

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



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Joint Application of Lodi Gas Storage, L.L.C.
(U-912-G), Buckeye Gas Storage LLC, and
Buckeye Partners, L.P. For Expedited
Approval of Indirect Transfer of Control of
Lodi Gas Storage, L.L.C. Pursuant to Public
Utilities Code § 854(a)

Application 10-08-____
(Filed August 24, 2010)

A1008018

**JOINT APPLICATION FOR EXPEDITED APPROVAL OF INDIRECT TRANSFER OF
CONTROL OF LODI GAS STORAGE, L.L.C.
PURSUANT TO PUBLIC UTILITIES CODE SECTION 854(a)**

[PUBLIC VERSION]

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Date: August 24, 2010

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OF THE STATE OF CALIFORNIA**

Joint Application of Lodi Gas Storage, L.L.C. (U-912-G), Buckeye Gas Storage LLC, and Buckeye Partners, L.P. For Expedited Approval of Indirect Transfer of Control of Lodi Gas Storage, L.L.C. Pursuant to Public Utilities Code § 854(a)

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JOINT APPLICATION FOR EXPEDITED APPROVAL OF INDIRECT TRANSFER OF CONTROL OF LODI GAS STORAGE, L.L.C. PURSUANT TO PUBLIC UTILITIES CODE SECTION 854(a)

Pursuant to Section 854(a) of the California Public Utilities Code (“Code”) and Article 2 and Rule 3.6 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure (“Rules”), Lodi Gas Storage, L.L.C. (“LGS”), Buckeye Gas Storage LLC (“Buckeye Storage”) and Buckeye Partners, L.P. (“Buckeye Partners”) (collectively “Joint Applicants”) request expedited authorization to surrender indirect control of LGS by transferring to the Buckeye Partners public limited partnership unitholders the right to vote for members of the board of directors (the “Board”) of Buckeye GP LLC (“Buckeye GP”), the general partner of Buckeye Partners. This transfer of voting rights, explained in detail below, will align control with a revised ownership structure for Buckeye Partners that is expected to become effective by the end of 2010.

Because this change in voting rights actually represents not a *transfer of control* but rather a *relinquishment of control*, Joint Applicants alternatively believe the Commission has no need to review and approve this Application. Therefore, Joint Applicants also submit a Motion to Dismiss this Application pursuant to Rule 11.2 of the Commission’s Rules.

For the reasons set forth below, Joint Applicants request that the Commission treat this Application on an expedited basis and grant the relief requested either by approving the transfer of voting rights as a transfer of indirect control of LGS under Section 854(a) or by dismissing this Application based on a finding that there will be no actual transfer of control that requires Section 854(a) review and approval.

I. APPLICATION

A. OVERVIEW

At the present time, Joint Applicants are predominantly *owned* by the limited partners of Buckeye Partners, whose interests are traded on the New York Stock Exchange as limited partnership units under the ticker symbol “BPL.” However, *control* of Buckeye Partners is vested in its general partner, Buckeye GP, which, in turn, is wholly-owned by Buckeye GP Holdings L.P. (“Holdings”). Holdings is *owned* by a combination of limited partners whose interests are also traded on the New York Stock Exchange as limited partnership units under the ticker symbol “BGH” and units owned by BGH GP Holdings, LLC (“BGH Holdings”). Holdings is *controlled* by its general partner, MainLine Management LLC (“Holdings GP”), which is wholly-owned by BGH Holdings. This ownership structure, which has been in place since June 2007, was described in A.07-07-025 in connection with the acquisition of LGS by Buckeye Storage approved by the Commission in D.08-01-018 in January 2008.

On August 18, 2010, Buckeye Partners, Buckeye GP, Holdings, Holdings GP, and Grand Ohio, LLC (“MergerCo”)¹ entered into an Amended and Restated Agreement and Plan of Merger (the “Merger Agreement”). Under the Merger Agreement, Buckeye Partners will acquire

¹ MergerCo is a direct, wholly-owned subsidiary of Buckeye Partners that was formed solely to effectuate the merger.

Holdings through a merger of MergerCo with and into Holdings, with Holdings surviving the merger. As a result of the merger, Holdings will become a subsidiary of Buckeye Partners, with Buckeye Partners as Holdings' sole limited partner. Subject to the Commission's approval of this Application or grant of the Motion to Dismiss this Application, all public owners of Buckeye Partners limited partnership units (including those who were unitholders before the merger and those who received units as a result of the merger, but excluding any affiliates of BGH Holdings) will be granted the right to vote for directors on Buckeye GP's Board.²

To effectuate the merger, Buckeye Partners will issue new limited partnership units in exchange for the limited partnership units of Holdings that are held by the current limited partners of Holdings and will cancel the economic interest in Buckeye Partners currently held by Buckeye GP. Buckeye Partners believes this simplification of its capital structure will result in substantial long-term benefits to it and its unitholders, including by lowering its cost of equity capital, which will enhance its ability to compete for acquisitions and expansion opportunities, by increasing its public float and thereby improve liquidity in the markets for its securities, by eliminating the duplication of expenses associated with having two publicly traded entities (*i.e.*, Buckeye Partners and Holdings), and by improving its corporate governance by allowing public unitholders to elect Board members. In essence, this transaction is a buy-back of equity -- namely, the general partner interest -- by Buckeye Partners.

Buckeye Partners anticipates that the merger will close in the fourth quarter of 2010 upon receipt of approval by Buckeye Partners' limited partners and Holdings' limited partners. Such

² Charts showing the organizational structure before and after the merger are appended hereto as Exhibit 1. The transaction is described in detail in the Form S-4/A Registration Statement filed with the U.S. Securities and Exchange Commission on August 19, 2010 pursuant to the Securities Act of 1933. A copy of the Form S-4/A is attached hereto as Exhibit 2. The Merger Agreement is attached to the Form S-4/A as Annex A and the Form of Amended and Restated Limited Partnership Agreement (the "Amended Partnership Agreement") is attached to the Form S-4/A as Annex B.

timing is important due to the possibility of adverse changes to federal tax laws that are expected to become effective after that date. Buckeye Partners anticipates that the merger will close in the fourth quarter of 2010 upon receipt of approval by Buckeye Partners' limited partners and Holdings' limited partners. Subject to unitholder approval, the parties intend to close the merger on or before December 31, 2010 due to the possibility of adverse changes to federal tax laws that are expected to become effective after that date. Of importance to this Commission, there will be no change in the legal ownership of LGS or any transfer of control, directly or indirectly, of LGS as a result of this merger.

