Decision 07-10-001 October 4, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Wild Goose Storage Inc. to Amend its Certificate of Public Convenience and Necessity to Expand and Construct Facilities for Gas Storage Operation.	Application 01-06-029 (Filed June 18, 2001)
Joint Application of Wild Goose Storage Inc. (U-911-G), EnCana Corp., Carlyle/Riverstone Global Energy and Power Fund III, L.P., Carlyle/Riverstone Global Energy and Power Fund II, L.P. and Niska Gas Storage US, LLC for Review under Public Utilities Code Section 854 of the Transfer of Control of Wild Goose Storage Inc. from EnCana Corporation to Niska Gas Storage US, LLC and for Approval of Financing under Public Utilities Code Section 851.	Application 06-05-033 (Filed May 26, 2006)
Joint Application of SFPP, L.P. (PLC-9 Oil), CALNEV PIPE LINE, L.L.C., KINDER MORGAN, INC., and KNIGHT HOLDCO LLC for Review and Approval under Public Utilities Code Section 854 of the Transfer of Control of SFPP, L.P. and CALNEV PIPE LINE, L.L.C.	Application 06-09-016 (Filed September 18, 2006)
Joint Application of The Goldman Sachs Group, Inc., American International Group, Inc., Carlyle Partners IV, L.P., Carlyle/Riverstone Global Energy and Power Fund III, L.P., for Exemption Under Section 852 of the Public Utilities Code for Certain Future Transactions Involving Non-Controlling Interests in California Public Utilities.	Application 06-09-021 (Filed September 22, 2006)

OPINION CORRECTING DECISION (D.) 06-11-019, ADDRESSING REPORTING ISSUES RAISED BY PETITIONS FOR MODIFICATION OF D.02-07-036 AND D.06-11-019, AND ADDRESSING RELATED ISSUE DEFERRED BY D.07-05-061

1. Summary

We consolidate Application (A.) 01-06-029 and A.06-05-033 with the previously consolidated A.06-09-016/A.06-09-021 for this decision, only, in order to concurrently resolve a number of related, outstanding matters. We address Joint Petitioners' requests for revision of certain reporting requirements imposed on Wild Goose Storage Inc. (Wild Goose), its parent and affiliates by D.02-07-036 (which issued in Application (A.) 01-06-029) and by D.06-11-019 (which issued in A.06-05-033). Today's decision modifies some of the reporting requirements and as requested, restates them in a single set of ordering paragraphs.

With respect to the sole issue deferred by D.07-05-061 – extension to Carlyle/Riverstone Global Energy and Power Fund III, L.P. (Carlyle/Riverstone III) and an affiliated fund, Carlyle Partners IV, of the partial exemption from Pub. Util. Code § 852[1] granted to Goldman Sachs Group, Inc. (Goldman Sachs) and American International Group, Inc. (AIG) – today's decision determines that the issue is now moot. Carlyle/Riverstone III and Carlyle Partners IV have withdrawn their request that we extend the exemption to them at this time.

Finally, we follow the direction in D.07-05-061 to review the accuracy of certain language in D.06-11-019. Today's decision corrects a footnote and a finding of fact in D.06-11-019.

2. Background

Wild Goose is an independent natural gas storage provider of firm and interruptible storage service at market-based rates. By D.02-07-036, the Commission authorized Wild Goose to expand its gas storage facilities in Butte County, California by 15 billion cubic feet (Bcf) to 29 Bcf and to interconnect the expanded facility with Line 400/401, the major transmission pipeline owned by Pacific Gas and Electric Company, via a new 25.5 mile, 36-inch bi-directional pipeline through Butte and Colusa Counties. At that time, the Canadian company EnCana Corporation (EnCana) owned Wild Goose.[2]

By D.06-11-019, the Commission authorized the transfer of control over Wild Goose from EnCana to a joint venture, Niska Gas Storage US, LLC (Niska Gas Storage) – 80% owned by Carlyle/Riverstone Global Energy and Power Fund II, L.P. (Carlyle/Riverstone II) and Carlyle/Riverstone III (collectively, Carlyle/Riverstone Funds[3]) and 20% owned by SemGroup, L.P. (SemGroup).

Carlyle/Riverstone Funds are two in a series of investment funds established by a joint venture between The Carlyle Group and Riverstone Holdings LLC to pursue private equity acquisitions in the energy and power sectors. SemGroup, through its subsidiaries, provides various energy services,

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[1] Unless otherwise indicated, all subsequent citations to statutes refer to the Public Utilities Code.

[2] See D.03-06-069, which subsequently fined Wild Goose $51,500 for finalizing the transfer of control over Wild Goose to EnCana from Alberta Energy Company, Ltd. (AEC) without first obtaining Commission authority under Pub. Util. Code § 854. The transfer of control occurred through the merger of AEC and PanCanadian Energy Corp., with the surviving entity renamed EnCana.

