

Decision 11-05-030 May 26, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Central Valley Gas Storage, LLC (915G), Nicor Inc., and AGL Resources Inc. for Expedited *Ex Parte* Authorization to Transfer Ownership of Central Valley Gas Storage, LLC to AGL Resources Inc.

Application 11-01-021
(Filed January 25, 2011)

DECISION APPROVING CHANGE IN OWNERSHIP AND CONTROL OF CENTRAL VALLEY GAS STORAGE, LLC

1. Summary

This decision approves the request of Central Valley Gas Storage, LLC (Central Valley), Nicor Inc. (Nicor) and AGL Resources Inc. (AGLR) (collectively, Joint Applicants) for a change in the ultimate ownership and control of Central Valley from Nicor to AGLR. In addition to approving the proposed transfer, we conclude that the transactions underlying the transfer qualify for an exemption from the California Environmental Quality Act. Accordingly, additional environmental review is not required.

2. Background

In Decision (D.) 10-10-001, the Commission granted Central Valley Gas Storage, LLC (Central Valley) a certificate of public convenience and necessity (CPCN) for the construction and operation of an underground natural gas storage facility in Colusa County, including a 14.7-mile pipeline to connect with Pacific Gas and Electric Company's (PG&E) natural gas transmission system

(Central Valley Project). This included the adoption of a settlement agreement between PG&E and Central Valley in which Central Valley agreed to pay all costs to connect with PG&E's gas transmission system. The CPCN was subject to certain conditions, including the requirement that Central Valley provide specified reports to Commission Staff and maintain \$50 million of general liability insurance per occurrence and in the aggregate. The Commission also authorized Central Valley, a new public utility under Pub. Util. Code §§ 216 and 222, to charge market-based rates. Finally, D.10-10-001 certified the Mitigated Negative Declaration for the Central Valley Project and authorized the issuance of a Notice of Determination for the Project pursuant to the California Environmental Quality Act (CEQA).

On January 25, 2011, Joint Applicants filed the instant application. The application does not seek to transfer Central Valley's CPCN or modify the conditions imposed on Central Valley in D.10-10-001. Rather, it seeks authorization for an indirect change in control of Central Valley as the result of a proposed merger between Nicor Inc. (Nicor) and AGL Resources Inc. (AGLR).

The Division of Ratepayer Advocates (DRA) filed a Motion for Party Status. DRA does not oppose the proposed transfer. However, it states that it seeks to ensure that the application would not modify or change the nature of the settlement adopted by the Commission in D.10-10-001, which granted Central Valley's CPCN.

A duly noticed prehearing conference (PHC) was held on March 24, 2011. At the PHC, Central Valley and DRA were asked to provide supplemental information. This information was filed and served on March 25, 2011 by Central Valley and on March 28, 2011 by DRA. As agreed by the parties, no further briefing was needed.

3. The Proposed Transaction

Joint Applicants seek Commission authorization for a change in the ultimate ownership and control of Central Valley from Nicor to AGLR as a result of an agreement and plan of merger between Nicor and AGLR (Merger Agreement). From the time of certification, Central Valley has been a subsidiary of Nicor Energy Venture Company, which in turn is a wholly-owned subsidiary of Nicor.

Under the Merger Agreement, Nicor will merge with Apollo Acquisition Corp, a wholly-owned subsidiary of AGLR, with Nicor to be the surviving corporation in the merger. The surviving corporation will then be merged with Ottawa Acquisition LLC, a wholly-owned subsidiary of AGLR. The surviving corporation of this subsequent merger will be Ottawa Acquisition LLC. Upon completion of the subsequent merger, Nicor Energy Venture Company will become a subsidiary of Ottawa Acquisition LLC, which in turn is a subsidiary of AGLR.¹

4. Standard of Review

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.² Absent prior

¹ Diagrams of the corporate organization structure prior to and after the proposed transaction were included in Exhibit 10 of the Application.

² See *San Jose Water Co.* (1916) 10 CRC 56.

Commission approval, § 854(a) provides that the transaction is “void and of no effect.”