Consistent with the simplified ownership structure achieved by the merger, Holdings GP has agreed to relinquish its control of Buckeye GP, and thus its control of Buckeye Partners and, indirectly, LGS, by granting to the public owners of Buckeye Partners limited partnership units the power to elect, over time, seven of nine members of the Board of Buckeye GP.³ Currently, Holdings GP (as general partner of Holdings) has the right to appoint all of the members of the Board. As Buckeye Partners' general partner, Buckeye GP controls Buckeye Partners and thereby indirectly controls LGS. The Buckeye Partners limited partnership unitholders currently have no right to vote for *any* director of the Board. Subject to Commission approval of this Application (or grant of the accompanying Motion to Dismiss), the result of this voting rights change will be that Holdings GP will relinquish its control of Buckeye Partners (and indirectly of LGS) to the public owners of Buckeye Partners as a whole. Buckeye Partners believes this will result in benefits to its public unitholders by enabling them to participate in the election of the directors who oversee the management of Buckeye Partners' operations. Joint Applicants acknowledge that Commission approval may be needed for this transfer of voting rights. Until

³ See section 16.1(b)(vi) of the Amended Partnership Agreement, Exh. 2, Annex B, [B-27 – B-28].

Commission approval of the voting rights change is granted, or the Commission determines such approval to be unnecessary, the current control structure, in which Holdings GP controls Buckeye Partners, will remain unchanged. However, Joint Applicants believe it would be advantageous to all Buckeye Partner public unitholders if the change of voting rights coincided with the merger scheduled for closing before the end of 2010.

After approval by this Commission (or granting of the companion motion to dismiss), Holdings GP will no longer exercise control over Buckeye Partners and, indirectly, LGS. The Amended Partnership Agreement will provide Holdings GP with the right to appoint up to two representatives on the Board, but the remaining seven directors will be elected, over time, by a majority of all of the voting Buckeye Partners limited partnership unitholders not affiliated with BGH Holdings.

Joint Applicants submit that this Application fully meets the standards for Commission approval under Section 854(a).⁴ Notwithstanding the relinquishment of control by Holdings GP, LGS will continue to operate as an independent natural gas storage provider subject to the jurisdiction of the Commission and will continue to be wholly-owned by Buckeye Storage. In addition, the transaction will not result in the transfer of any certificates, assets or customers of LGS. LGS will continue to be bound by the terms and conditions prescribed by the Commission in D.00-05-048 (granting LGS a Certificate of Public Convenience and Necessity (“CPCN”) for construction and operation of the Lodi Facility), as amended by subsequent Commission decisions, in D.06-03-012 (granting LGS a CPCN for construction and operation of the Kirby

⁴ As detailed in the Motion to Dismiss contained in Section II, after the voting rights change, there will be no party in a position to control the Board of Buckeye Partners’ general partner and, through such control, exercise indirect control over LGS. For this reason, Joint Applicants submit that this Application is unnecessary and should be dismissed based on a finding that there will be a *relinquishment* rather than a *transfer* of control.

Hills Facility), in D.08-02-035 (granting LGS a CPCN for construction and operation of Phase II of the Kirby Hills Facility) and in D.09-12-038 (amending the CPCN to authorize the drilling of additional wells at the Lodi Facility). LGS will also continue to be subject to the affiliate transactions reporting requirements prescribed by the Commission in D.03-02-071⁵ and to the conditions agreed to in a Settlement with the Division of Ratepayer Advocates (“DRA”) approved in D.08-01-018.

As detailed in this Application, Joint Applicants have met all the requirements for Section 854(a) approval. Specifically, in Section I.B., Joint Applicants provide detailed descriptions of the primary companies involved. In Section I.C., Joint Applicants describe the transaction in detail and explain how the change in voting rights will not result in any one unitholder or a group of unitholders acquiring control of Buckeye Partners following the relinquishment of control by Holdings GP. In Section I.D., Joint Applicants demonstrate that the change in voting rights meets the public interest standard under Section 854(a). In Section I.E., Joint Applicants show compliance with the California Environmental Quality Act (“CEQA”) (Public Resources Code § 21000, *et. seq.*) by detailing reasons why the change in voting rights is not a “project” under CEQA and, thus, not subject to review under that statute. In Sections I.F. and I.G., Joint Applicants request expedited approval of the change in voting rights and provide all information required under Rule 2.1(c) of the Commission’s Rules of Practice and Procedure.

Based on this showing, Joint Applicants respectfully request the Commission to approve the proposed change in voting rights described in this Application or to dismiss this Application pursuant to Section 854(a), as expeditiously as possible, ideally before year-end 2010.

B. DESCRIPTION OF JOINT APPLICANTS

⁵ D.03-02-071, Ordering Paragraph 3, at pp. 26 to 29.

