

Decision 09-10-035 October 29, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Gill Ranch Storage, LLC for a
Certificate of Public Convenience and Necessity
for Construction and Operation of Natural Gas
Storage Facilities.

Application 08-07-032
(Filed July 29, 2008)

And Related Matter.

Application 08-07-033

**DECISION ADDRESSING GILL RANCH STORAGE, LLC'S
AND PACIFIC GAS AND ELECTRIC COMPANY'S APPLICATIONS FOR
AUTHORITY TO CONSTRUCT AND OPERATE A GAS STORAGE FACILITY**

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**DECISION ADDRESSING GILL RANCH STORAGE, LLC'S
AND PACIFIC GAS AND ELECTRIC COMPANY'S APPLICATIONS FOR
AUTHORITY TO CONSTRUCT AND OPERATE A GAS STORAGE FACILITY**

Summary

This decision (Decision) approves two consolidated applications which seek to establish a competitive gas storage facility and to provide related gas storage services. The Decision approves Application (A.) 08-07-032, Gill Ranch Storage, LLC's (GRS') request for a certificate of public convenience and necessity (CPCN) to construct and operate the Gill Ranch Storage Project (Proposed Project) to provide natural gas storage services at market-based rates. The Decision also approves A.08-07-033, the Pacific Gas and Electric Company's (PG&E's) request for a CPCN to construct and operate the Proposed Project, and request for a permit to construct an electric substation and a 115 kilovolt electric power line to provide electric service to the Proposed Project.

As a result of this Decision, GRS and PG&E will offer up to 20 billion cubic feet of competitive natural gas storage services. The Decision grants the Applications after weighing the need for competitive gas storage services, pursuant to Pub. Util. Code §§ 1001,¹ et seq., as well as the factors set forth in § 1002 and the outcome of the environmental review process.

The Decision certifies the Mitigated Negative Declaration (MND), authorizes issuance of a Notice of Determination for the Proposed Project pursuant to the California Environmental Quality Act, and conditions the CPCNs and the permit to construct primarily on the conditions and mitigation

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

set forth in the MND.² The Decision also determines that GRS' project-related development financing is exempt from the requirements of §§ 818 and 851 and the Commission's Competitive Bidding Rule.

The Decision also approves the settlement agreement between the Division of Ratepayer Advocates, Lodi Gas Storage, LLC, GRS, and PG&E which resolves concerns about PG&E increasing its share of the ownership of the Proposed Project and its share of California's gas storage market, concerns that PG&E might grant preferential treatment to GRS over other independent storage providers, and concerns that PG&E might use revenues from core customers to subsidize its Proposed Project costs. The settlement agreement also establishes reporting and disclosure requirements for customer contracts, storage operations, and project ownership that will provide the Commission with information similar to that required of other independent storage providers but with additional information appropriate for the unique relationship between GRS and PG&E.

As a result of our approval of A.08-07-032, GRS will be certificated as a public utility with respect to the Proposed Project and, as such, will have eminent domain authority pursuant to § 613.³ However, because the Proposed Project will offer competitive services, GRS and PG&E must comply with § 625 before they can exercise the power of eminent domain with respect to the Proposed Project.

² As discussed below, this decision adopts clarifying language to mitigation measure Bio-17 as part of the authority granted to construct and operate.

³ PG&E already has eminent domain authority pursuant to § 613.

1. Background

On July 29, 2008, Gill Ranch Storage, LLC (GRS) filed Application (A.) 08-07-032 (the GRS Application) requesting (1) a certificate of public convenience and necessity (CPCN) to construct and operate the Proposed Project; (2) authority to charge market-based rates for storage services provided by GRS; (3) adoption of a Mitigated Negative Declaration (MND) and issuance of a Notice of Determination (NOD) for the Proposed Project pursuant to California Environmental Quality Act (CEQA); and (4) a determination that GRS' project-related development financing is exempt from the requirements of § 818 and § 851 and the Commission's Competitive Bidding Rule.

GRS is an Oregon limited liability company formed in 2007 for the purpose of developing the Proposed Project and is dedicated to exclusively serving the California market. GRS is a wholly owned subsidiary of Northwest Natural Gas Company, an Oregon-based company that provides natural gas distribution services to 652,000 customers in Oregon and southwest Washington.

On July 29, 2008, Pacific Gas and Electric Company (PG&E) filed A.08-07-033 (the PG&E Application) requesting: (1) a CPCN to construct the Proposed Project, including ancillary pipeline and other facilities; (2) a permit to construct (PTC) authorizing construction of an electric substation and a 115 kilovolt (kV) electric power line to provide electric service to the Proposed Project; and (3) adoption of an MND and issuance of a NOD for the Proposed Project pursuant to CEQA. The PG&E Application relies on the Proponent's Environmental Assessment (PEA) that GRS prepared for the Proposed Project.

PG&E is an operating public utility engaged principally in the business of furnishing gas and electric service in California since 1905.

The Proposed Project is comprised of an underground natural gas storage field, a compressor station for injecting and withdrawing gas from the storage field and associated dehydration and control facilities, an approximately 27-mile natural gas pipeline connecting the Proposed Project to PG&E's Line 401, an electric substation located at the compressor station, and a 9-mile 115 kV power line connecting the substation to PG&E's Dairyland-Mendota 115 kV power line to serve the compressors and other facilities. Except for the 115 kV power line, which will be constructed, owned, and operated by PG&E, GRS owns a 75 percent undivided interest in the Proposed Project and PG&E owns a 25 percent undivided interest. GRS and PG&E each will separately market its share of storage capacity in the Proposed Project. The Proposed Project will be constructed by GRS and PG&E and operated by GRS during development, permitting and construction, and for at least three years from the date commercial operations begin, pursuant to an Operator Agreement (OA) between GRS and PG&E.

The Proposed Project will utilize natural gas reservoirs within the Gill Ranch Gas Field (Gas Field), located in Madera and Fresno Counties approximately 10 miles east of Mendota and approximately 20 miles west of Fresno. The Gas Field consists of several geologically separate formations.⁴ Natural gas production continues today from wells in the Kreyenhagen and the Moreno Formations. The Proposed Project intends to use sandstone reservoirs at

⁴ PEA, at 3.42. These geologically separate formations are referred to as the Kreyenhagen, Domengine, Moreno, and the First and Second Starkey Formations. According to the PEA, the Kreyenhagen and Domengine Formations are 4,300 to 4,700 feet below ground, the Moreno Formation is 5,570 feet below ground and the First and Second Starkey Formations are 5,700 to 6,300 feet below ground.

the top of the First and Second Starkey Formations for gas storage, situated approximately 2,000 feet below the two producing gas wells.

Notice of the Applications appeared in the Commission's July 31, 2008 Daily Calendar. On September 2, 2008, Armstrong Petroleum Corporation (Armstrong), the Division of Ratepayer Advocates (DRA), and Will Gill & Sons filed protests to the PG&E Application, and Armstrong filed a protest to the GRS Application. Also on September 2, 2008, Lodi Gas Storage, LLC (LGS), Wild Goose Storage, LLC (WGS), and Meyers Farming (Meyers) filed responses to the GRS and PG&E Applications, and DRA filed a response to the GRS Application.

On September 12, 2008, GRS filed a reply to the responses and protest, and on September 15, 2008, PG&E filed a reply to the responses and the Armstrong and DRA protests.⁵ On October 3, 2008, GRS and PG&E each filed a reply to Will Gill & Sons protest.⁶

Because both Applications relate to the Proposed Project and involve identical or closely related questions of law or fact relating to the construction and operation of the Proposed Project, including the potential environmental impacts of the Proposed Project, the Administrative Law Judge (ALJ) consolidated A.08-07-032 and A.08-07-033.⁷

⁵ The October 27, 2008 ALJ ruling granted PG&E's request to late file its reply to responses and protests.

⁶ The September 23, 2008 ALJ ruling notified parties that Will Gill & Sons timely filed its protest but that the protest was not listed on the Commission's website. The ruling established October 3, 2008 as the deadline for responding or replying to the protest.

⁷ September 17, 2008 ALJ ruling.

A prehearing conference (PHC) was held on February 3, 2009, where representatives of GRS, PG&E, Armstrong, Will Gill & Sons,⁸ DRA, LGS, and WGS were in attendance.

On March 2, 2009, a scoping memo and ruling of assigned Commissioner and ALJ (Scoping Memo) was issued that, among other things, denied Armstrong's and Will Gill & Sons' requests to suspend or reject the Applications until GRS and PG&E acquired sufficient ownership interests in the underground reservoirs. The Scoping Memo also called for prehearing briefs on whether § 785⁹ requires the Commission to give priority to the production of natural gas from the Gas Field over the use of the Gas Field for gas storage services.

On March 11, 2009, GRS and PG&E reported that they reached agreement in principle with Armstrong and Will Gill & Sons on all of the issues that were raised by Armstrong and Will Gill & Sons, and expected to soon finalize an agreement. Also on March 11, 2009, GRS, PG&E, DRA, and LGS submitted a joint status report, and reported that they were near final agreement on the

⁸ Counsel for Armstrong also represented Will Gill & Sons, owner of 3,600 acres of property overlying the Gas Field.

⁹ Section 785(a) states: To the extent consistent with federal law and regulation and contractual obligations regarding other available gas, the commission shall, in consultation with the Division of Oil and Gas of the Department of Conservation and with the State Energy Resources Conservation and Development Commission, encourage, as a first priority, the increased production of gas in this state, including gas produced from that area of the Pacific Ocean along the coast of California commonly known as the outer continental shelf, and shall require, after a hearing, every gas corporation to purchase that gas which is compatible with the corporation's gas plant and which is produced in this state having an actual delivered cost, measured in equivalent heat units, equal to or less than other available gas, unless this requirement will result in higher overall costs of gas or other consequences adverse to the interests of gas customers. (Emphasis added.)

issues raised by LGS and DRA. GRS, PG&E, DRA, and LGS requested a PHC to address procedural issues related to the anticipated resolution of the issues raised by parties.

A second PHC was held on March 24, 2009 to confirm which of the issues listed in the Scoping Memo were resolved through negotiations, to identify the issues that remain unresolved, and to determine the process and schedule for addressing the issues. Pursuant to the March 24 PHC, the April 2, 2009 ALJ ruling modified the proceeding schedule to remove from the schedule the filing of legal briefs, evidentiary hearings, and related procedural activities (i.e., filing of testimony, etc.).

On April 8, 2009, GRS, PG&E, DRA, and LGS filed a motion for approval of a proposed settlement between these parties (Settling Parties). No responses to the motion were filed. However, according to the Settling Parties, WGS does not oppose the settlement terms.

On May 18, 2009, Armstrong withdrew its protests to the GRS and PG&E Applications. Armstrong states that, through negotiations with GRS and PG&E, it has resolved the issues it raised in its protests.

On May 22, 2009, GRS and PG&E filed a motion requesting confirmation of the proceeding schedule established by the April 2, 2009 ALJ ruling (Confirmation Motion). The Confirmation Motion states that GRS and PG&E had reached agreement in principle with Armstrong and Will Gill & Sons regarding the issues raised by those parties in this proceeding related to 2,600 acres of property leased by Armstrong from Will Gill & Sons, but have not been able to finalize an agreement with Will Gill & Sons with respect to

approximately 1,000 acres of unleased property owned by the Gill OG&M Trust.¹⁰ GRS and PG&E assert, however, that all evidentiary issues have been resolved, and request that the Commission expeditiously move forward with the proceeding.

On May 29, 2009, Will Gill & Sons filed a response to the Confirmation Motion, stating that it has not withdrawn its protest to the PG&E Application and, unless an agreement is reached between Applicants and Will Gill & Sons, the issues it raised in this proceeding are not resolved.

On June 17, 2009, Applicants moved to dismiss the Will Gill & Sons protest as a matter of law because Will Gill & Sons has waived its right to introduce new issues and because the protest does not raise any disputed material facts that are within the scope of this proceeding.

On June 19, 2009, Will Gill & Sons withdrew its protest to the PG&E Application. Will Gill & Sons states that, although it continues to disagree with GRS and PG&E and no settlement has been reached with GRS and PG&E for the approximately 1,000 unleased acres, the Madera County Superior Court is the proper forum for adjudicating the issues raised by Will Gill & Sons concerning the unleased acreage.

2. Standard of Review: The CPCN/CEQA Process

Two different regulatory schemes govern the Commission's responsibilities in reviewing GRS' and PG&E's requests for the approval of the

¹⁰ Although the protest of Will Gill & Sons states that Will Gill & Sons owns the mineral rights for the Gill Ranch Storage Field, GRS and PG&E state that the Gill OG&M Trust owns the mineral rights and that Will Gill & Sons is a participant in the Gill OG&M Trust.

Applications. First, §§ 1001 et seq., require that before Applicants can construct the Proposed Project, the Commission must grant a CPCN on the grounds that the present or future public convenience and necessity require or will require construction of the Proposed Project. In addition, construction of power line and substation facilities operating between 50 kV and 200 kV, such as those proposed in the PG&E Application, requires a PTC, pursuant to the requirements of General Order (GO) 131-D.

Second, CEQA (Public Resources Code §§ 21000, et seq.) requires that the Commission, as lead agency for the Proposed Project, prepare a document assessing the environmental effects of the Proposed Project for the Commission's use in considering the request for a CPCN or PTC.¹¹

These requirements are discussed separately below.

2.1. CPCN Requirements

The CPCN requirements of the Public Utilities Code include a determination of whether the Proposed Project is necessary. In addition, before granting a CPCN, the Commission considers the financial impacts of a project on the utility's ratepayers and shareholders. The Commission reviews the estimated cost of a project, and for those projects estimated to cost more than \$50 million, the Commission sets the maximum amount that can be spent by the utility on a project without seeking further Commission approval.

