

Decision **PROPOSED DECISION OF ALJ VIETH** (Mailed 10/10/2006)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Wild Goose Storage Inc., EnCana Corp., Carlyle/Riverstone Global Energy and Power Fund III, L.P., Carlyle/Riverstone Global Energy and Power Fund II, L.P. and Niska Gas Storage US, LLC for Review under Public Utilities Code Section 854 of the Transfer of Control of Wild Goose Storage Inc. from EnCana Corporation to Niska Gas Storage US, LLC and for Approval of Financing under Public Utilities Code Section 851.

Application 06-05-033
(Filed May 26, 2006)

OPINION APPROVING, WITH CONDITIONS, TRANSFER OF CONTROL AND RELATED FINANCING, AND EXEMPTING ANCILLARY TRANSACTION FROM PUBLIC UTILITIES CODE SECTION 852 PURSUANT TO SECTION 583(b)

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**OPINION APPROVING, WITH CONDITIONS, TRANSFER OF CONTROL
AND RELATED FINANCING, AND EXEMPTING ANCILLARY
TRANSACTION FROM PUBLIC UTILITIES CODE SECTION 852
PURSUANT TO SECTION 583(b)**

1. Summary

Wild Goose Storage Inc. (Wild Goose) is an independent natural gas storage provider in California. By this application as amended, Joint Applicants, the entities identified in the caption above, request:

- authority under Pub. Util. Code § 854¹ to transfer control of Wild Goose from the Canadian company, EnCana Corporation (EnCana), and a wholly-owned EnCana subsidiary to Niska Gas Storage US, LLC (Niska Gas Storage) via the sale of all issued and outstanding shares of Wild Goose. Niska Gas Storage is itself the subsidiary of a limited liability company 80%-owned by a joint venture known as Carlyle/Riverstone Funds, based in New York City, and 20%-owned by SemGroup, an Oklahoma limited partnership and its subsidiary.
- authority under § 851 to finance the acquisition of Wild Goose as proposed; and
- authority under § 852 (or an exemption under § 853(b)) to permit a separate acquisition of stock in Kinder Morgan, Inc. (KMI) by one member fund in Carlyle/Riverstone Funds, together with an affiliate, as part of a transaction with other entities not subject to this Commission's jurisdiction. KMI's business interests include partial ownership and effective indirect control of SFPP, L.P. (SFPP) and Calnev Pipe Line LLC (CALNEV), both California pipeline utilities. This separate transaction is part of a larger agreement to take KMI private. Joint Applicants acknowledge that the larger

¹ Unless otherwise indicated, all subsequent citations to sections refer to the Public Utilities Code.

agreement will require Commission review and approval under § 854 in the future, via a separate application.

Joint Applicants also request that we decide this matter no later than November 9, 2006 so that ownership and control of Wild Goose is clear and does not interfere with Wild Goose's participation in Pacific Gas and Electric Company's upcoming Request for Proposal for incremental natural gas storage, ordered by Decision (D.) 04-09-022 and D.06-07-010.

We find that the change of control is not adverse to the public interest and authorize it to go forward. Post-transfer, Wild Goose will continue to operate as a natural gas storage provider in California, pursuant to terms and conditions ordered by D.97-06-091 and D.02-07-036. However, given the new owners' substantial investments in energy and power businesses, to ensure that we have the information necessary to monitor Wild Goose's position, we condition our authorization of the transfer by requiring that Wild Goose report promptly on the identity, nature and amount of its affiliates' acquisition of or investment in electric and/or natural gas entities and assets in California and Western North America.

The proposed financing package is riskier than we would approve for traditional electric and gas utilities, and requires Wild Goose assets to be pledged to secure the financing of assets acquired outside California. We authorize the proposed financing, however, given the solvency of the new owners and because Wild Goose is not subject to cost of service regulation. With respect to the ancillary KMI investment, we conclude that an exemption under § 853(b) is warranted and we authorize it. We express no opinion on the merits of the § 854 application which KMI and others filed as Application 06-09-016 on September 18, 2006.

2. Background

D.97-06-091 granted Wild Goose a certificate of public convenience and necessity (CPCN) to provide a 14 billion cubic feet (Bcf) natural gas storage facility in California's Butte County and to offer storage services at market-based rates. D.02-07-036 amended Wild Goose's CPCN to authorize, subject to certain conditions, expansion of the existing Wild Goose gas storage facility to 29 Bcf. The present capacity of the facility is 24 Bcf.

From the date of certification and continuing until April 2002, Wild Goose was the wholly owned, indirectly held subsidiary of another Canadian company, Alberta Energy Company, Ltd. (AEC). Following the merger of AEC into PanCanadian Energy Corp., the merged company was renamed EnCana. D.03-06-099 approved the indirect transfer of control over Wild Goose from AEC to EnCana.

This Commission also regulates, as pipeline utilities, portions of both SFPP and CALNEV. These entities transport gasoline, diesel fuel, and jet fuel on an intrastate basis in California.

3. Identity of Joint Applicants and Other Necessary Participants in the Transactions at Issue

The Application identifies Joint Applicants as Wild Goose, EnCana, Carlyle/Riverstone Global Energy and Power Fund III, L.P. (Carlyle/Riverstone III), Carlyle/Riverstone Global Energy and Power Fund II, L.P. (Carlyle/Riverstone II), and Niska Gas Storage. Collectively, Carlyle/Riverstone III and Carlyle/Riverstone II, together with their respective co-investment funds, comprise Carlyle/Riverstone Funds.

Wild Goose, the subject of the § 854 transfer, is familiar to the Commission and needs little further introduction. An unaudited financial statement for Wild Goose, as of December 31, 2005, is Exhibit C to the Application.² At present, Wild Goose's immediate corporate parent is Alenco, Inc., (Alenco) a wholly-owned subsidiary of EnCana. Described as "one of North America's leading natural gas producers and among the largest holders of gas and oil resource lands onshore North America," EnCana is a publicly traded corporation; its financial statement for year-end 2005 is Exhibit E to the Application.

(Application, p. 7.)