1. Lodi Gas Storage, L.L.C.; Buckeye Gas Storage LLC; Buckeye Partners, L.P.

LGS is a Delaware limited liability company that has its principal place of business at One Greenway Plaza, Suite 600, Houston, Texas 77046. All of the limited liability company interests in LGS are owned by Buckeye Storage and will continue to be owned by Buckeye Storage after the merger and transfer of voting rights are completed. LGS is an independent natural gas storage provider in northern California. LGS constructed and currently operates the Lodi Gas Storage Facility (“Lodi Facility”) in San Joaquin and Sacramento counties, three miles northeast of the City of Lodi. In May 2000, the Commission issued a CPCN for the Lodi Facility in D.00-05-048. That decision was subsequently amended in D.03-08-048, D.04-05-046, D.04-05-034 and D.09-12-038. The Lodi Facility, as currently approved by the Commission, has approved total storage capacity of up to 21 billion cubic feet (“Bcf”) and working capacity of 17 Bcf. The Lodi Facility has maximum deliverability of 500 million cubic feet per day (“MMcf/d”) and maximum injection capacity of 400 MMcf/d. The Lodi Facility is interconnected with Pacific Gas and Electric Company’s (“PG&E”) Line 401 at the Sherman Island Interconnect. The Lodi Facility has operated without incident since it began commercial operation in 2002.

In March 2006, the Commission granted LGS’s Application A.05-07-015 and issued a CPCN for a separate gas storage facility referred to as the Kirby Hills Facility (“Kirby Hills”) in D.06-03-012. Kirby Hills is located in Solano County and was completed and placed in service in January 2007. In D.08-02-035, issued in February 2008, the Commission granted an amended CPCN to construct the second phase of Kirby Hills. Kirby Hills now has approved total storage capacity of up to 25 Bcf and working capacity of 17.5 Bcf. The maximum injection and withdrawal capacity for Kirby Hills is 300 MMcf/d. Kirby Hills is interconnected with PG&E’s

Line 400 and Line 401. The second phase of Kirby Hills began operations in June 2009. Kirby Hills has operated without incident since it began commercial operation in 2007.

The officers of LGS are:

President	William H. Schmidt, Jr.
Vice President - Field Operations	Robert B. Russell
Vice President - Commercial Operations	Todd G. Johnson
Vice President - Commercial Strategy	Corey C. Ayers
Vice President – Finance and Administration	Jeffrey I. Beason

Buckeye Storage is a Delaware limited liability company with its principal place of business at One Greenway Plaza, Suite 600, Houston, Texas 77046. Buckeye Storage was formed in 2007 for the purpose of holding all of the outstanding limited liability company interests of LGS. The acquisition of LGS by Buckeye Storage was approved in Commission Decision D.08-01-018, issued in January 2008. Buckeye Storage is wholly-owned by Buckeye Partners.

Buckeye Partners, with its principal place of business at One Greenway Plaza, Suite 600, Houston, Texas, is a publicly traded partnership that owns and operates one of the largest independent refined petroleum products pipeline systems in the United States in terms of volumes delivered, with approximately 5,400 miles of pipeline. Buckeye Partners also owns 67 refined petroleum products terminals, operates and maintains approximately 2,400 miles of pipeline under agreements with major oil and chemical companies, and markets refined petroleum products in certain of the geographic areas served by its pipeline and terminal operations. The general partner of Buckeye Partners, Buckeye GP, is owned by Holdings.

Holdings is also currently publicly traded on the New York Stock Exchange, but will be delisted as a result of the merger.

2. Designated Contacts for Applicants

The designated contacts for questions concerning this Application and service of pleadings are:

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3. Certificates of Formation

Pursuant to Rule 2.2 of the Commission's Rules, copies of the organizing documents of LGS and Buckeye Storage and evidence of their qualifications to transact business in California have previously been filed with the Commission as part of Application No. A.07-07-025, Exhibits 1-4.

The most recent audited annual financial statements for LGS and Buckeye Partners are attached as Exhibit 3 and Exhibit 4, respectively.⁶ The LGS financial statements have been filed under seal pursuant to the Motion for Leave to File Under Seal and Maintain Confidentiality of Financial Statements, which is being concurrently filed with this Application. The Buckeye Partners financial statements are excerpted from its most recent Annual Report on Form 10-K filed with the Securities and Exchange Commission.

⁶ Buckeye Storage's sole asset is its interest in LGS, and it has no operations of its own. As such, financial statements for Buckeye Storage are not routinely prepared.

Certificates of Status issued by the California Secretary of State on August 23, 2010 showing that LGS and Buckeye Storage are both in good standing are attached hereto as Exhibits 5 and 6, respectively

C. DESCRIPTION OF THE TRANSFER OF CONTROL ISSUE

1. To Provide an Opportunity for Commission Review of the Transfer of Control Issue, the Change in Buckeye Partners Voting Rights Has Been Separated from the Merger.

On August 18, 2010, Buckeye Partners, Buckeye GP, Holdings, Holdings GP and MergerCo entered into the Merger Agreement. The transactions contemplated by the Merger Agreement are described in detail in the Form S-4/A Registration Statement that was filed with the Securities and Exchange Commission under the Securities Act of 1933 on August 19, 2010 and appended hereto as Exhibit 2.

Under the Merger Agreement, Buckeye Partners will acquire Holdings and its subsidiary Buckeye GP through a merger of MergerCo with and into Holdings, and all current Holdings limited partnership units will be exchanged for newly issued Buckeye Partners limited partnership units. As a result of the merger, Holdings will become a subsidiary of Buckeye Partners, with Buckeye Partners as Holdings' sole limited partner. LGS is not a party to the merger and its legal ownership will not change as a result of the merger.

Subject to the Commission's approval of this Application or grant of the Motion to Dismiss this Application, all public owners of Buckeye Partners limited partnership units (including those who were unitholders before the merger and those who received units as a result

of the merger, but excluding any affiliates of BGH Holdings⁷) will be granted the right to vote for directors on Buckeye GP's Board. The Merger Agreement and the Amended Partnership Agreement separate the closing of the merger from the proposed voting rights change. Such separation defers any change in voting rights until the Commission can either review and approve the change pursuant to Section 854(a) or dismiss the Application because the voting rights change actually presents a relinquishment rather than a transfer of control.⁸ There will be no change in the legal ownership of LGS or any transfer of control, either direct or indirect, of LGS as a result of the merger. LGS will continue to be owned by Buckeye Storage and remain under the control of Buckeye Partners, and the members of the Board will continue to be appointed by Holdings GP (as general partner of Holdings).

Both before and after the merger, LGS will continue to operate as a limited liability company owned 100% by Buckeye Storage. LGS will continue to hold the CPCN for the Lodi Facility issued by the Commission in D.00-05-048, as amended in D.03-08-048, D.04-05-046, D.04-05-034 and D.99-12-038. LGS will also continue to hold the CPCN for the Kirby Hills Facility as granted in D.06-03-012 and amended in D.08-02-035. LGS will continue to be managed and operated by its existing management team, charged with ensuring that operations are reliable and consistent with the safety of its workers and the surrounding community, as well as the local environment, as LGS has done since it began operation.

2. No New Acquisition of Control of LGS Will Occur, If Ever, Until After Commission Action on the Application

⁷ Holdings GP will have the separate right to designate up to two of nine directors to the Buckeye GP board for so long as BGH Holdings and its affiliates continue to own specified amounts of Buckeye Partners limited partnership units. For so long as Holdings GP has the right to designate at least one such director, the Buckeye Partners limited partnership units held by BGH Holdings and its affiliates will not be entitled to vote for the remaining directors.

⁸ See Exhibit 2, pp. 47 and 88.

As a result of the merger, Holdings' current limited partnership unitholders will receive newly-issued limited partnership units in Buckeye Partners in exchange for their limited partnership units in Holdings, Holdings will become a subsidiary of Buckeye Partners and will no longer be publicly traded, and the current Buckeye Partners limited partnership agreement will be amended and restated as set forth in the Amended Partnership Agreement. After Commission approval or dismissal of this Application, however, the composition of the Board may change over time as the public owners of Buckeye Partners limited partnership units exercise their newly granted right to vote.

In the current structure, Holdings GP (as the general partner of Holdings) controls Buckeye Partners through its power to appoint all directors to the Board. The current Board consists of eight directors, four of whom are affiliated with Holdings, three of whom are unaffiliated (but, like the other directors, are removable at will by Holdings GP), and one is Buckeye GP's CEO. Buckeye Partners in turn controls LGS through its ownership of Buckeye Storage. After Commission approval or dismissal of this Application, Holdings GP will no longer control Buckeye Partners and, therefore, will no longer indirectly control LGS. Specifically, once authorized by the Commission, the Amended Partnership Agreement will provide that Holdings GP will have the power to appoint no more than two directors to serve on the Board, subject to elimination if BGH Holdings and its affiliates reduce their ownership of Buckeye Partners limited partnership units, and the remaining seven directors will be elected, over time, by the public owners of Buckeye Partners' limited partnership units.⁹

Joint Applicants note that even after action by the Commission, these voting rights changes will not equate to a transfer of control. As explained further in the Motion to Dismiss

⁹ Exhibit 2, Amended Partnership Agreement, Article 16.1, pp. [B-26] – [B-30].

this Application (Sec. II), the combination of the absence of any Buckeye Partners limited partnership unitholder (or group of unitholders) owning more than 5% of the total outstanding public units, the staggered terms of the Board, and voting restrictions on any unitholder that obtains more than 20% of the outstanding limited partnership units, precludes any immediate transfer of control as a result of the change in voting rights. In the future, of course, limited partnership unitholders who do accumulate enough limited partnership interests to be on the verge of acquiring actual control of Buckeye Partners and, thereby, indirect control of LGS, will themselves be subject to Section 854(a)'s requirement of first obtaining the approval of this Commission.

D. THE PROPOSED CHANGE OF VOTING RIGHTS IS IN THE PUBLIC INTEREST

Section 854(a) requires Commission authorization before a company may “merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission.”¹⁰ The Commission has not adopted specific rules defining the terms used in Section 854(a) but has focused its attention consistently and exclusively on mergers or acquisitions that result in an actual transfer of control.¹¹ As detailed further in Section II, the Commission has dismissed Section 854(a) applications in situations where there is no actual transfer of control.¹²

¹⁰ Sections 854(b) and (c) do not apply to this Application because LGS does not have gross annual California revenues exceeding \$500,000,000.

¹¹ Crico Communications Corp., D.92-005-006, 1992 Cal. PUC LEXIS 487; San Jose Water Co., D.94-01-025, 1994 Cal. PUC LEXIS 43 *6, CPUC 2d 37 (Section 854 “does not speak of the power or potential for control, but of control, and we interpret this to mean actual or working control”), citing WUI Inc. et al. v. Continental Tel. Corp., et al (1979) 1 CPUC 2d 579.

¹² See e.g., Warburg Pincus Private Equity IX, L.P. et al., D.08-12-021, 2008 Cal. PUC LEXIS 469.

In reviewing applications under Section 854(a), the Commission has broad discretion to determine whether a particular transfer of control is in the public interest and should be approved. In recent cases, the Commission has made clear that the appropriate standard to determine if a transfer of control should be approved is whether the transaction will be “adverse to the public interest.”¹³

Under this standard, the proposed change of voting rights clearly should be approved. Assuming for the moment that the change could be viewed as an actual transfer of control, there will be no adverse effect on the public interest because there will be no change to the services to be provided by LGS, or to the rates or terms and conditions under which they will be provided. LGS will continue to provide unbundled storage services to the public at market-based rates as approved by D.00-05-008 and to be bound by all terms and conditions of LGS’ CPCN granted in D.00-05-048 for the Lodi Facility and in D.06-03-012 for the Kirby Hills Facility, as modified by subsequent decisions. In addition, LGS will continue to be bound by the conditions in D.08-01-018 related to the transfer of control of LGS to Buckeye Storage. Joint Applicants expect that Buckeye Partners’ limited partnership units will be a more attractive investment when coupled with voting rights than if they were not. This, along with the elimination of Buckeye GP’s economic interests in Buckeye Partners, will reduce Buckeye Partners’ cost of equity capital, which will facilitate further investment by LGS into its natural gas storage assets. Continued operation and growth in existing facilities support the Commission’s long-standing goal of encouraging investment in public utility natural gas storage in California.¹⁴

¹³ Wild Goose Storage Inc., D.06-11-019, *mimeo* p. 14; Lodi Gas Storage, L.L.C. , D.05-12-007.

