

Decision 10-11-005 November 19, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Lodi Gas Storage, LLC to
Modify Decision 00-05-048 (U912G).

Application 09-06-011
(Filed June 12, 2009)

DECISION GRANTING JOINT MOTION AND DISMISSING APPLICATION

1. Summary

We grant the joint motion of Lodi Gas Storage, LLC, the Division of Ratepayer Advocates, and the California Farm Bureau to dismiss this application and, as those parties request, we have withdrawn the proposed decision and alternate proposed decision filed previously. Accordingly, we make no change to Decision 00-05-048.

2. Background

The Commission currently requires Lodi Gas Storage, LLC (Lodi), an independent natural gas storage owner and operator, to retain a \$10 million surety or performance bond to ensure its ability to meet the costs of certain obligations under a certificate of public convenience and necessity (CPCN) granted in 2000. Decision (D.) 00-05-048, which granted the CPCN, states:

“These costs include, but are not limited to, reburial of the pipeline in the event of subsidence of the soil covering the pipeline, costs of restoring the areas in the event of abandonment or bankruptcy, etc.”¹ In 2000 (and until 2008), Lodi’s

¹ D.00-05-048 at 34. See also, D.04-05-034, Findings of Fact 3.

owner was Western Hub Properties, LLC (WHP), a development company with limited assets. D.00-05-048 fashioned the bond requirement as a mitigation to address opposition to the project by individual landowners and the San Joaquin Farm Bureau Federation based on the potential risks development and operation of a gas storage facility posed in the local area. The bond was set at \$20 million.² In 2004, based on completion of the construction and a successful operating history, D.04-05-034 modified D.00-05-048, at Lodi's request, to reduce the bond to \$10 million, adjusted annually for inflation from May 18, 2000 (the date of issuance of D.00-05-048). The revised \$10 million bonding requirement reflected Lodi's own estimate of the costs of mitigation. More recently, D.08-01-018 authorized the transfer of indirect control of Lodi from WHP to Buckeye Partners, L.P. (Buckeye Partners), which is publicly traded on the New York Stock Exchange. Buckeye Partners owns 100% of Buckeye Gas Storage, L.L.C. (Buckeye Gas Storage), which owns 100% of Lodi.

² The Proposed Decision had recommended that the Commission deny the CPCN, concluding that, given the degree of opposition in the community, the project failed to comport with community values, one of the factors to be considered under Public Utilities Code Section 1002. (D.04-05-034 at 3-4.) An Alternate Decision sponsored by two Commissioners proposed a bond of \$30 million to mitigate community concerns about environmental degradation and other problems. (*Id.* at 4.) D.00-05-048 granted the CPCN, but conditioned it upon acquisition of a \$20 million bond.

3. Procedural History

The San Joaquin Farm Bureau Federation and the California Farm Bureau Federation (referred to here, collectively, as Farm Bureau) jointly protested this application, as did the Commission's Division of Ratepayer Advocates (DRA).³ With the permission of the Administrative Law Judge (ALJ), Lodi filed a reply to the protests, which included a request that the parties attempt to resolve their differences through the Commission's Alternative Dispute Resolution (ADR) program. At a prehearing conference (PHC) held on August 14, 2009, the parties discussed their views of the issues and the potential use of ADR. Counsel for DRA and Lodi also advised the ALJ of some preliminary discovery disputes between them, and after taking argument, the ALJ resolved them. Following the PHC, the assigned Commissioner filed a scoping memo, which memorialized the scope and schedule for this proceeding.⁴

The scoping memo authorized the parties, in their discretion, to file a stipulation of facts as well as motions requesting leave to file briefs. No party elected to make either filing. The parties agreed to mediate their dispute, but mediation did not result in settlement. In mid-December 2009, by email to the ALJ, the parties asked that this proceeding be submitted for decision on the pleadings filed as of that time.