[3] Reference to the constituent funds includes "their respective co-investment funds, parallel investment funds and alternative investment vehicles." (Petitions for Modification at 1.)

primarily in the area of North American crude oil and refined products. Attachments 1-4 to D.06-11-019 summarize the extensive business holdings of SemGroup and Carlyle/Riverstone Funds, as well as the additional investments that Carlyle/Riverstone III and an affiliated fund, Carlyle Partners IV, acquired through their subsequent investment in Kinder Morgan, Inc. (KMI), which at the time held effective control over two California pipeline utilities, SFPP, L.P. (SFPP) and Calnev Pipe Line, L.L.C. (Calnev). That investment was part of a larger effort, involving other investors, to transfer ownership and control of KMI to Knight Holdco, LLC (Knight Holdco).[4] By D.07-05-061, which authorized the Commission-jurisdictional portion of the transaction, Knight Holdco and its investors acquired indirect control of SFPP and Calnev through acquisition of KMI.

D.07-05-061 also approved a settlement which lays out the terms for an exemption for Goldman Sachs and AIG, two of the investors in Knight Holdco, from full compliance with § 852.[5] Absent an exemption, that statute requires California Public Utilities and their affiliates to obtain Commission approval

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[4] In addition to Carlyle/Riverstone III and Carlyle Partners IV, the investors in Knight Holdco consist of Goldman Sachs, AIG, and certain members of KMI's management.

[5] Section 852 provides in relevant part:

> No public utility, and no subsidiary or affiliate of, or corporation holding a controlling interest in, a public utility, shall purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or existing under or by virtue of the laws of this state, without having been first authorized to do so by the commission; provided, however, that the commission may establish by order or rule categories of stock acquisitions which it determines will not be harmful to the public interest, and purchases within those categories are exempt from this section … (Section 852, Emphasis added.)

before purchasing stock in other California public utilities. The settlement terms include various reporting requirements.

3. Procedural History and Identity of Moving Parties

3.1. A.01-06-029 and A.06-05-033

Joint Petitioners comprise Wild Goose, Niska Gas Storage, Carlyle/Riverstone II, Carlyle/Riverstone III, and SemGroup. Joint Petitioners filed separate, but essentially identical petitions for modification of D.02-07-036 (in A.01-06-029) and of D.06-11-019 (in A.06-05-033) on March 2, 2007. No protests or responses were filed. Previously, in comments on the proposed decision adopted as D.06-11-019, the same parties for the first time sought revision of the reporting requirements adopted earlier by D.02-07-036. The Commission declined to consider the request raised by the comments and directed the parties to petition for modification of the relevant decisions if they wished to pursue changes to the reporting requirements.

3.2. A.06-09-016 and A.06-09-021

The Commission consolidated A.06-09-016 and A.06-09-021 for hearing, as necessary, and for decision and by D.07-05-061 resolved all issues but one. The deferred issue concerns whether Carlyle/Riverstone III and Carlyle Partners IV, two of the Joint Applicants in that consolidated docket, should be granted the same, partial exemption from § 852 as Goldman Sachs and AIG. As already noted, Carlyle/Riverstone III and Carlyle Partners IV are two of the investors in Knight Holdco, the owner of KMI, which in turn holds effective control over SFPP and Calnev. In addition, Carlyle/Riverstone III, together with Carlyle/Riverstone II, have 80% ownership in, and indirect control over, Wild Goose. Carlyle Partners IV is an affiliate of both Carlyle/Riverstone Funds.

The Division of Ratepayer Advocates (DRA) negotiated the exemption agreement which D.07-05-061 adopted for Goldman Sachs and AIG but DRA opposed extension of the agreement to Carlyle/Riverstone III and to Carlyle Partners IV. Consumer Federation of California (CFC) opposed granting any exemption from complete compliance with § 852 to all four entities. D.07-06-051 determined that the overlap of the exemption request for the Carlyle entities with the substance of the pending petitions in A.01-06-029 and A.06-05-033, coupled with a lack of notice under § 1708, warranted deferring the issue as to them.

By ruling on July 20, 2007, the assigned Administrative Law Judge (ALJ) requested information by July 30 regarding the effect upon Carlyle/Riverstone II of extension of the § 852 exemption agreement to Carlyle/Riverstone III and to Carlyle Partners IV. Pursuant to an extension from the ALJ, responses were filed on August 1, 2007.

4. Discussion

Below, we address and resolve all of the issues before us:

4.1. Section 852 Exemption Deferred By D.07-05-061

We dispose of the § 852 exemption first. As we explain below, the matter is now moot; nonetheless, its relationship to other reporting issues warrants a summary of the request and the context in which it was raised. As previously stated, D.07-05-061 authorized an exemption from § 852 for Goldman Sachs and AIG but, for procedural reasons, deferred determining whether the exemption should extend to Carlyle/Riverstone III and Carlyle Partners IV. The terms of the adopted exemption, set forth in Attachment 4 to D.07-05-061 and entitled

"Section 852 Exemption Terms," are the product of the settlement which DRA and Joint Applicants negotiated in D.06-09-021.