¹⁴ *See e.g., Energy Action Plan II* issued October 2005 in which the Commission and the California Energy Commission identified the need to provide a natural gas delivery and storage system sufficient to

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In sum, Joint Applicants submit that the change in voting rights -- even if interpreted as a transfer of control -- has no negative impact on the public interest, may have positive impacts and should be approved under Section 854(a).

E. CEQA COMPLIANCE

The proposed change of voting rights is not a “project” within the meaning of CEQA and, as a result, CEQA does not apply to this Application. Accordingly, pursuant to Rule 2.4 of the Commission’s Rules, the Applicants request that the Commission make a determination that the proposed change of voting rights is not a “project” within the meaning of CEQA, Public Resources Code, Section 21000, *et. seq.*

CEQA applies only to “projects.” Projects subject to CEQA are defined as any “activity that may cause either a direct physical change to the environment, or reasonably foreseeable indirect physical change in the environment.”¹⁵ CEQA does not apply where the proposed “activity will not result in any direct or reasonably foreseeable indirect physical change in the environment.”¹⁶ The CEQA Guidelines provide for an exemption “[w]here it can be seen with certainty that there is no possibility that the proposed activity in question may have a significant effect on the environment.”¹⁷

In its issuance of a CPCN for the Lodi Facility, the Commission conducted a full environmental review and certified the Environmental Impact Report (“EIR”) for adoption. If

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meet California’s peak demand needs and to encourage the development of additional in-state natural gas storage.

¹⁵ See Public Resources Code sections 21065 and 21080(a).

¹⁶ CEQA Guidelines, section 15060(c)(2).

¹⁷ CEQA Guidelines, section 15061(b)(3).

the change in voting rights is approved or this Application is dismissed, LGS will continue to be obligated to operate its Lodi Facility in the same manner as approved by the Commission in D.00-05-048, as amended in D.03-08-048, D.04-05-046, and D.04-05-034. Similarly with regard to the Kirby Hills Facility, the Commission granted a CPCN to construct and operate that facility in D.06-03-012 and amended the CPCN in D.08-02-035. In those decisions, the Commission accepted and approved the Final Initial Study/Mitigated Negative Declarations. LGS has complied with all environmental conditions imposed in the original CPCN and the mitigation plan required for Kirby Hills and Kirby Hills Phase II and will continue to operate its facilities consistent with such restrictions.

This Application involves the relinquishment of control by Holdings GP and diffusion of control among all of the public Buckeye Partners limited partnership unitholders. Approval of such a change will not result in any direct or indirect change in the environment or any change in the previously reviewed and approved construction and operation criteria for the Lodi Facility or the Kirby Hills Facility. Even in cases of actual transfers of control, the Commission has

previously held that they either do not constitute projects within the meaning of CEQA or qualify for an exemption from CEQA.¹⁸

F. REQUEST FOR EXPEDITED TREATMENT

Joint Applicants request that the Commission approve this Application on an expedited basis. The separation of the merger from the change in voting rights, as explained above, will allow the parties to close the merger before the end of 2010. However, Joint Applicants would prefer that the public unitholders receive the voting rights envisioned in the Amended Partnership Agreement concurrently with the merger so that the public unitholders can realize the full intended benefits of the transaction without delay and so that Buckeye Partners can promptly realize the benefits of its new corporate governance structure. Accordingly, LGS submits that it is in the public interest that the Commission process this Application as expeditiously as possible leading to a decision before year-end 2010 either approving the change in voting rights or dismissing the Application.

In order to expedite the processing of this Application, Joint Applicants are requesting that this matter be handled without a hearing. Two earlier Applications seeking Commission authorization for a transfer of indirect control of LGS (A.01-09-045 and A.05-08-031) were not protested and did not require hearings. In the most recent Application for a transfer of indirect control of LGS (A.07-07-025), DRA did file a protest based on concerns that LGS and its primary competitor, Wild Goose Gas Storage, would be commonly controlled. Subsequently,

¹⁸ Lodi Gas Storage, L.L.C., D.03-02-071, Conclusion of Law 7; Pacific Gas and Electric Company, D.98-03-024, 78 Cal. PUC LEXIS 2d 684, 1998 Cal. PUC LEXIS 244*4; Pacific Gas and Electric Company, D.98-02-026, 78 Cal. PUC 2d 413, 1998 Cal. PUC Lexis 1024*4; Joint Application of Wild Goose Storage, Inc., En Cana Corp., Carlyle/Riverstone Global Energy and Power Fund III, LP., et al., D.06-11-019, Conclusion of Law 8.

DRA's issues were resolved through a settlement approved, without hearing, in D.08-01-018.¹⁹ Applicants submit that the information presented in this Application, including that found in the supporting exhibits, is sufficient to permit the Commission to determine that the proposed change in voting rights is in the public interest.

G. RULE 2.1(c) REQUIREMENTS

Pursuant to Rule 2.1(c), LGS recommends the following:

1. Categorization

Joint Applicants propose that this proceeding be categorized as ratesetting. Although this Application will not impact the rates of LGS's customers, the definitions of "adjudicatory" or "quasi-legislative" as set forth in Rules 1.3(a) and 1.3(d) clearly do not apply to this Application. Rule 7.1(e)(2) specifies that, when a proceeding does not clearly fit into any of the categories, it should be conducted under the rules for ratesetting proceedings. In addition, Rule 1.3(e) defines ratesetting proceedings to include "[o]ther proceedings" that do not fit clearly into any other category.

2. Need for Hearings

Joint Applicants submit that hearings are unnecessary in this proceeding and that the information submitted in this Application is sufficient to allow the Commission to determine that the change in voting rights will have no adverse impact on the public interest. Joint Applicants do not anticipate that any material issues of contested fact will arise regarding this Application, further supporting the conclusion that hearings are not necessary.