¹¹ If a lead agency determines that a proposed project would not have a significant effect on the environment, the lead agency shall adopt a negative declaration to that effect. (Public Resources Code § 21080(c).) If there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared. (Public Resources Code § 21080(d).)

The Gas Storage Decision (Decision (D.) 93-02-013) and subsequent decisions modified some of these requirements as they apply to competitive gas storage providers under the Commission's "let the market decide" policy. These modifications apply to the Applications and are discussed more fully below.

In addition, § 1002 requires the Commission to consider the following factors in determining whether or not to grant a CPCN: (1) community values, (2) recreational and park areas, (3) historical and aesthetic values, and (4) influence on the environment.

2.2. PTC Requirements

GO 131-D defines an electric "power line" as one designed to operate between 50 and 200 kV, and requires utilities to first obtain Commission authorization, in the form of a PTC, before beginning construction of a power line or substation.¹² GO 131-D requires PTC applications to:

- 1) Include a description of the proposed facilities and related costs, a map, reasons the route was selected, positions of the government agencies having undertaken review of the project, and a PEA;¹³
- 2) Show compliance with the provisions of CEQA related to the Proposed Project, including the requirement to meet various public notice provisions;¹⁴ and

¹² Section I and Section III.B.

¹³ Section IX.B.1. PTC applications for power lines need not include a detailed analysis of purpose and necessity, a detailed estimate of cost and economic analysis, a detailed schedule, or a detailed description of construction methods beyond that required for CEQA compliance. (Section IX.B.1.f.)

¹⁴ Section IX.B.2-5. Compliance with Section IX.B is not required for proposed power lines and substations that have undergone environmental review as part of a larger

Footnote continued on next page

- 3) Describe the measures to be taken or proposed by the utility to reduce the potential for exposure to electric and magnetic fields (EMF) generated by the Proposed Project.¹⁵

2.3. CEQA Requirements

CEQA requires that the Commission consider the environmental consequences before acting upon or approving the Proposed Project.¹⁶ Under CEQA, the Commission must act as either the Lead Agency or a Responsible Agency for project approval.¹⁷ Here, the Commission is the Lead Agency. If a Lead Agency determines that a proposed project would not have a significant effect on the environment, CEQA requires the Lead Agency to adopt a Negative Declaration or an MND to that effect.

Based on its initial study, the Commission's Energy Division (Energy Division) determined that an MND is required because, as discussed below, if certain mitigation measures are adopted, the Proposed Project will not have a significant adverse impact on the environment.

To administer the Commission's dual responsibilities under the Public Utilities Code and Public Resources Code, the proceeding was bifurcated into a review of non-environmental (CPCN/PTC) issues and an environmental review under CEQA. The environmental and non-environmental parts of the proceeding converge at the time the Final MND is submitted into the formal

project, and for which the final CEQA document finds no significant unavoidable environmental impacts caused by the proposed line or substation. (Section III.B.1.f.)

¹⁵ Section X.

¹⁶ CEQA Guidelines, Section 15050(b).

¹⁷ The Lead Agency is the public agency with the greatest responsibility for supervising or approving the Proposed Project as a whole. (CEQA Guidelines, Section 15051(b).)

proceeding for adoption by the Commission, and the MND becomes part of the record at that time.

3. Parties' Positions

This section briefly summarizes the positions of the parties in this proceeding.

3.1. GRS and PG&E

GRS and PG&E state that the Proposed Project is consistent with California's gas storage policy, and qualifies for application of the "let the market decide" policy established in D.93-02-013. According to GRS and PG&E, the Proposed Project will provide another competitive natural gas storage option in California, reducing market concentration and minimizing the potential for the exercise of market power by any single market participant.

PG&E states that its share of the Proposed Project will be integrated with the operation of PG&E's existing gas storage facilities, and PG&E's existing market storage rates (rates that are negotiable within certain price caps) will apply to services provided using PG&E's share of the Proposed Project.

GRS states that it currently has no customers in the California storage market, and that it will compete with incumbent and competitive gas storage providers, including PG&E. GRS states that its shareholders will bear all of the risks for the success of its share of the Proposed Project.

3.2. Armstrong and Will Gill & Sons

Will Gill & Sons asserts ownership of 3,600 acres of the Gas Field area and rights to use the space under that property, and states that GRS and PG&E do not have an agreement to use the Will Gill & Sons property. Will Gill & Sons' protest requests that the Commission reject or suspend the Applications until

GRS and PG&E acquire sufficient ownership interests in the underground reservoirs.

Armstrong's protests also request that the Commission reject or suspend the Applications until GRS and PG&E acquire sufficient ownership interests in the underground reservoirs. Armstrong further contends that § 785 requires the Commission, as a first priority, to encourage increased gas production, and that the Proposed Project will frustrate this policy.

Armstrong states that it currently leases mineral rights to most of the Gas Field from Will Gill & Sons, and is currently extracting natural gas from the Kreyenhagen Formation and from an area situated between the Domengine and the Starkey Formations.¹⁸ Armstrong asserts that there are additional natural gas deposits above, within, between and beneath the formations that GRS and PG&E intend to use as storage reservoirs, and that the Proposed Project could interfere with its existing gas producing operations and foreclose the future production of up to 16 billion cubic feet (bcf) of natural gas deposits in the Proposed Project area.

3.3. DRA

DRA does not object to granting CPCNs to GRS and PG&E or a PTC to PG&E. However, DRA recommends that GRS and PG&E each be required to annually report to the Commission (1) the capacity of the facilities (total inventory, injection and withdrawal rights); (2) average monthly inventory in storage, injections, and withdrawals; (3) daily operating records; (4) annual firm

¹⁸ The Applications also acknowledge that the Gas Field has been and continues to be used for natural gas production. (PG&E Application, at 8; GRS Application, at 8.)

capacity under contract; (5) annual interruptible capacity sold; and (6) annual safety report describing all safety-related incidents.

DRA also requests that any exemption from the requirements of § 818 and § 851 in connection with GRS' financing of the development of the Proposed Project be limited to the financing of the proposed facility and not to other transactions.

3.4. LGS and WGS

LGS and WGS are concerned that the Proposed Project may allow PG&E to give undue preference to GRS in terms of interconnection, curtailments, and other arrangements. LGS and WGS request that parties have an opportunity to review and comment on the Applicants' Operating Balancing Agreement (OBA) and the OA (Operator Agreement). LGS requests that the Commission's decision explicitly require PG&E to take all steps necessary to avoid any undue preference.

In addition, LGS is concerned that PG&E has the potential for exercising undue control of the storage market through its ownership interest in the Proposed Project, and the impact this could have on competition in California's natural gas storage market. LGS requests that PG&E be required to obtain prior Commission approval before enlarging its interest in the Proposed Project.

LGS also requests that, if the Commission does not require PG&E to provide full cost information as part of this proceeding, the Commission should require PG&E to seek Commission authorization for any cost recovery in core rates, and impose on PG&E the burden of justifying the costs of the Proposed Project as prudent and reasonable.

LGS further requests that GRS and PG&E be required to submit monthly, semi-annual, and annual reports containing the information requested by DRA

and information concerning changes in project ownership by PG&E and its affiliates.

Finally, LGS requests that the Commission require GRS to comply with conditions imposed on other natural gas storage providers, and, in particular, the conditions imposed on LGS by D.08-01-018.¹⁹

3.5. Meyers

Meyers is concerned about the possible impacts of the Proposed Project on endangered and other special status species, and other natural resources on its property. Meyers states that the Proposed Project's pipeline route runs along the southern portion of property owned by Meyers that contains habitat for endangered and special status species, and that the property is identified for protection by the United States Fish and Wildlife Service (USFWS).

Meyers asserts that its property is one of the only native habitats remaining in the San Joaquin Valley portion of Fresno County, and connects the Alkali Sink Ecological Reserve and Mendota Wildlife Area to the San Joaquin River and the Chowchilla Canal. Meyers requests that the Proposed Project be implemented in a way that does not interfere with the development or approval of the property for use as a conservation bank.

On September 18, 2008, Applicants supplemented the PEA in response to Meyer's concerns, and requested that the Commission evaluate an alternative pipeline route (the San Mateo Avenue route). Applicants' supplemental PEA

¹⁹ D.08-01-018 approved a settlement related to the transfer of control of LGS and established conditions addressing capital requirements, maintenance of and access to books and records, reporting on acquisitions of electric and natural gas investments, information sharing, and control over multiple independent gas storage providers.

states that the San Mateo Avenue pipeline route avoids any conflict with the Meyer's property conservation bank and avoids or mitigates other impacts to biological resources.

4. Need

Pursuant to § 1001 and § 1002, CPCN applicants must demonstrate that the present or future public convenience and necessity require or will require construction and operation of the Proposed Project. The Gas Storage Decision adopted a "let the market decide" policy for the construction or expansion of competitive natural gas storage facilities, concluding that the Commission should not test storage projects for need as long as all of the risk of unused new capacity resides with the builders and users of the new facilities.²⁰ Thus, the Commission's policy presumes a need for new gas storage facilities dedicated to non-core customers.

In addition to presumed need for gas storage services established by the Gas Storage Decision, Applicants provide evidence of actual need for the Proposed Project. Applicants state that the Proposed Project is needed because the market has expressed support for Applicants' services. Applicants state that the Commission's and the California Energy Commission's (CEC's) 2005 Energy Action Plan II and the CEC's 2007 Integrated Energy Policy Report recognize the need for increased storage as a way to ensure California's natural gas infrastructure is sufficient to meet California's peak demand requirements, enhance supply reliability, and provide price stability.

²⁰ D.93-02-013 (48 CPUC2d 107, 127). See, also, Finding 37.

Applicants point to a CEC report which found that, since 1997, natural gas demand in the electric sector increased more than 50 percent, primarily as a result of the increased reliance on natural gas-fired electric generation.²¹ According to the CEC report, California's demand for natural gas in the electric power generation sector is expected to increase by 2.4 percent over the next decade. PG&E states that natural gas demand for the electric power sector in its service area is projected to increase by 4 percent annually.

Applicants state that the Proposed Project's central California location will make it possible to more efficiently and cost-effectively use existing utility gas infrastructure, and will provide increased reliability and price stability during periods of high demand and during supply interruptions in California resulting from disruptions on the interstate gas delivery system.

Applicants assert that other independent gas storage providers are fully subscribed and have received Commission authority to expand their storage operations. GRS states that it has conducted an open season for its share of the Proposed Project's storage capacity, and that response demonstrates that demand exceeds its share of the Proposed Project's capacity.

GRS contends that projected increases in demand for natural gas in the electric generation sector, the lack of storage in central California, the desire for reliable supply and price stability, and the potential for increasing the use of liquefied natural gas demonstrate the need for additional gas storage services.

No party disputes the need for the Proposed Project. Therefore, pursuant to D.93-02-013, and in light of the record in this proceeding indicating the need

²¹ 2007 Final Natural Gas Market Assessment, In Support of the 2007 Integrated Energy Policy Report, Final Staff Report (December 2007).

for additional gas storage services, Applicants have demonstrated need for the Proposed Project, as required under § 1001.

5. Consideration of the Factors Set Forth in § 1002

Section 1002 requires the Commission to consider several factors, including community values, recreational and park areas, historical and aesthetic values, and influence on environment.

5.1. Community Values

Applicants state that the Proposed Project is consistent with community values because the response to Applicants' outreach efforts has been favorable and because the Proposed Project provides community benefits. Applicants state that they have held several open houses in the cities of Madera, Mendota, and Kerman to provide information to local community members.

Applicants state that GRS and PG&E representatives have been in contact with state and local agencies and elected officials, including the Madera County and Fresno County Planning Departments, the California Department of Fish and Game (CDFG), the USFWS, the Bureau of Reclamation, Madera County and Fresno County Supervisors, and the City Managers of the cities of Kerman, Mendota, and Firebaugh.

Applicants state that they have made presentations to the Kerman City Council, the Boards of Directors of the Madera County and Fresno County Farm Bureaus and the Westlands Water District, and that Applicants' representatives have met with other elected officials that represent the area where the Proposed Project is located, including Assemblyman Juan Arambula, Senator Dean Florez, Congressman Jim Costa and Congressman George Radanovich.

Applicants state that the Proposed Project will create socioeconomic benefits for Madera County and Fresno County through employment

opportunities and tax revenues. Applicants assert that construction of the Proposed Project will require approximately 350 workers over a 10- to 12-month period, and estimate that up to 40 percent of these workers will come from the local labor pool. Applicants estimate that 10 full-time local employees will operate the Proposed Project after construction.

GRS estimates the Proposed Project will contribute approximately \$1.2 million per year to fund local services in Madera County and approximately \$600,000 per year to fund local services in Fresno County, but the Proposed Project will not result in significant impacts to public facilities or services.

In considering the Proposed Project's compatibility with community values as set forth in Pub. Util. Code § 1002, we give considerable weight to the views of the local community. We also consider the views of the elected representatives of the area because we believe they are speaking on behalf of their constituents.

The Commission received letters of support for the Proposed Project from Senator Dave Cogdill, 14th District, California State Senate; Assemblymembers Michael N. Villines, 29th District, and Juan Arambula, 31st District, California Legislature; Supervisor Susan B. Anderson, Chair, Fresno County Board of Supervisors; Supervisor Max Rodriguez, Chair, Madera County Board of Supervisors; Ryan Jacobsen, Executive Director, Fresno County Farm Bureau; and Jim Erickson, Board President, Madera County Farm Bureau. In addition, GRS provided the Commission with copies of letters of support it received from Ron Manfredi, City Manager, City of Fresno and Gabriel Gonzalez, City Manager, City of Mendota. The Commission has received no letters in opposition to the Proposed Project.

No one disputes Applicants' assertions that the Proposed Project provides benefits to the community and is consistent with the community values of the area. Given the support from elected officials for the Proposed Project and absent any concerns expressed by the public, we conclude that the Proposed Project is consistent with community values.

5.2. Recreational and Park Areas, Historical and Aesthetic Values, and Influence on Environment

Applicants state that construction and operation of the Proposed Project will not affect recreation or park areas because all project components will be located on private lands, there are no park and recreation areas in the vicinity of the Proposed Project, and construction and operation of the Proposed Project will not result in a change in the use of existing parks or other recreation areas.

Applicants also state that the historic use of the Gas Field area has included natural gas production and agricultural development and no other Proposed Project components affect historical values. Therefore, according to Applicants, the Proposed Project is consistent with historical values in the Gas Field area.

Applicants state that, after incorporating design features and mitigation measures, the Proposed Project will not result in significant effects on the environment.

No party disputes Applicants assertions that the Proposed Project will not affect recreation or park areas, historical and aesthetic values, or that the Proposed Project will not result in significant effects on the environment.

Although recreational and park areas, historical and aesthetic values, and influence on environment are factors identified under § 1002, these factors are considered as a part of the environmental review discussed below and, where necessary, mitigation measures are adopted. With adoption of the mitigation

measures discussed below, we conclude that the Proposed Project is consistent with recreation or park areas and historical and aesthetic values, and that the Proposed Project will not have significant effects on the environment.

6. Proposed Settlement Agreement

The joint motion of DRA, GRS, LGS, and PG&E (Settling Parties) requests that the Commission approve the proposed settlement agreement between the Settling Parties (Joint Motion). The proposed settlement agreement (Settlement Agreement) contains conditions (Conditions) that the Settling Parties agree should be included, without modification, by the Commission as ordering paragraphs in any decision the Commission issues granting the Applications.

The Joint Motion states that Commission approval of the Settlement Agreement and inclusion of the Conditions in a decision granting the Applications will resolve all issues raised in DRA's and LGS' responses and protest to the Applications (Issues G, M, P, and Q in the Scoping Memo). The Settling Parties request that the Commission adopt all of the Conditions set forth in the Settlement Agreement, and that GRS and PG&E be required to comply with the Conditions, effective upon the Commission's granting of the Applications and issuance of a Commission decision containing such Conditions.

The following describes how the Settlement Agreement resolves parties' initial positions on issues concerning the Applications.

Issue G - Operating and Balancing Agreement, Joint Project Agreement and Operator Agreement

LGS and WGS raised concerns about the relationship between GRS and PG&E, and the potential for undue preference to GRS as compared to other independent storage providers in California and because of the unique circumstances presented by PG&E's ownership interest in the Proposed Project.

Much of this concern focused on the Joint Project Agreement (JPA), OA, and OBA that spell out the relationship between GRS and PG&E in connection with the Proposed Project.

The Scoping Memo asks if Applicants' OBA, JPA, and OA should be approved as part of any authority that may be granted to GRS or PG&E in this proceeding, and, if so, if the OBA, JPA and/or OA are reasonable.

GRS and PG&E contend that it is neither appropriate nor necessary for the Commission to approve the JPA and OA. GRS and PG&E state that the JPA relates to the commercial relationship between GRS and PG&E as project owners, and the OA relates to GRS' rights and obligations as operator of the Proposed Project. GRS and PG&E contend that the Commission's approval or disapproval of these agreements would create uncertainty in business transactions underlying the commercial agreements, and might create a barrier to similar projects to the detriment of the state's energy infrastructure, energy consumers, and the economy.

DRA and LGS recommend that, if the Commission deems the JPA and the OA to be appropriate, these agreements should be approved as part of the Commission's decision. DRA and LGS contend that the Commission should approve these agreements because of the unique nature of the partnership between PG&E and GRS, and the different regulations applicable to each entity. DRA recommends that the Commission approve the JPA and OA between GRS and PG&E to ensure Applicants operate their respective portions of the Proposed Project as represented.

LGS states that the Commission must take into account the Proposed Project's effect on competition, protect against undue preference and protect against cross-subsidization from captive ratepayers, and, therefore, recommend

that, if appropriate, the JPA, OA, and the OBA be approved as part of the Commission's decision.

The Settlement Agreement states that, because the parties have now had the opportunity to review the complete JPA, OA, and OBA, and because the Conditions, once adopted, provide ongoing protection to other independent storage providers from situations where PG&E could provide preferential treatment to GRS, DRA and LGS no longer seek Commission approval of the JPA, OA, and OBA.

The Settlement Agreement requires Applicants to promptly report and submit to the Commission and the parties to this proceeding copies of any revisions or amendments to the OA, JPA or OBA and related exhibits, and report to the Commission any circumstances in which GRS is allowed to deviate from the OA, JPA or OBA or where discretionary provisions are relied upon to release or modify obligations imposed upon GRS while not releasing or modifying other storage providers' similar obligations.²²

In addition, the Settlement Agreement requires PG&E, to the extent that the OBA of GRS or any existing independent storage provider contains, includes or provides treatment that is different from what PG&E offers to any other independent storage provider (including GRS), to provide any existing independent storage provider or GRS the opportunity to amend its OBA to include comparable terms and to provide comparable treatment under such amended terms.²³

²² Condition 2(c).

²³ Condition 2(d).

To address other concerns regarding potential preferential treatment, the Settlement Agreement prohibits PG&E and any entity related to PG&E from providing any undue preference to GRS as compared to any other independent storage providers in terms of pipeline operations, including, but not limited to, balancing, interconnection, access to pipeline facilities, classification of interconnection costs, construction and pricing of interconnection and other facilities, scheduling, curtailment, upgrades and expansions, and application or interpretation of applicable PG&E tariffs and tariff rules.²⁴

Absent prior written consent from the owner of the information, the Settlement Agreement prohibits PG&E or any entity related to PG&E from sharing any information obtained by PG&E in the course of business regarding LGS, WGS or any other independent storage provider in California with GRS or any entity related to GRS unless such information is of a public nature prior to the time of the release. To the extent that any sharing of the information prohibited by this Condition occurs, the Settlement Agreement requires PG&E to promptly report to the Commission the nature of any such sharing.²⁵

The Settlement Agreement also requires PG&E, pursuant to a standing request or an agreement-specific request of any party to this proceeding, to provide copies of any agreements setting forth interconnection arrangements with GRS, including all interconnection agreements, special facilities agreements and other agreements pertinent to the construction and operation of the interconnection between PG&E and GRS or otherwise relating to GRS access to

²⁴ Condition 2(a).

²⁵ Condition 2(b).

pipeline facilities. To the extent that there are any differences in treatment provided by PG&E to GRS as compared to other independent storage providers, the Settlement Agreement requires PG&E to provide other independent storage providers with the opportunity to receive comparable treatment.²⁶

Upon request by any party to this proceeding, the Settlement Agreement provides that PG&E and the requesting party will make all good faith efforts to resolve issues relating to possible preferential treatment by PG&E of GRS in an expeditious manner, and requires PG&E to provide information reasonably necessary for the requesting party to evaluate whether undue preferential treatment to GRS, as compared to other independent storage providers, is occurring or has occurred.²⁷

The provisions contained in Condition 2 resolve Issue G in the Scoping Memo.

Issues H and M - Is PG&E's proposal to integrate its share of the Proposed Project's capacity into its existing storage operations reasonable? Should PG&E's share of the costs of the Proposed Project be deemed reasonable for inclusion in storage rates developed in a subsequent proceeding?

DRA protested PG&E's Application in order to consider PG&E's proposed rate treatment and structure for its share of the Proposed Project. DRA states that PG&E should not be entitled to a presumption that the full costs of the Project would be deemed reasonable for inclusion in the next Gas Transmission

²⁶ Condition 2(e).

²⁷ Condition 2(f).

and Storage (GT&S) rate case if the Commission grants PG&E's request for a waiver of a detailed cost showing in this proceeding.

The Scoping Memo asks if PG&E's proposal to integrate its share of the Proposed Project's capacity into its existing storage operations and to use its existing tariffs for natural gas storage services provided from any of its gas storage fields, including the Proposed Project, is reasonable.²⁸ The Scoping Memo also asks whether PG&E's share of the costs of the Proposed Project should be deemed reasonable for inclusion in storage rates developed in a subsequent GT&S rate proceeding, or whether PG&E has the burden of justifying the costs of the Proposed Project sought to be recovered as prudent and reasonable and that PG&E is fully at risk for all costs deemed unreasonable in any subsequent review of PG&E's share of Proposed Project costs.

PG&E currently operates and sells the natural gas storage capacity from its existing three storage fields at McDonald Island, Los Medanos, and Pleasant Creek on an integrated basis without distinguishing between the fields, and does not have separate rates for each of its existing individual fields. PG&E proposes to continue this practice by integrating its share of the Proposed Project capacity into its existing storage operations and using its existing tariffs for natural gas storage services provided from any of its fields, including the Proposed Project.

According to PG&E, the integration of the Proposed Project's storage operations with PG&E's existing fields allows PG&E to operate its storage

²⁸ The PG&E Application contains PG&E's proposal to integrate its share of the Proposed Project capacity into its existing storage operations. No party opposed PG&E's proposal. However, this issue (Issue H) was included in to Scoping Memo so the Commission could consider the proposal.

services efficiently, providing the maximum amount of capacity to the market. PG&E states that it is operating under the terms of a three-year settlement, Gas Accord IV, which established PG&E's gas storage rates for the period 2008 through 2010.

PG&E states that it does not seek any adjustments to its existing rates as a result of placing the Proposed Project into service as part of its existing gas storage portfolio. Instead, PG&E intends to treat the new capacity provided by the Proposed Project for all purposes, including tariffs, the same as PG&E's existing capacity. After the expiration of the existing Gas Accord IV, PG&E will seek to have its rates for gas storage services adjusted in the next GT&S rate case.

The Settlement Agreement provides that PG&E will not seek recovery of any costs associated with the Proposed Project from the rates of its core customers in its 2011 GT&S rate case filed on September 18, 2009, or any other application or advice letter to the Commission which would include such costs prior to the end of the period in which rates determined by the 2011 GT&S rate case are effective.²⁹ This Condition resolves Issue H in the Scoping Memo.

The Settlement Agreement also provides that, to the extent that PG&E subsequently seeks recovery of any costs associated with the Proposed Project, PG&E will not be entitled to a presumption that the costs of the Proposed Project are reasonable or prudently incurred and shall bear the burden of proving (i) the prudence and reasonableness of the costs of the Proposed Project in any proceeding in which PG&E requests authority to include any costs of the Proposed Project in core rates, and (ii) that the storage costs which it proposes to

²⁹ Condition 3(a).

allocate to the class of customers are consistent with such customers' rights to use and actual utilization of the Proposed Project and other PG&E storage facilities.³⁰ This Condition resolves Issue M in the Scoping Memo.

Finally, the Settlement Agreement provides that PG&E will continue to obtain incremental core storage capacity through existing competitive procurement processes unless or until such competitive procurement processes are changed by final Commission order.³¹

The incremental core storage procurement procedures were adopted by the Commission in D.06-07-010, as modified by D.08-07-009. Under those decisions, PG&E is authorized to obtain incremental core storage capacity from storage providers using a request for offers process. Pursuant to the decision adopted today, GRS may participate in PG&E's authorized incremental core storage capacity solicitations.

Issue P - PG&E's ownership interest in the Proposed Project

LGS and WGS are concerned that PG&E's ability to increase its ownership interest in the Proposed Project could allow PG&E to exercise undue control of the storage market, and recommend that PG&E be required to obtain prior Commission approval before enlarging its share of the Proposed Project or before expanding or developing additional storage capacity beyond the 20 bcf of underground gas storage capacity anticipated for the Proposed Project. The Scoping Memo includes this as Issue P.

³⁰ Condition 3(b).

³¹ Condition 3(c).

To address concerns regarding increased ownership of the Proposed Project by PG&E, the Settlement Agreement provides that the Proposed Project is limited to the 20 bcf storage capacity described in the Applications or the capacity approved by the Commission in this proceeding, with PG&E owning a 25 percent undivided interest in such capacity (5 bcf) and GRS owning a 75 percent undivided interest in such capacity (15 bcf).³²

The Settlement Agreement prohibits PG&E or GRS from expanding the storage capacity of the Proposed Project beyond the capacity approved by the Commission in this proceeding without first seeking and receiving from the Commission any authority that may be required at the time of any proposed capacity expansion. To the extent that PG&E and/or GRS plan to expand the facilities and contend that Commission authority is not required at the time of any proposed capacity expansion, the Settlement Agreement requires PG&E and/or GRS to provide prior notice to the Commission and all parties to this proceeding of such proposed expansion and a detailed explanation in support of the contention that Commission authority is not required.³³

The Settlement Agreement also prohibits PG&E and/or GRS from changing the original 25 percent/75 percent project ownership ratio without first seeking and receiving from the Commission any approval that may be required at the time of the proposed change in the ownership ratio. To the extent that PG&E and GRS plan to change the original 25 percent/75 percent project ownership ratio and contend that Commission authority is not required, the

³² Condition 1(a).

³³ Condition 1(b).

Settlement Agreement requires PG&E and/or GRS to provide prior notice to the Commission and all parties to this proceeding of such proposed ownership ratio change and a detailed explanation in support of the contention that Commission authority is not required.³⁴

Finally, the Settlement Agreement requires PG&E and/or GRS to serve any notice, application and/or advice letter required by the Settlement Agreement or by laws and regulations applicable at the time authority is sought on all parties to this proceeding.³⁵

The provisions contained in Conditions 1(a) through 1(d) resolve Issue P in the Scoping Memo.

Issue Q - What reports and disclosures should be required?

In its protest to the PG&E Application and response to the GRS Application, DRA requests that GRS and PG&E be required to file annual reports detailing storage operations. DRA states that it does not object to issuance of the requested CPCNs if the reporting requirements are established.

The Scoping Memo asks what degree of disclosure should be required of Applicants' contracts and contract-related information; whether the Commission should adopt DRA's recommended reporting requirements for GRS and PG&E to address concerns about the potential exercise of market power; whether GRS and PG&E should be required to submit periodic reports containing information concerning changes in Proposed Project ownership by PG&E and its affiliates;

³⁴ Condition 1(c).

³⁵ Condition 1(d).

and whether GRS should be required to comply with any other conditions, such as those conditions imposed on LGS by D.08-01-018.

The Settlement Agreement requires GRS to semi-annually (on April 30 and on October 31) to report to the Director of the Energy Division, with a copy to DRA, the information about transactions which are not already subject to § 852 and § 854, including 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 (i) produces natural gas or provides natural gas storage, transportation or distribution services, or (ii) generates electricity, or provides electric transmission or distribution services. The information reported must include the nature (including name and location) of the asset acquired or in which the investment was made, and the amount of the acquisition or investment.³⁶

The Settlement Agreement requires GRS to provide to the Director of the Energy Division, for transactions to be completed within one year or less (short-term transactions), copies of all service agreements for such transactions within 30 days after commencement of the short-term service, to be followed by quarterly transaction summaries of specific sales. If GRS enters into multiple service agreements within a 30-day period, GRS may file these service agreements together so as to conserve the resources of both GRS and the Commission.³⁷ The quarterly summary of transactions must list, for all tariffed

³⁶ Condition 4(a)(i).

³⁷ Condition 4(a)(ii).

services, the purchaser, the transaction period, the type of service (e.g., firm, interruptible, balancing, etc.), the rate, the applicable volume, whether there is an affiliate relationship between GRS and the customer, and the total charge to the customer.

The Settlement Agreement also requires GRS to provide to the Energy Division, for transactions that will not be completed within one year (long-term transactions), true copies of all service agreements for such transactions within 30 days after commencement of the long-term service. To ensure the clear identification of filings and in order to facilitate the orderly maintenance of the Commission's records, the Settlement Agreement provides that service agreements for long-term transactions be filed separately from summaries of short-term transactions.³⁸

The Settlement Agreement prohibits GRS from engaging in storage or hub service transactions with its parent, Northwest Natural Gas Company (NW Natural) or its successors, or with any entity owned, affiliated with, or controlled by NW Natural, or its successors.³⁹

The Settlement Agreement requires GRS to provide an annual report to DRA detailing its operations in connection with GRS' percentage of undivided ownership interest in the Proposed Project, including:

- (a) The capacity of the storage facilities, i.e., total inventory, injection and withdrawal rights;

³⁸ Condition 4(a)(iii).

³⁹ Condition 4(a)(iv).

- (b) A summary showing average monthly storage inventory, injections and withdrawals for the project, which summary based on the Energy Information Reports GRS submits to the United States Department of Energy (DOE);
- (c) Daily operating records, aggregated on a weekly basis, based on the Energy Information Reports GRS submits to the DOE;
- (d) Firm capacity under contract on a monthly and annual basis; and
- (e) Interruptible capacity sold on a monthly and annual basis.⁴⁰

The Settlement Agreement requires GRS to maintain its corporate records at the utility level, make such records available to the Commission pursuant to § 314, and make available utility officers, employees and agents as required by § 314(a).⁴¹

The Settlement Agreement requires PG&E to provide an annual report to DRA detailing its operations at the Proposed Project, including, (a) the capacity of the Proposed Project storage facilities (i.e., total inventory, injection and withdrawal rights for PG&E's percentage of undivided ownership interest in the Proposed Project); (b) a summary showing average monthly storage inventory, injections and withdrawals for PG&E's percentage of undivided ownership interest in the Proposed Project, based on the Energy Information Reports that are submitted to the DOE; and (c) daily operating records, aggregated on a weekly basis, for PG&E's percentage of undivided ownership interest in the

⁴⁰ Condition 4(a)(v).

⁴¹ Condition 4(a)(vi).

Proposed Project, based on the Energy Information Reports that are submitted to the DOE.⁴²

The Settlement Agreement requires PG&E to, on an annual basis, provide a report to DRA of PG&E's aggregate firm storage capacity under contract (containing monthly and annual data) and aggregate interruptible storage capacity sold (also containing monthly and annual data).⁴³

The Settlement Agreement requires GRS and PG&E to provide an annual report to DRA, including (i) the capacity of the storage facilities (i.e., total inventory, injection and withdrawal rights); (ii) a summary showing average monthly storage inventory, injections and withdrawals for the Proposed Project, based on the Energy Information Reports the operator submits to the DOE; (iii) daily operating records, aggregated on a weekly basis, based on the Energy Information Reports the operator submits to the DOE; and (iv) a copy of the annual safety report, including a description of all safety-related incidents that is submitted to the United States Department of Transportation (DOT).⁴⁴

The Settlement Agreement provides that GRS or PG&E may submit competitively sensitive, confidential information under seal in accordance with GO 66-C and § 583.⁴⁵

The provisions of Condition 4 resolve Issue M in the Scoping Memo.

⁴² Condition 4(b)(i).

⁴³ Condition 4(b)(ii).

⁴⁴ Condition 4(c).

⁴⁵ This provision is included in Conditions 4(a), 4(b), and 4(c).

Other Terms of the Settlement Agreement

The Settling Parties agree to jointly request that the Commission adopt all of the Conditions in the Settlement Agreement; that the Conditions will apply to GRS and PG&E; and that GRS and PG&E will abide by the Conditions, effective upon the Commission's granting of the Applications and issuance of a Commission decision containing the Conditions.

The Settling Parties also agree to actively support prompt approval and implementation of the Settlement Agreement by including the Conditions without modification as ordering paragraphs in the decision granting the Applications, and to participate jointly in briefings to Commissioners and their advisors regarding the Settlement Agreement and the issues it resolves. Prior to a Commission decision in this proceeding, the Settling Parties further agree that they will not directly or indirectly advocate or otherwise seek any modification to or elimination of any or all of the Conditions.

The Settling Parties agree that upon issuance of a Commission decision adopting the Conditions, the Conditions may only be modified, revised, or eliminated by the Commission in a decision issued in response to a formal petition to the Commission that must be served on all of the parties to this proceeding, including DRA and LGS. Any such petition must state with specificity the need and basis for any proposed modification, revision, or elimination of any Condition(s).

The Settling Parties agree that upon Commission approval and implementation of the Settlement Agreement by including the Conditions as ordering paragraphs in the decision granting the Applications, all of the issues raised in the responses and protests of DRA and LGS will be deemed resolved and that GRS and PG&E will abide by the Conditions.

The Settling Parties agree that upon issuance of a Commission decision adopting the Conditions without modification, the Conditions may only be enforced by the Commission on its own investigation or pursuant to a formal or informal complaint by any of the Settling Parties, and that this Settlement Agreement does not create any contractual or other rights in the Settling Parties to enforce such Conditions in any forum other than the Commission.

Discussion

We have specific tests for whether or not to grant a motion for settlement and have applied these tests many times over the years. The Commission will not approve a settlement, whether contested or uncontested, unless it is reasonable in light of the whole record, consistent with law, and in the public interest.⁴⁶ We agree with Settling Parties that the unopposed Settlement Agreement meets the requirements set forth in Rule 12.1(d).

Reasonable in Light of the Whole Record

The proposed Settlement Agreement is reasonable in light of the whole record because the Settling Parties are fairly reflective of the affected interests, these parties actively participated in this proceeding, and the Settlement Agreement fairly and reasonably resolves the issues raised by the parties.

DRA protested the PG&E Application because it does not believe PG&E should be entitled to a presumption that the costs of the Proposed Project would be deemed reasonable for inclusion in the next GT&S rate case if the Commission granted PG&E's request for a waiver of a detailed cost showing in this proceeding. Condition 3 of the Settlement Agreement resolves concerns about

⁴⁶ Rule 12.1(d) of the Commission's Rules of Practice and Procedure (Rules).

subsidization of the Proposed Project by PG&E's core customers and the reasonableness of Proposed Project costs that PG&E may seek to recover.

DRA also recommended that GRS and PG&E be required to file annual reports detailing storage operations. Condition 4 of the Settlement Agreement resolves concerns about the need for information to detect the exercise of market power, and resolves Issues Q.1 through Q.4 in the Scoping Memo.

LGS' and WGS' responses to the Applications raised concerns regarding the potential for PG&E to afford GRS undue preference, the potential for PG&E's core ratepayers to subsidize PG&E's share of the Proposed Project, changes in project ownership, the need for parity in reporting and regulatory requirements among independent storage providers, and other potential impacts on the competitive gas storage market resulting from the joint development of the Proposed Project.

Condition 1 of the Settlement Agreement resolves concerns regarding increased ownership of the Proposed Project by PG&E and resolves Issue P in the Scoping Memo by limiting the capacity of the Proposed Project and GRS' and PG&E's share in ownership of that capacity, and by requiring GRS and PG&E obtain Commission approval before expanding that capacity or changing the percentage of the Proposed Project owned by GRS or PG&E. Condition 2 resolves concerns regarding the potential for undue preference to GRS by PG&E due to the unique circumstances presented by PG&E's ownership interest in the Proposed Project, and resolves Issue G in the Scoping Memo.

Condition 4 resolves concerns about the exercise of market power by establishing requirements for reporting ownership interests, short-term and long-term contracts, and storage operations data for each Applicant's share of the Proposed Project on a separate and combined basis, and for PG&E's monthly and

annual aggregate firm storage capacity under contract and monthly and annual aggregate interruptible storage capacity sold.

In their PHC statements, DRA and LGS recommended that, if the Commission deems the JPA and the OA to be appropriate, these agreements should be approved as part of the Commission's decision because of the unique nature of the partnership between PG&E and GRS, and the different regulations applicable to each. LGS also recommended that the OBA be approved as part of the Commission's decision.

The Settlement Agreement states that all parties have now had the opportunity to review the complete JPA, OA, and OBA, and to negotiate Conditions to prevent situations where PG&E could provide preferential treatment to GRS. Therefore, to the extent that the Commission approves the Conditions without modification and includes them as ordering paragraphs in a decision granting the Applications, Issue G is resolved and the Settling Parties no longer seek Commission approval of the JPA, OA, and OBA.

The Settling Parties have bargained earnestly and in good faith, and the agreed upon Conditions are the result of extensive negotiations between the Settling Parties that reflect a reasonable compromise of strongly held views on issues important to the parties. The compromises reached in the Settlement Agreement resolve many of the contested issues in the proceeding, and are within the reasonable range of possible outcomes of litigation. Therefore, we find that the Settlement Agreement is reasonable in light of the whole record.

Consistent With Law

The Commission may not adopt a settlement that is contrary to law. The Settling Parties dispute factual and legal issues, but set aside their disputes and propose a settlement which they contend does not contravene or compromise

any statutory provision or prior Commission decision. We agree that, taking the Settlement Agreement as a whole and considering the public interest (as discussed more below), the Settlement Agreement does not contravene or compromise any statutory provision or prior Commission decision. Moreover, unless we expressly provide otherwise, adoption of a settlement does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.⁴⁷

Although the Settlement Agreement provides that GRS or PG&E may submit competitively sensitive, confidential information under seal in accordance with GO 66-C and § 583, the Commission will determine at the time such information is submitted whether, pursuant to GO 66-C, the information should receive confidential treatment.

In the Public Interest

There is a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation,⁴⁸ and the Settlement Agreement satisfies this public policy preference for the following reasons.

First, the Settling Parties represent the interests of the Applicants, their ratepayers and their competitors. GRS and PG&E represent the interests of their shareholders and PG&E provides necessary energy services to its customers. DRA represents the interests of public utility customers and subscribers within the jurisdiction of the Commission, with the goal of obtaining the lowest possible

⁴⁷ Rule 12.5.

⁴⁸ D.88-12-083, 30 CPUC2d 189, 221.

rate for service consistent with reliable and safe service levels.⁴⁹ LGS represents the interests of competitive gas storage providers because it owns and operates an independent gas storage facility, competes with PG&E and others in the storage service business, and will face additional competition from GRS and PG&E after the Proposed Project is approved and constructed. Thus, the Settling Parties represent the interests of shareholders, ratepayers, and competitors that have an interest in the gas storage market. Although the Settlement Agreement is not joined by all parties, the Settlement Agreement is uncontested.⁵⁰

The Settling Parties are experienced in public utility litigation, and the Settlement Agreement is the result of extensive, vigorous, and arms-length settlement negotiations. The Settling Parties acknowledge that the Commission could have resolved the issues raised in the responses and protests of DRA and LGS in favor of either DRA, GRS, LGS or PG&E. Accordingly, the Settling Parties themselves have balanced a variety of issues of importance to them and have agreed to the Conditions and other terms of the Settlement Agreement as a reasonable means by which to resolve all of the issues raised in the responses and protests of DRA and LGS.

The Settlement Agreement serves the public interest by resolving competing concerns in a collaborative and cooperative manner. By reaching a settlement, the parties avoid the costs of further litigation in this proceeding, and

⁴⁹ § 309.5(a).

⁵⁰ WGS, an independent gas storage provider, participated in the settlement discussions but is not a party to the Settlement Agreement. However, according to the Settling Parties, WGS does not oppose the settlement terms, does not request evidentiary hearings, and does not oppose the issuance of CPCNs to GRS or PG&E (Joint Status Report of DRA, GRS, LGS, and PG&E, at 3.)

eliminate the possible litigation costs for rehearing and appeal. Approval of the Settlement Agreement will provide speedy and complete resolution of contested issues between the Settling Parties and will facilitate prompt approval of the Applications.

The Settlement Agreement resolves competitors' concerns about the possibility of PG&E increasing its share of the ownership of the Proposed Project and its share of California's gas storage market, and concerns that PG&E might grant preferential treatment to GRS over other independent storage providers. The Settlement Agreement also resolves concerns that PG&E might use revenues from core customers to subsidize its Proposed Project costs, and requires PG&E to demonstrate the prudence and reasonableness of any Proposed Project costs it may seek to include in core rates in the future.

Finally, the Settlement Agreement establishes reporting and disclosure requirements for customer contracts, storage operations, and project ownership that will provide the Commission with information similar to that required of other independent storage providers but with additional information appropriate for the unique relationship between GRS and PG&E.

Thus, for these reasons and taken as a whole, the Settlement Agreement is in the public interest. The Settlement Agreement meets the tests for Commission adoption, and should be approved by the Commission as a fair and final resolution of several issues in this proceeding.

7. Other Issues

7.1. Does § 785 Give Priority to Natural Gas Production Over Storage?

Armstrong's protests contend that § 785 requires the Commission, as a first priority, to encourage increased gas production, and that the Proposed Project

will frustrate this policy.⁵¹ Although Armstrong withdrew its protests to the Applications, the Commission will still consider the legal issue of whether § 785 requires the Commission to give priority to production of natural gas from the Gas Field over the use of the Gas Field for gas storage to ensure that our decision is consistent with § 785. We conclude that § 785 does not require the Commission to give priority to production of natural gas from the Gas Field over the use of the Gas Field for gas storage services, and, therefore, approval of the Proposed Project will not contravene § 785.

The Legislature established the Gas Policy Act when it enacted Assembly Bill (AB) 2117 to add § 785 to the Public Utilities Code in 1983.⁵² Section 785(a) states in part that,

“the commission shall... encourage, as a first priority, the increased production of gas in this state, including gas produced from that area of the Pacific Ocean along the coast of California commonly known as the outer continental shelf, and shall require, after a hearing, every gas corporation to purchase that gas which is compatible with the corporation’s gas plant and which is produced in this state having an actual delivered cost, measured in equivalent heat units, equal to or less than other available gas, unless this requirement will result in higher overall costs of gas or other consequences adverse to the interests of gas customers. (Emphasis added.)

In establishing the Gas Policy Act, the Legislature declared that California gas production is an important part of the state’s gas supply, that the actual

⁵¹ Armstrong withdrew its protests to the Applications on May 18, 2009, after resolving the issues raised in its protests through negotiations with GRS and PG&E.

⁵² Stats 1983 Chapter 1287.

delivered cost of California produced gas is presently lower than the cost of alternative out-of-state and Canadian gas supplies.⁵³ Section 2(d) of the Gas Policy Act explicitly states that the Legislature's intention in enacting the Gas Policy Act is to require the state's public utility gas corporations to purchase all available supplies of low-cost California gas first, provided that such purchases do not result in higher overall costs of gas or other consequences adverse to the interests of gas customers.

The Legislature's declaration makes clear that the intent of § 785 is to give priority to purchasing low-cost natural gas produced in California over the purchase of higher-cost out-of-state and Canadian gas supplies. This interpretation is supported by the legislative bill analysis for AB 1906.

AB 1906 was initially introduced to amend § 785 but was ultimately enrolled as § 785.1, as the Gas Policy Act Amendments of 1993. According to the bill analysis, AB 1906 was authored to ensure that California gas producers are not placed at an unfair economic disadvantage relative to out-of-state shippers. The bill analysis states, in part,

"... The price paid to California producers is substantially below the cost of out-of-state gas, in part reflecting the fact that buyers do not incur charges for long distance transportation over interstate pipelines. In part the lower price reflects the historical fact that Pacific Gas & Electric (PG&E), incase [sic] of Northern California gas production, has exercised its monopoly control over intrastate gas transmission service and its monopoly power as the sole buyer of gas to suppress prices for California gas. The result has been a decline in the level of exploration and development for California gas and the diminution of investment, employment and taxes paid

⁵³ Chapter 1287, AB 2117, Sections 2(a) and 2(b).

by this local California business. Loss of market share by California gas production has been accompanied by a gain in market share for out-of-state producers. The Legislature has acted on this issue a number of times in the past 10 years, most notably in the California Gas Policy Act (Moore, 1983 and 1985). This bill addresses problems which have gone unresolved by the CPUC for a number of years, in which the Assembly Utilities and Commerce Committee heard at its informational hearing earlier in the session.”

This analysis is consistent with the stated intent of § 785 to give priority to purchasing natural gas produced in California over natural gas produced out-of-state. Like § 785, the intent of § 785.1 is for the Commission to give priority to California-produced gas over out-of-state gas.

There is nothing to suggest that the Legislature intended for the Commission to prioritize natural gas production over storage. In establishing the Gas Policy Act Amendments of 1993, the Legislature states, among other things, that the state’s regulatory agencies “should ensure that natural gas produced in this state is not placed at an unfair economic disadvantage relative to gas from sources outside of the state as the result of any transportation tariffs or conditions of service.”⁵⁴

Related statutes support the conclusion that § 785 does not require the Commission to give natural gas production priority over the storage of natural gas. For example, § 785.2 requires the Commission “to investigate, as part of the rate proceeding for any gas corporation, impediments to the in-state production and storage of natural gas. The commission may adopt a tariff that encourages in-state production or storage of natural gas, including, but not limited to,

⁵⁴ AB 1906, Chapter 732, Chaptered October 4, 1993. Emphasis added.

reducing local transmission rates applicable to in-state gas blends, unless the commission finds that adopting the tariff will likely result in consequences adverse to the interests of gas customers.⁵⁵

Section 785.2 requires the Commission to investigate impediments to both the in-state production and the in-state storage of natural gas, and does not prioritize one over the other. Section 785.2 also permits the Commission to adopt a tariff that encourages in-state production or storage of natural gas but does require that the Commission prioritize production over storage.

Section 785.5(b) permits the Commission to establish and revise guidelines for priorities among suppliers and sources of supply of gas to gas corporations, taking into consideration the requirements of § 785, and § 785.7 prohibits gas corporations from charging a higher rate for the transportation of gas produced in this state than for the transportation of gas from any other source.⁵⁶

Thus, the intent of §§ 785, et seq. is to ensure that natural gas produced in this state is not placed at an unfair economic disadvantage relative to gas from sources outside of the state but § 785 does not require the Commission to prioritize the production of natural gas over gas storage services. Because § 785 does not require the Commission prioritize natural gas production over gas storage services, it is not necessary to determine if the Starkey Formations that the Proposed Project intends to use as storage reservoirs are depleted of all economically recoverable gas.

⁵⁵ § 785.2. Emphasis added.

⁵⁶ § 785.7(a).

As discussed above, Armstrong, through negotiations with GRS and PG&E, reached agreement on the issues raised in its protests, and has withdrawn its protests to the GRS and PG&E Applications. Although Will Gill & Sons continues to disagree with GRS and PG&E and has not settled with GRS and PG&E with regard to the approximately 1,000 unleased acres, Will Gill & Sons withdrew its protest to the PG&E Application.

Because Armstrong and Will Gill & Sons no longer object to GRS and PG&E using the Gas Field for gas storage services, it is not necessary to determine if the Proposed Project can coexist with continued natural gas production from the other formations in the Gas Field, or to consider what, if anything, should be required to minimize or eliminate conflicts between gas production and storage operations. It is also not necessary to determine whether any grant of authority to GRS or PG&E in this proceeding should be limited to the Starkey Formations so as not to unreasonably interfere with ongoing natural gas production from other formations within the Gas Field.

7.2. Liability Insurance and Similar Indemnifications

The OA (Operator Agreement) provides that the Operator shall maintain policies of insurance at all times commensurate with the risk, and having such deductibles and retentions as would be placed by a reasonably prudent natural gas storage and pipeline business operator during the development and permitting, construction and operation phase(s) for a project of similar scope and nature.⁵⁷ Exhibit F to the OA requires the Proposed Project operator to obtain

⁵⁷ Exhibit F.

and maintain a general liability insurance policy with coverage of at least a \$50 million minimum per occurrence and \$50 million annual aggregate.

As discussed above, the Settlement Agreement that we approve and the terms of which we incorporate in this Decision require Applicants to promptly report and submit to the Commission and the parties to this proceeding copies of any revisions or amendments to the OA. Thus, the Commission will be made aware of any changes to the OA that would modify the insurance requirements, and, if necessary, the Commission will have an opportunity at that time to address any concerns. Therefore, we will not impose on Applicants any additional insurance requirements for the Proposed Project.

7.3. Interconnection With PG&E

Applicants state that the details regarding the terms and conditions of the interconnection with PG&E Line 401 will be addressed in an Agreement for Installation or Allocation of Special Facilities (Special Facilities Agreement), and that Applicants and PG&E are working to finalize the Special Facilities Agreement using the form of agreement on file with the Commission.⁵⁸

Applicants state that detailed design engineering work for the interconnection must be completed and costs of interconnection facilities identified before the Special Facilities Agreement can be finalized. Applicants state that this effort is underway but may not be completed until late in the third or early in the fourth quarter of 2009. Applicants agree to submit to the Energy Division a copy of the Special Facilities Agreement as soon as possible after it is executed.

⁵⁸ Applicants' June 30, 2009 response to the June 18, 2009 ALJ ruling directing Applicants to submit additional information.

Applicants assert that the interconnection arrangements between Applicants and PG&E will be similar to those established in previous agreements between PG&E and other independent storage providers, and will comply with the Gas Storage Rules and PG&E Rule 2. Applicants further state that the agreement must also be consistent with the Settlement Agreement.

As stated above, the Settlement Agreement, among other things, prohibits PG&E and any entity related to PG&E from providing any undue preference to GRS as compared to any other independent storage providers in terms of interconnection, classification of interconnection costs, construction and pricing of interconnection and other facilities.⁵⁹

The Settlement Agreement also requires PG&E, pursuant to a standing request or an agreement-specific request of any party to this proceeding, to provide copies of, among other things, interconnection agreements and other agreements pertinent to the construction and operation of the interconnection between PG&E and GRS. To the extent that there are any differences in treatment provided by PG&E to GRS as compared to other independent storage providers, the Settlement Agreement requires PG&E to provide other independent storage providers with the opportunity to receive comparable treatment.

The Gas Storage Decision provides that utilities should interconnect with independent storage providers as if the latter were consumers of gas. The Gas Storage Decision determined that standard interconnection costs will be recovered on a rolled-in basis, that special facilities costs will be charged to the

⁵⁹ Condition 2(a).

storage provider, and that PG&E's Rule 2 is a reasonable model for determining of what are standard facilities costs and what are special facilities costs.

The agreement form that will be used to establish interconnection arrangements (PG&E Form 79-255) contains the terms and conditions (excluding costs) for installation of special facilities, and is analogous in scope and depth (although not in content) to the interconnection agreements between PG&E and other independent storage providers. The Special Facilities Agreement that will be established between Applicants and PG&E complies with the Gas Storage Rules⁶⁰ and should be approved.

Submitting the executed agreement to the Energy Division after a decision is issued approving the application is consistent with the practice in prior independent gas storage proceedings. In D.97-06-091 and D.00-05-038, the Commission required the applicants to provide the Energy Division the final total cost of interconnection, including the share of the cost paid by each entity, because this information was not set forth in the interconnection agreements.

Similarly, we will require Applicants to provide the Energy Division with a supplemental filing similar to those we required in D.97-06-091 and D.00-05-038. Before commencing its operations, Applicants shall provide the Commission, in a supplemental filing to the Energy Division, a copy of the executed Special Facilities Agreement containing the final total cost of the interconnection including the cost paid by each entity.⁶¹

⁶⁰ D.93-02-013, Appendix B.

⁶¹ The Special Facilities Agreement should not be filed with the Commission's Docket Office.

7.4. GRS' Request for Approval of Market-Based Rates

GRS requests authority to charge market-based rates for the storage services it provides using its 75 percent interest in the Proposed Project. The Gas Storage Decision adopted market-based rates for non-core storage including incremental rates for service derived from new or expanded facilities, and, since that decision, the Commission has approved market-based rates for other independent gas storage providers.

The Commission evaluates the following factors in its market power analysis:⁶²

1. Whether the applicant is a new entrant to California;
2. Whether the proposed project creates risks for core ratepayers;
3. Whether the applicant or any of its affiliates owns or controls gas transportation; and
4. Whether the applicant or any of its affiliates controls other natural gas facilities.

Applying these criteria to GRS leads us to conclude that GRS does not have market power and should be authorized to charge market-based rates for the storage services.

First, GRS is a new entrant to the California gas storage market, and has no customers. GRS will become the third independent storage provider to enter California's gas storage market and will compete with other independent gas storage service providers. As a new entrant, it is highly unlikely that

⁶² See D.00-05-048 and D.02-07-036.

competition from GRS could drive the incumbent investor-owned utility from the gas storage market.

Each of the existing independent gas storage service providers has nearly twice the working gas capacity of GRS, representing significantly larger potential gas storage market shares than GRS. As a result of the approval of this Application, PG&E will also increase its own market share of storage capacity through its ownership interest in the Proposed Project, and will compete with GRS.

GRS' entry into the gas storage market will increase competition among the current non-core storage providers, and, as a result, reduce market concentration in California. In addition, there are alternatives to gas storage services, including pipeline transportation capacity and utility gas balancing services.

As discussed above, the Settlement Agreement also contains provisions that prohibit Applicants from changing the 75/25% ownership ratio between GRS and PG&E or expanding the storage capacity of the Proposed Project beyond the capacity approved by the Commission in this proceeding without first seeking and receiving from this Commission any authority that may be required, and to provide prior notice to the Commission and all parties to this proceeding of any proposed expansion that Applicants contend does not require Commission authorization.⁶³

Second, GRS' interest in the Proposed Project does not place core ratepayers at risk. GRS' shareholders bear the risks resulting from unused or

⁶³ Conditions 1(b) and 1(c).

discounted capacity in GRS' share of the Proposed Project. GRS does not have core ratepayers and will not be subsidized by the core ratepayers of its parent, NW Natural or by PG&E's core ratepayers. Therefore, there is no risk that core ratepayers will cross-subsidize GRS' interest in the Proposed Project or be at risk for that investment.

Finally, GRS does not own or control gas transportation infrastructure or contracts for capacity on major gas pipelines or own or control any other natural gas industry facilities, including the transportation infrastructure necessary to deliver gas stored in the Proposed Project to the market. GRS' parent, NW Natural, owns pipeline and distribution facilities in Oregon and Washington, which it uses to serve core customers. It also holds contracts for transportation capacity on two major natural gas pipelines in the Pacific Northwest in order to transport gas to its Oregon and Washington facilities.

However, NW Natural does not provide any services in California, and does not own or control transportation infrastructure in California or directly connected to California. We conclude that GRS does not have market power as a result of its or NW Natural's ownership of other natural gas infrastructure and interests in capacity contracts. Therefore, GRS should be authorized to provide the proposed storage services at market-based rates because GRS is a new market entrant with no customers, GRS' interest in the Proposed Project presents no risk to core ratepayers, and neither GRS nor its affiliates own or control gas transportation or other natural gas facilities in California.

As we have done in our prior decisions concerning competitive gas storage applications,⁶⁴ we will permit GRS to charge market-based rates within a rate zone and to file tariffs with a rate window to allow for fluctuations in the market. GRS need not file any cost justification with its tariffs.

7.5. Requests for Waiver of Cost Showing

CPCN applicants are required to submit a statement of the estimated cost of the proposed construction and the estimated fixed and operating annual costs.⁶⁵ However, the Commission has not previously required applicants seeking to provide competitive gas storage services to provide a cost showing relating to development and construction of their gas storage facilities.⁶⁶

GRS is seeking market-based rate authority for the gas storage services it will provide in connection with the Proposed Project, and PG&E proposes to charge its tariffed market storage rates for the gas storage services it will provide in connection with the Proposed Project. Because GRS' and PG&E's shareholders will be at risk for the financial success of the Proposed Project, GRS and PG&E should be treated the same as other competitive storage providers with regard to providing a cost showing.

Except to the extent that PG&E obtains incremental core storage capacity under Commission authorized procedures, the Proposed Project will not serve core ratepayers, and core customers will not bear project costs because PG&E is not seeking to apply new rates to the Proposed Project at this time. As a result,

⁶⁴ See D.97-06-091, as modified by D.98-06-083, and D.00-05-048.

⁶⁵ Rule 3.1(f).

⁶⁶ See D.98-06-083, re: WGS and D.00-05-048 re: LGS.

there is no need to assess costs to determine whether the Proposed Project is cost-effective for ratepayers, and a cost showing at this time is not necessary.

Therefore, GRS' and PG&E's requests to waive the need for a cost showing in the Applications are granted.

7.6. Requests for Waiver of the Cost Cap Requirement

Section 1005.5 requires the Commission to specify a maximum cost deemed to be reasonable and prudent for projects whose estimated costs are over \$50 million (cost cap). The purpose of § 1005.5 is to limit cost recovery from ratepayers under a more traditional cost-of-service rate-of-return ratemaking scheme. GRS and PG&E estimate that the Proposed Project will cost will be in the range of \$200 to \$225 million.

The Commission has not previously applied the cost cap requirement in connection with independent gas storage facilities. For example, D.00-05-048 waived the cost cap requirement because LGS' rates were to be market-based and because ratepayers would not be financing the LGS project. D.02-07-036 also waived the cost cap requirement because WGS did not have captive customers who would finance the expansion project. Because GRS' rates will be market-based, ratepayers are not financing the Proposed Project and we do not have concerns regarding cross-subsidization by ratepayers.

Similarly, PG&E is seeking to provide natural gas storage services using its existing market storage tariff rates and does not seek to allocate any of its share of the costs to core customers. We do not have concerns regarding cross-subsidization by ratepayers because PG&E's captive ratepayers will not be funding its interest in the Proposed Project. Therefore, we waive the cost cap requirement of § 1005.5 for GRS and for PG&E.

7.7. GRS' Request for Exemptions From the Requirements of § 818 and § 851 and the Commission's Competitive Bidding Rule

GRS requests that the Commission determine that the competitive bidding rule does not apply to GRS, or that GRS' project-related financing arrangements are exempt from the policy. GRS asserts that this will provide GRS with the flexibility to negotiate advantageous financing where the financing structure for independent gas storage is uncommon, and in cases like this where GRS has no bond rating.

The Scoping Memo asked if GRS' request for exemptions from the requirements of § 818 and § 851 and the Commission's Competitive Bidding Rule in connection with its financing of the development of the Proposed Project is in the public interest, and if any exemptions that may be granted to GRS should be limited to the initial financing of the Proposed Project or extended to include to subsequent transactions.

DRA states that it does not oppose GRS' requests for exemptions in connection with the financing of the Proposed Project, but that GRS should not be exempt from the requirements of § 851 beyond its activities in connection with the financing of the Proposed Project.

In response to concerns expressed by DRA and LGS, GRS clarified that it seeks an exemption from the requirements of § 818 and § 851 only for the initial construction financing and permanent debt financing in connection with development of its 75 percent share in the Proposed Project and is not seeking a general exemption from those requirements. This clarification is recited in the Settlement Agreement and is no longer an issue with the Settling Parties.

We grant GRS' requests for exemption from the requirements of § 818 and § 851 for the initial construction financing and permanent debt financing in

connection with development of its 75 percent share in the Proposed Project. GRS will not have captive customers to finance the Proposed Project and, therefore, GRS shareholders will bear the financial risk of the Proposed Project. Market competition will serve to constrain the costs that GRS can incur for capital and still compete effectively, and, therefore, the Commission's supervision of GRS' financing arrangements is not necessary to protect GRS customers or the public interest.

There is no need to grant GRS an exemption from the Competitive Bidding Rule for the Proposed Project because the Competitive Bidding Rule does not apply to GRS. The Competitive Bidding Rule,⁶⁷ among other things, provides that the competitive bidding requirement is applicable only to utilities with bond ratings of "A" or higher. The Competitive Bidding Rule does not apply to GRS because GRS does not have a bond rating.

7.8. PG&E's Requests for a PTC

The PG&E Application satisfies the requirements for a PTC, including a description of the proposed facilities and related costs, a map, reasons the route was selected, positions of the government agencies having undertaken review of the Proposed Project, a PEA (Proponent's Environmental Assessment), and compliance with the provisions of CEQA.⁶⁸ No party opposes PG&E's request and the PTC is granted.

⁶⁷ See Resolution F-616, adopted October 1, 1986.

⁶⁸ On July 21, 2009, PG&E submitted to the ALJ and served parties a copy of its Field Management Plan describing the measures PG&E will take to reduce the potential for exposure to EMFs generated by the Proposed Project.

8. Environmental Review

The actions taken for environmental review of the Proposed Project, in accordance with GO 131-D and CEQA, are discussed below.

8.1. Proponent's Environmental Assessment

GRS included its PEA with the Application, pursuant to GO 131-D, Section IX.B.1.e.⁶⁹ The PEA evaluates the environmental impacts that may result from the construction or operation of the Proposed Project. GRS' PEA contains a project description in Section 3, and maps and diagrams in Figures 3.1-1 through 3.7-3.

The PEA concludes that the Proposed Project will have less than significant, or no impact, to all environmental resource categories. Although GRS does not anticipate significant impacts to any resource category, GRS incorporates specific procedures into the Proposed Project construction plans as an added measure of protection to environmental resources that occur in the area.⁷⁰

8.2. Draft Initial Study/Mitigated Negative Declaration

As the next step in the environmental review, the Energy Division reviewed the PEA. On November 7, 2008, the Energy Division informed GRS and PG&E by letter that the Applications was deemed complete for purposes of undertaking the environmental review required by CEQA, and began preparing an Initial Study (IS). On December 8, 2008, the Energy Division determined the

⁶⁹ The PG&E Application relies on the PEA that GRS has prepared for the Proposed Project.

⁷⁰ PEA, Section 4.

Proposed Project will not have a significant adverse impact on the environment, conditioned on certain mitigation measures.

8.3. Mitigation Measures

The Draft IS/MND found that, with mitigation measures, approval of the Proposed Project will have a less than significant environmental impact in the areas of aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, noise, recreation, transportation and traffic, and utilities and service systems.⁷¹

8.4. Mitigation Monitoring and Reporting Program

As required by CEQA, the Draft IS/MND included a Mitigation Monitoring and Reporting Program (MMRP).⁷² The MMRP describes the mitigation measures and specifically details how each mitigation measure will be implemented, and includes information on the timing of implementation and monitoring requirements. The Commission also uses the MMRP as a guide and record of monitoring the utility's compliance with its provisions. GRS and PG&E have agreed to each measure and provision of the MMRP. In response to comments on the Draft IS/MND certain changes were made to the MMRP and

⁷¹ The Draft IS/MND found that the Proposed Project will have no environmental impact on land use and planning, and less than significant environmental impacts requiring no mitigation measures in the areas of mineral resources, population and housing, and public services. The Draft IS/MND also found that the Proposed Project will have a less than significant environmental impact on air quality but recommends feasible measures to reduce greenhouse gas emissions.

⁷² CEQA Guidelines, Section 15074(d).

those changes are documented in the Final IS/MND. Additionally, the Commission further clarifies mitigation measure Bio-17 as follows:

Qualified biologists shall survey the area to be directly impacted by construction in order to determine presence of potentially suitable habitat for Nelson's antelope ground squirrel. Pre-construction surveys shall be performed at appropriate times and under appropriate environmental conditions, in consultation with CDFG within 15 days prior to the onset of any project related ground-disturbing activity during the life of the Project. Potentially suitable habitat is defined as non-cultivated areas with sandy loam soils, widely-spaced alkali scrub vegetation, and dry washes. Appropriate measures shall be determined and implemented in consultation with CDFG to avoid impacts if surveys indicate presence of Nelson's antelope squirrel in the Project Area. ~~Potential measures may include:~~

- ~~a) Exclusion fencing at perimeter of construction areas~~
- ~~b) Trapping and relocation of ground squirrels to suitable habitat outside of construction areas~~
- ~~c) Avoiding burrow concentration areas.~~

If preconstruction surveys do not indicate the presence of the Nelson's antelope ground squirrel and the species is detected during the construction phase, construction activities shall be immediately halted in the area and consultation with the CDFG shall occur. The CDFG shall determine if the project will require a take permit. If a take permit will not be required, avoidance measures shall be implemented in consultation with the CDFG. Potential avoidance measures may include:

- a) Establishing a minimum 30 foot buffer around any burrow of appropriate size for the Nelson's antelope ground squirrel;
- b) Onsite biological monitor shall be present during all construction activities;
- c) Speed limits shall be established for construction vehicles, and in some cases, biological monitors shall escort vehicles by walking in front of the vehicles while watching for the Nelson's antelope ground squirrel;

- d) Installation of exclusion fencing at the perimeter of the construction area if the CDFG determines that the installation would not result in a take.

The Commission adopts the MMRP, with the above clarification, as part of its approval of the Proposed Project, and Applicants are required to comply with it.

8.5. Electric and Magnetic Fields

CEQA does not define or adopt any standards to address the potential health risk impacts of possible exposure to EMF, primarily because of the lack of scientific evidence of such risk. The Commission also has examined EMF impacts in several previous proceedings. We found the scientific evidence presented in those proceedings was uncertain as to the possible health effects of EMF, and we did not find it appropriate to adopt any related numerical standards.

However, recognizing that public concern remains, we require that all requests for a PTC include a description of the measures taken or proposed by the utility to reduce the potential for exposure to EMF generated by the Proposed Project.⁷³ We developed an interim policy addressing the matter that requires utilities, among other things, to identify the no-cost measures undertaken, and the low-cost measures implemented, to reduce the potential impacts of EMF.⁷⁴ The benchmark established for low-cost measures is 4% of the total budgeted project cost that results in an EMF reduction of at least a 15% (as measured at the edge of the utility right-of-way).

⁷³ GO 131-D, Section X.

⁷⁴ See D.06-01-042, and D.93-11-013.

EMF will be present during construction of the Proposed Project from the existing power lines and other sources in the area, and from the operation and maintenance of the proposed power line. Although most of the Proposed Project will be located on land that is undeveloped or agricultural, there is a single residence located along the proposed power line right-of-way on Avenue 7 ½ in Firebaugh.

Pursuant to D.06-01-042, low-cost EMF mitigation is not necessary in agricultural and undeveloped land except for permanently occupied residences, schools or hospitals located on these lands. Therefore, EMF mitigation is required at the residential location in Firebaugh.

On July 21, 2009, PG&E submitted the EMF Field Management Plan (FMP) addressing the EMF measures that will be taken in connection with the Proposed Project.⁷⁵ The FMP proposes to relocate the tap point (the point on the power line where a tap from the substation is tied in) for the new power line approximately 1,100 feet further east than the originally proposed location. As a result, the tap point will no longer be adjacent to the residence on Avenue 7 ½.

We adopt the FMP for the Proposed Project and require PG&E to comply with it.

8.6. Public Notice and Review

On July 16, 2009, the Energy Division published a Notice of Intent to Adopt an MND (NOI), and released the Draft IS/MND for a 30-day public review and comment period.⁷⁶ The Draft IS/MND was distributed to federal,

⁷⁵ The FMP is included in the Final MND as Appendix G.

⁷⁶ The September 15, 2009 Administrative Law Judge Ruling identified, marked, and received into the record the IS/Draft MND as Reference Exhibit A.

state and local agencies; property owners within 300 feet of the Proposed Project; and other interested parties (identified in the Draft IS/MND). A Public Notice of the Proposed Project also was published in the local newspaper, announcing the availability of the Draft IS/MND, and a public meeting was held on July 29, 2009 to provide information and to accept written or oral comments on the Draft IS/MND. The 30-day public review and comment period ended on August 14, 2009.

Comment letters on the Draft IS/MND were received from the Department of Forestry and Fire Protection, the CDFG (California Department of Fish and Game), the California State Lands Commission, the Department of Water Resources, the Madera County Planning Department, the San Joaquin Valley Air Pollution Control District, and the Westlands Water District. Those comments and the Commission's responses to those comments are contained in the Final MND.

8.7. Final MND

A Final MND was prepared pursuant to CEQA guidelines, and released by the Energy Division on September 14, 2009.⁷⁷ The Final MND addresses all aspects of the Draft IS/MND, includes the comments received on the Draft IS/MND and the responses to those comments by the Lead Agency (Energy Division), and includes a final version of the MMRP.

Although a few revisions were made in the Final MND to clarify and further explain certain mitigation measures described in the Draft IS/MND, the Final MND does not identify any new significant environmental impacts in

⁷⁷ The September 15, 2009 Administrative Law Judge Ruling identified, marked, and received into the record the Final MND as Reference Exhibit B.

addition to those identified in the Draft IS/MND. However, in response to recommendations from the CDFG, mitigation measures Bio-17 and Bio-18 in the Draft MND have been revised and combined as a single mitigation measure (Bio-17) in the Final IS/MND. Mitigation measure Bio-17 in the Final IS/MND requires Applicants to perform pre-construction surveys in consultation with the CDFG, and, if Nelson's antelope ground squirrel, a protected species, is detected, to consult with the CDFG to determine and implement appropriate measures.

In this decision we further clarify Bio-17 to detail actions that must be taken if the Nelson antelope ground squirrel is detected during the construction phase. The specific language is detailed in Section 8.4 above. The clarifying language provides more effective mitigation as the original measure could have unintentionally resulted in harm to the Nelson antelope ground squirrel. The mitigation measure as clarified will not have any potential significant effect on the environment.

Before granting the Applications, we must consider the Final MND.⁷⁸ We have done so and find that the Final MND (which incorporates the Draft IS/MND) was prepared in compliance with and meets the requirements of CEQA. We further find that on the basis of the whole record there is no substantial evidence that the Proposed Project will have a significant effect on the environment and that the Final MND reflects the Commission's independent judgments and analysis.⁷⁹ We adopt the Final MND in its entirety and with the

⁷⁸ CEQA Guidelines, Section 15004(a).

⁷⁹ CEQA Guidelines, Section 15074(b).

clarifying language of mitigation measure Bio-17, and incorporate it by reference in this decision approving the Proposed Project.⁸⁰

The Final MND concludes that the Proposed Project will not have a significant adverse impact on the environment, because the mitigation measures described therein, and agreed to and incorporated by Applicants into the Proposed Project, will ensure that any potentially significant impacts that have been identified with the Proposed Project will remain at less than significant levels.

9. Conclusion

Based on the analysis of the Draft IS/MND and Final MND, and the mitigation measures identified therein and incorporated into the Proposed Project, the Commission finds that the Proposed Project will not have a significant impact on the environment.

We have reviewed the Applications and, after considering all of the above requirements, find them complete and in compliance with GO 131-D. After considering the need for and the benefits of competitive gas storage facilities in California pursuant to § 1001, the criteria set forth in § 1002, and the outcome of the IS/MND, we approve GRS' and PG&E's Applications for CPCNs as further defined and conditioned in this Decision. We also find that granting the PTC is in the public interest and PG&E's request for a PTC should be approved. Our order today adopts the Final MND (which incorporates the Draft IS/MND), subject to the conditions therein, and authorizes work to begin.

⁸⁰ The Final MND is available for inspection on the Commission's website, <http://www.cpuc.ca.gov/Environment/info/mha/gillranch/gillranch.htm>.

10. Comments on Proposed Decision

The proposed decision of the assigned ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3. On October 19, 2009, GRS and PG&E filed joint comments requesting minor changes to clarify the proposed decision. The comments have been considered and appropriate changes have been made.

11. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Richard Smith is the assigned ALJ in this proceeding.

Findings of Fact

1. GRS is an Oregon limited liability company formed in 2007 for the purpose of developing the Proposed Project and is dedicated to exclusively serving the California market. GRS is a wholly owned subsidiary of NW Natural, an Oregon-based company that provides natural gas distribution services to 652,000 customers in Oregon and southwest Washington.

2. The Proposed Project is comprised of an underground natural gas storage field, a compressor station for injecting and withdrawing gas from the storage field and associated dehydration and control facilities, an approximately 27-mile natural gas pipeline connecting the Proposed Project to PG&E's Line 401, an electric substation located at the compressor station, and a nine-mile 115 kV power line connecting the substation to PG&E's Dairyland-Mendota 115 kV power line to serve the compressors and other facilities.

3. Armstrong, DRA, and Will Gill & Sons filed protests to the PG&E Application, and Armstrong filed a protest to the GRS Application. LGS, WGS, and Meyers filed responses to the GRS and PG&E Applications, and DRA filed a response to the GRS Application.

4. On April 8, 2009, GRS, PG&E, DRA, and LGS filed an unopposed motion for approval of a proposed settlement between these parties. The proposed settlement resolves all issues raised in DRA's and LGS' responses and protest to the Applications.

5. On May 18, 2009, Armstrong withdrew its protests to the GRS and PG&E Applications, and on June 19, 2009, Will Gill & Sons withdrew its protest to the PG&E Application.

6. Except to the extent that PG&E obtains incremental core storage capacity under Commission authorized procedures, the Proposed Project will not serve core ratepayers, and core customers will not bear project costs because PG&E is not seeking to apply new rates to the Proposed Project at this time.

7. GRS' entry into the gas storage market will increase competition among the current non-core storage providers, and, as a result, reduce market concentration in California.

8. Because GRS' rates will be market-based, ratepayers are not financing the Proposed Project and there are no concerns regarding cross-subsidization by ratepayers.

9. Cross-subsidization of the Proposed Project by PG&E's ratepayers will not occur because PG&E's captive ratepayers will not be funding its interest in the Proposed Project.

10. The Final MND (which incorporates the Draft IS/MND) related to the Proposed Project conforms to the requirements of CEQA.

11. Clarifying and combining mitigation measures Bio-17 and Bio-18 in the Final MND and in this decision will be more effective in mitigating or avoiding potential significant effects and will not cause any potentially significant effect on the environment.

12. The Final MND identified no significant environmental impacts of the Proposed Project that could not be avoided or reduced to non-significant levels with the mitigation measures described therein.

13. On the basis of the whole record, there is no substantial evidence that the project will have a significant effect on the environment.

14. The MMRP, included as part of the Final MND, specifically describes the mitigation measures to be taken.

15. Applicants agree to comply with the mitigation measures described in the Final MND and as further clarified in this decision.

16. The Commission considered the Final MND in deciding to approve the Proposed Project.

17. The Final MND reflects the Commission's independent judgment.

18. The Proposed Project includes no-cost and low-cost measures (within the meaning of D.93-11-013, and D.06-01-042) to reduce possible exposure to EMF.

19. The PG&E Application satisfies the GO 131-D requirements for a PTC.

Conclusions of Law

1. We affirm the ALJ's ruling consolidating A.08-07-032 and A.08-07-033.

2. Pursuant to § 1001, the present public convenience and necessity require the Proposed Project.

3. Evidentiary hearings are not necessary.

4. Pursuant to § 1002, the Proposed Project is consistent with community values, recreational and park areas, and historical and aesthetic values.

5. The Commission is the Lead Agency for compliance with the provisions of CEQA.

6. A Draft IS/MND analyzing the environmental impacts of the Proposed Project was processed in compliance with CEQA.

7. A Final MND on the Proposed Project was processed and completed in compliance with the requirements of CEQA.

8. With adoption of the mitigation measures identified in the Final MND and clarified in this decision, the Proposed Project will not have significant effects on the environment.

9. The Draft IS/MND and the Final MND (which includes the MMRP) should be adopted in their entirety.

10. Possible exposure to EMF has been reduced by the no-cost and low-cost measures contained in the EMF Field Management Plan that PG&E will include in the Proposed Project, pursuant to D.93-11-013 and D.06-01-042. The EMF Field Management Plan should be adopted.

11. Applicants should obtain all necessary permits, easement rights or other legal authority for the Proposed Project prior to commencing construction.

12. The Settlement Agreement between the Division of Ratepayer Advocates, Gill Ranch Storage, LLC, Lodi Gas Storage, LLC, and the Pacific Gas and Electric Company meets the tests for Commission adoption and should be approved.

13. The conditions contained in the Settlement Agreement should be included, without modification, as Ordering Paragraphs in any decision granting the Applications.

14. Pub. Util. Code § 785 does not require the Commission to give priority to production of natural gas from the Gill Ranch Gas Field over the use of the Gill Ranch Gas Field for gas storage services.

15. The Special Facilities Agreement that will be established between Applicants and PG&E complies with the Gas Storage Rules and should be approved.

16. Before commencing operation of the Proposed Project, Applicants should provide the Commission, in a supplemental filing to the Energy Division, the executed Special Facilities Agreement containing the final total cost of the interconnection, including the cost paid by each entity.

17. GRS is a new market entrant with no customers, GRS' interest in the Proposed Project presents no risk to core ratepayers, and neither GRS nor its affiliates own or control gas transportation or other natural gas facilities in California.

18. GRS does not have market power and should be authorized to charge market-based rates for the storage services.

19. GRS should file tariff rates within a rate window, but without cost justification.

20. GRS' and PG&E's requests to waive the need for a cost showing in this application should be approved.

21. The cost cap requirement of § 1005.5 should be waived for GRS and for PG&E.

22. GRS' requests for exemption from the requirements of § 818 and § 851 should be granted because Commission supervision of GRS' financing arrangements is not necessary to protect GRS customers or the public interest.

23. The Competitive Bidding Rule does not apply to GRS because GRS does not have a bond rating.

24. GRS' and PG&E's Applications for CPCNs and PG&E's Application for a PTC should be approved, subject to the mitigation measures set forth in the Final MND and the EMF Field Management Plan.

25. Because the Settlement Agreement is reasonable, consistent with the law, and in the public interest, the Settlement Agreement should be approved.

26. A.08-07-032 and A.08-07-033 should be closed.

27. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Gill Ranch Storage, LLC is granted a certificate of public convenience and necessity to construct and operate the Gill Ranch Storage Project to provide natural gas storage services at market-based rates, and shall be allowed to charge market-based rates within a filed rate zone, subject to the conditions in the ordering paragraphs set forth below.

2. Before commencing its service to customers, Gill Ranch Storage, LLC shall file with this Commission an advice letter and accompanying tariff schedules which shall set forth proposed rate ceilings or floors, and which will comply with the criteria of the Commission's General Order 96-B, and other applicable Commission rules and procedures.

3. The Pacific Gas and Electric Company is granted a certificate of public convenience and necessity to construct and operate the Gill Ranch Storage Project to provide natural gas storage services, subject to the conditions in the ordering paragraphs set forth below.

4. The Pacific Gas and Electric Company shall use its existing tariffs for natural gas storage services provided from the Gill Ranch Storage Project.

5. The Pacific Gas and Electric Company is granted a permit to construct an electric substation and a 115 kilovolt electric power line to provide electric service to the Gill Ranch Storage Project, subject to the conditions in the ordering paragraphs set forth below.

6. The cost cap requirement of Pub. Util. Code § 1005.5 is waived for Gill Ranch Storage, LLC and for the Pacific Gas and Electric Company.

7. Gill Ranch Storage, LLC's requests for exemption from the requirements of Pub. Util. Code §§ 818 and 851 for the initial construction financing and permanent debt financing in connection with development of its 75 percent share in the Proposed Project is granted.

8. The Settlement Agreement between the Division of Ratepayer Advocates, Gill Ranch Storage, LLC, Lodi Gas Storage, LLC, and the Pacific Gas and Electric Company is approved and included in this decision as Appendix A.

9. The authority granted herein is expressly limited to the 20 billion cubic feet storage capacity described in the Applications, with the Pacific Gas and Electric Company owning a 25 percent undivided interest in such capacity (5 billion cubic feet) and Gill Ranch Storage, LLC owning a 75 percent undivided interest in such capacity (15 billion cubic feet).

10. The Pacific Gas and Electric Company and/or Gill Ranch Storage, LLC shall not expand the storage capacity of the Gill Ranch Storage Project beyond the capacity approved by the Commission in this proceeding without first seeking and receiving from this Commission any authority that may be required by laws and regulations applicable at the time of any proposed capacity expansion. To the extent that the Pacific Gas and Electric Company and/or Gill Ranch Storage, LLC plan to expand the facilities and contend that Commission authority is not required by laws and regulations applicable at the time of any proposed capacity expansion, Pacific Gas and Electric Company and/or Gill Ranch Storage, LLC shall provide prior notice to the Commission and all parties to this proceeding of such proposed expansion and a detailed explanation in support of the contention that Commission authority is not required.

11. The Pacific Gas and Electric Company and/or Gill Ranch Storage, LLC shall not change the original 25 percent/75 percent project ownership ratio without first seeking and receiving from this Commission any approval that may be required by laws and regulations applicable at the time of the proposed change in the Gill Ranch Storage Project ownership ratio. To the extent that the Pacific Gas and Electric Company and/or Gill Ranch Storage, LLC plan to change the original 25 percent/75 percent project ownership ratio and contend that Commission authority is not required by laws and regulations applicable at the time, the Pacific Gas and Electric Company and/or Gill Ranch Storage, LLC shall provide prior notice to the Commission and all parties to this proceeding of such proposed ownership ratio change and a detailed explanation in support of the contention that Commission authority is not required.

12. The Pacific Gas and Electric Company and/or Gill Ranch Storage, LLC, shall serve on all parties to this proceeding any notice, application and/or advice letter required by Ordering Paragraphs 10 and 11 or by laws and regulations applicable at the time authority is sought.

13. The Pacific Gas and Electric Company and any entity related to the Pacific Gas and Electric Company shall not provide any undue preference to Gill Ranch Storage, LLC, as compared to any other independent storage provider(s) in terms of pipeline operations, including, but not limited to, balancing, interconnection, access to pipeline facilities, classification of interconnection costs, construction and pricing of interconnection and other facilities, scheduling, curtailment, upgrades and expansions, and application or interpretation of applicable Pacific Gas and Electric Company tariffs and rules contained therein.

14. Absent prior written consent from the owner of the information, the Pacific Gas and Electric Company and any entity related to the Pacific Gas and Electric

Company shall not share any information obtained by the Pacific Gas and Electric Company in the course of business regarding Lodi Gas Storage, LLC, Wild Goose Storage, LLC, or any other independent storage provider in California with Gill Ranch Storage, LLC, or any entity related to Gill Ranch Storage, LLC, unless such information is of a public nature prior to the time of the release. To the extent that any sharing of this information occurs, the Pacific Gas and Electric Company shall promptly report to the Commission the nature of any such sharing.

15. The Pacific Gas and Electric Company and Gill Ranch Storage, LLC shall promptly report and submit to the Commission and the parties to this proceeding copies of any revisions or amendments to the Operator Agreement, the Joint Project Agreement, the Operating and Balancing Agreement and any exhibits thereto, and shall report to the Commission any circumstances in which Gill Ranch Storage, LLC is allowed to deviate from the aforementioned agreements or where discretionary provisions (e.g., Operating and Balancing Agreement, § 5.8) are relied upon to release or modify obligations imposed upon Gill Ranch Storage, LLC while not releasing or modifying other storage providers' similar obligations.

16. To the extent that the Operating and Balancing Agreement of Gill Ranch Storage, LLC or any existing independent storage provider contains, includes or provides treatment that is different from what the Pacific Gas and Electric Company offers to any other independent storage provider (including Gill Ranch Storage, LLC), the Pacific Gas and Electric Company shall provide any existing independent storage provider or Gill Ranch Storage, LLC, (a) the opportunity to amend its Operating and Balancing Agreement to include comparable terms and (b) comparable treatment under such amended terms.

17. Pursuant to a standing request or an agreement-specific request of any party to this proceeding, the Pacific Gas and Electric Company shall provide copies of any agreements setting forth interconnection arrangements with Gill Ranch Storage, LLC, including all interconnection agreements, special facilities agreements and other agreements pertinent to the construction and operation of the interconnection between the Pacific Gas and Electric Company and Gill Ranch Storage, LLC, or otherwise relating to Gill Ranch Storage, LLC, access to pipeline facilities. To the extent that there are any differences in treatment provided by the Pacific Gas and Electric Company to Gill Ranch Storage, LLC, as compared to other independent storage providers, the Pacific Gas and Electric Company shall provide other independent storage providers with the opportunity to receive comparable treatment.

18. Upon request by any party to this proceeding, the Pacific Gas and Electric Company and the requesting party will make all good faith efforts to resolve issues relating to possible preferential treatment by the Pacific Gas and Electric Company of Gill Ranch Storage, LLC, in an expeditious manner. As part of the process, the Pacific Gas and Electric Company shall provide information reasonably necessary for the requesting party to evaluate whether undue preferential treatment to Gill Ranch Storage, LLC, as compared to other independent storage providers, is occurring or has occurred.

19. The Pacific Gas and Electric Company shall not seek recovery of any costs associated with the Gill Ranch Storage Project from the rates of its core customers in its Year 2011 Gas Transmission and Storage rate case (filed on September 18, 2009) or any other application or advice letter to the Commission which would include such costs prior to the end of the period in which rates determined by the Year 2011 Gas Transmission and Storage rate case are effective.

20. To the extent that the Pacific Gas and Electric Company subsequently seeks recovery of any costs associated with the Gill Ranch Storage Project authorized herein, the Pacific Gas and Electric Company shall not be entitled to a presumption that the costs of the Gill Ranch Storage Project are reasonable or prudently incurred and shall bear the burden of proving (a) the prudence and reasonableness of the costs of the Gill Ranch Storage Project in any proceeding in which the Pacific Gas and Electric Company requests authority to include any costs of the Gill Ranch Storage Project in core rates and (b) that the storage costs which it proposes to allocate to the class of customers are consistent with such customers' rights to use and actual utilization of the Gill Ranch Storage Project and other Pacific Gas and Electric Company storage facilities.

21. The Pacific Gas and Electric Company shall continue to obtain incremental core storage capacity through existing competitive procurement processes unless or until such competitive procurement processes are changed by final Commission order.

22. As an independent storage provider and as a condition to the authority granted herein, Gill Ranch Storage, LLC shall:

- (a) Semi-annually, on April 30 and on October 31, report to the Director of the Commission's Energy Division, with a copy to the Division of Ratepayer Advocates, the following information about transactions which are not already subject to Pub. Util. Code §§ 852 and 854, (i) the identity of any affiliate that directly or indirectly has acquired or has made an investment resulting in a controlling interest or effective control, whether direct or indirect, in an entity in California or elsewhere in Western North America that produces natural gas or provides natural gas storage, transportation or distribution services; and (ii) the identity of any affiliate that directly or indirectly has acquired or has made an investment resulting in a controlling interest or effective control, whether direct or indirect, in an entity in

California or elsewhere in Western North America that generates electricity, or provides electric transmission or distribution services. Information reported pursuant to subsections (i) and (ii) shall include the nature (including name and location) of the asset acquired or in which the investment was made, and the amount of the acquisition or investment. "Affiliate" means any direct or indirect parent entity of Gill Ranch Storage, LLC, any entity controlled by Gill Ranch Storage, LLC, whether directly or indirectly, any entity under common control with Gill Ranch Storage, LLC by a direct or indirect parent entity (e.g., any subsidiary of any Gill Ranch Storage, LLC parent entity). In addition to California, the states of Oregon, Washington, Arizona, New Mexico, Texas, Nevada, Colorado, Wyoming, and Utah, "Western North America" includes the provinces of British Columbia and Alberta, Canada, and the State of Baja California Norte, Mexico.

- (b) Provide to the Director of the Commission's Energy Division, for transactions to be completed within one year or less (short-term transactions), true copies of all service agreements for such transactions within 30 days after commencement of the short-term service, to be followed by quarterly transaction summaries of specific sales. If Gill Ranch Storage, LLC enters into multiple service agreements within a 30-day period, Gill Ranch Storage, LLC may file these service agreements together so as to conserve the resources of Gill Ranch Storage, LLC and the Commission. The quarterly summary of transactions shall list, for all tariffed services, the purchaser, the transaction period, the type of service (e.g., firm, interruptible, balancing, etc.), the rate, the applicable volume, whether there is an affiliate relationship between Gill Ranch Storage, LLC and the customer, and the total charge to the customer.
- (c) Provide to the Director of the Commission's Energy Division, for transactions that will not be completed within one year (long-term transactions), true copies of all service agreements for such transactions within 30 days after commencement of the long-term service. To ensure the clear identification of filings, and in order to facilitate the orderly maintenance of the

Commission's records, service agreements for long-term transactions shall not be filed with summaries of short-term transactions.

- (d) Not engage in storage or hub service transactions with its parent, Northwest Natural Gas Company or its successors, or with any entity owned, affiliated with, or controlled by Northwest Natural Gas Company, or its successors.
- (e) Provide an annual report to the Division of Ratepayer Advocates detailing its operations in connection with Gill Ranch Storage, LLC's, percentage of undivided ownership interest in the Gill Ranch Storage Project, containing the following information:
 - (i) The capacity of the Gill Ranch Storage Project storage facilities, i.e., total inventory, injection and withdrawal rights;
 - (ii) A summary showing average monthly storage inventory, injections and withdrawals for the project, which summary shall be based on the Energy Information Reports Gill Ranch Storage, LLC submits to the United States Department of Energy;
 - (iii) Daily operating records, aggregated on a weekly basis, based on the Energy Information Reports Gill Ranch Storage, LLC submits to the United States Department of Energy;
 - (iv) Firm capacity under contract on a monthly and annual basis; and
 - (v) Interruptible capacity sold on a monthly and annual basis.
- (f) Maintain its corporate records at the utility level, make such records available to the Commission pursuant to Pub. Util. Code § 314, and make available utility officers, employees and agents as required by Pub. Util. Code § 314(a).

23. As an owner of a portion of the Gill Ranch Storage Project and as condition to the authority granted herein, the Pacific Gas and Electric Company shall:

- (a) Provide an annual report to the Division of Ratepayer Advocates detailing its operations at the Gill Ranch Storage Project, containing the following information:
 - (i) The capacity of the Gill Ranch Storage Project storage facilities, i.e., total inventory, injection and withdrawal rights for the Pacific Gas and Electric Company's percentage of undivided ownership interest in the project;
 - (ii) A summary showing average monthly storage inventory, injections and withdrawals for the Pacific Gas and Electric Company's percentage of undivided ownership interest in the Gill Ranch Storage Project, which summary shall be based on the Energy Information Reports that are submitted to the United States Department of Energy; and
 - (iii) Daily operating records, aggregated on a weekly basis, for the Pacific Gas and Electric Company's percentage of undivided ownership interest in the Gill Ranch Storage Project, based on the Energy Information Reports that are submitted to the United States Department of Energy.
- (b) On an annual basis, provide a report to the Division of Ratepayer Advocates of the Pacific Gas and Electric Company's aggregate firm storage capacity under contract (containing monthly and annual data) and aggregate interruptible storage capacity sold (also containing monthly and annual data).

24. Gill Ranch Storage, LLC and the Pacific Gas and Electric Company shall ensure that the operator of the Gill Ranch Storage Project provides an annual report to the Division of Ratepayer Advocates containing the following information for the Gill Ranch Storage Project:

- (a) The capacity of the Gill Ranch Storage Project storage facilities, i.e., total inventory, injection and withdrawal rights;
- (b) A summary showing average monthly storage inventory, injections and withdrawals for the Gill Ranch Storage Project, which summary shall be based on the Energy Information Reports the operator submits to the United States Department of Energy;
- (c) Daily operating records, aggregated on a weekly basis, based on the Energy Information Reports the operator submits to the United States Department of Energy;
- (d) A copy of the annual safety report, including a description of all safety-related incidents that is submitted to the United States Department of Transportation.

25. Competitively sensitive, confidential information submitted pursuant to Ordering Paragraphs 22, 23, and 24, including short-term and long-term service agreements, may be submitted under seal in accordance with General Order 66-C and Pub. Util. Code § 583. Competitively sensitive, confidential information shall be identified by Gill Ranch Storage, LLC and/or the Pacific Gas and Electric Company and treated by the Division of Ratepayer Advocates as confidential pursuant to General Order 66-C and Pub. Util. Code § 583. This confidentiality agreement is made between the Settling Parties. The Commission has the authority to determine whether such information is subject to confidential treatment.

26. The Final Mitigated Negative Declaration (which incorporates the Draft Initial Study/Mitigated Negative Declaration) is adopted pursuant to the requirements of the California Environmental Quality Act, Public Resources Code §§ 21000, et seq.

27. The Mitigation Monitoring and Reporting Program, included as part of the Final Mitigated Negative Declaration and further clarified in this decision, is adopted.

28. The Electromagnetic Field Management Plan, included as Appendix B to this Decision, is adopted.

29. The Gill Ranch Storage, LLC certificate of public convenience and necessity to construct and operate the Gill Ranch Storage Project, the Pacific Gas and Electric Company certificate of public convenience and necessity to construct the Gill Ranch Storage Project, and the Pacific Gas and Electric Company Permit to Construct an electric substation and a 115 kilovolt electric power line to provide electric service to the Gill Ranch Storage Project are subject to the Electromagnetic Field Management Plan included in Appendix B to this Decision and the mitigation measures set forth in the Final Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, and Applicants shall fully implement these measures.

30. Applicants shall have in place, prior to commencing construction, all of the necessary easements rights, or other legal authority, to the Proposed Project sites.

31. Applicants shall provide the Commission, in a supplemental filing to the Energy Division, a copy of the executed Special Facilities Agreement between Applicants and the Pacific Gas and Electric Company containing the final total cost of the interconnection including the cost paid by each entity.

32. Application 08-07-032 and Application 08-07-033 are closed.

This order is effective today.

Dated October 29, 2009, at San Francisco, California.

MICHAEL R. PEEVEY

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