D.07-05-061 observes that the settlement constitutes an effort by the parties "to fashion a workable means of permitting at least some of the financial institutions and their affiliates to continue to make benign, passive stock acquisitions and still provide the Commission with a means to monitor potentially significant changes in market ownership." (D.07-05-061 at 49.)

D.07-05-061's summary and reviews of the exemption agreement states:

> The agreement provides for an exemption for all "Covered Entities." The parties agree that this term should be defined to mean Goldman Sachs and AIG (Section 852 Applicants argue the definition also should include Carlyle/Riverstone III and Carlyle Partners IV) and to all entities: (1) these financial institutions control; (2) which control them; (3) which together they control; and (4) those with which they are under joint control. The agreement requires a list of all Covered Entities to be produced to the Commission, requires the list to be updated semi-annually, requires an officer to verify accuracy, and recognizes the authority of the Commission (including DRA) to conduct discovery to verify the list. The agreement also provides for a semi-annual report to the Commission's Energy Division and to DRA of "Reportable Holdings," defined to mean those which "include a 5% or greater voting stake in any California public utility or its holding company in the Energy Sector, and, if reportable, must specify the percentage and name of the California utility or its holding company." Finally, the agreement recognizes the right of the Commission to modify the exemption after notice and an opportunity for hearing.
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> This final provision and some of the discovery provisions essentially restate existing law or established Commission practice. Given the sophistication of the parties involved, we interpret these statements as acknowledgment of the same and do not interpret them to suggest that new territory has been charted. The other provisions, however, indicate a thoughtful effort to resolve a difficult subject in

> a way that reasonably balances private and public interests by means of carefully-fashioned regulatory safeguards.
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> In particular, we note that "Reportable Interests" for each financial institution and its applicable affiliates must be disclosed both as an aggregate amount and as the separate contributions of each Covered Entity toward the aggregate. Likewise, the 5% voting stake threshold appears to be set low enough to capture potentially meaningful participation levels.[29] We are mindful that creative use of business organization forms (such as master limited partnerships and limited liability companies) can maximize voting power to place effective control in the hands of those with comparatively small stock holdings. As we have seen already, KMI has effective control over SFPP and Calnev though its equity ownership is only 15%.
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> [29] Five percent is the threshold for the definition of "affiliate" in the most recent Affiliate Transaction Rules, referenced in section 3 of today's decision, and in the earlier version (still applicable to smaller California electric and natural gas utilities) adopted by D.97-12-088, 1997 Cal. PUC LEXIS 1139, as modified by D.98-08-035, 1998 Cal. PUC LEXIS 594. Though the transactional and reporting Rules do not apply to SFPP or Calnev, the definition there merits mention since the objective of both frameworks is a common one – meaningful compliance. (D.07-06-051 at 49-51 and footnote 29.)[6]

In briefs and comments filed in A.06-09-016/A.06-09-021, Carlyle/Riverstone III and Carlyle Partners IV argue that their respective situations, as majority owner of Wild Goose and owner's affiliate, should have no bearing on application to them of the § 852 exemption. They contend there is no reason to treat them any differently than Goldman Sachs and AIG and read § 852 to support their position.

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[6] The term "Reportable Interests" in the third paragraph quoted above more accurately should be "Reportable Holdings," which is the term used in the exemption agreement.

In their response to the ALJ's July 20, 2007 ruling, Carlyle/Riverstone III and Carlyle Partners IV now state that, at least at this time, they "… have determined that they no longer wish to pursue their previous request for a Section 852 exemption on behalf of themselves or any of their affiliates." (Response at 1.) They then set out their answers to the ruling's two questions. Below we quote each question and then the respective answer.

1. If the Section 852 Exemption Terms are extended to Carlyle Partners IV and Carlyle/Riverstone III, is it your contention that Carlyle/Riverstone Global Energy and Power Fund II, L.P. (Carlyle/Riverstone II), will or will not become a covered entity? Please explain clearly why Carlyle/Riverstone II is or is not an affiliate of a public utility as defined by the Section 852 Exemption Terms. (Ruling at 2.)

Answer to Question 1:

The Section 852 Exemption Terms in Attachment 4 were the result of a negotiation between DRA and the Applicants, and were ultimately applied only to Goldman Sachs and AIG. If the agreement in Attachment 4, including its Exemption Terms, were to be have been extended to CP IV and C/R II (which no longer is being requested here), the Carlyle/Riverstone Global Energy and Power Fund II, L.P. ("C/R II") presumably would have been a Covered Entity, and C/R II would likely also have qualified as "an affiliate of a public utility" as defined by the Section 852 Exemption Terms. However, as noted above, CP IV and C/R II no longer seek to pursue their request for a Section 852 exemption, without prejudice to their right to request such an exemption in the future. (Response at 1-2.)