¹⁹ LGS will, of course, continue to be bound to the conditions agreed to in the settlement with DRA.

3. Issues to be Considered

The only issue to be considered is whether the provision of voting rights to the public owners of Buckeye Partners limited partnership units in the Amended Partnership Agreement constitutes a transfer of indirect control of LGS for which Section 854(a) approval is required, and if so, whether it meets the public interest standard of Public Utilities Code Section 854(a).

4. Proposed Schedule

Joint Applicants propose the following schedule:

Application filed	August 24 , 2010
Public Notice	August 27, 2010
Last day to submit protests	September 27, 2010
Reply to protests, if any	October 7, 2010
Proposed Decision Issued ²⁰	November 1, 2010
Comments on PD (if needed)	November 22, 2010
Reply Comments on PD (if needed)	November 29, 2010
Final Commission Decision	December 2, 2010

H. Compliance with Procedural Requirements

This section cross-references compliance with the Rules applicable to this Application:

Rule 2.1	Sections I.B., I.C., and I.G.
Rule 2.2	Section I.B.3.
Rule 2.3	Section I.B.3.; Exhibits 3 and 4

²⁰ Joint Applicants anticipate that this Application will be uncontested. If so, there would be no protests or need for replies to protests. Similarly, if the Application is uncontested and the decision grants the relief requested (either by granting the Application or by granting the Motion to Dismiss the Application), Rule 14.6(c)(2) permits the Commission to reduce or waive the comment period on the Proposed Decision.

Rule 2.4 Section I.E.

Rule 3.6 Section I.C.; Exhibits and 2.

II. **MOTION TO DISMISS APPLICATION**

A. **Overview and Introduction**

As referenced in the Application, Joint Applicants request Commission authorization for the change of voting rights on the basis that such a change could be construed as a transfer of indirect control of LGS. By filing this Application, Joint Applicants are not contesting the question of whether the Commission has jurisdiction to review and approve the voting rights change under Section 854(a). Joint Applicants, however, submit that there is no *actual* transfer of control that will occur when the voting provisions in the Amended Partnership Agreement become effective. Since the Commission's consistent interest in exercising its Section 854(a) authority has been confined to circumstances of *actual* transfers of control, Joint Applicants urge the Commission to follow its past practice of dismissing applications where there is no *actual* transfer of control.

In support of this Motion, Joint Applicants demonstrate that: (a) the Commission has consistently interpreted Section 854(a) as only requiring approval in situations involving actual transfers of control; (b) the voting rights change does not result in an actual transfer of control and, indeed, even after such change, there can be no actual acquisition of the power to elect a majority of the Board before at least two annual elections of Buckeye GP's directors have been held by the public limited partners, and (c) factual scenarios such as presented here have resulted in dismissals of applications for Section 854 approval. Accordingly, Joint Applicants hereby move to have the Commission dismiss this Application as premature and unnecessary. At some

point in the future, if one or more persons were to seek to acquire control of LGS, that person or persons would, of course, be subject to the requirements of Section 854(a).

B. Argument

1. The Commission has Consistently Acknowledged that Only Actual, not Potential, Transfers of Control Need Section 854 Authorization.

Section 854 applications typically arise in situations directly related to a change in ownership and control of the utility. A common situation is one in which a new entity proposes to acquire a 50% or greater ownership interest in a California utility and gain control of the utility.²¹ A second scenario occurs when the owner of a minority interest in a utility proposes to increase its ownership interest and thereby acquire a controlling interest in the utility.²² A third scenario occurs when a new entity is in a position to elect or appoint the majority of the board of either the utility or the entity controlling the utility.²³ In each of these scenarios, there is an actual transfer of control where a specific entity, who has not controlled the public utility before, is in a position to gain direct or indirect control of the utility. In those cases, Section 854 “enable[s] the Commission, before any transfer of public utility authority is consummated, to review the situation and to take such action (as a condition of approving the transfer) as the public interest may require.”²⁴

In the 1989 Amendment of Section 854(a), the California legislature added language allowing the Commission to establish definitions of merger, acquisition, or control activities

²¹ *E.g.*, Buckeye Storage acquisition of Lodi Gas Storage approved in D.08-01-018, issued January 27, 2008; *see also*, Wild Goose Storage Inc. et al., D.06-11-019, 2006 Cal. PUC LEXIS 499.

²² *E.g.*, Comtel Telecom Assets LP, D.07-08-020, 2007 Cal. PUC LEXIS 470; Telecom Consultants, et al., D.05-12-039, 2005 Cal. PUC LEXIS 546 (authorizes increase from 20% interest to 81% interest).

²³ *E.g.*, Re Paging Network of San Francisco, D.93-11-063, 52 CPUC 2nd 127, 1993 Cal. PUC LEXIS 794 at *6 (CPUC relied on the fact that the new entity lacked a majority on the utility’s Board and thus did not have the power to direct management to find that transaction did not entail a transfer of control).

²⁴ San Jose Water Co., D.94-01-025, 1994 Cal. PUC LEXIS 43 *6, CPUC 2d 37.

subject to Section 854 by rule or order. To date, the Commission has not done so in a formal rulemaking. Instead, the Commission has developed consistent precedent in case-by-case analyses which serve as a guide as to what the Commission considers to be a direct or indirect *transfer of control*. The Commission has consistently found that actual, rather than potential, control of the utility should be the focus of the Commission review.²⁵ In addition, Section 854(a) focuses on the *acquirer* of control rather than the party *relinquishing* control.²⁶ Finally, the Commission has not deemed Section 854(a) applicable to the general issuance of common stocks to many individuals until such time as one person or entity gains control of the utility.²⁷

2. Due to the Provisions in the Amended Partnership Agreement, No Actual Indirect Acquisition of Control of LGS Can Occur For a Number of Years.