Niska Gas Storage is a limited liability company incorporated in Delaware earlier this year to serve as an acquisition vehicle; it will become the immediate owner of Wild Goose post-transfer. The principal place of business for Niska Gas Storage is in New York City. The company is controlled by Niska Holdings I, L.P., which was a wholly-owned subsidiary of Carlyle/Riverstone Funds at the time the Application was filed; according to the Amendment to Application, Carlyle/Riverstone Funds now holds an 80% ownership interest in Niska Holdings I, L.P.³

Carlyle/Riverstone Funds are limited partnerships registered in Delaware in 2002 (Carlyle/Riverstone II) and in 2005 (Carlyle/Riverstone III), with a principal of business in New York City. Carlyle/Riverstone Funds are two in a

² Exhibit C has been filed under seal by Administrative Law Judge (ALJ) Ruling dated October 5, 2006.

³ Footnote 32 of the Application explains that another subsidiary, Niska GS Holdings II, LP, is the parent of the Canadian gas storage facilities purchased from EnCana, including the facilities at the AECO hub in Alberta.

series of investment funds (currently four in number) established by the joint venture between The Carlyle Group and Riverstone Holdings LLC (joint venture or Carlyle/Riverstone joint venture). The Application explains the motivation for the joint venture thus:

The joint venture was formed to capitalize on The Carlyle Group's private equity prowess and Riverstone Holding LLC's experience in the energy and power industry. The joint venture provides private equity capital for buyouts, growth capital opportunities, strategic joint ventures and leverage buildups globally in the energy and power industry. The objective of investments by the joint venture is to generate long-term capital appreciation through privately negotiated equity and equity-related investment in energy and power companies. The joint venture makes investments globally throughout the energy and power industry with primary focus on the midstream, upstream, power, and oilfield service sectors. (Application, pp 8-9.)

According to the Application, the Carlyle/Riverstone joint venture currently has approximately U.S. \$5.4 billion in committed capital and has invested approximately U.S. \$2.5 billion in a number of energy or power ventures in North America (the joint venture has other investments world-wide). Carlyle/Riverstone III and Carlyle/Riverstone II have committed capital of over US \$4 billion between them. A financial statement for Carlyle/Riverstone III for the period from inception through December 31, 2005 is attached to the Application as Exhibit I. Exhibit K to the Application is a combined financial statement for Carlyle/Riverstone II for the years ending 2003 and 2004.⁴ Because of its recent formation, Niska Gas Storage has no financial statements.

⁴ Exhibits I and K have been filed under seal by ALJ Ruling dated October 5, 2006.

Exhibit G to the Application (appended to this decision as Attachment 1) lists twelve separate investments by Carlyle/Riverstone Funds in energy and power industries located in the Western United States and elsewhere. The Amendment to Application supplements Exhibit G to add four subsequent, additional investments. (This supplement is Attachment 2 to this decision.) One of these investments is in SemGroup (described in the following paragraph), in which Carlyle/Riverstone Funds holds a 29.3% equity interest. In addition, through the separate investment in KMI by The Carlyle Group and Riverstone Holdings LLC, which we review in Section 6 of this decision, Carlyle/Riverstone III will acquire an interest in KMI's diverse energy and power businesses. The Amendment to Application also supplements Exhibit G to add a summary of these businesses. (The supplement is Attachment 3 to this decision.)

As explained in the Amendment to Application, SemGroup, L.P. and SemGroup Subsidiary Holding, L.L.C. (collectively, SemGroup), are the new, minority owners (20%) of Niska Gas Storage via a capital investment in Niska Holdings I, L.P. and Niska Holdings II, L.P. SemGroup, L.P. is an Oklahoma limited partnership; its wholly-owned subsidiary, SemGroup Subsidiary Holding, L.L.C., is a Delaware limited liability company formed to facilitate SemGroup's indirect investment in Wild Goose. Both SemGroup companies have their principal place of business in Tulsa, Oklahoma. Exhibit T to the Amendment to Application consists of SemGroup's (publicly released) condensed, consolidated financial statements as of June 30, 2006 and December 31, 2005. These statements show, for the six months ending June 30, 2006, revenues of more than US \$8 billion, total assets of more than US \$3.5 billion, and total partners' capital of \$444 million.

SemGroup, through its subsidiaries, provides a “diversified range of midstream energy services ... primarily for the North American crude oil and refined products industry.” (Amendment to Application, p. 11.) Furthermore,

Its operations include field services, gathering, processing, storage, terminaling, and marketing of crude oil, refined petroleum products, natural gas, natural gas liquids and asphalt. SemGroup serves customers primarily in the Mid-Continent and Midwestern U.S., including the states of Oklahoma, Kansas, Louisiana, Texas, and in the provinces of Alberta, British Columbia and Saskatchewan, Canada. In the U.S., SemGroup owns and operates natural gas gathering, processing and storage facilities in Kansas and New York, but provides no natural gas or natural gas products or services in the California market. (*Ibid.*)

Exhibit U to the Amended Application (made Attachment 4 to this decision) summarizes SemGroup’s investments in the energy and power industries.

Finally, we review the organization of KMI. Again, KMI is not a party to the Wild Goose transfer, but will become affiliated through an investment by Carlyle/Riverstone III for which Joint Applicants seek separate authority under § 852. By that investment, Carlyle/Riverstone III will acquire an interest in KMI’s subsidiaries and business interests, including Kinder Morgan Energy Partners, L.P. (KMEP) and its California utility subsidiaries, SFPP and CALNEV. KMI controls both the general partner of KMEP and its delegate, Kinder Morgan Management, LLC, and therefore effectively maintains indirect control of SFPP and CALNEV.

The Amendment to Application describes KMI as “one of the largest energy transportation, storage and distribution companies in North America” and states that it has, in combination with KMEP, an enterprise value of more

than \$35 billion⁵. (Amendment to Application, p. 5.) See Attachment 3 for a summary of KMI's businesses.