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.”³ While on occasion the Commission has also inquired whether a transfer will provide positive ratepayer benefits, this additional assessment cannot be applied readily to an entity like Central Valley, 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.

Section 854(b) and (c) do not expressly apply to the instant transaction because, according to Joint Applicants, neither Nicor nor AGLR 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.

5. Discussion

The Commission has previously expressed its intent to exercise its regulatory authority to review and approve proposals for a change in control of California’s independent gas storage providers and stated:

³ 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.

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.*, at 7, 2005 Cal PUC LEXIS 527 quoting D.03-02-071, *mimeo.* at 11-12, 2003 CalPUC LEXIS 133.

In this instance, Central Valley's proposed change in ownership is due to the proposed merger of Nicor and AGLR. This proposed merger will have no impact on Central Valley's operations, and Central Valley will continue to hold the CPCN for its storage facility issued in D.10-10-001. Joint Applicants state that the transfer will not result in any change to the proposed services to be provided by Central Valley, or to the rates or terms and conditions under which they will be provided. Once in service, Central Valley will provide unbundled storage services to the public, as approved by D.10-10-001 and be bound by the terms and conditions of its CPCN.⁴ Joint Applicants do not seek the transfer of Central Valley's CPCN, rather, Central Valley will continue to hold it and will offer natural gas storage at market-based rates, pursuant to D.10-10-001.

The proposed indirect change of control will also not affect Central Valley, its customers nor the market place. Joint Applicants state:

Notwithstanding the indirect change in ownership, Central Valley will continue to operate as an independent natural gas storage provider subject to the jurisdiction of the Commission. In addition, the

⁴ Central Valley has stipulated that it will abide by all the obligations, terms and conditions imposed by D.10-10-001, as well as the terms and conditions of the settlement agreement. (Reporter's Transcript (RT), Vol. PHC-1 at 16:21 - 17:4.)

transaction will not result in the transfer of any certificates, assets or customers of Central Valley.⁵

Joint Applicants state that AGLR's affiliate, Sequent Energy Management, L.P. (Sequent) currently has contracts for short-term interruptible storage with PG&E within California and holds a limited amount of firm transportation capacity on Gas Transmission Northwest Corporation and El Paso Natural Gas Company. However, neither AGLR nor its subsidiaries or affiliates own gas storage facilities and pipeline assets in California or the West Coast.⁶ Therefore, the proposed transaction will have no significant impact on competition or the marketplace.

Joint Applicants state that the proposed transfer of ownership will affect one aspect of D.10-10-001. In that decision, Central Valley could obtain the required \$50 million in general liability insurance either directly or through Nicor. Since Nicor will cease to exist after the proposed transaction, AGLR will now bear this responsibility. AGLR has affirmed that it will step in to Nicor's shoes to provide the insurance on Central Valley's behalf, rather than Central Valley obtaining it on its own.⁷ Joint Applicants state that the change in responsible party from Nicor to AGLR, as part as the transfer of ownership, will not affect the type nor amount of insurance required in D.10-10-001. However, they believe some affirmative authorization is required before such a change may occur. We agree with Joint Applicants that AGLR should be authorized to obtain insurance on Central Valley's behalf. Consequently, upon completion of

⁵ Application at 2.

⁶ Application at 10.

⁷ RT PHC-1 at 10:9-18.

the proposed transaction, AGLR shall replace Nicor as the responsible party and shall be authorized to obtain insurance on behalf of Central Valley.

Central Valley will benefit from the proposed transaction. AGLR currently operates gas storage facilities in Texas and Louisiana, and thus has extensive natural gas storage experience. This experience will assist Central Valley in its provision of storage services to California customers. Additionally, the combination of Nicor and AGLR's financial resources will provide Central Valley with greater access to funds for investments. Further, Nicor and AGLR are two of the largest natural gas distribution companies in the United States. Thus, consolidation of these two entities will allow for cost efficiencies in the provision of all services.

6. CEQA Compliance

Under CEQA and Rule 2.4 of the Commission's Rules of Practice and Procedure, we are required to consider the environmental consequences of projects that are subject to our discretionary approval. (*See* Public Resources Code Section 21080.)