Although Joint Applicants believe that there is no potential transfer of control at issue in this proceeding, the provision of voting rights to the public owners of Buckeye Partners limited partnership units pursuant to provisions in the Amended Partnership Agreement could permit one or more such owners in the future to *accumulate* enough units to establish such control. But

²⁵ San Jose Water Co., D.94-01-025, 1994 Cal. PUC LEXIS 43 *6, CPUC 2d 37 (Section 854 “does not speak of the power or potential for control, but of control, and we interpret this to mean actual or working control”), citing WUI Inc. et al. v. Continental Tel. Corp., et. al. (1979) 1 CPUC 2d 579., which held that a 12.6% block of stock did not constitute actual control even though it was the largest single block of voting shares, when the block could not be used without a protracted and expensive proxy fight.

²⁶ Crico Communications Corp., D.92-005-006, 1992 Cal. PUC LEXIS 487 (“[Section 854] is directed at the person acquiring control, not the person giving up control. We routinely authorize public stock offerings...but we are concerned with the purchasers only when the purchaser...is able to take control of the public utility.” Cf. P.U. Code 818 which focuses on acts taken by the utility itself: “No public utility may issue stocks and stock certifications...or other evidences of indebtedness.”)

²⁷ Metrocall, Inc., 1994 Cal. PUC LEXIS 98, 53 CPUC 2d 214 (Section 854(a) App. dismissed in situation where controlling person drops below 50% ownership interest but no other entity will acquire control of the utility because of the reduction).

these same provisions defer even that potential acquisition of control for at least two years into the future.²⁸

a. Staggered Terms for Board members preserve incumbent Board composition until at least two annual meetings have been held following establishment, if any, of a theoretically controlling voting interest

Section 16.1(b)(vi) of the Amended Partnership Agreement provides for the election of the Board's directors using staggered terms.²⁹ After receiving all regulatory approvals, the Board is expected to contain nine members, consisting of two of the current affiliated directors, the six current independent directors (three of whom currently are independent directors of Buckeye GP and three of whom currently are independent directors of Holdings GP) and Buckeye GP's CEO.³⁰ The Amended Partnership Agreement will provide for a staggered board of directors where no more than one third of the total directors would be subject to reelection at any annual meeting. Because of this classified board of directors structure, even if a unitholder (or group of unitholders acting in concert) were to accumulate a majority of the voting power for director elections, such unitholder (or group) would be unable to elect a majority of the directors until at least two annual meetings had been held.³¹ Given the current ownership of limited partnership units by public unitholders, *i.e.*, no individual holds or otherwise controls more than 5% of the outstanding limited partnership units, and the voting restrictions described below, Joint

²⁸ As noted above, Holdings GP will continue its current control of the Board of Buckeye GP through its ability to appoint and remove Board members until the Commission acts on this Application/Motion to Dismiss. The Board of Buckeye GP controls Buckeye Partners and, indirectly, LGS.

²⁹ Exh. 2, Amended Partnership Agreement, [B-27 – B-28].

³⁰ Exh. 2, p. 142.

³¹ For example, a unitholder (or group) with a majority voting interest could only obtain a majority of the nine member board by electing three directors at the first annual meeting and an additional two at the second annual meeting.

Applicants believe that it will take a substantial amount of time for a unitholder or group of unitholders to obtain a majority of the voting power for director elections.

b. Voting right restrictions for a unitholder or group with more than 20% of the outstanding units significantly reduce the likelihood of an actual acquisition of control even in the future.

In addition to the staggered terms, Section 16.1(b)(v) of the Amended Partnership Agreement places restrictions on the voting power of any individual or entity or group holding more than 20% of the outstanding limited partnership units.³² Specifically, Section 16.1(b)(v) provides that if any person or group beneficially owns 20% or more of the outstanding limited partnership units, then all limited partnership units owned by such person or group in excess of 20% may not be voted and such units will not be counted when calculating the required votes for such matter.³³

In a relatively simple hypothetical, assume that at the first annual meeting after voting rights are provided to the public limited partnership unitholders, public unitholder Entity A has acquired 40% of the outstanding limited partnership units, no other person or group owns more than 20% and BGH Holdings continues to own 17%.³⁴ Entity A's limited partnership units in excess of 20% would not be entitled to vote and would not be counted as outstanding for purpose of calculating required votes. In addition, the 17% of units held by BGH Holdings would not be

³² Exh. 2, Amended Partnership, p. [B-27].

³³ *Id.*

³⁴ As described above, to effectuate the merger Holdings unitholders will exchange their limited partnership units in Holdings for newly issued limited partnership units in Buckeye Partners. BGH Holdings currently owns approximately 62% of the limited partnership units in Holdings and, after the merger, will own approximately 17% of the limited partnership units in Buckeye Partners. After the merger, Holdings GP, which is owned by BGH Holdings, will have the right to appoint up to two directors, with the number depending upon the continued ownership of specified thresholds of units by BGH Holdings and its affiliates. The Buckeye Partners limited partnership units held by BGH Holdings will not be entitled to be voted for the other directors. See Exh. 2, Amended Partnership Agreement, Section 16.1(b)(iv), p. [B-27] and S-4, page 111 (“Board of Directors—Holdco GP Directors”).

counted when calculating the required votes for election of directors and would not be deemed to be outstanding for purposes of determining a quorum. In this scenario, Entity A's voting power would be approximately 31.7%.³⁵ In order for Entity A to have a controlling vote during all times while BGH Holdings owns 17% of the limited partnership units, Entity A would need to own more than 63% of the limited partnership units.³⁶

In a second hypothetical, assume that BGH Holdings no longer owns any limited partnership units, Entity A has acquired 40% of the outstanding limited partnership units, and no other person or group owns more than 20% of the outstanding limited partnership units. Entity A's limited partnership units in excess of 20% would not be entitled to vote and would not be counted as outstanding for purposes of calculating required votes. Entity A's resulting voting power would equal 25%.³⁷ In this scenario, in order for Entity A to have a controlling vote, Entity A would now need to own more than 80% of the outstanding limited partnership units.³⁸

Currently, there are no individuals or entities holding more than 5% of the Buckeye Partner limited partnership units. Due to the restrictions described above, in order for any individual or entity (or group acting in concert) to gain control of the Board, such individual or

³⁵ 20%/63%, where 20% is the maximum percentage of units Entity A is permitted to vote and 63% is the percentage of units that are deemed outstanding for voting purposes (100% - 20% (Entity A's interest above 20%) - 17% (BGH Holdings' interest)).

³⁶ 63% ownership of limited partnership units would result in 50% voting power: 20%/40%, where 20% is the maximum percentage of units Entity A is permitted to vote and 40% is the percentage of units that are deemed outstanding for voting purposes (100% - 43% (Entity A's interest above 20%) - 17% (BGH Holdings' interest)). If BGH Holdings' interest were to be reduced, the ownership of limited partnership units that Entity A would need to own would increase on a unit for unit basis.

³⁷ 20%/80%, where 20% is the maximum percentage of units Entity A is permitted to vote and 80% is the percentage of units that are deemed outstanding for voting purposes (100% - 20% (Entity A's interest above 20%)).

³⁸ A 80% ownership of limited partnership units would result in 50% voting power: (20%/40%), where 20% is the maximum percentage of units Entity A is permitted to vote and 40% is the percentage of units that are deemed outstanding for voting purposes (100% - 60% (Entity A's interest above 20%)).

entity would need to acquire more than 63% of the outstanding units and possibly more than 80%. As a result, without significant changes in ownership (which would require public notice in the form of filings with the SEC), an actual transfer of control is impossible.

3. The Commission Should Dismiss this Application Consistent with Dismissals in Similar Situations.

As shown, there will be no actual transfer of direct or indirect control of LGS as a result of the proposed voting rights changes. Furthermore, it may take years, if ever, before an actual accumulation of control will occur. In similar situations, the Commission has dismissed applications for Section 854(a) authorization. Joint Applicants urge the Commission to do the same here.

A recent case involving Warburg Pincus Private Equity is a prime example of a Commission action dismissing an application based on the finding that there was no actual transfer of control.³⁹ In that case, the applicants originally believed that a transfer of control would occur as a result of one entity acquiring a majority share of the equity interests of an entity directly controlling a public utility. During the course of the proceeding, the situation changed such that there would be no one entity owning the majority share. Based on the lack of an actual transfer of control, the Commission granted a motion to dismiss the application. Similarly, in Crico Communications,⁴⁰ the Commission granted dismissal of the Section 854(a) application because no approval was found to be necessary for a public stock offering where the original

³⁹ Warburg Pincus Private Equity IX, L.P. et al., D.08-12-021, 2008 Cal. PUC LEXIS 469.

⁴⁰ D.92-005-006, 1992 Cal. PUC LEXIS 487.

owners would retain only 20% of utility stock but no other person or entity would acquire control.⁴¹

This Application is similar to these factual situations. Here, there will be a relinquishment of control by Holdings GP, but no receipt of control by one or more Buckeye Partners unitholders. As such, there is no new entity acquiring indirect control of LGS. Rather, there is, as in these other cases, at most, a potential for a future acquisition of control when and if a unitholder accumulates sufficient voting power to elect a majority of the directors to the Board. Joint Applicants recognize that if future circumstances occur under which an actual acquisition of control is imminent, Commission approval of such acquisition of control would be required prior to its effectiveness. In contrast, where, as here, there is at most only the potential for future accumulation of control, Joint Applicants respectfully submit that the Commission find that Section 854(a) review and approval is unnecessary and dismiss the Application.

III. CONCLUSION

WHEREFORE, Joint Applicants respectfully request that the CPUC issue an Order to become effective upon the date of issuance as follows:

1. Grant this Application authorizing the proposed voting rights change pursuant to Section 854(a) of the Public Utilities Code;
2. Grant Commission confirmation that CEQA does not apply to this potential indirect transfer of control of LGS; and
3. Grant such additional authorization or further relief to Joint Applicants with respect to the authorization sought herein as the Commission may deem appropriate; OR

⁴¹ See also Metrocall, Inc., 1994 Cal. PUC LEXIS 98, 53 CPUC 2d 214 (Section 854 App. dismissed in situation where controlling person drops below 50% ownership interest but no other entity will acquire control of the utility because of the reduction).

4. Dismiss this Application because there is no need for Section 854(a) approval based on findings that there is no actual transfer of control taking place and that there is no new entity presently empowered to control the Board and indirectly control LGS.

Respectfully submitted,

By: /s/ James W. McTarnaghan
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Attorneys for Joint Applicants

Dated: August 24, 2010

EXHIBITS TO APPLICATION

- Exhibit 1** Diagrams showing organization structure before and after the proposed transaction

- Exhibit 2** Registration Statement on Form S-4/A filed on August 19, 2010 under the Securities Act of 1933

- Exhibit 3** Financial statements of Lodi Gas Storage, L.L.C. [**Filed under seal**]

- Exhibit 4** Financial statements of Buckeye Partners, L.P. [Excerpted from SEC Form 10-K]

- Exhibit 5** Secretary of State Certificate of Good Standing Status for Lodi Gas Storage, L.L.C.

- Exhibit 6** Secretary of State Certificate of Good Standing Status for Buckeye Gas Storage LLC

VERIFICATION OF APPLICATION

LODI GAS STORAGE, L.L.C. , BUCKEYE GAS STORAGE LLC

AND BUCKEYE PARTNERS, L.P.

I, William H. Schmidt, Jr., hereby declare that I am the President of Lodi Gas Storage, L.L.C. and the Vice President, General Counsel and Secretary of Buckeye Gas Storage LLC and of the general partner of Buckeye Partners, L.P., and that I have read the foregoing Application; and that the information set forth therein concerning such entities is true and correct to the best of my knowledge.

I declare under penalty of perjury that the foregoing issue is true and correct.

Executed this 24th day of August, 2010

/s/ William H. Schmidt, Jr.

William H. Schmidt, Jr.