2. The Section 852 Application, at page 6, states that TC Group, L.L.C. indirectly owns and controls the general partner of Carlyle Partners IV and indirectly holds a joint venture interest in the general partner of Carlyle/Riverstone III. What is the relationship, if any, of TC Group, L.L.C. to Carlyle/Riverstone II? (Ruling at 2.)

Answer to Question 2:

> TC Group, L.L.C. holds a joint venture interest in the general partner of C/R II. (Response at 2.)

Carlyle/Riverstone III and Carlyle Partners IV also state that they "acknowledge and understand that, when and if CP IV and C/R III seek to renew their request for a Section 852 exemption, CP IV and C/R III will need to serve such a request on all parties to the Wild Goose dockets, as well as parties in this docket." (*Ibid*.) The reference to "this docket" is to A.06-09-016/A.06-09-021.

Given all of the foregoing, there is no need to discuss the merits of extending the § 852 exemption to Carlyle/Riverstone III and Carlyle Partners IV. The matter is moot and we make no revisions to Attachment 4 to D.07-05-061.

4.2. Wild Goose Reporting Requirements

4.2.1. Language in D.02-07-036 and D.06-11-019

We begin by examining the currently operative language and the Commission's rationale for it, as expressed in the decisions which Joint Petitioners ask us to modify.

D.02-07-036, Ordering Paragraph 3(c) provides:

> 3(c) Wild Goose shall promptly advise the California Public Utilities Commission (Commission) of the following changes in status that reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing: (i) Wild Goose's own purchase of natural gas facilities, transmission facilities, or substitutes for natural gas, like liquefied natural gas facilities; (ii) an increase in the storage capacity or in the interstate or intrastate transmission capacity held by affiliates of its parent, Alberta Energy Company Ltd. (Alberta Energy, or a successor); or (iii) merger or other acquisition involving affiliates of Alberta Energy or a successor and another entity that owns gas storage or transmission facilities or facilities that use natural gas as an input, such as electric generation.

In granting a Certificate of Public Convenience and Necessity (CPCN) to Wild Goose and authorizing market-based rates, the first Wild Goose decision, D.97-06-091, relied upon Wild Goose's status as a new entrant without market share and consequently, without market power. Five years later, D.02-07-036 framed the issue central to the Commission's review of the proposed Wild Goose expansion as "whether changes in the market, including the addition of expansion capacity, must change the Commission's previous finding that Wild Goose cannot wield market power." (D.02-07-036 at 11.) D.02-07-036 determined that Wild Goose's own market power assessment showed "a highly concentrated market for storage injection and withdrawal and significant market share for Wild Goose." (*Id*., Finding of Fact 9.) Ultimately, D.02-07-036 stated:

> We are unable to determine, on this record, that Wild Goose cannot exercise market power. Neither can we determine that the potential for Wild Goose to exercise market power is fully mitigated by its lack of control of the transportation system, or by other factors discussed [in the decision]. (*Id*. at 16.)

The Commission also observed:

> The recent electricity crises in California and the gas price-spikes during the winter of 2000/01 have shown us, first-hand, the great public cost of energy market manipulation. We recognize, moreover, that the natural gas market is highly dynamic and that changes in storage, as well as in other parts of the market, may affect the storage market in critical ways. (*Ibid*.)

Thus while D.02-07-036 authorized the expansion project, it did so after rescinding Wild Goose's then-existing exemption from certain standard reporting requirements and also imposing the additional requirements set out in

Ordering Paragraph 3(c).[7] The text cautions, "Our approval of market-based rates is subject to re-examination if significant change occurs in Wild Goose's market power status." (*Id*. at 19.)

Some four years thereafter, D.06-11-019 approved the transfer of control of Wild Goose from EnCana to Niska Gas Storage and its owners, Carlyle/Riverstone Funds and SemGroup. Ordering Paragraph 6 of D.06-11-019 expressly conditions the transfer upon the continued application of D.02-07-036, Ordering Paragraph 3(c):

> 6. Wild Goose and its owners shall continue to be bound by all terms and conditions of Wild Goose's certificate of public convenience and necessity, as granted by Decision (D.) 97-06-091 and modified by subsequent decisions of the Commission, including D.02-07-036 and by the tariff filed with the Commission, as approved and subsequently modified by any approved amendments.

In addition, D.06-11-019, Ordering Paragraph 7 provides:

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[7] D.02-07-036 also:

- rescinded Wild Goose's exemption from General Order (GO) 65-A, which requires submission of financial statements, GO 77-K (now GO 77-M), which requires regular reporting of compensation to officers and employees and other information, and GO 104-A, which requires submission of an annual report.
- rescinded Wild Goose's authority to comply with Pub. Util. Code § 587 through filing a simplified report on affiliate activities.
- adopted, as an additional remedy, Wild Goose's own proposal for a prohibition on any storage or hub services transactions with its parent company or any other affiliate owned or controlled by its parent company (both short-term and long-term transactions.)

7. Wild Goose shall semi-annually report the following information to the Commission: 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, to the extent such transactions are not already captured by Decision 02-07-036, Ordering Paragraph 3(c); 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; 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. For the purposes of this Ordering Paragraph, "Western North America" is defined to mean, in addition to California, the states of Oregon, Washington, Arizona, New Mexico, Texas, Nevada, Colorado, Wyoming and Utah, as well as the provinces of British Columbia and Alberta in Canada and the State of Baja California Norte in Mexico.

D.06-11-019 imposes these reporting requirements to permit adequate regulatory monitoring, post-transfer. "Given the number and breadth of the energy and power industry businesses in which Carlyle/Riverstone Funds, SemGroup and their subsidiaries and affiliates are involved, we will need a more complete picture, going forward, than compliance with D.02-07-036, Ordering Paragraph 3(c), will provide." (*Id.* at 18.) The decision text and Conclusion of Law 5 expressly recognize that upon the closing of the sale of Wild Goose from EnCanca to Carlyle/Riverstone Funds, the new owners and their affiliates become subject to § 852. D.06-11-019 explains: "Our intent is to receive timely notice of acquisitions and investments other than those for which Commission approval must be sought under § 852 (governing acquisition of a stock in another

California utility) or § 854 (governing merger and control [of] another California utility)." (*Id.* at 19.)

4.2.2. Summary of Revisions Sought by Joint Petitioners

Joint Petitioners contend that the reporting requirements in D.02-07-036 and D.06-11-019 should be revised and consolidated because they are overlapping and inconsistent in material respects, because they are overly broad, and because if they are interpreted too broadly, compliance will be difficult or impossible, particularly given the diverse, global business endeavors of Carlyle/Riverstone Funds and SemGroup. To accomplish the result they seek, Joint Petitioners recommend that the Commission delete Ordering Paragraph 3(c) of D.02-07-036 and revise Ordering Paragraphs 6 and 7 of D.06-11-019.

They urge the Commission to adopt a new set of reporting requirements that differs from the existing Ordering Paragraphs in six ways and they attach redlined versions of those Ordering Paragraphs to lay out their suggested wording. Three of the six requested changes would affect what must be reported by redefining the threshold for what constitutes a reportable economic investment interest in another entity, narrowing the range of business endeavors covered by the rules, and limiting the geographic scope. Another two requested changes would affect who must do the reporting and when the report must be made. The final one would restate all reporting requirements, as revised, in a single decision.

4.2.3. Revisions Adopted Today

As we have seen, D.02-07-036 and D.06-11-019 express the Commission's ongoing concern about the need to monitor Wild Goose's evolving market share in the natural gas storage market (however the parameters of that market are

defined) and most critically, whether Wild Goose's position, given all other, relevant factors, permits the exercise of market power. These public interest concerns must be in the forefront of our assessment.

First we consider what must be reported. Joint Petitioners make three requests: (a) that reporting "focus on investments that entail the acquisitions of either controlling interests or effective control," further suggesting that those terms "be defined as either ownership interest of 50.1% or greater, or actual effective management control," (b) that reporting requirements exclude "investments in facilities that merely use natural gas as an input" and (c) that the geographic scope of reportable investments "be limited to investments in entities providing covered products and services in California or elsewhere in Western North America, but not beyond." (*Id*. at 12-13.)

We discuss these in reverse order, beginning with geographic scope. It was not an issue in D.02-07-036 and consequently is not addressed in Ordering Paragraph 3(c). Geographic scope has arisen as an issue subsequently because Wild Goose's current owners have global business interests. D.06-11-019, Ordering Paragraph 7 limits reporting to investments in "Western North America" and further defines that term to mean "in addition to California, the states of Oregon, Washington, Arizona, New Mexico, Texas, Nevada, Colorado, Wyoming and Utah, as well as the provinces of British Columbia and Alberta in Canada and the State of Baja California Norte in Mexico." Joint Petitioners ask us to clarify that Western North America, as defined, limits the scope of required reporting. We confirm that D.06-11-019, Ordering Paragraph 7, sets out our intended limitation on geographic scope.

Regarding the types of the business acquisitions which trigger reporting, Joint Petitioners concede that investments in entities that produce natural gas or

provide natural gas storage, transportation or distribution services, and that generate electricity or provide electric transmission or distribution services are "clearly pertinent to the jurisdiction and authority of the Commission to the extent they affect California energy markets." (Joint Petition at 5.) D.06-11-019, Ordering Paragraph 7 identifies such investments as within the scope of required reporting. However, as Joint Petitioners point out, the language in D.02-07-036, Ordering Paragraph 3(c) also employs the phrase "facilities that use natural gas as an input, such as electric generation." We agree this phrase is overbroad to the extent it could be read to include numerous, unidentified manufacturing or processing industries. We confirm that D.06-11-019, Ordering Paragraph 7 sets out our intended limitation on the types of business acquisitions which must be reported.

Regarding control, we agree with Joint Petitioners that reporting need only concern controlling interests, not non-controlling, passive interests.[8] But we cannot support the definition of control that Joint Petitioners ask us to apply here. As we observed in D.07-05-061, the Commission has used "a fact specific, case by-case analysis" rather than a numerical assessment when determining issues of control in the context of § 852 and § 854. (D.07-05-061 at 47.) Summarizing the major trends in Commission precedent, D.07-05-061 recognizes that while some cases do "focus on evidence of working or actual control" others

[8] The reporting requirements adopted by D.02-07-036 and D.06-11-019 were formulated to capture – and therefore permit the monitoring of -- transactions that do not already fall within § 852 (or § 854). Reiteration of existing statutory requirements, such as in D.02-07-036, Ordering Paragraph 3(c) (iii) imposes nothing new, but merely underscores a continuing statutory obligation in an area where the Commission had expressed concern that Wild Goose's previous parent, AEC, had entered into a merger without first obtaining Commission approval under § 854.

"focus upon whether an entity, directly or indirectly, possesses the power to direct or cause the direction of the management and policies of a corporation, or has the ability to exercise control" whether or not active control occurs. (*Ibid*.) Footnote 28 of D.07-05-061 identifies a number of Commission decisions that examined these various concepts of "control":

> See respectively, Gale v. Teel, D.87478, 81 CPUC 817, 1977 Cal. PUC LEXIS 152 [definition of control in Corp. Code 160(a) instructive for purposes of Section 854 and given facts, warranted voiding acquisition of 50% of stock in a public utility organized as a closely-held corporation by purchaser who failed to obtain Commission approval prior to purchase – power to cause direction of management and policies evidenced by purchaser's actions in ceasing utility operations, placing utility in receivership, and seeking dissolution]; Application of Wild Goose Storage, D.03-06-069, 1994 Cal. PUC LEXIS 43 [Commission fined EnCana for acquiring Wild Goose at the holding company level without first seeking Commission authority, finding that EnCana had the ability to control Wild Goose and intermediaries in the corporate structure and rejecting Wild Goose's contention that absent a change of intermediary management, no change of control had occurred]; Joint Application of San Jose Water and SJW Corp., D.94-01-025, 1994 Cal. PUC LEXIS 43, [actual or working control determinative and thus San Jose Water's holding company parent, SJW, which already owned a 9.75% interest in California Water Service (CWS), authorized to purchase additional shares to avoid dilution of that non-controlling ownership interest, but authorization limited to five years to ensure no change of control under Section 854.] (*Id*. at 47, footnote 28.)

Joint Petitioners have not established why a different standard, employing a looser definition of control, should apply to limit the data reported for regulatory monitoring of Wild Goose's market share and its ability or inability to exercise market power. Given the express link between those issues and continued, market-based rate authority for Wild Goose, we see no reason the

Commission should apply a looser standard of "control." We think a case by case assessment of "control" in accordance with existing precedent is appropriate.[9]

Next we consider who must report. Joint Petitioners concede that reporting is appropriate "with respect to acquisitions or investments by Wild Goose, any entity directly or indirectly controlled by Wild Goose, and any direct or indirect parent entity of Wild Goose" but they object to the requirement for reporting by a broader group of Wild Goose "affiliates." (Petitions at 13.) They argue that the narrower application they recommend will "focus more discretely on transactions potentially pertinent to Wild Goose and California natural gas and electricity markets." (*Ibid*.)

We agree with Joint Petitioners that Wild Goose, all entities Wild Goose controls either directly or indirectly, and all of Wild Goose's direct or indirect parents should continue to be bound by these reporting requirements. But Joint Petitioners' request that we define the term "affiliates" to limit application to these entities, alone, is problematic and ultimately unpersuasive. Joint Petitioners' definition would exclude, for example, all other entities (1) owned by Wild Goose's direct or indirect parents, (2) which engage in business investments *outsid*e of California (thus exempting such transactions from §§ 852 and 854) but *elsewhere* within Western North America, and (3) whose business investments

[9] Joint Petitioners have not shown that compliance with this standard is unduly burdensome (though such a showing would not necessarily result in adoption of weaker reporting requirements). Moreover, we observe that the standard is one of the tenets of the "Section 852 Exemption Terms" made applicable to Goldman Sachs and AIG by D.07-05-061 and in fact until recently, Carlyle/Riverstone III and Carlyle Partners IV sought to have that exemption agreement extended to them.

thereby result in the control of entities that produce natural gas or provide natural gas storage, transportation or distribution services, or that generate electricity or provide electric transmission or distribution services. On the record developed in the dockets which led to D.02 07-036 and D.06-11-019 (which is the only evidence before us), we cannot conclude that none of these potential transactions have any bearing on Wild Goose's market position. Furthermore, while we recognize that to date the Commission has declined to apply to Wild Goose or other natural gas storage utilities the Affiliate Transaction Rules applicable to other energy utilities, we note that the definition of "affiliate" that Joint Petitioners urge us to adopt here is markedly narrower than the definition used in those Rules, where "affiliate" means an entity 5 % owned by a utility, its parent or the subsidiaries of either.[10]

Joint Petitioners' final two requests make common sense. We agree that all reporting should be required on a semi-annual basis, consistent with D.06-11-019. We also agree that the revised reporting requirements can mostly clearly and concisely be set forth by deleting Ordering Paragraph 3(c) of D.02-07-036 and by modifying Ordering Paragraphs 6 and 7 of D.06-11-019, consistent with the discussion above. Attachment 1 to today's decision shows, in redline format, deletions to Ordering Paragraph 3(c) of D.02-07-036. Attachment 2 shows, in redline format, revisions to Ordering Paragraphs 6 and 7 of D.06-11-019. We should adopt these revisions.

[10] D.06-12-029 adopts Affiliates Transaction Rules Applicable to Large California Energy Utilities. These rules consist of revisions to earlier rules, adopted a decade ago, which still apply to all other energy utilities, pursuant to D.97-12-088, 77 CPUC 2d 422, 449, as amended by D.98-08-035, 81 CPUC 2d 607 and D.98-12-075, 84 CPUC 2d 155.

4.3. Correction of D.06-11-019, Footnote 20 and Finding 17

D.07-05-061 questions the correctness of Finding 17 in D.06-11-019. That finding states:

> 17. The KMI investment by Carlyle/Riverstone III and Carlyle Partners IV is too small to give them or their affiliate's indirect control over SFPP or CALNEV. Neither does this investment appear to have any competitive ramifications for Wild Goose, which provides no refined petroleum products or services in California.

D.07-05-061 recognizes Finding 17 is based upon discussion in the text of D.06-11-019 (and in particular, footnote 20), about the respective equity interests of Carlyle/Riverstone III and Carlyle Partners IV in Knight Holdco's then-pending proposal to acquire KMI and thereby obtain indirect control over SFPP and Calnev.[11] As D.07-05-061 more clearly reflects, however, KMI's control over the pipelines does not stem from its equity ownership (roughly 15 %) in the intermediary known as Kinder Morgan Energy Partners, L.P. (KMEP), but rather from KMI's ownership of the general partner interest (Kinder Morgan G.P., Inc. [KMGPI]) and all voting shares of another affiliate, Kinder Morgan Management,

[11] The discussion arises in the context of the request for a limited exemption from § 852, which D.06-11-019 approves concurrently with authorization for Carlyle/Riverstone II and Carlyle/Riverstone III to acquire Wild Goose from EnCana. Wild Goose Joint Applicants sought the exemption because immediately upon approval of the Wild Goose transfer of control, Carlyle/Riverstone III and Carlyle Partners IV would become subject to § 852 and thus, any initial, non-controlling investment they made in the Knight Holdco/KMI/SFPP/Calnev transacation would require Commission approval under that statute. The details of the Knight Holdco deal were at issue only tangentially in the proceeding underlying D.06-11-019 and so the discussion there is brief. Detailed discussion occurs in D.07-05-061, which approves the § 854 transfer of control over SFPP and Calnev.

LLC., to which KMGPI has delegated authority to manage KMEP's business and affairs.

In order to avoid confusion in the future about the basis for the § 852 exemption approved by D.07-05-061 and to properly recognize that equity holdings, alone, may not be determinative of control, we should modify Footnote 20 and Finding 17 in D.06-11-019, as shown in Attachment 2.

5. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Jean Vieth is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The related, outstanding matters in the captioned dockets can be concurrently resolved in a single decision by consolidating A.01-06-029 and A.06-05-033 with the previously consolidated dockets, A.06-09-016/A.06-09-021.

2. By their response to the ALJ's July 20, 2007 ruling, Carlyle/Riverstone III and Carlyle Partners IV have withdrawn their request that the Commission extend to them and their affiliates the "Section 852 Exemption Terms" appended to D.07-05-061 as Attachment 4.

3. Joint Petitioners have introduced no evidence that the factors, which caused the Commission to impose reporting requirements on Wild Goose in order to monitor its market share and ability to exercise market power, have changed in ways that militate for a relaxation of existing reporting requirements.

Joint Petitioners have established that Ordering Paragraph 3(c) of D.02-07-036 and Ordering Paragraphs 6 and 7 of D.06-11-019 should be revised to eliminate duplication and inconsistency among them.

4. The revised reporting requirements adopted today are intended to capture – and therefore permit the monitoring of – transactions that do not already fall within the purview of § 852 or § 854.

5. The geographic scope of the revised reporting requirements should be limited to "Western North America" as defined to mean "in addition to California, the states of Oregon, Washington, Arizona, New Mexico, Texas, Nevada, Colorado, Wyoming and Utah, as well as the provinces of British Columbia and Alberta in Canada and the State of Baja California Norte in Mexico."