4. Proposed Transfer of Wild Goose

4.1 Description of the Transfer

Joint Applicants ask this Commission to approve the transfer of indirect control over Wild Goose from EnCana to Carlyle/Riverstone Funds through the sale by Alenco of all issued and outstanding shares of Wild Goose to Niska Gas Storage, the acquisition vehicle controlled by Niska GS Holdings I, L.P. As discussed previously, Niska GS Holdings I, L.P. is owned 80% by Carlyle/Riverstone Funds and 20% by SemGroup.

The Wild Goose Purchase and Sale Agreement dated March 6, 2006 and included with the Application as Exhibit M⁶, memorializes the terms of the Wild Goose transfer.⁷ This transfer is part of a larger transfer to the Carlyle/Riverstone joint venture of virtually all of the natural gas storage assets owned by EnCana and its affiliates. The transfer includes the following: the AECO Hub, a 125 Bcf facility in Alberta, Canada; Salt Plains, a 15 Bcf facility in Oklahoma; Starks, a 27 Bcf facility under development in Louisiana; and Coastal Plains, a potential gas storage development in Texas.

The Application explains the rationale for the transfer as follows:

EnCana has decided to sell the majority of its gas storage assets in order to focus on other business opportunities. While EnCana is

⁵ We understand this representation to refer to US dollars.

⁶ Portions of Exhibit M have been filed under seal by ALJ Ruling dated October 5, 2006.

⁷ The agreement is entitled "US (WGSI) Purchase and Sale Agreement."

seeking to divest gas storage assets to pursue other opportunities, the Carlyle/Riverstone joint venture is seeking to invest in such assets and to focus on growth opportunities in natural gas storage. The joint venture has entered into agreements to acquire EnCana's gas storage assets, including Wild Goose, in order to take advantage of these opportunities. The joint venture believes that its acquisition of Wild Goose, as well as EnCana's other gas storage assets, provides a unique opportunity to enhance the value of these assets, both to the market and to the Carlyle/Riverstone Funds' investors, through strategic use of The Carlyle Group's financial strength and access to private equity and Riverstone Holdings LLC's background and experience successfully managing energy industry investments. (Application, p. 13.)

The Application also states that Carlyle/Riverstone Funds intend to invest in the completion of Wild Goose's expansion project by adding the 5 Bcf of capacity authorized by D.02-07-036 but not yet built. SemGroup shares Carlyle/Riverstone's assessments and objectives, according to the Amended Application.

Joint Applicants stress that they have structured the larger transaction by means of several separate agreements, in order to ensure that no direct or indirect transfer of control of Wild Goose occurs prior to Commission approval. To that end, they have negotiated separate Purchase and Sale Agreements for EnCana's Canadian assets, for EnCana's U.S. assets other than Wild Goose, and for Wild Goose. The sales of all assets other than Wild Goose closed on May 12, 2006.

During the transitional period between execution of the Wild Goose Purchase and Sale Agreement and this Commission's action on the Application, Joint Applicant's have made certain provisions to ensure the uninterrupted management and operation of Wild Goose. The application states that EnCana has retained as employees all of the operational staff employed at Wild Goose's

Butte County storage facility, as well as two employees and one consultant based in Calgary (a lead engineer, a production manager, and a gas controller), and that the officers of Wild Goose will remain the same until the transaction closes. Certain corporate and management services provided to all gas storage operations are continuing to be provided via a Transitional Service Agreement, Exhibit N to the Application.⁸

4.2 Protests

Roseville Land Development Association (Roseville Land) and Lodi Gas Storage, L.L.C. (Lodi) filed Protests to the Application, to which Joint Applicants replied. Roseville Land also filed a Protest to the Amendment to Application, to which Joint Applicants replied.

Roseville Land, a California corporation, owns about 500 acres of farmland near the Wild Goose project, including one mile of right-of-way condemned in connection with the original construction. The approved but as yet unbuilt portion of the expansion project includes an additional pipeline across Roseville Land's property. In connection with the expansion, Wild Goose filed a condemnation action against Roseville Land in 2002 but that proceeding apparently was abandoned before trial.

Roseville Land's two Protests assert a number of objections to the amended Application and seek hearings. The primary objection is that the change of control will cause the expansion project to resume and will lead to another condemnation action, to the financial detriment of Roseville Land. The issues which arise from such a scenario fall outside this proceeding; however,

⁸ Portions of Exhibit N have been filed under seal by ALJ Ruling dated October 5, 2006.

since they are not relevant to the merits of the proposed change of control or the requested financing authority.

Other objections raised by Roseville Land include: the change of control will increase Wild Goose's costs, leading to an increase in rates for its customers; the proceeds of the sale should be shared by Wild Goose's customers; the capital the purchasers have proposed to commit to the project is less than half of the current owner's retained earnings for 2005; the Application fails to show that the transfer will not further exacerbate price volatility in the California natural gas market; and the Commission should seek the advice of the California Attorney General before issuing any decision. As we discuss further in Sections 4.3 and 4.4, below, these objections are largely irrelevant in the context of this Application and, furthermore, do not require us to hold hearings.

Lodi's Protest neither opposes the transfer of control nor seeks hearings but points out, lest the Application create some misunderstanding on this point, that Wild Goose continues to be the largest independent gas storage owner/operator in the California market. Lodi's Protest also suggests that to the extent the Application seeks to remove restrictions on storage or hub services transactions between independent gas storage providers and their affiliates, Lodi desires the same relief. Lodi refers to conditions the Commission imposed on previous changes of control for Wild Goose (in D.02-07-036) and Lodi (D.03-02-071, D.05-12-007). In addition, Lodi suggests that statements in the Application raise the specter of ongoing affiliate transactions violations by Wild Goose.

Joint Applicants' Reply does not disavow Wild Goose's position in the California market and states, unequivocally, that the Application does not seek to be relieved from any requirements or conditions ordered by prior Commission

decisions. The Assigned Commissioner's scoping memo⁹ bars such issues from consideration here, stating:

Wild Goose correctly points out, however, that if Lodi wishes the Commission to reexamine affiliate transaction restrictions on independent gas storage providers, other, more appropriate avenues are available (e.g., petition for rulemaking).¹⁰ We will not expand the scope of this proceeding to include such a reexamination. (Scoping memo, pp.4-5.)

4.3 Standard of Review

It is now well-settled that the Commission intends to exercise its regulatory authority to review and approve proposals for a change in control of California's independent gas storage providers. The Commission recently reiterated:

We think it prudent public policy to review and approve changes in the ownership and control of certificated natural gas storage utilities, whether those changes occur directly, or indirectly through corporate intermediaries. Such review should help to ensure the continued economic viability of such utilities and to prevent market manipulations that may affect not only their own customers but also larger ratepayer groups. D.05-12-005 *mimeo.*, p. 7, 2005 Cal PUC LEXIS 527 quoting D.03-02-071, *mimeo.*, pp. 11-12, 2003 CalPUC LEXIS 133.

⁹ *Assigned Commissioner's Scoping Memo and Joint Ruling with Administrative Law Judge Granting Motion to Intervene, Addressing Protests, Requiring Amendment to Motion for Leave to File Under Seal, and Establishing Initial Service List*, July 27, 2006.

¹⁰ The Commission's Affiliate Transaction Rules, first adopted by D.97-12-088, do not apply to independent gas storage providers. (footnote in original)

The applicable law is § 854 and the body of decisions interpreting it. 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...” The purpose of this and related sections is to enable the Commission, before any transfer of public utility authority is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require.¹¹ Absent prior Commission approval, § 854(a) provides that the transaction is “void and of no effect.” Section 854(b) and (c) do not expressly apply to the instant transaction because, according to Joint Applicants, neither Wild Goose nor the other parties to the proposed transfer of control have gross annual California revenues exceeding US \$500 million. When California revenues reach this threshold, § 854(b)(3) requires the Commission to seek an opinion on competitive impacts from the California Attorney General. Below this threshold there is no such requirement. We therefore need not pursue Roseville Land’s request for an opinion from the Attorney General.

The standard generally applied by the Commission to determine if a transaction should be approved under § 854(a) is whether the transaction will be “adverse to the public interest.”¹² While on occasion the Commission has also

¹¹ See *San Jose Water Co.* (1916) 10 CRC 56.

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

inquired whether a transfer will provide positive ratepayer benefits, this additional assessment cannot be applied readily to an entity like Wild Goose, which is not a traditional investor-owned public utility with captive ratepayers. In fact, the Commission has not considered "ratepayer benefits" in its review of other change of control applications by independent gas storage providers. Roseville Land's request for such review fails.

4.4 Discussion

Joint Applicants state that the proposed change of control will have no adverse effect upon the public interest and should be approved under § 854(a). The net effect of the change of control is that Wild Goose's operations will continue unchanged, subject to all conditions previously ordered by the Commission and Wild Goose will continue "to have the financial and management strength necessary to meet the growing needs of California for well designed, environmentally sensitive and efficiently managed competitive natural gas storage services." (Application, p. 15.)

Joint Applicants' showing on the public interest impacts of the change of control goes on to discuss compliance with most of the public interest criteria enumerated in § 854(c). Wild Goose employed the same useful strategy when it sought authority for the change of control occasioned by the EnCana merger and the Commission noted that "consideration of these criteria ensures assessment of a broad spectrum of important public interest concerns and provides a good gauge of the public interest under § 854(a)." (D.03-06-069 *mimeo.*, p. 10-11, 2002 CalPUC LEXIS 975 16.)

For example, with respect to the competitive implications of the change of control, the Application and Amendment to Application affirmatively assert that the new ownership, including Carlyle/Riverstone Funds and SemGroup and its

subsidiaries, have no natural gas or gas transportation assets, products, or services in California or in any location that could affect the California market. The Amendment to Application makes the same representation about KMI and its subsidiaries or affiliates. For this reason, and because other developments in the California natural gas storage market have reduced Wild Goose's market share since the Commission approved the expansion project,¹³ Joint Applicants suggest that any Commission concerns about the potential for market manipulation should be lessened under the new ownership. Nor should financial viability prove a problem, given the assets and revenues of Carlyle/Riverstone Funds and SemGroup. Both service quality and management quality should be unaffected or even improved, Joint Applicants state. That assessment appears highly credible considering the caliber of the proposed new ownership and given the plan to continue to employ all of the current Wild Goose workforce in Butte County as well as many of those serving in key operational and management positions elsewhere.

Furthermore, as required by the scoping memo, Wild Goose has put forward evidence (the declaration of Kim Joslin, Vice President of EnCana's Canadian Gas Marketing) that Wild Goose has complied with the prohibition on affiliate and storage services transactions ordered by prior Commission decisions. Lodi's suggestion to the contrary appears to be unfounded.

Roseville Land's financial and economic concerns are largely misplaced. As the scoping memo concludes, "Roseville Land's concerns suggest a general misunderstanding of the regulatory regime in California governing independent

¹³ Wild Goose still continues to hold the largest share in the California market.

gas storage facilities, which unlike incumbent public utilities, have no captive customers, offer market-based rates, and bear full risk for cost recovery of facility development, operation, and management.” (Scoping memo, p. 3.) While the financial status of the buyers is clearly relevant, as the scoping memo observes: “Roseville Land’s protest confuses things by focusing on measures (i.e., capital commitment of buyer vs. retained earnings of seller) that do not advance the necessary inquiry.” (*Id.* at 4.) In fact the scoping memo goes on to direct Joint Applicants to amend their financial showing to better explain the derivation of the total capital ratio for Wild Goose post-transfer, and Joint Applicants have complied.

Joint Applicants have made a persuasive showing that the change of control should be free from any negative impacts – and may have positive impacts – on the completion of the Wild Goose expansion and on Wild Goose’s service quality and management. As noted above, Wild Goose does not seek to be released from any of the reporting conditions the Commission has imposed upon it in prior decisions and we have no reason at this time to cancel those requirements. We reiterate that unless and until modified, all terms and conditions of D.97-06-091 and D.02-07-036 will continue to apply to Wild Goose. Likewise, Wild Goose must continue to operate in conformance with its filed tariff and with any subsequent amendments of that tariff.

However, given the significant global investments in the energy and power industries that Carlyle/Riverstone Funds, SemGroup, and their subsidiaries and affiliates have made and report they will continue to make, and the rapidity with which some assets appear to change hands, the Commission must ensure that it has sufficient information to monitor important developments in the energy markets with the potential to affect California most

directly. D.02-07-036, Ordering Paragraph 3(c) requires Wild Goose to report the following:

Wild Goose shall promptly advise the California Public Utilities Commission (Commission) of the following changes in status that reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing: (i) Wild Goose's own purchase of natural gas facilities, transmission facilities, or substitutes for natural gas, like liquefied natural gas facilities; (ii) an increase in the storage capacity or in the interstate or intrastate transmission capacity held by affiliates of its parent, Alberta Energy Company Ltd. (Alberta Energy, or a successor); or (iii) merger or other acquisition involving affiliates of Alberta Energy or a successor and another entity that owns gas storage or transmission facilities or facilities that use natural gas as an input, such as electric generation.

Given the number and breadth of the energy and power industry businesses in which Carlyle/Riverstone Funds, SemGroup, and their subsidiaries and affiliates are involved, we will need a more complete picture, going forward, than compliance with D.02-07-036, Ordering Paragraph 3(c), will provide. Therefore, as a condition of the change of control, we also will require Wild Goose to advise the Commission semi-annually of its affiliates' direct or indirect acquisition of or investment resulting in a controlling interest or effective control, whether direct or indirect, in any entities in California or elsewhere in Western North America that produce natural gas or provide natural gas storage, transportation, or distribution services, to the extent such transactions are not already captured by D.02-07-036, Ordering Paragraph 3(c). We also will require Wild Goose to semi-annually advise the Commission of its affiliates' similar acquisition of or investment in any entities in California or elsewhere in Western North America that generate electricity, or provide electric transmission or

distribution services. For the purposes of today's order, we define "Western North America" to mean, in addition to California, the states of Oregon, Washington, Arizona, New Mexico, Texas, Nevada, Colorado, Wyoming and Utah, as well as the provinces of British Columbia and Alberta in Canada and the State of Baja California Norte in Mexico. Our intent is to receive timely notice of acquisitions and investments other than those for which Commission approval must be sought under § 852 (governing acquisition of a stock in another California utility) or § 854 (governing merger and control another California utility). Reports should include the identity of the affiliate; the nature of the acquisition or investment; and the amount of the investment.

4.5 CEQA

Under the California Environmental Quality Act (CEQA), we must consider the environmental consequences of projects that are subject to our discretionary approval. (Pub. Resources Code § 21080.) It is possible that a change of ownership and/or control may alter an approved project, result in new projects, or change facility operations, etc. in ways that have an environmental impact.

Joint Applicants affirmatively state (and reiterate in the Amendment to Application) that this proposed transaction:

involves only a change of control of Wild Goose. It will not result in any change in the operation of Wild Goose's natural gas storage facilities or in any additional construction that has not been previously reviewed and approved the Commission in full compliance with CEQA. (Application, p. 26.)

We concur, for a number of reasons. The Wild Goose gas storage facilities will continue to be developed and operated as previously authorized by this Commission, all environmental mitigation measures contained in the certified

Environmental Impact Reports (EIRs) will continue to apply, and all monitoring requirements and restrictions imposed in D.97-06-091 and D.02-07-036, which certified these EIRs, will continue. Therefore, the proposed project qualifies for an exemption from CEQA pursuant to § 15061(b)(3)(1) of the CEQA guidelines and the Commission need perform no further environmental review. (See CEQA Guidelines § 15061(b)(3)(1).)

5. Request for Financing Authority

Joint Applicants explain that Carlyle/Riverstone Funds propose to finance the Wild Goose purchase as part of the acquisition of all of EnCana's gas storage business – partly through equity and partly through debt. SemGroup's 20% equity investment in Niska Gas Storage does not change the proposal; it merely reduces the amount of cash that Carlyle/Riverstone Funds must bring to the deal. As further explained below, the financing package includes guarantees backed by liens as security. Under § 851, Wild Goose must obtain Commission authority before incurring any debt or pledging any assets as security for financing.¹⁴ Before authorizing either, the Commission must determine if the transaction will adversely affect the public interest.

The Commitment Letter from the Lenders (Exhibit O), the Summary of Indicative Terms and Conditions (Exhibit P), and the Credit Agreement

¹⁴ Section 851 provides in relevant part:

No public utility ... shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its ... line, plant, system, or other property necessary or useful in the performance of its duties to the public, ... without first having secured an order from the commission authorizing it to do so.

(Exhibit Q) are all made part of the Application.¹⁵ Wild Goose will issue no debt itself; all debt associated with the financing proposal has been or, in the case of the Wild Goose purchase, will be issued at the parent company level by subsidiaries of Carlyle/Riverstone Funds. However, the financing package requires security in the form of cross-collateralized security agreements and cross guarantees. This means that all of the financing will be guaranteed by all of the subsidiaries that own the gas storage facilities and other assets purchased from EnCana. Likewise, the security for all these guarantees will be provided by liens on all of the gas storage assets. Joint Applicants state that such financing is beneficial for lenders, borrowers, and customers because it diversifies financial risk and provides additional revenue support, which allows more favorable rates, terms, and conditions to attach to the financing. In other words, it lowers the cost of debt compared to that available if each gas storage facility were to be financed separately.

Once Niska Gas Storage issues additional debt (US \$70 million) to complete the Wild Goose acquisition, this amount will be imputed to Wild Goose. (Likewise, post-acquisition, all equity must be imputed, as Wild Goose will be owned and operated as an asset of Niska Gas Storage and will not issue either debt or equity directly.) The resulting equity to total capital ratio, as further clarified in Joint Applicants' response to the scoping memo, is approximately 65%.¹⁶

¹⁵ These exhibits have been filed under seal by ALJ Ruling dated October 5, 2006.

¹⁶ Joint Applicants have calculated this ratio by dividing the equity amount imputed to Wild Goose by the acquisition cost. As we noted in D.06-06-059 (2006 Cal PUC LEXIS 252) when we approved new financing for Lodi, our acceptance of this calculation for

Footnote continued on next page

In considering this financing proposal, we are mindful that we have not held independent gas storage providers to the same cost of capital standards as the traditional public utilities engaged in the provision of electricity and natural gas. Our rationale for allowing more risky financing for independent gas storage providers is that they have no captive customers, are not subject to cost of service regulation, and bear their own investment and operations risks. We will authorize the financing. However, were the buyers less solvent than the financial records provided to us indicate, we might question this financing package, in part because it requires Wild Goose assets to be pledged to secure the financing of assets acquired outside California. While captive California ratepayers do not rely directly upon Wild Goose's natural gas storage services, such services increasingly are becoming a critical part of the efficient and effective functioning of California's gas infrastructure.

6. KMI Stock Acquisition

6.1 Description

As explained in Section 3 of this decision, KMI controls SFPP and CALNEV, parts of which are regulated as California pipeline utilities. Because Carlyle/Riverstone III intends to participate in the agreement to take private KMI, and thereby to indirectly transfer control of KMEP's regulated pipeline subsidiaries, that transaction will require Commission approval under § 854, which Joint Applicants recognize. The matter before the Commission at this time, however, is whether the Commission must authorize the initial investment

Wild Goose, does not mean we are departing from our practice of using book value of debt and total assets in calculating the debt ratio for a utility subject to rate-of-return regulation.

in KMI and the related companies by Carlyle/Riverstone III under § 852.

Carlyle/Riverstone will become subject to § 852 immediately upon the closing of the sale of Wild Goose from EnCana to Carlyle/Riverstone Funds.

Before attempting to answer this question, it is necessary to have a more detailed understanding of the KMI transaction. According to the Amendment to Application, the KMI transaction became public on August 28, 2006, several months after the Application was filed, when “KMI announced that it had agreed to a buyout offer from investors led by the company’s chairman and co-founder, Richard D. Kinder and including Goldman Sachs Capital Partners and certain of its affiliates, as well as affiliates of American International Group, Inc., The Carlyle Group and Riverstone Holdings LLC ...”. (Amendment to Application, pp. 3-4.) This explains why there is no mention of the KMI transaction in the Application.

Joint Applicants describe the status of the transaction as follows. The KMI Investor Group has offered to buy all outstanding shares of KMI at \$107.50 share, or about US \$15 billion. The Amendment to Application reports that the offer represents a 27% premium over the closing price of KMI shares as of May 26, 2006, the last trading day before the proposal was announced. The Carlyle Group is participating through Carlyle Partners IV, L.P. (Carlyle Partners IV) and Carlyle/Riverstone III; Riverstone Holdings LLC is participating through Carlyle/Riverstone III. Upon approval by KMI’s shareholders, and once all regulatory approvals have been obtained, Carlyle/Riverstone III and Carlyle Partners IV would each acquire a minority equity interest in KMI of about 12.5%. Richard D. Kinder, others in KMI management, and other equity investors would own the rest. The result would be the transfer of KMI from public to

private ownership and the transfer of direct and indirect control of all of KMI's subsidiaries and business interests.

6.2 Authority

Section 852 prohibits a company with a controlling interest in a California jurisdictional public utility from investing in another California jurisdictional utility without prior approval from the Commission.¹⁷ Section 853(b) permits the Commission to exempt a public utility from § 852 if the Commission finds that application of § 852 is “not necessary in the public interest.”¹⁸

¹⁷ Section 852 provides in relevant part:

No public utility, and no subsidiary or affiliate of, or corporation holding a controlling interest in, a public utility, shall purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or existing under or by virtue of the laws of this state, without having been first authorized to do so by the commission; provided, however, that the commission may establish by order or rule categories of stock acquisitions which it determines will not be harmful to the public interest, and purchases within those categories are exempt from this section ...

¹⁸ Section 853(b) provides in relevant part:

The commission may from time to time by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if it finds that the application thereof with respect to the public utility or class of public utility is not necessary in the public interest. The commission may establish rules or impose requirements deemed necessary to protect the interest of the customers or subscribers of the public utility or class of public utility exempted under this subdivision. These rules or requirements may include, but are not limited to, notification of a proposed sale or transfer of assets or stock and provision for refunds or credits to customers or subscribers.

6.3 Discussion

Joint Applicants argue that we should exempt Carlyle/Riverstone III (and its affiliate, Carlyle Partners IV, and their other unnamed affiliates¹⁹) from § 852, since their respective minority acquisitions constitute no more than a 12.5% interest in KMI by each (or 25%, combined), which translates into a much smaller indirect interest in SFPP and CALNEV.²⁰

As Joint Applicants observe, D.00-05-023 provides a precedent for such an exemption in somewhat similar circumstances.²¹ In that decision the Commission exempted from § 852 the indirect transfer of a 19% minority interest in Time Warner Telecom of California, LP (TWT-California) in the course of the transfer of MediaOne Group, Inc. (MediaOne) to AT&T Corp under § 854. TWT-California, which provided facility-based communications services in the San Diego area, was a subsidiary of MediaOne. The Commission determined that the transfer would have no effect on the control or operations of TWT-California and exempted the transaction on that basis. We conclude, similarly, that the KMI investment by Carlyle/Riverstone III (and Carlyle Partners IV) is too small to give them or their affiliates indirect control over SFPP

¹⁹ Joint Applicants express some uncertainty as to whether § 852 and § 853(b) even apply to Carlyle Partners IV. Since post-transfer of Wild Goose to Niska Gas Storage, Carlyle Partners IV will become an affiliate of the entity (i.e., Carlyle/Riverstone Funds) holding an 80% interest in and indirect control of Wild Goose, we believe it is quite clear that these statutes extend to Carlyle Partners IV.

²⁰ Carlyle/Riverstone III will have an interest of approximately 1.9% in each of SFPP and CALNEV. This investment appears to be far too small to provide indirect control over either pipeline utility.

²¹ See *Application of AT&T Corp. Meteor Acquisition Inc., and MediaOne Group for Change of Control*, D.00-05-023, 2000 Cal. PUC LEXIS 355.

or CALNEV. Neither does this investment appear to have any competitive ramifications for Wild Goose, which provides no refined petroleum products or services in California. The larger KMI agreement will come before us as part of a § 854 application in the future and we express no opinion on its merits in this decision. Our assessment to grant an exemption from § 853(b) here, should not be interpreted more broadly than the limited terms of that grant.

7. Procedural History and Miscellaneous Procedural Matters

Joint Applicants filed the Application on May 26, 2006 and notice of the filing appeared in the Commission's Daily Calendar on June 6, 2006. On June 27, 2006, another entity, WG Storage LP, moved to intervene and shortly thereafter, the Commission received two timely protests, one filed by Roseville Land on June 30, 2006 and the other filed by Lodi on July 6, 2006. Joint Applicants filed a reply to both protests on July 17, 2006. On July 27, 2006, the Assigned Commissioner's scoping memo issued; among other things, the scoping memo directed Joint Applicants to respond by August 15, 2006 to clarify two matters identified in the scoping memo. Joint Applicants did so.

On September 15, 2006 Joint Applicants filed an Amendment to Application. By ruling on September 18, 2006, the ALJ shortened time for Protests or Responses to October 2, 2006. On September 19, 2006, Joint Applicants filed a Second Amendment to Application, to update the exhibit list previously filed as part of the Application. By ruling on September 21, 2006, the ALJ reiterated the October 2, 2006 deadline for Protests/Responses. On October 2, 2006 Roseville Land filed a protest to the Amendment to Application. Joint Applicants filed a Reply on October 4, 2006.

In Resolution ALJ 176-3174, dated June 15, 2006, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily

determined that hearings were not necessary. The scoping memo confirmed those determinations.

8. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. Joint Applicants filed comments on October 30, 2006.

Joint Applicants ask the Commission to adopt the Proposed Decision on November 11, 2006, but seek several minor clarifications and corrections to the text as well as six changes to Ordering Paragraph 7 (and the corresponding text). We make all of the minor changes and four substantive changes to Ordering Paragraph 7 and related text. Because two other changes would modify a prior Commission decision, D.02-07-036, without providing the notice and opportunity to be heard required by §1708, we do not make them in today's decision and need not assess the merits here.

The major changes consist of the following. One, we revise Ordering Paragraph 7 to include a definition of the term "Western North America." We use Joint Applicants' definitional list of states and provinces but add to it the state of Texas, since natural gas from the Permian Basin in Texas flows into California through the Transwestern and El Paso interstate pipelines. Two, we revise Ordering Paragraph 7 to provide that the information required by today's decision may be provided semi-annually, as Joint Applicants request. Three, as Joint Applicants' also request we clarify that the information required by today's decision concerns natural gas production, storage, transportation or distribution as well as electricity generation, transmission and distribution. Four, we clarify that we are not requiring the reporting of passive, minority interests that do not

give the investing entity effective control. Rather, the information required by today's decision concerns direct or indirect acquisitions and other investments that result in a controlling interest, including an interest that permits effective direct or indirect control. Limiting reporting only to direct acquisitions or to investments that result in majority ownership, as Joint Applicants request, is inappropriate on this record. Joint Applicants themselves note, for example, that KMI's effective, indirect control over the pipeline utilities SFPP and CALNEV is the result of its control of the general partner and the management delegee of KMI's subsidiary KMEP, even though as of December 31, 2005 KMI held only 15.2% of the total equity of KMI.

We do not modify the term "affiliate" as it is used in Ordering Paragraph 7 or add the statement that Ordering Paragraph 7 supersedes subparts ii and iii of Ordering Paragraph 3(c) of D.02-07-036. In both respects, the Proposed Decision's Ordering Paragraph 7 refers to Ordering Paragraph 3(c) without modifying it. Section 1708 requires notice and opportunity to be heard before the Commission may amend or alter a prior decision. The amended Application expressly states that Wild Goose does not seek to be relieved of any requirements imposed by D.02-07-036 and seeking these changes now, in Comments on the Proposed Decision, is procedurally inappropriate. Joint Applicants should file a Petition for Modification under Rule 16.4 of the Commission's Rules of Practice and Procedure if they wish to pursue these issues.

9. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Jean Vieth is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Wild Goose is an independent natural gas storage provider regulated as a public utility by this Commission.
2. The transfer of change of control over Wild Goose is one part of a transfer of virtually all of the natural gas storage assets owned by EnCana and its affiliates to Carlyle/Riverstone Funds (80% ownership) and SemGroup (20% ownership).
3. Carlyle/Riverstone Funds, both limited partnerships, are two in a series of investment funds established by the joint venture between The Carlyle Group and Riverstone Holdings LLC formed to provide private equity capital for buyouts, growth capital opportunities, strategic joint ventures and leverage buildups globally in the energy and power industry. The objective of investments by the joint venture is to generate long-term capital appreciation through privately negotiated equity and equity-related investment in energy and power companies. The member funds in the joint partnership, Carlyle/Riverstone III and Carlyle/Riverstone II, have committed capital of over US \$4 billion between them.
4. SemGroup has a diverse range of oil and natural gas businesses. Its financial statements show, for the six months ending June 30, 2006, revenues of more than US \$8 billion, total assets of more than US \$3.5 billion, and total partners' capital of \$444 million.
5. KMI's business interests include partial ownership and effective indirect control of SFPP and CALNEV, both California pipeline utilities.
6. Carlyle/Riverstone Funds and SemGroup and its subsidiaries have no natural gas or gas transportation assets, products, or services in California or in

any location that could affect the California market. Neither does KMI and its subsidiaries or affiliates.

7. Wild Goose's public interest showing discusses many of the criteria listed in § 854(c), even though no party to this transaction has gross annual California revenues of \$500 million.

8. The change of control over Wild Goose should leave its service quality and management quality unimpaired, should not be adverse to the current Wild Goose workforce in Butte County or to many of those serving in key operational and management positions elsewhere, and should be free from any negative impacts – and may have positive impacts – on the completion of the Wild Goose expansion.

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

10. Wild Goose has no plans or intentions to make any changes to its facilities or in its operations that have not already been approved as part of D.02-07-036.

11. It can be seen with reasonable certainty that the change of indirect control over Wild Goose will not have a significant effect on the environment. This is the independent judgment of the Commission.

12. Given the significant global investments in the energy and power industries that Carlyle/Riverstone Funds, SemGroup, and their subsidiaries and affiliates have made and report they will continue to make, and the rapidity with which some assets appear to change hands, the Commission should ensure that it has sufficient information to monitor important developments.

13. The financing package for the purchase and sale of the EnCana assets, including Wild Goose, requires that all of the financing will be guaranteed by all of the subsidiaries that own the gas storage facilities and other assets purchased.

Likewise, the security for all these guarantees will be provided by liens on all of the gas storage assets.

14. Because, post-transfer, Wild Goose will not issue debt or equity, Joint Applicants have imputed a 65% debt to total capital ratio to Wild Goose by dividing the imputed equity by the acquisition cost.

15. The financing package is riskier than the Commission would approve for traditional electric and gas utilities and requires Wild Goose assets to be pledged to secure the financing of the assets acquired outside California. However, it is not unreasonable given the solvency of the buyers and because Wild Goose is not subject to cost of service regulation.

16. Upon approval by KMI's shareholders, and once all regulatory approvals have been obtained, Carlyle/Riverstone III and Carlyle Partners IV would each acquire a minority equity interest in KMI of about 12.5%; the interest in SFPP and CALNEV will be much smaller.

17. The KMI investment by Carlyle/Riverstone III and Carlyle Partners IV is too small to give them or their affiliates indirect control over SFPP or CALNEV. Neither does this investment appear to have any competitive ramifications for Wild Goose, which provides no refined petroleum products or services in California.

18. Neither Roseville Land nor Lodi has established the existence of material, disputed facts that require hearing.

Conclusions of Law

1. Because no party to the transfer of control has California revenues exceeding \$500 million, § 854(b)(3) is inapplicable. Section 854(b)(3) requires the Commission to seek an opinion on competitive impacts from the California Attorney General if revenues reach this threshold.

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

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

4. Carlyle/Riverstone Funds and Wild Goose Storage should be authorized under § 851 to enter into the financing described herein.

5. Carlyle/Riverstone III and Carlyle Partners IV, and their affiliates, will become subject to § 852 immediately upon the closing of the sale of Wild Goose from EnCana to Carlyle/Riverstone Funds.

6. An exemption from the requirements of § 852 should be granted under § 853(b) to permit Carlyle/Riverstone III and Carlyle Partners IV, and their affiliates, to invest in the proposed KMI transaction, as described herein.

7. The preliminary determinations in Resolution ALJ 176-3174, confirmed in the scoping memo, should be reaffirmed.

8. This transfer of control qualifies for an exemption from CEQA under CEQA Guidelines § 1506(b)(3)(1) and therefore, additional environmental review is not required.

9. Before any transfer of control of SFPP or CALNEV occurs, the Commission must review and approve the transfer proposal under § 854.

10. This order should be effective immediately so that Wild Goose may participate in PG&E's upcoming RFO.

O R D E R

IT IS ORDERED that:

1. Application (A.) 06-059-033 is approved, as further provided in these Ordering Paragraphs.

2. Pursuant to Public Utilities Code § 854(a) and subject to the reporting requirements provided in Ordering Paragraph 7, the transfer of control over Wild Goose Storage Inc. (Wild Goose) from EnCana Corporation to Carlyle/Riverstone Funds and SemGroup, L.P. and SemGroup Subsidiary Holding, L.L.C. (collectively SemGroup) through the sale by Alenco, Inc. of all issued and outstanding shares of Wild Goose to Niska Gas Storage US, LLC (Niska Gas Storage), is approved.

3. Pursuant to Public Utilities Code § 851, Carlyle/Riverstone Funds and Wild Goose Storage are authorized to enter into the financing described herein and in the Application (including Exhibits O, P and Q), and the Amendment to Application.

4. Pursuant to Public Utilities Code § 853(b), an exemption is granted to Carlyle/Riverstone Global Energy and Power Fund III, L.P. (Carlyle/Riverstone III) and Carlyle Partners IV, L.P. and their affiliates, from the requirements of Public Utilities Code § 852 for their investment in the proposed Kinder Morgan, Inc. transaction, as described herein and in the Amendment to Application. However, no transfer of control of SFPP, L.P. and Calnev Pipe Line LLC shall occur without approval of the Commission under Public Utilities Code § 854.

5. The transfer of control qualifies for an exemption from the California Environmental Act (CEQA) under CEQA Guidelines § 1506(b)(3)(1) and therefore, additional environmental review is not required.

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

7. Wild Goose shall semi-annually report the following information to the Commission: the identity of any affiliate that directly or indirectly has acquired or has made an investment resulting in a controlling interest or effective control, whether direct or indirect, in an entity in California or elsewhere in Western North America that produces natural gas or provides natural gas storage, transportation or distribution services, to the extent such transactions are not already captured by Decision 02-07-036, Ordering Paragraph 3(c); the identity of any affiliate that directly or indirectly has acquired or has made an investment resulting in a controlling interest or effective control, whether direct or indirect, in an entity in California or elsewhere in Western North America that generates electricity, or provides electric transmission or distribution services; the nature (including name and location) of the asset acquired or in which the investment was made, and the amount of the acquisition or investment. For the purposes of this Ordering Paragraph, "Western North America" is defined to mean, in addition to California, the states of Oregon, Washington, Arizona, New Mexico, Texas, Nevada, Colorado, Wyoming and Utah, as well as the provinces of British Columbia and Alberta in Canada and the State of Baja California Norte in Mexico.

8. Application 06-05-033 is closed.

This order is effective today.

Dated _____, at San Francisco, California.