³ A document titled *Reclamation District No. 563 Objection to Application of Lodi Gas Storage, LLC to modify Decision 00-05-048* was tendered for filing after expiration of the protest period without a motion requesting leave to file late. The Commission's Docket Office notified counsel for the Reclamation District of the options available to cure this defect; however the Reclamation District determined not to seek party status but rather asked to have the document placed in the correspondence file for this proceeding.

⁴ *Scoping Memo and Ruling of Assigned Commissioner*, September 3, 2009.

A proposed decision filed on January 25, 2010, recommended that the Commission deny Lodi's application. In comments filed on February 16, 2010, Lodi set forth a slightly revised proposal. The Commission's Rules of Practice and Procedure do not allow modification of an application by that means at that stage of a proceeding; however, Lodi was given leave to properly file a motion for leave to amend its application. Lodi filed such motion, the ALJ granted the motion by email notice to the service list on March 1, 2010, the Commission withdrew the January 25, 2010 proposed decision, and, on March 2, 2010, Lodi filed an amended application. Farm Bureau and DRA filed protests to the amended application and Lodi filed a reply. A proposed decision and an alternate proposed decision were filed concurrently on August 24, 2010. Thereafter the parties jointly requested an extension of time to file comments and, on October 1, 2010, they filed this joint motion.

4. Discussion

The joint motion reports that Lodi, DRA, and Farm Bureau have resolved all of their differences and that pursuant to this resolution, which they have memorialized in a private letter agreement, they have agreed that the surety or performance bond requirement ordered by D.00-05-048, as modified by D.04-05-034, should continue without modification. They ask that the proposed decision and alternate proposed decision both be withdrawn and that we dismiss this application.

The parties recognize that at an advanced stage of a proceeding and particularly after issuance of a proposed decision, dismissal ceases to be a right of the parties and becomes a matter of Commission discretion. In D.92-04-027, which examined Southern California Gas Company's desire to withdraw an application after hearings had occurred and a proposed decision had issued, the

Commission expressly recognized its own “capacity to address issues of continuing public interest” by determining whether an open docket should continue to a decision on the merits.⁵ While the Commission ultimately determined that good cause existed for dismissal, and accordingly dismissed the matter, it declined to articulate the precise boundaries of the private right, observing, “[i]t is sufficient that we indicate that submission of a matter upon an evidentiary record and obtaining a proposed decision within the meaning of [Public Utilities Code] Section 311(d) involves steps which clearly make termination a matter of the Commission’s discretion.”⁶

Here, where all parties have reached an agreement that preserves a prior Commission determination and jointly request dismissal, no public policy would be served by denying the request.

5. Waiver of Comment Period

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

6. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Jean Vieth is the assigned ALJ in this proceeding.

⁵ *In re Southern California Gas Co.*, (1992) D.92-04-027, 43 CPUC 2d 639, 640; See also, *San Diego Gas & Electric Co. and Southern California Gas Company*, (2008) D.08-09-011.

⁶ 43 CPUC 2d at 641.

Findings of Fact

1. Lodi, DRA, and Farm Bureau have resolved all of their differences and have memorialized this resolution in a private letter agreement. They have agreed that the surety or performance bond requirement ordered by D.00-05-048, as modified by D.04-05-034, should continue without modification.

2. No public policy would be served by denying the joint motion for dismissal of this application.

3. The withdrawal of the proposed decision and alternate proposed decision should be confirmed.

Conclusions of Law

1. The joint motion should be granted and the application should be dismissed.

2. This decision should be effective immediately to minimize business uncertainty for the parties.

O R D E R

IT IS ORDERED that:

1. The Joint Motion to Dismiss filed on October 1, 2010, by Lodi Gas Storage, LLC, the California Farm Bureau Federation and the San Joaquin Farm Bureau Federation, and the Division of Ratepayer Advocates is granted and withdrawal of the proposed decision and alternate proposed decision is confirmed.

2. Application 09-06-011 filed on June 12, 2009, as amended on March 2, 2010 by Lodi Gas Storage, LLC is dismissed.

3. Application 09-06-011 is closed.

This order is effective today.

Dated November 19, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners