

Decision 08-02-035 February 28, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application by Lodi Gas Storage, L.L.C.
(U-912-G) To Amend Its Certificate of Public
Convenience and Necessity for Construction and
Operation of Phase II of the Kirby Hills Natural
Gas Storage Facility And To Issue A Subsequent
Mitigated Negative Declaration.

Application 07-05-009
(Filed May 8, 2007)

**DECISION GRANTING AMENDED CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO CONSTRUCT AND OPERATE PHASE II
OF THE KIRBY HILLS NATURAL GAS STORAGE FACILITY**

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**DECISION GRANTING AMENDED CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO CONSTRUCT AND OPERATE PHASE II
OF THE KIRBY HILLS NATURAL GAS STORAGE FACILITY**

1. Summary

This decision grants an amended certificate of public convenience and necessity (CPCN) to Lodi Gas Storage, L.L.C. (LGS) to construct and operate the second phase of a natural gas storage facility in Solano County, California. In Decision (D.) 06-03-012, we granted a CPCN to construct and operate the first phase of this facility, which is known as the Kirby Hills Natural Gas Storage Facility (Kirby Hills Facility or Facility). LGS now desires to construct the second phase of the Facility, which will be referred to hereinafter as Phase II, because all of the storage capacity that resulted from construction of the first phase is fully subscribed, and according to the application, there is more than enough demand to support the additional storage capacity that would result from Phase II.

Phase II of the Kirby Hills Facility would result in the expansion of two of the three components of the Facility that we described in D.06-03-012. As stated in that decision, the first component is a natural gas storage and withdrawal field, which includes a compressor/dehydration station and a number of wells for injection and withdrawal. (D.06-03-012, pp. 1, 9.) The storage field and compressor station are located in a rural agricultural area of the Montezuma Hills, approximately six miles west of the City of Rio Vista, and 16 miles southeast of the City of Fairfield. In Phase II, LGS proposes to add three new well pad sites that would contain 15 injection and withdrawal wells. These new wells would access an area called the Wagenet Reservoir, which lies more than 2000 feet below the Domengine Sand formation that is now being used by the

Kirby Hills Facility for gas storage.¹ The new wells would be connected to the existing compressor site by constructing a 12-inch flow line (*i.e.*, pipeline) that would be approximately 3700 feet long. The existing compressor site would also be expanded to house two additional compressors totaling 5900 horsepower (hp). (Application, p. 4.)²

The second component of the Kirby Hills Facility is a 16-inch, 5.9-mile pipeline that runs from the compressor/dehydration station to a remote metering station and interconnection site, where the Facility interconnects with Line 400 owned by Pacific Gas and Electric Company (PG&E). (D.06-03-012, at 1-2.) Phase II would not involve any modifications to this 5.9-mile pipeline. (Application, p. 4.)

The third component of the Kirby Hills Facility is the remote monitoring station and interconnection site near PG&E's Line 400. In Phase II, the capacity of the metering station and the interconnection with PG&E's system would be expanded from 100 MMcf/d to 350 MMcf/d. (*Id.* at 5.)

¹ According to the application, the Wagenet Reservoir lies under two parcels of land. The first is the Kirby Hills Ranch that LGS now leases from Kirby Hills Associates, LLC (KH Associates). The second is an adjacent area of land known as the Wohn Parcel. The application states that in 2006 and 2007, LGS and its affiliate, Lodi Development, LLC, acquired the necessary rights to conduct gas storage activities under the Wohn Parcel. (Application, pp. 3-4.)

² The existing Kirby Hills Facility has a total storage capacity of about seven billion cubic feet (Bcf), of which about 5.5 Bcf is working capacity and 1.5 Bcf is cushion gas capacity. The firm injection and withdrawal capacity of the existing Facility is about 50 million cubic feet per day (MMcf/d). The proposed Phase II would have a total working capacity of up to 12 Bcf, with approximately 6 Bcf of cushion gas capacity. The maximum firm injection and withdrawal capacity of Phase II would be approximately 250 MMcf/d.

As part of its application, LGS has also requested that it be authorized to charge market-based prices for the storage and hub services that will be supplied by Phase II. As we concluded in D.06-03-012, such authority would be consistent with the pricing authority for LGS's other storage facilities near Lodi, California, and also with the policies to promote competitive gas storage facilities that we have followed since D.93-02-013. In keeping with these policies, we will grant the market-based pricing authority that LGS requests.

As part of its application, LGS has also requested that the Commission find that under the California Environmental Quality Act (CEQA), the potentially significant environmental impacts associated with Phase II can be mitigated to less-than-significant levels through the mitigation measures LGS is proposing. Specifically, LGS has proposed that certain mitigation measures set forth in the Mitigation Monitoring Plan contained in Section C of the Final Initial Study/Mitigated Negative Declaration (Final IS/MND) adopted in D.06-03-012 should apply to Phase II. (Application, p. 27.)³

As part of our decision today, we accept and approve the Subsequent Mitigated Negative Declaration and Supporting Initial Study (Subsequent

³ LGS acknowledges, however, that one of the potentially significant impacts requiring mitigation and identified in its Proponent's Environmental Assessment (PEA) was not addressed in the Mitigation and Monitoring Plan in the Final IS/MND adopted in D.06-03-012. That impact is "the re-completion of two existing abandoned wells (W2 and W5) in the Suisun Marsh Primary Management Area (SMPMA) to convert them to observation wells." (Application, p. 27.) LGS points out that this work would result in the placement of fill material into potential waters of the United States, and notes that it has proposed a specific mitigation measure to deal with this potential impact. This mitigation measure, which is known as Applicant-Proposed Measure (APM) B-7, is set forth at page 3.3-20 of the PEA and is discussed further in Sections 2.2 and 3.4 of this decision.

MND/IS) that our staff has prepared in connection with Phase II. Although we agree with LGS that the extension of some of the mitigation measures approved in D.06-03-012 will be sufficient to address a number of the potentially-significant impacts identified in the Subsequent MND/IS , we also agree with the Subsequent MND/IS that additional mitigation measures beyond those proposed by LGS will be required. As a condition of granting the authority sought in the instant application, we will require LGS to implement each of the mitigation measures required by the Subsequent MND/IS and to abide by the Mitigation Monitoring Plan set forth in Section C thereof.

2. Procedural History

2.1. Responses to the Application

Notice of the instant application appeared in the Commission's Daily Calendar on May 11, 2007, so the 30-day period for filing protests to the application expired on June 11, 2007. No protests were filed, but four responsive pleadings were filed by the due date.

The first was a motion filed on June 7 by PG&E seeking party status pursuant to Rule 1.4(a)(4) of the Commission's Rules of Practice and Procedure (Rules). The motion noted that since PG&E would be affected by the proposed expansion of the interconnection of the Facility with PG&E's Line 400, it was appropriate that PG&E should enjoy party status.

The second pleading was a Response filed on June 8 by the Division of Ratepayer Advocates (DRA). In its response, DRA stated that it was not opposed to the application and saw advantages to the additional gas storage capacity that Phase II would bring. However, DRA requested that LGS be required to file annual reports that would assist DRA in tracking developments within the gas storage industry. DRA stated:

“DRA requests that LGS file an annual report detailing its operations, consistent with the status of LGS as a public utility, in order to allow the Commission to monitor the operational utilization of the facility and mitigate any concerns about the exercise of market power. The report should contain the following information:

1. The capacity of the facilities, i.e., total inventory, injection and withdrawal rights.
2. Average monthly inventory in storage, injections, and withdrawals.
3. Daily operating records.
4. Firm capacity under contract, on a monthly and annual basis.
5. Interruptible capacity sold, on a monthly and annual basis.
6. Annual safety report describing all safety-related incidents.”
(DRA Response at 2.)

The two remaining responsive pleadings were filed on June 11, 2007 by Wild Goose Storage, Inc. (Wild Goose) and Sacramento Natural Gas Storage LLC (Sacramento NGS). Wild Goose sought intervention pursuant to Rule 11.1, arguing that the increase in gas storage capacity that would be brought about by Phase II would “provide additional direct competition with Wild Goose.” (Wild Goose Motion at 2.) Sacramento NGS’s response was filed pursuant to Rule 2.6 and noted that Sacramento NGS was seeking a CPCN to construct and operate its own gas storage facilities, and would thus be impacted by Phase II. Sacramento NGS’s response requested information-only status.

On June 21, 2007, LGS filed a response to DRA. Although not conceding that any report was necessary or appropriate, LGS stated that it had reached an

agreement with DRA concerning each of the six items quoted above that DRA had asked be included in an annual report.⁴

Since the filing of LGS's June 21 Response, DRA has given no indication that it objects to LGS's proposed resolution of any of the six reporting issues that DRA raised.

⁴ With respect to the capacity issues covered by DRA's first item, the June 21 response stated that this information is available on LGS's website, and is already reported in more detail than DRA had requested to the Commission's Energy Division. LGS agreed to provide to DRA the same capacity report it provides to the Energy Division, provided that DRA treated the report as confidential pursuant to General Order (GO) 66-C and Pub. Util. Code § 583.

With respect to DRA's second item, average monthly inventories, LGS noted that it reports this data on a weekly and monthly basis to the U.S. Department of Energy in a document entitled the Energy Information Report (Energy IR). In lieu of providing these reports to DRA, LGS agreed to prepare an annual summary showing average monthly storage inventory, injections and withdrawals, based on the Energy IR reports.

As to the third item, daily operating records, LGS noted that this is provided in the weekly Energy IR reports. LGS agreed to include the weekly aggregate data in the annual summary it will provide to DRA.

With respect to the fourth and fifth items – firm capacity under contract on a monthly and annual basis, and interruptible capacity sold on a monthly and annual basis – LGS noted that it is already required under D.03-02-071 and D.05-12-007 to submit such contracts and provide such information to the Commission. LGS agreed to provide this same material to DRA subject to the data being treated as confidential pursuant to GO 66-C and Pub. Util. Code § 583.

With respect to the final item, an annual report describing all safety-related incidents, LGS noted that it prepares an annual safety report for the U.S. Department of Transportation, of which the Commission receives a copy. LGS agreed to provide a copy of this safety report to DRA, and also pointed out that it is obliged to report all safety incidents to the Commission pursuant to GO 112-A.

2.2. Adequacy of the Proponent's Environmental Assessment

Under Rule 2.4(b), any applicant who proposes to construct a project such as Phase II of the Kirby Hills Facility is required to submit, as a separate exhibit, a PEA. Moreover, as the agency responsible for certification of Phase II, the Commission is required under § 15100 of CEQA to assess the completeness of the application, including the PEA.

In its PEA, LGS asserted that Phase II of the Kirby Hills Facility would either have no significant effects upon the environment, or that – with the exception of certain wetlands that must be filled in⁵ – any environmental impacts that Phase II might have could be reduced to less-than-significant levels through implementation of some of the same measures identified in the Mitigation Monitoring Plan set forth in Section C of the Final IS/MND adopted in D.06-03-012.

⁵ As noted in footnote 3, LGS acknowledges that Phase II will necessitate filling in approximately 1.17 acres of brackish marsh and mudflats that lie within the SMPMA and are likely to be considered waters of the United States. With respect to this acreage, LGS acknowledges it will be required to obtain a permit from the U.S. Army Corps of Engineers pursuant to § 404 of the Clean Water Act (CWA), as well as a water quality certification from the Regional Water Quality Control Board (RWQCB) pursuant to § 401 of the CWA.

In APM B-7, which appears at page 3.3-20 of the PEA, LGS states that “as part of these permit authorizations, LGS will implement measures to minimize the placement of fill material into the wetlands and will compensate for the permanent loss of wetlands at a minimum 1:1 ratio (1 acre for every 1 acre filled.) The final compensatory mitigation ratio and implementation plan (e.g., the purchase of mitigation bank credits) will be determined through coordination with the Corps [of Engineers], RWQCB, and [the Bay Conservation and Development Commission, or BCDC] (if necessary).”

After an initial review of the application including the PEA, the Commission's Energy Division sent LGS a letter on June 1, 2007 stating that the application and PEA would be deemed complete.

Pursuant to CEQA, the Energy Division then commenced its initial study of the project to determine whether, as LGS had requested, a Subsequent MND could be issued in connection with Phase II. On August 24, 2007, the Energy Division issued for 30 days of public review and comment a Proposed Subsequent MND/IS in connection with Phase II. The Proposed Subsequent MND/IS concluded that if certain mitigation measures in addition to those proposed by LGS were implemented, the environmental effects of Phase II could be reduced to less-than-significant levels.

2.2.1. Objections to Phase II Raised by KH Associates in Its Comments on the Proposed Subsequent MND/IS

As noted above, the Proposed Subsequent MND/IS was issued on August 24, 2007, so comments concerning it were due on September 24, 2007.

Four sets of comments were submitted by the due date. These comments are set forth in full in Section D of the Subsequent MND/IS that we are adopting as part of today's decision.⁶ Of the comments, the most significant was one submitted on September 19 in the form of a letter from David J. Bowie, an attorney representing KH Associates, the entity that owns the Kirby Hills Ranch. As stated in D.06-03-012, LGS's rights to use the Kirby Hills Ranch for the Facility

⁶ In addition to these comments, one comment was submitted to the Solano County Resource Management Department, which received it on September 25, 2007. Even though out-of-time, this comment is also included in Section D of the adopted Subsequent MND/IS.

are based upon a lease entered into between KH Associates and Lodi Holdings in March 2005, which lease was subsequently assigned to LGS. (D.06-03-012 at 8.) In his September 19 letter, while not dealing directly with CEQA issues, Bowie stated:

“The substantive basis and claim of legal right upon which the subject LGS Storage Facility Project is grounded is that very [March 2005] Lease with my client. That Lease specifically defines the subsurface areas for which Gas Storage Facility rights have been granted. The subsurface areas of the Ranch available to LGS for gas storage purposes exist between the depths of 1700 and 2300 feet as measured from mean sea level. Certain expansion rights as to the existing gas storage reservoir within the same subsurface depths have been granted pursuant to Lease. Nothing in the Lease, however, grants to LGS any rights of gas storage at the subsurface depths proposed in the subject application.

“LGS has been placed on written notice that its subsequent proposed Gas Storage Facility labeled as a Phase II Project is not sanctioned by its Lease. LGS has been advised that pursuit of the existing application and any actions taken to implement the Project will constitute a trespass in derogation of the private property rights of [KH Associates.]”

The Bowie letter closed by demanding that in view of the dispute between the ranch owners and LGS, “further processing of this application be immediately suspended.”

2.2.2. LGS’s Response to the Objections Raised by KH Associates

On September 27, 2007, one of the attorneys for LGS, James McTarnaghan, sent the assigned Administrative Law Judge (ALJ) a letter in response to the September 19 letter from Bowie. This letter is also included in Section D of the Subsequent MND/IS. In McTarnaghan’s letter, LGS argued that for several

reasons, the issues raised in the Bowie letter should be ignored and that the instant application should continue to move forward.

First, LGS pointed out that the issues raised by Bowie, even if considered legitimate – which LGS denied – should have been raised in a protest. However, despite having been properly served with the application, and thus being placed on notice of LGS’s claim of right to use the Wagenet Reservoir for gas storage under the 2005 lease, KH Associates had failed to file a protest by the June 11, 2007 deadline. (McTarnaghan Letter, p. 2.)⁷

Second, LGS argued that the Bowie letter was improper because it failed to discuss any issue related to CEQA. By raising a dispute about lease terms rather than environmental issues, KH Associates was “attempt[ing] to insert an irrelevant commercial dispute into this proceeding over three months after any protest was due,” thereby “try[ing] to add leverage to its commercial position,” according to LGS. In view of KH Associates’ failure to file a timely protest, LGS

⁷ On the question of LGS’s lease rights, the application stated:

“Lodi Holdings, L.L.C. entered into a 50-year Gas Storage Lease and Agreement (“Agreement”) with Kirby Hills Associates, a California Limited Liability Company, in March of 2005 for a portion of the Kirby Property’s surface estate and all of the identified subsurface storage reservoirs. The Agreement was subsequently assigned to LGS. The existing surface and storage lease rights provided in the Agreement will satisfy all surface, storage and mineral rights required for Kirby Hills II on the Kirby Property during construction and operation. In 2007 Lodi Development, L.L.C. acquired the storage rights to the Wohn Parcel that overlies a portion of the Wagenet Reservoir, as well as the surface access rights to the Wohn Parcel that is required in order to convert two existing abandoned wells to observation wells. Lodi Development, L.L.C. also has the consent from the mineral rights owner to conduct the proposed storage operations.” (Application, pp. 12-13.)

argued that it “should not be allowed to misuse the CEQA process to now ‘comment’ upon the Application itself.” (*Id.* at 2-3.)

Third, while reiterating its confidence that the 2005 lease with KH Associates allowed it to store gas in the portion of the Wagenet Reservoir lying beneath the Kirby Hills Ranch, LGS emphasized that the new dispute with KH Associates would be resolved outside of Commission processes, and thus there was no reason to hold up continued work on the application:

“As it would address other commercial disputes in the normal course of business, LGS is fully prepared to resolve this dispute with KH Associates and take all steps necessary to maintain its storage rights under the Agreement. Thus, the dispute does not relate to the Application and its resolution falls outside the jurisdiction of the Commission. As with any such dispute, LGS, as a participant in the competitive gas storage market, bears the risk of resolution and fully expects to resolve this dispute long before it could have any operational impact on the Kirby Hills II Expansion. Further, it is common for an Applicant to have some outstanding commercial matters at the time the Commission grants a certificate to construct a new facility.” (*Id.* at 4; footnote omitted.)

The McTarnaghan letter closed by pointing out that when LGS had conducted an “open season” to gauge interest in an expansion of the Kirby Hills Facility, indications of interest were received from 22 market participants, who sought more than twice the amount of capacity that would result from the Phase II expansion. Based on this, LGS stated that it had begun to negotiate new storage contracts that were contingent upon Commission approval of the instant application. Thus, LGS concluded, any delay in processing the Phase II application would harm not only LGS, but also those gas market participants who were interested in purchasing additional gas storage capacity.

On October 17, 2007, KH Associates followed up on the allegations in Bowie's September 19 letter by submitting to the Commission a motion to intervene in this proceeding, a motion for acceptance of a late-filed protest, a protest, and a declaration by Bowie in support of the motion for acceptance of the late-filed protest. These pleadings repeated and expanded upon the allegations made in Bowie's letter of September 19.

2.2.3. Resolution of the Issues Raised by KH Associates

On October 26, 2007, LGS counsel McTarnaghan, sent a letter to the assigned ALJ on behalf of LGS and KH Associates that stated as follows:

"We are pleased to report to you that the dispute between KH Associates and LGS has been resolved in principle and that the parties are now working on documents to memorialize the agreement. The parties anticipate that KH Associates will withdraw its opposition to the Application and hope to be in a position to do so in the very near future."

In order to preserve its rights to respond to the October 17 pleadings submitted by KH Associates, however, LGS also requested that in the "unlikely event" the parties' agreement in principle fell apart, LGS's time for responding to the October 17 pleadings be extended for "up to 10 days from the time notice is provided that the [KH Associates] pleadings will not be withdrawn . . ."

On October 29, 2007, the assigned ALJ sent McTarnaghan an e-mail stating that his time for responding to KH Associates' October 17 pleadings, in the event such responses became necessary, would be extended to November 15, 2007. The ALJ also stated that if the parties needed additional time beyond November 15 to finalize their agreement, "you will be expected to give us a substantive progress report summarizing the status of your discussions and indicating when you expect to be able to reach and document your agreement."

Subsequently, LGS provided such reports and its time to file any necessary responses was extended first to November 27, and then to November 30, 2007.

On November 30, 2007, KH Associates filed a motion to withdraw the pleadings it had submitted on October 17; *viz.*, the motion to intervene, the motion for acceptance of a late-filed protest, the protest, and the Bowie declaration in support of the motion to accept the late-filed protest. In its withdrawal motion, KH Associates stated:

“ . . . KH Associates and LGS have reached agreement to modify their pre-existing Gas Storage Lease and Agreement. The modifications address the concerns of KH Associates’ regarding the Lease by LGS of those certain subsurface rights necessary to its operation of the proposed Kirby Hills II facility. Specifically, an Amended and Restated Gas Storage Lease and Agreement has been negotiated between KH Associates and LGS and executed by them, pursuant to which LGS now has acquired the necessary legal rights to the subsurface strata of the Kirby Hills Ranch necessary for the construction and operation of the Kirby Hills II facility.

“As a result of such agreement, KH Associates hereby moves the withdrawal of the KH Associates’ Pleadings filed in this proceeding and advises that it has concurrently waived its opposition to A.07-05-009.” (KH Associates’ Motion, pp. 2-3.)

2.2.4. Issuance of the Subsequent MND/IS

On December 19, 2007, the Commission’s Energy Division caused to be issued the Subsequent MND/IS concerning Phase II of the Kirby Hills Facility. Apart from noting and briefly responding to the handful of comments submitted in response to the Proposed Subsequent MND/IS, the Subsequent MND/IS makes no changes to the Proposed Subsequent MND/IS.

3. Issues Raised by the Subsequent MND/IS

Because KH Associates has resolved its differences with LGS by entering into an Amended and Restated Gas Storage Lease and Agreement, and now states that it supports the instant application, the only issues that remain are the CEQA matters discussed in the Subsequent MND/IS.

In our decision approving the first phase of the Kirby Hills Facility, D.06-03-012, we set forth an extensive discussion of the environmental issues raised by the proposed construction of that project, including the issues relating to the construction of the 5.9-mile pipeline that connects the Project's gas storage field and compressor station in the Montezuma Hills with the interconnection facilities near PG&E's Line 400. (D.06-03-012, pp. 13-26.) In view of the fact that LGS has argued in its application here that virtually all of the potentially-significant environmental effects resulting from Phase II can be reduced to less-than-significant levels by adopting the same mitigation measures set forth in the Mitigation Monitoring Plan appearing in the Final IS/MND adopted in D.06-03-012, there is no need to recapitulate that decision's discussion of all the environmental issues.

However, as noted in footnotes 3 and 5, LGS's application here acknowledges that the Mitigation Monitoring Plan adopted in D.06-03-012 did not address the issue raised by LGS's proposal (as part of the work of reconditioning two wells) to fill in approximately 1.17 acres of wetlands lying within the SMPMA. In order to address this issue, LGS has proposed APM B-7, which would require it to minimize the placement of fill material into the wetlands and, after consultation with the Corps of Engineers, the RWQCB, and BCDC, to "compensate for the permanent loss of wetlands at a minimum 1:1 ratio (one acre for every one acre filled)." (PEA, p. 2-17.)

In addition to this new measure, the Subsequent MND/IS suggests that we require LGS to undertake several additional mitigation measures beyond those proposed in its PEA. It is to these new measures that we now turn.

3.1. Air Quality Issues

Although Phase II of the Facility will entail less construction than did the first phase, the new work will nonetheless be sufficient to raise air quality issues. Phase II would create temporary construction emissions, and ongoing emissions from the proposed compressor station and glycol dehydration system. Most of the Phase II construction, and essentially all of the operating emissions resulting from Phase II, will occur in the sparsely-populated western portion of the Kirby Hills Facility, which is under the jurisdiction of the Bay Area Air Quality Management District (BAAQMD). A small amount of the Phase II construction will take place at the metering station that makes up most of the eastern portion of the project, an area that is under the jurisdiction of the Yolo-Solano Air Quality Management District (Y-SAQMD). Although neither BAAQMD nor Y-SAQMD has fugitive dust rules that specifically regulate construction, both districts have CEQA guidelines on this issue that the lead agency may impose at its discretion.

The Subsequent MND/IS points out that the western portion of the Facility near the Montezuma Hills is a windy area, and that there is a potential for fugitive dust emissions and impact events when high winds occur. (Subsequent MND/IS, p. B-55.) In addition, the Subsequent MND/IS concludes that mitigation of the oxides of nitrogen and particulate matter emissions from Phase II's construction is necessary, because the adjacent San Francisco Bay Air Basin (SFBAB) and the Sacramento Valley Air Basin (SVAB), into which the emissions will be blown, are both non-attainment areas for particulate matter and ozone. The Subsequent MND/IS therefore concludes that the additional

mitigation measures set forth below should be required, in addition to those proposed by LGS. We agree that these additional measures should be included in the Mitigation Monitoring Plan for Phase II, and we will require LGS to abide by them as a condition of receiving the authority granted in this decision. The additional air quality mitigation measures are:

1. During high wind events, construction areas that have visible dust emissions must be watered hourly at the source, and activities that cause dust emissions visible 100 feet from their point of origin must either be discontinued or reduced to limit the dust plume to less than 100 feet from the point of origin. In addition, construction within one-half mile of any downwind residence that causes visible fugitive dust must be discontinued when dust plumes remain visible more than 50 feet from their point of origin.
2. All diesel-fueled construction equipment must use fuel meeting the ultra-low sulfur certification specifications of the California Air Resources Board (CARB).
3. All diesel-fueled off-road construction equipment with engines of 50 hp or larger must meet USEPA/CARB Tier 1 engine standards, except for (a) equipment permitted by the local district or certified through CARB's statewide portable equipment registration program, or (b) any single, specialized equipment item that will be used for a total of less than 5 days during construction. (Subsequent MND/IS, pp. B-56 to B-57.)

3.2. Geology, Soils and Hazardous Materials

In D.06-03-012, we pointed out that because the three components of the Kirby Hills Facility all lie within seismically-active areas, and because a fault rupture could result in an uncontrolled release of flammable natural gas that could damage project facilities and threaten personnel safety, we would require, as a condition of granting the requested CPCN, that there be an independent, third-party review of LGS's construction drawings and specifications, as well as

independent monitoring of the Facility's construction to ensure compliance with all applicable laws, ordinances, regulations, and standards. (D.06-03-012 at 18-19.)

The Subsequent MND/IS raises the same seismic concerns with respect to Phase II of the Kirby Hills Facility. The Subsequent MND/IS notes that while "modern buried welded steel pipelines . . . have generally performed well" during seismic events, "pipeline ruptures have occurred where the pipeline has been placed in compression" at fault crossings, and that even in the absence of ruptures, "significant displacements have been experienced." (Subsequent MND/IS at B-89.) Because of these possibilities, the Subsequent MND/IS recommends that we require LGS to submit all of its construction drawings and specifications for an independent, third-party review and approval. The Subsequent MND/IS concludes that such a requirement will ensure there is "proper pipeline design at any fault crossings, areas subject to liquefaction, and adequate pipe wall design to withstand the combined pipe stresses, including those caused by ground shaking." (*Id.*)

The Subsequent MND/IS also points out that when LGS applied to build the first phase of the Kirby Hills Facility, an independent engineering analysis was performed to evaluate system safety and the risk of upset. This study was included as Appendix 4 to the Final IS/MND adopted in D.06-03-012. The study concluded that as long as all of the components of the first phase of the Kirby Hills Facility were designed and constructed in accordance with applicable laws, ordinances, regulations and standards, the first phase would have a less-than-significant effect upon the environment. However, the Subsequent MND/IS

notes that the primary regulations applicable to Phase II, those set forth in 49 C.F.R. Part 192,⁸ do not require an independent, third-party review of either the design or construction of project components. Significantly, LGS did not include independent, third-party review of construction drawings and specifications as one of its APMs.

An additional factor to consider is that, as the Subsequent MND/IS points out, the resources of county authorities may not be sufficient to perform these tasks:

“Although the Solano County Public Works and Resource Management Departments may conduct a plan check and inspection of some project components (e.g., compressor building), they may not have the expertise to oversee the engineering and construction of the process facilities and pipeline components. The CPUC has the responsibility for enforcing the requirements of 49 CFR [Part] 192 for these intrastate pipeline facilities. To ensure that these regulations are complied with during the design and construction of the proposed facilities[,] and thus potential impacts are less than significant, [third-party design review and approval should be] required.” (*Id.* at B-96.)

The independent, third-party review of construction drawings and specifications is addressed in Mitigation Measure HZ-1, which provides as follows:

“The applicant shall submit to the CPUC its construction drawings and specifications for independent, third party design review and CPUC review and approval. Project construction shall also be independently monitored to ensure compliance with all applicable laws, ordinances, regulations and standards. The applicant shall

⁸ Part 192 of 49 C.F.R. is entitled “Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.”

make payments to the CPUC for these design review, plan check and construction inspection services. These design review and construction observation services shall not in any way relieve the applicant of its responsibility and liability for the design, construction, operation, maintenance, and emergency response for these facilities.” (*Id.*)

This mitigation measure is very similar to one, also designated HZ-1, that was included in the Final IS/MND adopted in D.06-03-012. (Final IS/MND, pp. B-103 to B-104.) In view of the concerns about seismic risks to pipelines and other factors discussed above, we will include Mitigation Measure HZ-1 in the Mitigation and Monitoring Plan for Phase II.

3.3. Traffic

In D.06-03-012, we pointed out that although the local roadways in the area of the Kirby Hills Facility had low traffic volumes, construction of the Facility had the potential to increase congestion with respect to roads that provided regional access, such as State Route (SR) 12. To alleviate this impact and reduce it to less-than-significant levels, the Final IS/MND adopted in D.06-03-012 included Mitigation Measure TRA-1, which required LGS and its construction contractor to schedule all construction traffic to avoid peak commute hours along SR 12, and to encourage carpooling among construction workers. (D.06-03-012 at 20-21.)

The Subsequent MND/IS concludes that construction of Phase II of the Facility would raise the same traffic issues as did the construction of the first phase. As with the first phase, a maximum of 90 workers can be expected in the Phase II project area during peak periods of construction. Although LGS included a traffic mitigation measure among its APMs (APM T-1), it did not include TRA-1.

Because of concerns about potential congestion on SR 12, the Subsequent MND/IS recommends that we include in the Phase II Mitigation and Monitoring Plan the same Mitigation Measure TRA-1 that was adopted in D.06-03-012. We will accept this recommendation.

3.4. Mandatory Findings of Significance

As pointed out in the Final IS/MND that we adopted in D.06-03-012, the portion of the Kirby Hills Facility that is west of Shiloh Road in Solano County lies within the Secondary Management Area (SMA) for the Suisun Marsh. The SMA is intended to serve as a buffer between the Primary Management Area (PMA) for Suisun Marsh and developed land. The Suisun Marsh Protection Plan permits natural gas production, storage and transportation within the SMA provided facilities are designed and constructed to avoid impacts to the PMA. (D.06-03-012 at 21.)

The Subsequent MND/IS points out that to implement the Suisun Marsh Protection Plan, Solano County requires a Marsh Development Permit for proposed uses within the SMA. As noted above, because Phase II will require LGS to fill in some wetlands in the PMA that may be considered waters of the United States, LGS will be required to obtain a permit from the U.S. Army Corps of Engineers pursuant to CWA § 404, as well as a water quality certification from RWQCB pursuant to § 401. These permits (as to the advisability of which we express no opinion), combined with any other conditions imposed in the required Marsh Development Permit, will ensure that any potential effects upon the environment are reduced to less-than-significant levels.

Similarly, implementation of the APMs that LGS has proposed in connection with Cultural Resources (which are set forth at pages B-33 to B-34 of

the Subsequent MND/IS) will ensure that any impacts related to archaeological resources are less-than-significant.

4. The Pub. Util. Code § 1002(a) Factors Raised by the Application

As we pointed out in D.06-03-012, in deciding whether to grant a CPCN, the Commission is required to consider, in addition to the standard set forth in Pub. Util. Code § 1001, four additional factors that are set forth in § 1002(a).⁹

These four factors are:

- Community values;
- Recreational and park areas;
- Historical and aesthetic values; and
- Influence on the environment.

Further, as we noted in D.90-09-057 and D.00-05-048, § 1002 imposes upon the Commission a “responsibility *independent of CEQA* to include environmental

⁹ Pub. Util. Code § 1002(a) provides in pertinent part:

“The commission, as a basis for granting any certificate pursuant to Section 1001 shall give consideration to the following factors:

1. Community values.
2. Recreational and park areas.
3. Historical and aesthetic values.
4. Influence on environment, except that in the case of any line, plant, or system or extension thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 . . . or similar state laws in the other state, the commission shall not consider influence on the environment unless any emissions or discharges therefrom would have a significant influence on the environment of this state.”

influences and community values in our consideration of a request for a CPCN.” (37 CPUC 2d 413, 453; D.00-05-048 at 27-28; emphasis added.) In this case, LGS asserts that the proposed Phase II of the Kirby Hills Facility would be consistent with all four of the factors set forth in § 1002(a).

With respect to community values, LGS maintains that it has “secured all necessary rights from private landowners to construct and operate Kirby Hills II,” and that it has briefed local agencies and officials on the project, including the affected Assembly member and county supervisor. LGS also points out that the proposed Facility will create considerable economic benefits for Solano County, including 90 construction jobs, other construction spending, and approximately \$400,000 per year in additional county tax revenues to support schools, libraries, parks and local government. (Application, pp. 20-21.)

Although, as noted above, a dispute developed after the filing of the application over whether LGS had obtained the necessary rights from KH Associates to enable Phase II to go forward, that dispute has now been resolved, and KH Associates states that it supports the application. In addition, the Commission has received letters of support for Phase II from Assembly Member Lois Wolk, State Senator Patricia Wiggins, and Solano County Supervisor Mike Reagan.¹⁰ In D.00-05-048, we noted that in assessing community values under § 1002(a), “we acknowledge the positions of the elected representatives of the area because we believe they are also speaking on behalf of their constituents.” (D.00-05-048 at 30.)

¹⁰ The Commission has also received a letter in support of the application from State Senator Michael Machado, who represents the 5th District, where LGS’s other facility, the Lodi Gas Storage Facility, is located.

With respect to recreational and park areas, LGS argues, as it did in connection with the first phase of the Facility, that all of Phase II's components will be located on private lands "remotely located from park and recreation areas," and that none of them will lead to any change in the use of any existing park or recreation area. (Application at 21.)

With respect to historical values, LGS notes that Phase II would be "consistent with the extensive historical gas production that has occurred in this area over the last sixty years," as well as with the gas storage operations that occurred on the Kirby Hills Ranch when it was leased by Dow Chemical Corporation from the late 1970s to the mid-1990s. (*Id.* at 22.) With respect to aesthetics, LGS points out that the construction and operation of the well and compressor facilities will be remote from public view, and that the facilities associated with the metering station visible from Birds Landing Road at the end of the 5.9-mile pipeline are "low lying" and will not affect the visual characteristics of the surrounding area. (*Id.*)

Finally, with respect to influence on the environment, LGS points out that when the APMs set forth in its PEA are taken into account, the environmental impacts of Phase II will be reduced to less-than-significant levels. These APMs include the avoidance of sensitive habitat or areas, the fact that construction and operation of the new facilities will take place at an existing site that is remote, the scheduling of construction to minimize impacts on surrounding communities, and compliance with all applicable federal, state, and local regulations and requirements. LGS also points to its excellent record in operating the Lodi and first phase of the Kirby Hills Facilities, which contributed to LGS being designated as the recipient of the 2006 "Outstanding Lease Award" given by the California Division of Oil, Gas and Geothermal Resources. According to LGS, all

of these factors ensure that the fourth criterion set forth in Pub. Util. Code § 1002(a) is satisfied. (*Id.* at 22-23.)

5. Discussion

In view of the lack of protests to the application and the resolution of the lease issue raised by KH Associates, the thorough analysis of the potential environmental effects of Phase II in the Subsequent MND/IS, its conclusion that any potentially significant effects can be reduced to less-than-significant levels, and the support for Phase II by local elected officials, we have decided to grant the amended CPCN that LGS has requested so that Phase II of the Kirby Hills Facility can go forward.

In D.93-02-013, the so-called Storage Decision (48 CPUC 2d 107), the Commission presumed that competitive gas storage facilities are needed, because the owners of such facilities do not have a captive customer base and operate at their own financial risk. (48 CPUC 2d at 118-119.) In this particular case, we are also satisfied that there is a need for the additional storage facilities Phase II would provide. As LGS's application points out, the *Energy Action Plan II* adopted by the Commission in October 2005 identified as Key Action No. 4 in its discussion of Natural Gas Supply, Demand and Infrastructure, "encourage[ment of] the development of additional in-state natural gas storage to enhance reliability and mitigate price volatility." LGS also notes that the capacity of the Kirby Hills Facility's first phase is fully-subscribed, and that the open season LGS conducted from mid-February to mid-March of 2007 resulted in bid responses for 26.5 Bcf, more than twice the projected capacity of Phase II. (Application, p. 18.)

As noted in the introduction to this decision, LGS has requested as part of its application, authority to charge market-based rates for the gas storage and

withdrawal services it will offer in connection with Phase II. As we have noted in D.06-03-012 and other decisions, D.93-02-013 and its progeny make clear that LGS, and not its ratepayers, will be fully at risk if the expected demand for the storage and withdrawal capacity at Phase II does not materialize. Thus, it is reasonable to grant LGS's request for authority to charge market-based rates for the gas storage, withdrawal and related services that will be offered in connection with Phase II. Granting such authority is also consistent with the manner in which we have treated LGS's Lodi facility.

As was the case with the first phase of the Facility considered in D.06-03-012, the issues that have consumed the most energy in connection with this application (apart from the lease dispute) have been the environmental ones. We commend our Energy Division for their diligence in preparing and issuing the Subsequent MND/IS in a timely manner.

We also think that the Subsequent MND/IS – which is identical (except for the comments and responses in Section D) to the Proposed Subsequent MND/IS – represents a thorough, careful analysis of the environmental issues raised by the application and the PEA. Accordingly, we will approve it and receive it (along with the Proposed Subsequent MND/IS) into the record. We agree with the Subsequent MND/IS that implementation of the APMs suggested by LGS, along with the additional Mitigation Measures discussed in Section B of the Subsequent MND/IS, will reduce the potentially significant environmental effects that have been identified in connection with Phase II to less-than-significant levels. As a condition of the authority granted in this decision, LGS will be required to comply with each and every provision of the Mitigation Monitoring Plan set forth in Section C of the Subsequent MND/IS.

We also conclude that LGS has made a satisfactory showing with respect to the four factors relevant to a CPCN identified in Pub. Util. Code § 1002(a). With respect to the first of these factors, community values, we give considerable weight to the positions of the elected representatives in the area – especially since other community members are not speaking to the contrary – because as noted in D.00-05-048, we believe that these elected officials are generally speaking on behalf of their constituents. (D.00-05-048 at 28.) As noted above, Phase II of the Kirby Hills Facility is supported by Assembly Member Lois Wolk, State Senator Patricia Wiggins, and Solano County Supervisor Mike Reagan, all of whom represent the affected area.

We reach a similar conclusion with respect to the other three factors identified in § 1002(a), *viz.*, recreational and park areas, historical and aesthetic values, and influence on the environment. As LGS points out, the proposed facilities are in remote areas, far away from recreation and park areas. The proposed Phase II operations are consistent with how the Kirby Hills Field has been used for nearly 50 years, and all of Phase II's above-ground facilities will either be low-lying or not visible due to topography. As to environmental factors, the Mitigation Monitoring Plan set forth in the Subsequent MND/IS will, as we have noted in Section 3 of this opinion, require LGS to undertake a broad array of measures designed to minimize the potential effects of Phase II upon the environment.

In D.03-02-071, in which we approved the transfer of a 50% interest in LGS's parent, Lodi Holdings, to WHP Acquisition Company, we emphasized that the markets for gas storage and injection services in both Northern California and statewide were highly concentrated. (D.03-02-071 at 16.) Although these concerns were reduced because of the passive nature of the

investment by WHP Acquisition Company and ArcLight Fund I, we nonetheless imposed the following restrictions on the transfer approved in D.03-02-071:

“So that we may better monitor the evolving natural gas market, and as a condition of our approval of the change of ownership (with continued market-based rate authority), we will impose the same reporting requirements on LGS that we have imposed on Wild Goose. Specifically . . . we will prohibit LGS from engaging in any storage or hub services transactions with its ultimate parents, Western Hub and ArcLight (or their successors) or any other affiliate owned or controlled by either of those entities. In addition, we will direct LGS 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 market-based pricing: LGS’ 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 parents or their successors; or, merger or other acquisition involving affiliates of its parents, or their successors, and another entity that owns gas storage or transmission facilities or facilities that use natural gas as an input, such as electric generation.”
(D.03-02-071, pp. 17-18.)

In Application (A.) 07-07-025, which was recently granted in D.08-01-018, we approved a transfer of control of LGS from WHP Acquisition, L.L.C. and WHP Acquisition II, L.L.C. (each of which held a 50% interest in Lodi Holdings, L.L.C., the parent of LGS) to Buckeye Gas Storage LLC, a 100%-owned affiliate of Buckeye Partners, L.P., a national energy firm that is traded on the New York Stock Exchange. As a condition of approving this transfer of control, we also approved a set of conditions that were part of a Settlement Agreement entered into between the joint applicants in A.07-07-025 (and certain other entities) and DRA. These conditions are attached to D.08-01-018 as Appendix A. Condition 3 in Appendix A broadens the requirements on LGS to report changes in market

conditions that had been imposed in D.03-02-071. Condition 3 also requires LGS to file a petition for modification of D.03-02-071 seeking the deletion of Ordering Paragraph (OP) 3(c) thereof (which reflects the narrower reporting obligation in D.03-02-071 quoted above), as well as OP 3(b) of D.05-12-007 (which reflected reporting obligations essentially identical to those imposed in D.03-02-071).

As the discussion above and in D.08-01-018 makes clear, none of the evidence before us suggests that the gas storage injection and withdrawal markets are any less concentrated today than they were when D.03-02-071 was decided. Accordingly, we place LGS on notice that it is subject to the reporting obligations set forth in Appendix A to D.08-01-018, and that compliance with those obligations is a condition of the authority granted in this decision.

6. Categorization and Need for Hearing

In Resolution ALJ 176-3192, dated May 24, 2007, we preliminarily determined that this proceeding should be categorized as ratesetting, and that a hearing was not necessary. We hereby affirm those determinations.

7. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment of the Proposed Decision (PD) was reduced to 13 days, with no provision for reply comments. No comments on the PD were submitted.

8. 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. The application is unopposed.

2. We affirm Resolution ALJ 176-3192's preliminary determination that this proceeding should be categorized as ratesetting, and that a hearing is not necessary.

3. Once the requirements imposed in D.08-01-018 are carried out, LGS will become 100% owned by Buckeye Gas Storage LLC.

4. The existing Kirby Hills Facility consists of three parts, the first of which is a gas storage field and compressor/dehydration station located near the western edge of the Montezuma Hills, approximately six (6) miles west of the City of Rio Vista, and 16 miles southeast of the City of Fairfield.

5. The second part of the existing Facility is a 5.9-mile pipeline that runs from the compressor/dehydration station east to a remote metering station and interconnection facility.

6. The third part of the existing Facility consists of the remote metering station and interconnection facility, which is located near PG&E's Line 400.

7. As part of the proposed Phase II, LGS would change the first part of the Facility by (a) adding three new well pad sites with 15 injection and withdrawal wells to the gas storage and withdrawal field, (b) connecting these new wells to the existing compressor site by means of a 3700 foot, 12-inch flowline, and (c) expanding the compressor site by adding two additional compressors totaling 5900 hp.

8. As part of the proposed Phase II, LGS would change the third part of the existing Facility by expanding the capacity of the metering station and interconnection with PG&E's Line 400 from 100 MMcf/d to 350 MMcf/d.

9. As part of Phase II, LGS does not propose to make any changes to the 5.9-mile pipeline that runs from the compressor/dehydration station east to the remote metering station and PG&E interconnection facility.

10. Upon completion of the proposed Phase II, the working capacity of the Facility would be increased by up to 12 Bcf, of which approximately 6 Bcf would be cushion gas capacity. Upon completion of Phase II, a maximum of 250 MMcf/d of firm injection and withdrawal capacity would be added to the Facility.

11. As part of the authority sought here, LGS requests permission to charge market-based rates for the gas injection, withdrawal and related services that will become available as a result of the completion of Phase II.

12. All of the capacity in the existing Kirby Hills Facility is fully subscribed.

13. As stated in *Energy Action Plan II*, the proposed Phase II is needed to provide additional natural gas storage facilities in Northern California so as to enhance reliability and mitigate price volatility.

14. As part of the environmental review required by CEQA, the staff of the Commission's Energy Division caused to be prepared a Proposed Subsequent MND/IS, which was issued for 30 days of public review and comment on August 24, 2007.

15. On September 19, 2007, counsel for KH Associates, the lessor of the site on which the Facility's gas storage field and compressor station are located, submitted a letter in response to the Proposed Subsequent MND/IS that contended, among other things, that the 2005 lease governing the site did not give LGS authority to drill at the subsurface depths contemplated by the instant application.

16. On September 27, 2007, counsel for LGS submitted a letter in response to the September 19 letter from KH Associates arguing, among other things, that (a) the issues raised in the September 19 letter should have been raised in a protest, but no timely protest had been filed, (b) the September 19 letter

represented a misuse of the CEQA process, in that it commented upon the application itself rather than upon environmental issues, (c) since the dispute raised by the September 19 letter would be resolved outside of Commission processes, the letter was no reason to hold up continued work on the application, and (d) both LGS and parties seeking additional gas storage capacity that would result from Phase II would be adversely affected if the application were delayed as a result of the September 19 letter.

17. On October 17, 2007, counsel for KH Associates submitted for filing a motion for intervention in this proceeding, a motion for acceptance of a late-filed protest, a protest, and a declaration from counsel in support of the motion for acceptance of the late-filed protest.

18. On October 26, 2007, counsel for LGS informed the ALJ by e-mail that LGS and KH Associates had reached a settlement in principle of their dispute, but that additional time was needed to work out details and document the settlement. Counsel for KH Associates also requested an extension of time to respond to the pleadings submitted by KH Associates on October 17, 2007 in case the settlement fell through and such a response became necessary.

19. On October 29, 2007, the ALJ granted LGS an extension of time until November 15, 2007 to file responses to KH Associates' October 17, 2007 pleadings, in the event such responses became necessary. In response to further requests from LGS, the time for filing such responses was subsequently extended until November 30, 2007.

20. On November 30, 2007, KH Associates filed a motion to withdraw the four pleadings it had submitted on October 17, 2007, and stated in an accompanying letter that it now supported the instant application.

21. The Subsequent MND/IS, which sets forth and responds to the comments received concerning the Proposed Subsequent MND/IS, was issued on December 19, 2007.

22. The Subsequent MND/IS reflects the independent judgment of this Commission.

23. The Subsequent MND/IS conforms to the requirements of CEQA.

24. The Subsequent MND/IS identifies no significant environmental effects of the proposed Phase II that cannot be avoided or reduced to less-than-significant levels by implementing the Mitigation Monitoring Plan set forth in Section C of the Subsequent MND/IS.

25. The Commission has considered the Subsequent MND/IS in deciding to grant the authority requested in the instant application.

26. Based upon the mitigation measures set forth in the Mitigation Monitoring Plan contained in the Subsequent MND/IS, Phase II of the Kirby Hills Facility will not have a significant effect upon the environment.

27. In order to construct and operate the proposed Phase II of the Kirby Hills Facility, LGS must obtain permits from Solano County and various local, state and federal agencies, including the U.S. Army Corps of Engineers.

28. The Commission has considered community values, recreational and park areas, historical and aesthetic values and influence on the environment in deciding to grant the authority requested by LGS in this application, and concludes that granting LGS authority to construct and operate Phase II of the Kirby Hills Facility would not be inconsistent with them.

29. To continue the necessary monitoring of the natural gas storage and related markets, the conditions that were imposed on LGS as part of the

settlement reached in A.07-07-025 and approved in D.08-01-018 should also be incorporated here.

Conclusions of Law

1. The motions of PG&E for party status in this proceeding, of Wild Goose for intervention in this proceeding, and of Sacramento NGS for information-only status in this proceeding, should be granted.

2. The October 17, 2007 motion of KH Associates to intervene in this proceeding should be granted.

3. The November 30, 2007 motion of KH Associates to withdraw the other pleadings that it submitted on October 17, 2007, *viz.*, the motion for acceptance of a late-filed protest, protest, and declaration of David Bowie in support of motion for acceptance of a late-filed protest, should be granted.

4. LGS's May 8, 2007 motion for leave to file under seal its audited financial statements for the years ending December 31, 2005 and December 31, 2006, which financial statements are included as Exhibit 8 to the application, should be granted, as set forth in the order below.

5. LGS has provided the showing required by Pub. Util. Code §§ 1001 and 1002(a) as a condition of granting or amending a CPCN.

6. Because ratepayers will not be at risk if expected demand for the gas storage and withdrawal services provided by Phase II fails to materialize, it is appropriate to grant LGS the authority it has requested to charge market-based rates for the gas storage, withdrawal and related services that will be offered as a result of Phase II of the Kirby Hills Facility.

7. The Subsequent MND/IS has been completed in compliance with the requirements of CEQA.

8. The Subsequent MND/IS and the Proposed Subsequent MND/IS should be received into the record of this proceeding.

9. Permits from Solano County and from various local, state, and federal agencies, including the U.S. Army Corps of Engineers, will be necessary before Phase II of the Kirby Hills Facility can be constructed.

10. LGS's application for authority to amend the CPCN granted in D.06-03-012 so as to permit construction and operation of Phase II of the Kirby Hills Facility should be granted, subject to full compliance by LGS and each of its employees, agents and contractors with each and every condition set forth in the Mitigation Monitoring Plan that comprises Section C of the Subsequent MND/IS.

11. LGS's application for authority to amend the CPCN granted in D.06-03-012 so as to permit construction and operation of Phase II of the Kirby Hills Facility should be granted, subject to the requirement that LGS shall at all times comply with Conditions 2(a), 3, 4, and 5 set forth in Appendix A to D.08-01-018 in A.07-07-025.

12. LGS's application for authority to amend the CPCN granted in D.06-03-012 so as to permit construction and operation of Phase II of the Kirby Hills Facility should be granted, subject to the condition that LGS shall comply with all of the undertakings to provide DRA with certain data, as set forth in LGS's June 21, 2007 response to the June 8, 2007 response of DRA to the application herein.

13. In order to allow construction of Phase II of the Kirby Hills Facility to proceed expeditiously, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The June 7, 2007 motion of Pacific Gas and Electric Company for party status in this proceeding, the June 11, 2007 motion of Wild Goose Storage, Inc. to intervene in this proceeding, the June 11, 2007 request of Sacramento Natural Gas Storage LLC for information-only status in this proceeding, and the October 17, 2007 motion of Kirby Hills Associates, LLC (KH Associates) to intervene in this proceeding, are granted.

2. The November 30, 2007 motion of KH Associates to withdraw three of the pleadings that it submitted for filing on October 17, 2007, *viz.*, a motion for acceptance of a late-filed protest, the protest, and the declaration of David Bowie in support of the motion for acceptance of a late-filed protest, is granted.

3. The May 8, 2007 motion of applicant Lodi Gas Storage, L.L.C. (LGS) for leave to file confidential materials under seal is granted with respect to the audited financial statements for LGS for the years ending December 31, 2005 and December 31, 2006, which financial statements comprise Exhibit 8 to the application. The aforesaid materials should be placed under seal for a period of two years from the effective date of this decision, through and including March 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 LGS believes that further protection of the aforesaid materials is needed after March 1, 2010, then LGS 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.

4. LGS's application to amend the certificate of public convenience and necessity granted in Decision (D.) 06-03-012 so as to permit LGS to construct and operate Phase II of the Kirby Hills Natural Gas Storage Facility, as described in the application, is approved pursuant to Pub. Util. Code § 1001, subject to the terms and conditions set forth in the following Ordering Paragraphs (OPs).

5. The authority granted in OP 4 is conditioned upon compliance by LGS and each of its employees, agents and contractors with each and every condition set forth in the Mitigation Monitoring Plan that comprises Section C of the Subsequent Mitigated Negative Declaration and Supporting Initial Study (Subsequent MND/IS) issued in connection with this application on December 19, 2007.

6. LGS shall provide to the Division of Ratepayer Advocates (DRA), the annual report and other information described in LGS's September 21, 2007 response to the June 8, 2007 response of DRA to the application herein. Competitively sensitive, confidential information provided pursuant to this OP may be submitted under seal in accordance with General Order 66-C and Pub. Util. Code § 583.

7. As a condition of the authority granted in this decision, LGS shall at all times comply with Conditions 2(a), 3, 4, and 5 set forth in Appendix A to D.08-01-018 in Application (A.) 07-07-025.

8. The Subsequent MND/IS and the Proposed Subsequent Mitigated Negative Declaration and Supporting Initial Study issued on August 24, 2007 are admitted into the record of this proceeding as Exhibits 1 and 2, respectively.

9. No hearing was held in this proceeding.

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

11. A.07-05-009 is closed.

This order is effective today.

Dated February 28, 2008, at San Francisco, California.

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

Commissioner Timothy Alan Simon, being necessarily absent, did not participate.