We acknowledge that in some cases, it is possible that a change of ownership and/or control may alter an approved project, result in new projects, or change facility operations in ways that have an environmental impact. However, Joint Applicants state that the transaction at issue involves the indirect transfer of ownership of Central Valley as a result of the proposed merger. This transfer of ownership will not result in any direct or indirect change in the environment. Further, Joint Applicants note that Central Valley will continue to be obligated to construct and operate its storage facility in the manner approved

in D.10-10-001 and comply with all environmental conditions imposed in its CPCN and the Mitigated Negative Declaration.⁸

We conclude that under these circumstances, the proposed project qualifies for an exemption from CEQA pursuant to § 15061(b)(3) of the CEQA guidelines, inasmuch as it can be seen with certainty that the project will have no significant impact upon the environment. Accordingly, the Commission need perform no further environmental review for this application.

7. Conclusion

We find that the Application should be approved. This approval does not modify in any way the terms and conditions associated with the CPCN granted to Central Valley in D.10-10-001. However, once indirect ownership and control of Central Valley is transferred from Nicor to AGLR, AGLR shall assume responsibility for all obligations imposed on Nicor in D.10-10-001, including the requirement to obtain, if Central Valley cannot, an insurance policy to provide \$50 million of general liability insurance coverage on behalf of Central Valley.

8. Categorization and Need for Hearing

In Resolution ALJ 176-3269, the Commission preliminarily determined the category of this proceeding to be ratemaking, and that a hearing was not necessary. We affirm that categorization.

9. 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 comments were

⁸ See Application at 11-12.

allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

No comments were filed.

10. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Amy C.

Yip-Kikugawa is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Central Valley was issued a CPCN in D.10-10-001.
2. Central Valley is a wholly-owned subsidiary of Nicor.
3. On December 6, 2010, Nicor, AGLR, Apollo Acquisition Corp., and Ottawa Acquisition LLC entered into an Agreement and Plan of Merger.
4. Under the Agreement and Plan of Merger, Central Valley will become a wholly-owned subsidiary of AGLR as a result of a series of transactions.
5. The proposed transfer will result in the change of ownership and control of Central Valley but will not result in the transfer of any certificates, assets or customers. Central Valley will continue to be bound by the terms and conditions prescribed by the Commission in D.10-10-001.
6. Neither AGLR nor any of its subsidiaries own gas storage facilities and pipeline assets in California or the West Coast.
7. The proposed transaction will have no significant impact on competition or the marketplace.
8. This change of ownership and control will have no significant effect on the environment since Central Valley will continue to be operated as previously authorized by this Commission. All environmental mitigation measures and all monitoring requirements and restrictions imposed in D.10-10-001 will continue.
9. No hearing is necessary.

Conclusions of Law

1. The transaction proposed constitutes a change of control, within the meaning of Pub. Util. Code § 854.
2. The Application should be granted.
3. Central Valley shall continue to be bound by the terms and conditions imposed on it as part of the CPCN granted in D.10-10-001.
4. Upon completion of the proposed transaction, AGLR should be authorized to replace Nicor as the responsible party who may obtain the general insurance required in D.10-10-001 on behalf of Central Valley.
5. This change of control qualifies for an exemption from CEQA under CEQA guidelines § 15061(b)(3) and therefore, additional environmental review is not required.
6. The preliminary determinations in Resolution ALJ 176-3269 should be confirmed.
7. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The Application of Central Valley Gas Storage, LLC (Central Valley), Nicor Inc. and AGL Resources Inc. (AGLR) for a change in the ultimate ownership and control of Central Valley from Nicor to AGLR is approved pursuant to Pub. Util. Code § 854.
2. Central Valley Gas Storage, LLC (Central Valley) and its owners shall continue to be bound by all terms and conditions of Central Valley's certificate of public convenience and necessity, as granted by Decision 10-10-001.

3. Upon completion of the proposed transaction, AGL Resources Inc. is authorized to obtain the general insurance required in Decision 10-10-001 on behalf of Central Valley Gas Storage LLC.

4. Application 11-01-021 is closed.

This order is effective today.

Dated May 26, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners