Decision 08-01-018 January 10, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Lodi Gas Storage, L.L.C. (U-912-G), Lodi Holdings, L.L.C., WHP Acquisition, L.L.C., WHP Acquisition II, L.L.C., Buckeye Gas Storage LLC, and Buckeye Partners, L.P. For Expedited *Ex Parte* Authorization to Transfer Control of Lodi Gas Storage, L.L.C. to Buckeye Gas Storage LLC Through the Sale of the 100% Interest of Lodi Holdings, L.L.C. in Lodi Gas Storage, L.L.C., Pursuant to Public Utilities Code § 854(a).	Application 07-07-025 (Filed July 27, 2007)

OPINION APPROVING TRANSFER OF 100% INTEREST IN LODI GAS STORAGE, L.L.C. TO BUCKEYE GAS STORAGE LLC

Summary

We approve, subject to the conditions set forth below, the now-unopposed request of the six joint applicants to transfer control of a 100% interest in one of them, Lodi Gas Storage, L.L.C. (LGS), from Lodi Holdings, L.L.C. (Lodi Holdings), a second joint applicant, to a third, Buckeye Gas Storage LLC (Buckeye). The other joint applicants in this proceeding are WHP Acquisition, L.L.C. (WHP), which owns a 50% interest in Lodi Holdings, WHP Acquisition II, L.L.C. (WHP II), which owns the other 50% interest in Lodi Holdings, and Buckeye Partners, L.P. (Buckeye Partners), a publicly-traded entity on the New York Stock Exchange which owns 100% of Buckeye.

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 (CEQA). Accordingly, additional environmental review is not required.

Background

This application represents the latest in a series of transfers in recent years of the ownership interests in LGS. In Decision (D.) 03-02-071, the Commission approved the transfer of a 50% interest in Lodi Holdings from Western Hub Properties L.L.C. (Western Hub) to WHP Acquisition Company, the predecessor of applicant WHP here. About three years later, in D.05-12-007, the Commission approved the transfer of the other 50% interest in Lodi Holdings from Western Hub to WHP II. As D.05-12-007 noted, the practical effect of the latter transfer was to bring Lodi Holdings and LGS under unified management and control, since both companies were to become wholly-owned subsidiaries of ArcLight Funds I and II, two Delaware limited partnerships formed to invest in the power and energy industries. D.05-12-007 further noted that both ArcLight Funds I and II are managed by ArcLight Capital Partners, L.L.C. (ArcLight Capital Partners), an investment management firm headquartered in Boston, Massachusetts.

LGS has been an energetic participant in the Northern California gas storage market. In D.00-05-048, we granted LGS a certificate of public convenience and necessity (CPCN) to build and operate the Lodi Gas Storage Facility (Lodi Facility) in San Joaquin and Sacramento Counties.[1] The Lodi Facility began commercial operation in 2002 and currently has a total storage capacity of 21 billion cubic feet (Bcf), with a working capacity of 17 Bcf. In

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[1] The CPCN granted in D.00-05-048 was subsequently amended in D.03-08-048, D.04-05-046 and D.04-05-034.

D.06-03-012, we granted LGS a CPCN to build and operate a second gas storage facility known as the Kirby Hills Facility, which is located in Solano County. The Kirby Hills Facility went into service in January 2007 and has a total storage capacity of up to 7 Bcf, with a working capacity of 5.5 Bcf. Earlier this year, LGS filed Application (A.) 07-05-009, which seeks to amend the CPCN granted in D.06-03-012 to expand the Kirby Hills Facility. This expansion project has come to be known as Kirby Hills II.

In this joint application, the parties assert that the transfer of control of LGS from Lodi Holdings to Buckeye will have several advantages:

> "The transfer of control sought here will provide LGS with long-term financial stability and capital for expansion plans such as Kirby Hills II. Continued operation and growth in existing facilities supports the Commission's goal of investors building utility natural gas storage in California. Storage capacity is clearly needed[,] as evidenced by the facts that all of LGS' current storage capacity is fully subscribed and that LGS had [a] very positive response in the recent open season for Kirby Hills II.
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> ". . . The development and operation of LGS' facilities have been a clear success. The current sale brings a new publicly-traded company as an investor into the California market with access to lower-cost capital to the benefit of the company. The current sale also enables ArcLight Funds I and II to provide return on investment to their investors and will allow for additional investment in California and elsewhere in energy infrastructure and project development." (Joint Application, pp. 11-12; footnotes omitted.)

1. DRA's Protest

Although no one had protested the applications for transfer that resulted in D.03-02-071 and D.05-12-007, the Commission's Division of Ratepayer Advocates (DRA) did file a protest to this application on August 31, 2007. In its protest, DRA raised a number of issues. First, it argued that certain representations in the financial statements filed with the application concerning the ownership of BGH GP Holdings, LLC (the owner of the general partner of Buckeye GP Holdings, L.P., which in turns owns the general partner of joint applicant Buckeye Partners), were at odds with other statements about the ownership of BGH GP Holdings, LLC contained in the application. (DRA Protest, pp. 2-3.) Second, DRA argued that the apparent indirect ownership by the Carlyle/Riverstone Global Energy and Power Fund II, L.P. (Carlyle/Riverstone) of Buckeye GP LLC, the general partner of joint applicant Buckeye Partners, raised antitrust issues in view of Carlyle/Riverstone's interests in other Northern California gas storage ventures:

> "Through its investment vehicles, Carlyle/Riverstone has an 80% interest over Wild Goose Storage, Inc., the other 'independent' natural gas provider in Northern California. Carlyle/Riverstone has also recently obtained an interest in the SFPP and Calnev pipelines . . .
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> "Wild Goose Storage and Lodi Gas Storage collectively own over 50% of the natural gas storage market in California. If there is a sufficient nexus between the web of affiliates and holding companies which own Wild Goose Storage and are attempting to acquire Lodi Gas Storage, there may be the potential for collusive behavior. Such behavior could result in market manipulation of over 50% of the natural gas storage in Northern California. This situation may require the Commission to annul each of the company's respective authority to implement market-based rates." (*Id.* at 5.)

In view of these and other issues set forth in the protest, DRA urged that the application should either be dismissed without prejudice, or that DRA should be granted three months to conduct discovery after the submission of the joint applicants' opening testimony, "in order to fully ascertain the identities and interrelationships between the entities and individuals involved in [the] application." Such discovery was necessary, DRA argued, to allow the development of a record sufficient to support the findings required under Pub. Util. Code § 854(a) if the application were to be approved.

2. The Response of the Joint Applicants to DRA's Protest

On September 10, 2007, the joint applicants filed a lengthy response to DRA's protest. In essence, the joint applicants argued that DRA had ignored information available on several websites which allegedly made clear that Carlyle/Riverstone would have no interest in Buckeye after the proposed transfer. Thus, the joint applicants continued, DRA's concerns about possible market manipulation were unjustified, and there was no reason for extensive discovery to allow DRA to probe the ownership interests of the Buckeye entities, or for any other reason.

On the question of whether Carlyle/Riverstone would have any interest in Buckeye or Buckeye Partners if the proposed transfer were approved, the Joint Response stated unequivocally:

> "Joint Applicants assure the Commission and DRA that Carlyle/Riverstone has absolutely no ownership, control, or other interest in any entity within the entire corporate structure of the Buckeye Companies.[[2]] Joint Applicants further assure

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[2] A footnote within the quotation explained the "Buckeye Companies" as follows:

> "As shown on Exhibit 8, p. 2 [of the application], after Commission approval of this transaction, LGS will be directly owned by Buckeye. Buckeye is in turn owned by Buckeye Partners, a publicly traded entity on the New York Stock Exchange ('NYSE'). The remaining entities involved in this transaction are fully explained in detail on p. 6 of the Joint Application. The general partner of Buckeye Partners is Buckeye GP LLC. The owner of Buckeye GP

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> the Commission and DRA that Carlyle/Riverstone does not own or otherwise control the entities which collectively own BGH Holdings, *i.e.,* ArcLight Funds III and IV, Kelso, and Lehman." (Joint Applicants' Response, pp. 3-4; italics in original.)

Although conceding that "Carlyle/Riverstone did control the Buckeye Companies through its ownership of BGH Holdings from May 2004 until late June 2007," the Joint Applicants insisted that there was no need to state this in the application, since Carlyle/Riverstone's control of BGH Holdings "ended prior to the transactions now at issue and is unrelated to the current transaction before the Commission." (*Id.* at 4.) The Joint Applicants also insisted that it should have been clear from a review of the on-line documents DRA claimed to have examined in its protest – especially an April 2007 ArcLight press release and the Form 10-Q filed by Buckeye Partners with the Securities Exchange Commission (SEC) -- that the sale of Carlyle/Riverstone's interest in the Buckeye Companies had closed on June 25, 2007, about a month before the instant application was filed. However, the Joint Applicants conceded that a "small portion" of the "Carlyle Group website incorrectly still lists Buckeye Partners as one of its portfolio companies." (*Id.* at 6, 9.) The Joint Applicants continued that

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LLC is Buckeye GP Holdings L.P. ('BGH'), a second publicly traded entity on the NYSE. The general partner of BGH is MainLine Management LLC (as explained in Section II.A.3 of this Response) which is owned by BGH GP Holdings, L.L.C. ('BGH Holdings'). For purposes of this Response, the series of entities from Buckeye up to MainLine are referred to as 'the Buckeye Companies.' BGH Holdings was created as the acquisition vehicle for the purchase of Carlyle/Riverstone's interests in the Buckeye Companies." (Joint Applicants' Response, p. 3, n. 3.)

any perceived inconsistency between the SEC Form 10-Q and the statement on the Carlyle Group website could easily have been cleared up if DRA had contacted the Joint Applicants' counsel. (*Id.* at 9-10.)

Because Carlyle/Riverstone no longer had any control over the Buckeye Companies, the Joint Applicants concluded that the antitrust concerns raised by DRA – that Carlyle/Riverstone exercised control over both LGS and Wild Goose Storage, Inc. (Wild Goose), and that these two companies together controlled more than 50% of the Northern California gas storage market – were unfounded and should not be considered by the Commission. (*Id.* at 11-13.)

Finally, the Joint Applicants took issue with DRA's characterization of the legal standards applicable to the proposed transfer. Noting that DRA conceded that LGS – the only California public utility involved in this transaction – does not have $500,000,000 in annual revenues, the Joint Applicants disputed DRA's suggestion that the criteria in Pub. Util. Code §§ 854(b) and (c) were somehow applicable to this transaction. The Joint Applicants argued that only the standard embodied in § 854(a) – that the proposed transaction not be adverse to the public interest – was applicable to this transaction.[3] (*Id.* at 14-18.)

The Joint Applicants also took issue with the argument at pages 9-10 of DRA's Protest that the proposed transfer is subject to Pub. Util. Code § 852, which provides that "no public utility, and no subsidiary or affiliate of, or corporation holding a controlling interest in a public utility, shall purchase or

[3] In particular, the Joint Applicants took issue with DRA's argument that under D.07-05-061, the so-called "Kinder Morgan" decision, the Commission should consider the §§ 854(b) and (c) factors in this application, even though authority for the proposed transfer of control is sought only under § 854(a). (*Id.* at 15-17.)

acquire, take or hold, any part of the capital stock of any other [California] public utility, without having first been authorized to do so by the commission . . ." Noting that other Commission decisions (including D.05-12-007) had not discussed § 852 before approving transfers of control sought pursuant to § 854(a), the Joint Applicants argued:

> "Joint Applicants recognize that ArcLight Capital Funds I and II are involved in this transaction on the Seller's side (these funds currently indirectly own LGS) and that ArcLight Capital Funds III and IV are involved in the transaction on the Buyer's side as partial owners of BGH Holdings. Joint Applicants, however, sharply disagree with any suggestion that this in any way triggers Section 852. To the contrary, the plain language of the statute requires that there be *another* California public utility at issue. In this case, the only public utility is Lodi Gas Storage. At the end of the proposed transaction, ArcLight Funds I and II will no longer directly or indirectly own Lodi Gas Storage or any other California public utility[,] and ArcLight Funds III and IV will become an indirect partial owner of Lodi Gas Storage but no other public utility. Under this scenario, the concerns which Section 852 seeks to address, namely the ownership of multiple California public utilities by one entity, are not present." (Joint Response, pp. 19-20; footnote omitted, emphasis in original.)

3. The October 22, 2007 PHC

Because the Joint Applicants' Response appeared to address all of the issues raised in DRA's protest, the assigned Commissioner and the assigned Administrative Law Judge (ALJ) decided to hold a prehearing conference (PHC) to determine if any issues remained. In an October 3, 2007 e-mail message to the parties, the ALJ stated that they should be prepared to address the following issues at the PHC:

> "The principal issues to be discussed at the PHC will be whether, in light of the September 10 Response of the Joint Applicants and the data responses that DRA apparently expects to receive from the applicants sometime soon . . ., any real issue remains as to the principal question raised in DRA's protest: i.e., whether Carlyle/Riverstone, or any group of entities ultimately controlled by them, would be able, if the proposed transfer were approved, to exercise control of more than 50% of the Northern California gas storage market. If DRA believes this continues to be an issue, DRA should be prepared at the PHC to set forth its reasoning in detail, and to propose a plan for resolving the issue promptly. If DRA contends that there are any other issues requiring discovery and a hearing in this proceeding, it should also be prepared to spell them out in detail . . ."

The PHC was held on October 22, 2007. The ALJ opened the PHC by discounting the suggestion in the Joint Response that more study by DRA of the materials accompanying the application would have obviated the need for a protest:

> "[I]t seems to me that if the joint applicants had dotted all the I['s] and crossed all the T['s] in their application to begin with[,] they could have saved themselves a lot of grief. The tone of this September 10th response is at times very defensive, and appropriately so, since they conceded there was, you know, a statement on the Carlyle Group website suggesting that the Carlyle Group people still had control of Buckeye.
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> "So it seems to me the argument that is made implicitly in this response that it was somehow a frivolous issue to raise in a protest, that there might be this degree of control over both Lodi Gas Storage and Wild Goose[,] was a very legitimate concern at the time the protest was filed. And the attempt in this September 10th response to somehow shift the burden onto DRA to look at six different websites and sort out conflicting information and decide that some information was correct and should be accorded . . . weight, and that the other conflicting

> information was perhaps the product of clerical error, is just asking too much. The applicants should have taken care of that in their application." (PHC Transcript, p. 5.)

Turning to the issues posed by the ALJ in his e-mail message, counsel for DRA stated that without further data responses from the joint applicants, DRA's concerns about the possible role of Carlyle/Riverstone in Buckeye's affairs were not entirely alleviated by the information in the Joint Response. Noting that DRA was concerned that there should be "no bridges" through which "sensitive market information" about LGS and Wild Goose Storage could be shared, DRA's counsel said:

> "[T]here were certain facts that came about which caused DRA to increase its scrutiny. For instance, there were certain directors who were Carlyle directors who, according to the response that was given by the joint applicants, recused themselves from discussions of this transaction. DRA would like to see more information in terms of these recused directors which were indicated in our data request. And so it is a bit difficult for us to, you know, agree 100 percent that there is no Carlyle involvement until all of our data requests have been responded to." (*Id.* at 7, 8.)

Counsel for LGS replied that although he thought a significant number of DRA's data requests had been objectionable, his clients had responded to them and "provided as much information as we thought we could" to DRA, including "the entire organizational structure [of the joint applicants] prior to and after the transfer of control happens, if it is approved." (*Id.* at 13.)

The parties then turned to a discussion of five "potential conditions" for approval of the application that DRA had handed out at the beginning of the PHC. Although counsel for DRA emphasized that these conditions were "not a settlement offer," the ALJ directed that the draft conditions should be attached to the PHC transcript for reference, although their inclusion would be without prejudice to the ultimate disposition of the application. (*Id.* at 10, 28.) The ALJ also made clear that he would not expect the joint applicants to address the conditions at the PHC, since they had not yet had an opportunity either to study them or to confer with their clients concerning them. (*Id.* at 15.)

Although a formal discussion of the conditions did not occur, counsel for DRA did offer an explanation of the thinking behind them. The first two of the conditions, he noted, had been adapted from the recently-decided D.07-05-061, the Commission's so-called "Kinder Morgan" decision. The other conditions dealt with preventing improper exchanges of sensitive market information:

> "[T]he first priority condition [is] a means of preventing the potential underfunding of the underlying utility. The second issue in terms of lack of transparency [is] being addressed by access to books and records, as well as by semiannual reports regarding affiliates.
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> "On the flip side, the potential for anticompetitive conduct premised on the potential for the sharing of sensitive market information between Lodi Gas Storage and Wild Goose Storage, or the potential for commonality of interest between Lodi Gas Storage and Wild Goose Storage, []poses an issue and is addressed by having the applicants essentially agree or the Commission impose that there shall be no transfer of sensitive information between these entities . . ." (*Id.* at 26-27.)[4]

[4] At another point in the PHC, counsel for LGS reiterated the arguments set forth in the Joint Application that the circumstances of this case are entirely different from those in Kinder Morgan. Counsel argued that the following were important distinctions: (1) in this case, unlike Kinder Morgan, none of the joint applicants has a controlling interest in any other California public utility; (2) unlike Kinder Morgan, there is no concern here about captive ratepayers subsidizing upstream assets, inasmuch as LGS provides services to its customers through market-based rates; (3) unlike Kinder Morgan, in

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The ALJ and the parties then turned back to DRA's requests for further discovery. After the ALJ noted that "these sorts of discovery requests can become never-ending and perpetuating and there needs to be some bounds put around them," DRA's counsel noted that he would not be pursuing requests for documents between the applicants and their counsel, since the production of such documents had been objected to on the ground of attorney-client privilege. (*Id.* at 11, 21-22.) Rather, counsel continued, DRA was concerned about eliminating the potential for collusive behavior between Wild Goose – which is indirectly controlled by a joint venture, 80% of which is owned by Carlyle/Riverstone and its affiliate, Carlyle/Riverstone Global Energy and Power Fund III, L.P.[5] – and LGS, which would be controlled by the now-independent Buckeye entities:

> "Carlyle/Riverstone sold off their interest about a month before the transaction was consummated, I suppose. And there are individuals, people who were there within the Buckeye structure at the time that Carlyle was the owner who remained there.
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> "The only thing we are really looking to do is that to the extent that there remains any sort of a . . . lingering nexus, it is absolutely important to ensure that appropriate conditions are

which no employees were to be found until one went up five or six levels in the corporate structure, all employees operating LGS are employed by LGS, which after the transfer will be a direct subsidiary of Buckeye; and (4) unlike Kinder Morgan, where a longstanding history of commercial disputes between the California oil pipelines and its customers raised many issues, LGS has no history of commercial disputes with its customers, who pay market-based rates. (See, Joint Application, pp. 6-7; PHC Transcript, pp. 18-19.)

[5] *See* D.07-05-061, *mimeo.* at 12, fn. 8.

> put in [any Commission decision approving the transfer] to make sure that that doesn't result in the transfer . . . of sensitive market information[,] or the motive to engage in [collusive] behavior which would be commonality of interest." (*Id.* at 22-23.)

After DRA had explained its concerns, counsel for both of the joint applicants indicated a willingness to meet-and-confer with DRA on ways that these concerns might be addressed. (*Id.* at 29-30.) The ALJ then brought the PHC to a close by urging DRA and the joint applicants to meet soon. The ALJ also instructed the parties to file a report on their progress by November 5, 2007, two weeks after the PHC.[6] The ALJ noted that pending the receipt of this report from the parties, he expected the Commission would hold off issuing any scoping memo or other ruling concerning the application. However, if the parties were unable to resolve their differences on discovery, then a memo defining the scope of the issues properly within the proceeding would have to be issued. (*Id.* at 30-39.)

4. The November 2007 Settlement Agreement

On November 5, 2007, DRA and the joint applicants submitted the joint status report the ALJ had requested at the October 22 PHC. The report announced that the parties had reached agreement on a series of settlement conditions, and that if these conditions were adopted in a Commission decision granting the application, "the issues raised by DRA's Protest would be fully addressed by these safeguards." Thus, the report continued, there would be no need for additional discovery, testimony or hearings.

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[6] The ALJ also instructed the parties that if they could not agree on a joint report, they should file separate reports. (*Id.* at 33-34.)

The report also requested a telephonic PHC with the ALJ, which was held on November 6, 2007. The subject of the this PHC was whether, if all parties agreed to a waiver of their respective rights to attend a settlement conference, it would be necessary to hold a settlement conference (as provided in Rule 12.1(b) of the Commission's Rules of Practice and Procedure), or to allow 30 days for the filing of comments on the proposed settlement conditions (as provided in Rule 12.2).

On November 7, the joint applicants informed the ALJ that the necessary waivers had been obtained. The ALJ then informed the parties by e-mail that unless someone objected to these arrangements by the close of business on November 8, 2007, the requirements for a settlement conference and a 30-day comment period would be deemed waived. No objections to the proposed arrangements were submitted by the November 8 deadline.

On November 14, 2007, DRA and the Joint Applicants filed a Settlement Agreement setting forth the proposed conditions, along with a motion urging their adoption. The five settlement conditions are set forth in Appendix A to this decision, and we discuss each of them in the next section of this decision. Under the terms of the Settlement Agreement, each of the settling parties (1) agrees to support adoption of the conditions as ordering paragraphs in a Commission decision granting the application, (2) agrees to support prompt approval of the application, and not to advocate, whether formally or informally, any deviation in form or substance from the agreed-upon language of the conditions, and (3) agrees that upon issuance of a Commission decision granting the application and adopting the conditions, "the issues raised in the DRA Protest shall be deemed resolved, and that the Joint Applicants et. al. shall abide by such conditions." (Joint Motion, pp. 7-8.)

5. The Five Proposed Conditions

As all parties in this case acknowledge, this is a transfer-of-control application subject to Pub. Util. Code § 854(a). However, as indicated by the discussion above, a considerable part of DRA's August 30, 2007 Protest, the Joint Applicants' September 10 Response thereto, and the discussion at the October 22, 2007 PHC, were all devoted to the issue of whether the special conditions imposed on the transfer approved in the recent Kinder Morgan decision, D.07-05-061, should also be applied in some form to the transfer proposed here.

It is clear from an examination of the five conditions set forth in the November 14 Settlement Agreement between DRA and the Joint Applicants that several of these conditions have been adapted from the Kinder Morgan decision, and that the rest of them have been tailored to address the concerns about possible collusive behavior and unauthorized sharing of market information that DRA articulated in its Protest and at the PHC.

The first settlement condition is straight-forward. It requires the six entities listed in footnote 2 that will control LGS to "take all steps reasonably necessary to ensure that [LGS] has capital sufficient to provide safe and reliable service." This is a so-called "first priority" condition, which we described in Kinder Morgan as "requir[ing] a holding company's board to give first priority to the capital requirements of the utility, as determined to be necessary and prudent to meet the obligation to serve or to operate the utility in a prudent and efficient manner." (D.07-05-061, *mimeo.* at 33, n. 19.) As Kinder Morgan pointed out, the California Court of Appeal has upheld the Commission's authority to impose and enforce a first priority condition when the Commission approves a transfer of control to a holding company pursuant to Pub. Util. Code § 854. See, *PG&E Corp. v. Public Utilities Com.*, 118 Cal. App. 4th 1174, 1196-1201 (2004).

Condition 2(a) is also straight-forward, requiring LGS to maintain its books and corporate records at the utility level and to make these records, as well as applicable personnel, available to the Commission pursuant to Pub. Util. Code § 314.

Condition 2(b) is a variant of the above. It requires the six entities listed in footnote 2 that will control LGS (as well as the successors of these entities and any other intermediate entities) to make their books and records available to the Commission pursuant to § 314, states that requests for production by the Commission's employees or agents directed to these entities "shall be deemed presumptively valid, material and relevant," and specifies the Commission forums in which objections to such discovery requests must be raised, as well as the standard that must be met to defeat a discovery request. The language of Condition 2(b) is taken directly from the Kinder Morgan decision. (D.07-05-061, *mimeo.* at 38-39, 74 (Ordering Paragraph 13).)

Proposed Condition 3 broadens the reporting requirements that had been imposed on LGS in D.03-02-071 and D.05-12-007 in connection with investments by LGS or its affiliates in natural gas production, transmission or storage facilities. Specifically, Condition 3 requires that on April 30 and October 1 of each year after petitions for modification of D.03-02-071 and D.05-12-007 have been granted (as described below), LGS shall report to the Director of the Energy Division "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 either (a) produces natural gas or provides natural gas storage, transportation or distribution services, or (b) generates electricity, or provides electric transmission or distribution services. These reporting requirements apply to transactions not already subject to Pub. Util. Code §§ 852 or 854.

Condition 3 adds teeth to its reporting requirements by defining the terms "affiliate" and "Western North America" very broadly. The term "affiliate" is defined as "any direct or indirect parent entity of [LGS], any entity controlled by [LGS] whether directly or indirectly, [or] any entity under common control with [LGS] by a direct or indirect parent entity (e.g. any subsidiary of any [LGS] parent entity)." The term "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."[7]

Finally, Condition 3 provides that within 30 days after the acceptance of this condition in a Commission decision, LGS shall file petitions to modify D.03-02-071 and D.05-12-007 seeking the deletion of Ordering Paragraph (OP) 3(c) in the former, and the deletion of OP 3(b) in the latter. As noted above, these ordering paragraphs had imposed narrower reporting requirements on LGS concerning purchases by itself or its ultimate parents, ArcLight Energy Partners Fund I, L.P. and ArcLight Energy Partners Fund II, L.P., in natural gas production, transmission, or storage facilities.[8]

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[7] This language appears to be adapted from similar reporting requirements that were recently imposed on Wild Goose (which is now formally known as Wild Goose Storage LLC) in D.06-11-019. (See D.06-11-019, *mimeo.* at 18-19.)

[8] For example, OP 3(b) in D.05-12-007 provides that LGS is required to:

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Proposed Condition 4 is designed to prevent the sharing of "Sensitive Market Information," a defined term,[9] with the other principal independent Northern California gas storage firm, Wild Goose. Condition 4 provides:

> "[LGS] and any entity related to [LGS]: (a) shall not share Sensitive Market Information regarding [LGS] with any entity exercising direct or indirect control over [Wild Goose], or with any other entity in which such sharing could reasonably result in the direct or indirect disclosure of Sensitive Market Information regarding [LGS] to [Wild Goose]; (b) shall not share external providers of financial planning services, regulatory affairs, lobbying, legal, and/or risk management personnel

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> "Provide prompt disclosure of the following changes in status that reflect a departure from the characteristics the California Public Utilities Commission has relied upon in approving market-based pricing for LGS: (i) the purchase by LGS of natural gas facilities, transmission facilities, or substitutes for natural gas, such as liquefied natural gas facilities; (ii) an increase in the storage capacity or in the interstate or intrastate transmission capacity held by affiliates of LGS's ultimate parents, ArcLight Energy Partners Fund I, L.P. (ArcLight Fund I) and ArcLight Energy Partners Fund II, L.P. (ArcLight Fund II), or their respective successors; or (iii) a merger or other acquisition involving ArcLight Fund I or ArcLight Fund II, or their respective affiliates or successors, and any other entity that owns gas storage or transmission facilities, or facilities that use natural gas as an input, such as electric generation."

[9] Condition 4 defines "Sensitive Market Information" as follows:

> "Any information which would customarily be considered by a natural gas storage customer to be sensitive or proprietary, which is not available to the public, or which, if disclosed, would subject a natural gas storage customer to risk of competitive disadvantage or other business injury. This includes, but is not limited to: contractual capacity rights, actual customer injection and/or withdrawal data (including forecast/future price, historical price, contractual valuation data, costs, when injection and/or withdrawal occurs and how much natural gas is involved), both as to individual customers and in aggregate."

> with [Wild Goose] or any entity exercising direct or indirect control over [Wild Goose], except in situations in which the sharing of external resources would not result in the direct or indirect disclosure of Sensitive Market Information regarding [LGS] to [Wild Goose]; and (c) to the extent that any sharing of Sensitive Market Information prohibited by (a) and (b) of this Condition nevertheless occurs, shall promptly report to the Commission the nature of any such sharing."

Condition 5, the final proposed condition, requires LGS, the six entities listed in footnote 2 that will control LGS, and various related entities (who are collectively referred to as "Lodi Gas et. al.") not to allow a "commonality of interest," another defined term, to develop with Wild Goose without prior Commission approval, and to report such a commonality of interest to the Commission if one develops inadvertently. The term "commonality of interest" is defined as:

> "[T]he existence of: (a) any individual(s) or entity/entities having direct or indirect control over Lodi Gas et. al. while at the same time having direct or indirect control over [Wild Goose]; (b) any individual(s) employed by Lodi Gas et. al. while at the same time employed by [Wild Goose] or any entity exercising direct or indirect control over [Wild Goose]; or (c) any individual(s) on a board within Lodi Gas et. al. while at the same time serving on the board of any entity exercising direct or indirect control over [Wild Goose]."

Discussion

As noted above, this application for approval of a transfer of control is governed by Pub. Util. Code § 854(a). In Kinder Morgan, we described the standard of review under § 854(a) as follows:

> "The standard traditionally applied by the Commission to determine if a transaction should be approved under Section 854(a) is whether the transaction will be 'adverse to the public

> interest.' On occasion the Commission has inquired whether a transfer will provide positive benefits[,] and such an examination is expressly required under Section 854(b) when one or more parties to the proposed transaction has gross annual California revenues exceeding U.S. $500 million. Likewise, Section 854(c) requires the Commission to review . . . transactions [meeting the $500 million threshold] for other, enumerated impacts . . . [E]ven when Section 854(b) and (c) do not expressly apply to a transaction, the Commission has used the criteria set forth in those statutes to provide context for a public interest assessment." (D.07-05-061, *mimeo.* at 24; footnotes omitted.)

Despite its recognition of the traditional tests for approving a transfer of control under § 854, Kinder Morgan also recognized that the growing role of private equity firms in the ownership and management of California public utilities, and the increased complexity of regulation the participation of these firms has brought about, can necessitate the imposition of special conditions where changes of control involving private equity firms are involved.[10] For example, after requiring the two oil pipelines whose control was at issue, SFPP, L.P. (SFPP) and Calnev Pipe Line L.L.C. (Calnev), to file new general rate applications, the Kinder Morgan decision continued:

> "[G]iven the complexity of the business organization now and the increased complexity and lack of transparency under

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[10] The Commission has long had authority to impose such conditions under § 854. As we stated in D.05-12-007:

> "The purpose of this and related statutes 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 approving the transfer) as the public interest may require. (*San Jose Water Co.* (1916) 10 CRC 56.)" (*Mimeo.* at 6.)

> private limited liability company ownership, the substantial debt now and increased debt post-transfer, and the ongoing reliance upon regular cash infusions from the pipeline utilities, we place several other conditions on our approval . . .
>
> "Several of the conditions we have developed, ourselves, to establish safeguards we deem necessary or to obtain information required for ongoing monitoring. The conditions manifest our concern, based upon the entirety of the record, for the future of SFPP and Calnev if we take no action. They also manifest our determination to exercise our jurisdictional authority to ensure provision of safe, reliable, environmentally sound products pipeline services at just and reasonable rates." (*Id.* at 31-32.)

Although we generally agree with the Joint Applicants that the ownership and management arrangements that will apply to LGS if we approve the transfer to Buckeye are less complex than the arrangements in Kinder Morgan, they are still complex enough (as shown in footnote 2), and may present enough opportunities for exchanges of sensitive market information, that the concerns expressed by DRA at the October 22 PHC were reasonable. It is also clear from an examination of the five conditions the parties have agreed to that these conditions seem appropriately tailored to address DRA's concerns.

As noted above, Conditions, 1 and 2(a) are straight-forward and can be found in many Commission decisions. Condition 1 is the "first priority" requirement which mandates that LGS's owners provide it with sufficient capital to allow it to perform its public utility duties. Condition 2(a) requires LGS to maintain its books and records at the utility level, and to make these records and appropriate personnel available to the Commission pursuant to Pub. Util. Code § 314.

As we have pointed out above, Condition 2(b) is taken directly from the Kinder Morgan decision. It not only requires the six entities listed in footnote 2 that will control LGS to make their books and records available to the Commission pursuant to § 314, but also requires that any challenges to the relevancy or materiality of any discovery request, including requests for information from individuals, must first be litigated at the Commission. The establishment of a clear Commission forum for challenging any discovery request made pursuant to § 314 should make the resolution of any contested discovery issues easier.

Condition 3 considerably broadens the requirements that were first imposed on LGS in D.03-02-071 to report on acquisitions by itself or its affiliates of investments in natural gas production, storage, transportation or distribution, or in electric generation, transmission or distribution. In view of the fact that it was the apparent absence of market power that originally persuaded the Commission to grant the authority to charge market-based rates to gas storage facilities such as LGS and Wild Goose, these broader reporting requirements in markets that are apparently becoming more concentrated are reasonable.[11] As

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[11] In D.02-07-036, we reviewed the issue of market concentration in an application by Wild Goose to expand its gas storage facilities. We found that although definitive conclusions could not be reached, there was substantial evidence of growing concentration in the gas storage and related markets based on generally-accepted measures of market power such as the Herfindahl-Hirschman Index used by the Federal Energy Regulatory Commission. As a result of this conclusion, we imposed the following reporting requirements on Wild Goose:

> "[A] s a final condition of the authorization of market-based rate authority for the expansion project, we should direct Wild Goose to promptly inform the Commission of the following changes in status that would reflect a departure from the characteristics the Commission has relied upon in approving

Footnote continued on next page

noted above, Condition 3 also requires LGS to seek modification of the more limited reporting requirements in D.03-02-071 and D.05-12-007.

Condition 4 is also a reasonable response to the concerns about the potential for exchanging sensitive market information that DRA articulated at the October 22 PHC. For example, DRA expressed concern about the possible role of directors in one of the Carlyle/Riverstone companies (which still indirectly control Wild Goose) who recused themselves from the discussion about Carlyle/Riverstone's decision to sell the Buckeye entities. (PHC Transcript at 22.) DRA also noted that after the sale, Buckeye retained a number of senior employees who had worked there while Buckeye was under the control of Carlyle/Riverstone. (*Id.* at 26-27.)

Condition 4 addresses DRA's concerns about the potential for such individuals sharing sensitive market information by setting forth a broad prohibition on LGS or any entity affiliated with it from sharing such information "with any entity exercising direct or indirect control over [Wild Goose] or with any other entity in which such sharing could reasonably result in the direct or

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market-based pricing: Wild Goose's own purchase of other natural gas facilities, transmission facilities, or substitutes for natural gas, like liquefied natural gas facilities; an increase in the storage capacity or in the interstate or intrastate transmission capacity held by affiliates of its parent, Alberta Energy or a successor; or 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." (*Mimeo.* at 19-20.)

The reporting conditions imposed on LGS in D.03-02-071 and D.05-12-007, which LGS will now be filing petitions to modify as a result of our acceptance of Condition 3, grew out of these reporting requirements for Wild Goose. (See, D.03-02-071, *mimeo.* at 16-17; D.05-12-007, *mimeo.* at 8-9.)

indirect disclosure of Sensitive Market Information regarding [LGS] to [Wild Goose].” Even more broadly, Condition 4 prohibits LGS from sharing “external providers of financial planning services, regulatory affairs, lobbying, legal, and/or risk management personnel with [Wild Goose] or any entity exercising direct or indirect control over [Wild Goose], except in situations in which the sharing of external resources would not result in the direct or indirect disclosure of Sensitive Market Information regarding [LGS] to [Wild Goose].”

Condition 5 addresses conditions that could undermine the competition between LGS and Wild Goose from a somewhat different perspective. The perspective of Condition 5 is not information sharing *per se*, but what the parties refer to as a “Commonality of Interest,” which is defined as “the existence of: (a) any individual(s) or entity/entities having direct or indirect control over Lodi Gas et. al. while at the same time having direct or indirect control over [Wild Goose]; (b) any individual(s) employed by Lodi Gas et. al. while at the same time employed by [Wild Goose] or any entity exercising direct or indirect control over [Wild Goose]; or (c) any individual(s) on a board within Lodi Gas et. al. while at the same time serving on the board of any entity exercising direct or indirect control over [Wild Goose].” The net cast by Condition 5 is quite broad, since “Lodi Gas et. al.” is defined to include LGS, any entities controlled by LGS, and the other entities listed in footnote 2 or any entities controlled by them. Given the concerns DRA articulated at the October 22 PHC, we find Condition 5 to be reasonable.

As DRA and the Joint Applicants point out in their motion urging adoption of the Settlement Agreement, Rule 12.1(d) of the Commission’s Rules of Practice and Procedure require that before any settlement is adopted, the Commission must find that the settlement is (1) reasonable in light of the whole record, (2) consistent with law, and (3) in the public interest. The first test is clearly met here, since the settlement including the five settlement conditions addresses all of the issues raised in DRA's Protest, represents a compromise of both sides' strongly-held positions, and has been negotiated by counsel who are all experienced in public utility regulation. Furthermore, we find the five conditions reasonable as set forth in more detail above.

The second test of Rule 12.1(d) is also met. The settling parties state that they are not aware of any statutory provision or prior Commission decision that would be contravened by acceptance of the settlement conditions.[12] We conclude that, with the one exception noted in footnote 12, there would not be any conflict with any decision or statutory provision.

We also think that the third test of Rule 12.1(d) has been met. Not only will acceptance of the five settlement conditions spare the Commission and the parties the time and expense associated with protracted litigation, but approval of the transfer at issue will provide LGS with long-term financial stability and capital for expansion plans such as Kirby Hills II, while assuring the public that (a) LGS is adequately capitalized to discharge its public utility duties, (b) there is adequate access to LGS's books and records, as well as to the books and records of the entities above LGS in the Buckeye corporate structure, and (c) there is adequate monitoring of gas market conditions, while minimizing the temptations for collusion.

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[12] However, as noted in the text, the settling parties recognize that there is an inconsistency between the reporting requirements on market conditions set forth in Condition 3 and those contained in OPs 3(c) of D.03-02-071 and OP 3(b) of D.05-12-006. As part of Condition 3, the Joint Applicants agree to file petitions for modification of those two decisions seeking deletion of those two ordering paragraphs.

CEQA Compliance

The principal remaining issue is whether, as the joint applicants assert, the proposed transfer qualifies for an exemption from CEQA. 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 § 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, as the Joint Application states (at pages 12-14), if the proposed transfer is approved, Buckeye will be obligated to operate LGS in the same manner as approved by the Commission in the decisions that have authorized the Lodi Facility and the Kirby Hills Facility, including the conditions imposed in those decisions to comply with CEQA. (See, D.00-05-048, D.03-08-048, D.04-05-046, D.04-05-034, D.06-03-012.)[13]

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

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[13] As noted above, in the pending A.07-05-009, LGS seeks to amend the CPCN granted in D.06-03-012 to authorize Kirby Hills II, which LGS asserts will not cause additional environmental impacts beyond those considered in D.06-03-012. The Joint Application specifically states that "LGS has complied with all environmental conditions imposed in the original CPCN and the mitigation plan required for Kirby Hills I and will continue to construct and operate its facilities consistent with such restrictions as required in the proposed expansion." (Joint Application, p. 13.) We will address any CEQA issues related to A.07-05-009 in that application.

significant impact upon the environment. Accordingly, the Commission need perform no further environmental review for this application.

Categorization and Need for Hearing

In Resolution ALJ 176-3197, the Commission preliminarily determined the category of this proceeding to be ratemaking, and that a hearing was not necessary. We affirm that categorization.

Comments on the Proposed Decision

In view of the acceptance of all the conditions set forth in the November 14, 2007 Settlement Agreement in this proceeding between the Joint Applicants et al. and DRA, this proceeding was treated as an uncontested matter in which the proposed decision (PD) granted the relief requested. Accordingly, pursuant to Rule 14.6(c)(2), the period for filing comments on the PD was shortened to 14 days, with no provision for reply comments.

No comments were submitted by the January 4, 2008 due date. However, certain technical errors of nomenclature that appeared at various points in the PD have been corrected herein.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and A. Kirk McKenzie is the assigned ALJ in this proceeding.

Findings of Fact

1. LGS is an independent natural gas storage provider regulated by this Commission as a public utility.

2. On July 24, 2007, Lodi Holdings and Buckeye executed a Purchase and Sale Agreement (PSA) whereby Lodi Holdings agrees to sell 100% of its interests in LGS to Buckeye for approximately $440 million. The PSA (except for exhibits

and schedules that have been filed under seal) is attached to the joint application as Exhibit 7.

3. The proposed transfer of control of LGS from Lodi Holdings to Buckeye will result in a change of ownership of LGS, but 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 (as modified by subsequent decisions) and by D.06-03-012.

4. Buckeye is 100% owned by Buckeye Partners, L.P., a publicly-traded entity on the New York Stock Exchange. According to the Joint Application, Buckeye Partners, L.P. has its principal place of business in Pennsylvania and owns and operates independent refined petroleum products pipelines in 17 states located east of the Mississippi River.

5. Until late June 2007, Buckeye Partners, L.P. was indirectly controlled by Carlyle/Riverstone through the latter's control of Buckeye GP Holdings L.P. (BGH) and MainLine Management LLC (MainLine), the general partner of BGH. On June 25, 2007, Carlyle/Riverstone sold its interest in MainLine and BGH to BGH GP Holdings, LLC, a limited liability company owned by affiliates of ArcLight Capital Partners, L.L.C., Kelso & Company and Lehman Brothers Holdings Inc.

6. Wild Goose, another independent natural gas storage provider located in Northern California, is indirectly controlled by Carlyle/Riverstone.

7. Together, LGS and Wild Goose control more than 50% of the independent natural gas storage market in Northern California.

8. On August 31, 2007, DRA filed a protest of the Joint Application.

9. On September 10, 2007, the Joint Applicants filed a lengthy response to DRA's protest.

10. On October 22, 2007, the assigned Commissioner and assigned ALJ convened a PHC to determine what issues, if any, remained in the proceeding.

11. On November 5, 2007, the Joint Applicants and DRA informed the ALJ that they had reached agreement on a set of conditions that, if accepted by the Commission, would fully address all of the issues raised in DRA's protest.

12. On November 7, 2007, the Joint Applicants and DRA informed the ALJ that all parties to the proceeding had provided written waivers of their respective rights to attend a settlement conference and to file comments on the proposed settlement. No party raised any objection to these arrangements by the November 8, 2007 deadline set by the ALJ.

13. On November 14, 2007, the Joint Applicants and DRA filed a settlement agreement that included the five settlement conditions set forth in Appendix A to this decision.

14. The first settlement condition in Appendix A reasonably addresses the concern that LGS be adequately capitalized by requiring the six entities listed in footnote 2 of this opinion that will control LGS to take all steps reasonably necessary to ensure that LGS has sufficient capital to provide safe and reliable public utility service.

15. Settlement Condition 2(a) in Appendix A reasonably addresses the concern that LGS's operations remain transparent after the proposed transfer of control by requiring LGS to maintain its books and corporate records at the utility level, and by making its personnel available to the Commission pursuant to Pub. Util. Code § 314.

16. Settlement Condition 2(b) in Appendix A reasonably addresses the concern that the Commission be able to monitor control over LGS by requiring the six entities listed in footnote 2 of this opinion that will control LGS to make

their respective books, records, and personnel available to the Commission pursuant to Pub. Util. Code § 314, and by establishing procedures for litigating at the Commission in the first instance the relevance or propriety of any contested discovery request directed at these entities.

17. Settlement Condition 3 in Appendix A reasonably addresses the concern that the Commission be able to monitor changes in the competitive conditions that resulted in the grant of authority to LGS in D.00-05-048 to charge market-based rates, by requiring LGS to report twice yearly, any direct or indirect acquisition of a controlling interest by an LGS affiliate in any entity that (a) produces natural gas or provides natural gas storage, transportation or distribution services, or (b) generates electricity, or provides electric transmission or distribution services, whether in California or elsewhere in North America. Settlement Condition 3 applies only to transactions that are not subject to either Pub. Util. Code § 852 or § 854.

18. Settlement Condition 4 reasonably addresses the concern that LGS not be able to share Sensitive Market Information with Wild Goose by prohibiting such direct or indirect sharing, and also by prohibiting LGS from sharing with Wild Goose any external providers of financial planning services, regulatory affairs, lobbying, legal, and/or risk management personnel, unless sharing of Sensitive Market Information would not occur by virtue of such sharing of personnel or services.

19. Settlement Condition 5 reasonably addresses the concern that LGS and Wild Goose not develop a commonality of interest by not allowing, without prior Commission approval, anyone who is a director of, an employee of, or who exercises direct or indirect control over Lodi Gas, et al. (as defined in Settlement

Condition 5) from having a similar relationship with Wild Goose, or any entity exercising direct or indirect control over Wild Goose.

20. The proposed transfer of control will have no significant effect upon the environment, because after the transfer LGS will continue to operate its facilities subject to all of the terms and conditions set forth in D.00-05-048 (as amended), D.03-02-071, D.05-12-006, and D.06-03-012, except for those conditions as to which LGS has agreed to seek Commission modification pursuant to the final paragraph of Settlement Condition 3.

21. The proposed transfer of ownership of LGS from Lodi Holdings to Buckeye will provide LGS with long-term financial stability and capital for expansion plans, and will also enable ArcLight Energy Partners Fund I, L.P. and ArcLight Energy Partners Fund II, L.P., the current owners of Lodi Holdings, to provide a return on investment to their investors.

Conclusions of Law

1. The joint application should be granted, subject to the conditions set forth in this opinion.

2. The five conditions contained in the Settlement Agreement filed on November 14, 2007 in this proceeding, which conditions are set forth in Appendix A to this opinion, are reasonable in light of the whole record.

3. The five Settlement Conditions set forth in Appendix A are consistent with law.

4. The five Settlement Conditions set forth in Appendix A are in the public interest.

5. The five Settlement Conditions set forth in Appendix A to this opinion should be adopted, and adherence to them should be made a condition of the authority granted in this opinion.

6. The entire Settlement Agreement filed on November 14, 2007 in this proceeding is reasonable in light of the whole record, consistent with law, and in the public interest, and should be adopted.

7. The proposed transfer qualifies for an exemption from CEQA pursuant to CEQA Guidelines § 15061(b)(3), so additional environmental review is not required.

8. The joint motion of LGS, Lodi Holdings, Buckeye and Buckeye Partners for leave to file confidential material under seal, dated July 27, 2007, should be granted.

9. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The joint application of Lodi Gas Storage, L.L.C. (LGS), Lodi Holdings, L.L.C. (Lodi Holdings), Buckeye Gas Storage LLC (Buckeye), Buckeye Partners, L.P. (Buckeye Partners), WHP Acquisition, L.L.C. (WHP), and WHP Acquisition II, L.L.C. (WHP II), to transfer 100% of the outstanding limited liability company interests in LGS, all of which are now owned by Lodi Holdings, to Buckeye, is approved pursuant to Pub. Util. Code § 854(a), subject to the terms and conditions set forth in the following Ordering Paragraphs (OPs).

2. LGS and its owners shall continue to be bound by all the terms and conditions of the certificates of public convenience and necessity (CPCNs) granted to LGS by Decision (D.) 00-05-048 (as modified by subsequent decisions of this Commission) and by D.06-03-012.

3. LGS and its owners shall continue to be bound by all the terms and conditions of D.03-02-071 and D.05-12-006, except to the extent LGS has agreed

pursuant to the Settlement Agreement filed in this proceeding on November 14, 2007 to file petitions for modification seeking the deletion of OP 3(c) of D.03-02-071 and the deletion of OP 3(b) of D.05-12-007.

4. The authority granted in OP 1 is conditioned upon full compliance with the settlement conditions filed in this proceeding on November 14, 2007, which settlement conditions are attached to this opinion as Appendix A.

5. In addition to the settlement conditions set forth in Appendix A, the parties to this proceeding shall abide by all of the other provisions set forth in the Settlement Agreement filed on November 14, 2007.

6. The change of ownership approved herein qualifies for an exemption from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines § 15061(b)(3), so additional environmental review is not required.

7. The July 27, 2007 Joint Motion of LGS, Lodi Holdings, Buckeye and Buckeye Partners for leave to file confidential material under seal, namely audited financial statements for LGS and certain exhibits and schedules to the Purchase and Sale Agreement attached to the Joint Application as Exhibit 7, is granted. The aforesaid materials should be placed under seal for a period of two years from the effective date of this decision, through and including February 1, 2010, and during that period the material so protected shall not be made accessible or disclosed to anyone other than Commission staff except upon the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge. If the Joint Applicants believe that further protection of the aforesaid materials is needed after February 1, 2010, any one or more of them may file a motion stating the justification for further withholding of these materials from public inspection, or for such other relief as the Commission's

rules may then provide. Such a motion shall explain with specificity why the designated materials still need protection in light of the passage of time involved, and shall attach a clearly-identified copy of the ordering paragraphs of this decision to the motion. Such a motion shall be filed at least 30 days before expiration of the protective order set forth in this paragraph. The assigned ALJ has the authority to rule on such a motion.

8. The Joint Applicants shall provide written notification of the transfer of ownership authorized herein to the Director of the Commission's Energy Division within 30 days after the date of the transfer. A true copy of the instruments of transfer shall be attached to such notification.

9. The authority granted herein shall expire if not exercised within one year of the date of this order.

10. Application 07-07-025 is closed.

This order is effective today.

Dated January 10, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

D0801018 Appendix A