycartermurphy.com; P Villegas@SempraUtilities.com; mrw@mrwassoc.com; peteresposito@earthlink.net; JLSalazar@SempraUtilities.com; NROhanlon@hhlaw.com; michael.alexander@sce.com; cem@newsdata.com; RegRelCPUCCases@pge.com; KJBh@pge.com; mike.ahmadi@Granitekey.com; Cadenasso, Eugene; Sabino, Pearlie Z.; Myers, Richard A.; Smith, Richard; Pocta, Robert M.; Kenney, Timothy
Cc: Gangopadhyay, Monisha; ALJ Central Files ID; Tisdale, Matthew
Subject: Parties' Response to Requested Shortened Comment Period Necessary by Monday, August 30, 2010 5:00 PM PST; Central Valley Gas Storage (A.09-08-008) - shortened comment period request

To the parties in A.09-08-008:

I am ALJ Kenney's supervisor and send this notice in lieu of ALJ Kenney. This notice is sent to the most recent service list for A.09-08-008 and will **NOT** be followed by a written ruling. I am in receipt of Mr. Schindler's request

9/22/2010

on behalf of applicant Central Valley Gas Storage LLC (see note below) to reduce the comment period on a proposed decision in this matter to 12 days (as opposed to 20 days) upon stipulation of the parties so that this matter can be considered on the Commission's 9/23/10 agenda, pursuant to Rule 14.6(b) of the Commission's Rules of Practice and Procedure. This would mean that parties would have 12 (as opposed to 20) days to file comments on the proposed decision and five days thereafter to file reply comments pursuant to Rule 14.3.

Parties should respond to this email note no later than Monday, August 30, 2010 by 5:00 PM Pacific Standard Time if they have any objections to shortening the comment period to 12 days. This email response should be served on the service list of A.09-08-008 and also include the undersigned at jjj@cpuc.ca.gov. If there are no objections received by 5:00 PM Pacific Standard Time on Monday, August 30, 2010 to shortening the comment period, the comment period will be shortened to 12 days.

I am copying the Commission's Central Files with this email and a copy of it will be placed in the case file.

Thank you very much.

Janet A. Econome
Assistant Chief Administrative Law Judge
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
415/703-1494
jjj@cpuc.ca.gov

From: Gangopadhyay, Monisha
Sent: Wednesday, August 25, 2010 2:06 PM
To: Econome, Janet A.; Smith, Richard
Subject: FW: Central Valley Gas Storage (A.09-08-008) - shortened comment period request

From: Schindler, Christopher A. [<mailto:christopher.schindler@hoganlovells.com>]
Sent: Wednesday, August 25, 2010 2:02 PM
To: sdpatrick@semprautilities.com; Rashid, Rashid A.; kts1@pge.com; jarmstrong@goodinmacbride.com; mmattes@nossaman.com; dcarroll@downeybrand.com; atrowbridge@daycartermurphy.com; scittad@nicor.com; dmcnama@nicor.com; peterosposito@earthlink.net; JLSalazar@semprautilities.com; O'Hanlon, Neil R.; michael.alexander@sce.com; pvillegas@semprautilities.com; cem@newsdata.com; RegRelCPUCCases@pge.com; KJBh@pge.com; mike.ahmadi@Granitekey.com; mrw@mrwassoc.com; Cadenasso, Eugene; Sabino, Pearlie Z.; Myers, Richard A.; Pocta, Robert M.; Gangopadhyay, Monisha
Cc: Kenney, Timothy
Subject: Central Valley Gas Storage (A.09-08-008)

To Parties in Central Valley Gas Storage (A.09-08-008):

The most recent procedural schedule in this proceeding targeted the issuance of the Presiding ALJ's Proposed Decision in time to meet the deadline for the Commission's September 23, 2010 open meeting. Commission rules require the issuance of the PD at least thirty (30) days in advance of the Commission vote to allow for public review and comment. Although Central Valley understands that the Proposed Decision is to be issued very shortly, it is no longer possible to meet the full 30-day time requirement prior to the September 23 Commission meeting date.

Rule 14.6(b) allows for the reduction of the period of time for public review and comment "where all parties stipulate." **Accordingly, Central Valley is requesting the consent of each party to shorten the time for submitting initial comment on the Proposed Decision to twelve (12) days from service of the PD (as**

opposed to the more typical twenty (20) days) in order that the decision may be part of the agenda for the September 23 meeting.

Central Valley understands that the Presiding ALJ will be issuing further procedural instructions concerning this request. Thank you in advance for your attention to this matter.

Chris Schindler
Counsel for Central Valley Gas Storage LLC

Christopher Schindler

Partner

Hogan Lovells US LLP	
Columbia Square 555 Thirteenth Street, NW Washington, DC 20004	
Tel:	+1 202 637 5600
Direct:	+1 202 637 5723
Fax:	+1 202 637 5910
Email:	christopher.schindler@hoganlovells.com
	www.hoganlovells.com

Please consider the environment before printing this e-mail.

Hogan Lovells refers to the international legal practice comprising Hogan Lovells International LLP, Hogan Lovells US LLP, Hogan Lovells Worldwide Group (a Swiss Verein), and their affiliated businesses. Hogan Lovells International LLP is a limited liability partnership registered in England and Wales with registered number OC323639. Registered office and principal place of business: Atlantic House, Holborn Viaduct, London EC1A 2FG. Hogan Lovells US LLP is a limited liability partnership registered in the District of Columbia. The word "partner" is used to refer to a member of Hogan Lovells International LLP or a partner of Hogan Lovells US LLP, or an employee or consultant with equivalent standing and qualifications, and to a partner, member, employee or consultant in any of their affiliated businesses who has equivalent standing. A list of the members of Hogan Lovells International LLP and of the non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at the above address. Further important information about Hogan Lovells can be found on www.hoganlovells.com.

CONFIDENTIALITY. This email and any attachments are confidential, except where the email states it can be disclosed, it may also be privileged. If received in error, please do not disclose the contents to anyone, but notify the sender by return email and delete this email (and any attachments) from your system.

9/22/2010

CERTIFICATE OF SERVICE

I, Christopher A. Schindler, hereby certify that I served a copy of the foregoing **MOTION OF CENTRAL VALLEY GAS STORAGE, LLC TO STRIKE OUT-OF-TIME COMMENTS OF ENERLAND, LLC ON PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE KENNEY** on September 23, 2010, on all known parties to Service List(s) for A.09-08-008 via electronic mail to those whose addresses are available and via U.S. mail to those who do not have an electronic address as follows:

Service Via Electronic Mail:

Steven D.	Patrick	sdpatrick@semprautilities.com
Rashid A.	Rashid	rhd@cpuc.ca.gov
Keith T.	Sampson	kts1@pge.com
Jeanne B.	Armstrong	jarmstrong@goodinmacbride.com
Martin A.	Mattes	mmattes@nossaman.com
Dan L.	Carroll	dcarroll@downeybrand.com
Ann	Trowbridge	atrowbridge@daycartermurphy.com
Stephen	Cittadine	scittad@nicor.com
Daniel	McNamara	dmcnama@nicor.com
Peter G.	Esposito	peteresposito@earthlink.net
Jeffery L.	Salazar	JLsalazar@semprautilities.com
Neil R.	O'Hanlon	NROhanlon@hhlaw.com
Michael	Alexander	michael.alexander@sce.com
Pedro	Villegas	pvillegas@semprautilities.com
Hilary	Corrigan	cem@newsdata.com
Case	Coordination	RegRelCPUCCases@pge.com
Kenneth	Brennan	KJBh@pge.com
Mike	Ahmadi	mike.ahmadi@Granitekey.com
MRW & Associates		mrw@mrwassoc.com
Eugene	Cadenasso	cpe@cpuc.ca.gov
Pearlie	Sabino	pzs@cpuc.ca.gov
Richard A.	Myers	ram@cpuc.ca.gov
Robert M.	Poeta	rmp@cpuc.ca.gov
Timothy	Kenney	tim@cpuc.ca.gov

Service Via First-Class Mail:

Copies were also sent by first-class mail to the following:

Administrative Law Judge Timothy Kenney
California Public Utilities Commission
505 Van Ness Avenue, Room 5015
San Francisco, CA 94102-3214

Richard Smith
California Public Utilities Commission
Division of Administrative Law Judges
Room 5007
505 Van Ness Avenue
San Francisco, CA 94102-3214

Alfred F. Jahns
Law Office of Alfred F. Jahns
3620 American River Drive, Suite 105
Sacramento, CA 95864

I declare under penalty of perjury under the laws of the District of Columbia that the above is true and correct.

Executed on this 23rd day of September, 2010, at Washington, D.C.

/s/Christopher A. Schindler

Christopher A. Schindler
Hogan Lovells US LLP
555 Thirteenth Street, N.W.
Washington, DC 20004
Telephone: (202) 637-5723
Facsimile: (202) 637-5910
E-mail: christopher.schindler@hoganlovells.com