6. The types of business acquisitions captured by the revised reporting requirements should be revised to delete the phrase "facilities that use natural gas an input, such as electric generation." This phrase is overbroad to the extent it could be read to include numerous, unidentified manufacturing or processing industries.

7. The revised reporting requirements should concern controlling interests, not non-controlling, passive interests. "Control" should be assessed on a fact specific, case-by-case basis consistent with Commission precedent. Joint Petitioners' recommendation that "control" be defined as "either ownership interest of 50.1% or greater or actual effective management control" is inconsistent with Commission precedent.

8. The entities which should be required to comply with the revised reporting requirements are the following: Wild Goose, all entities Wild Goose controls either directly or indirectly, all of Wild Goose's direct or indirect

parents, any entity under common control with Wild Goose by a direct or indirect parent entity (e.g. any subsidiary of any Wild Goose parent entity.)

9. Reporting under the revised reporting requirements should occur on a semi-annual basis, consistent with D.06-11-019.

10. The revised reporting requirements can mostly clearly and concisely be set forth by deleting Ordering Paragraph 3(c) of D.02-07-036 and by modifying Ordering Paragraphs 6 and 7 of D.06-11-019, as shown in Attachments 1 and 2 to today's decision.

11. Footnote 20 and Finding 17 in D.06-11-019 should be modified, as shown in Attachment 2 to today's decision, to avoid confusion in the future about the basis for the § 852 exemption approved by D.07-05-061 and to properly recognize that equity holdings, alone, may not be determinative of control.

Conclusions of Law

1. A.01-06-029 and A.06-05-033 should be consolidated for this decision with the previously consolidated dockets, A.06-09-016/A.06-09-021.

2. Because Carlyle/Riverstone III and Carlyle Partners IV have withdrawn their request for extension to them of the "Section 852 Exemption Terms" adopted by D.07-05-061, the request is moot and the Commission need not address the merits.

3. Revisions to D.02-07-036 and D.06-11-019, consistent with Attachments 1 and 2 to today's decision are reasonable and should be adopted.

4. Today's decision should be effective immediately to promote timely reporting and provide certainty to the affected parties.

O R D E R

IT IS ORDERED that:

1. For purposes of this opinion, Application (A.) 01-06-029 and A.06-05-033 are consolidated with the previously consolidated A.06-09-016 and A.06-09-021.

2. Ordering Paragraph 3(c) of Decision (D.) 02-07-036 is deleted, consistent with Attachment 1 to today's opinion.

3. Footnote 20 and Finding 17 of D.06-11-019 are corrected and Ordering Paragraphs 6 and 7 of D.06-11-019 are modified, consistent with Attachment 2 to today's opinion.

4. The Petition to Modify D.02-07-036 and the Petition to Modify D.06-11-019, both filed March 2, 2007, are granted to the extent consistent with Ordering Paragraphs 1 and 2, above, and otherwise are denied.

5. The issue deferred by D.07-05-061 (i.e., whether to extend application to Carlyle/Riverstone Global Energy and Power Fund III, L.P. and Carlyle Partners IV of the "Section 852 Exemption Terms" appended to that decision as Attachment 4) is moot.

6. A.01-06-029 and A.06-05-033 are closed.

This order is effective today.

Dated October 4, 2007, at San Francisco, California.

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

ATTACHMENT 1

Adopted revisions to D.02-07-036 (strikeout font indicates deletions):

D.02-07-036, Ordering Paragraph 3(c):

~~3(c). Wild Goose shall promptly advise the California Public Utilities Commission (Commission) of the following changes in status that reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing: (i) Wild Goose's own purchase of natural gas facilities, transmission facilities, or substitutes for natural gas, like liquefied natural gas facilities; (ii) an increase in the storage capacity or in the interstate or intrastate transmission capacity held by affiliates of its parent, Alberta Energy Company Ltd. (Alberta Energy, or a successor); or (iii) merger or other acquisition involving affiliates of Alberta Energy or a successor and another entity that owns gas storage or transmission facilities or facilities that use natural gas as an input, such as electric generation~~.

(END OF ATTACHMENT 1)

ATTACHMENT 2

Adopted revisions to D.06-11-019 (strikeout font indicates deletions; additions appear in italics):

Footnote 20:

[20] Carlyle/Riverstone III will have an interest of approximately 1.9% in each of SFPP and CALNEV. *From the standpoint of equity ownership alone,* ~~T~~this investment appears to be ~~far~~ too small to provide indirect control over either pipeline utility. *We will review the entire transaction in the forthcoming § 854 application*.

Finding of Fact 17:

17. The KMI investment by Carlyle/Riverstone III and Carlyle Partners IV is too small to give them or their affiliates indirect control over SFPP or CALNEV *from the standpoint of equity ownership alone and we will review the entire transaction in the forthcoming § 854 application*. Neither does this investment appear to have any competitive ramifications for Wild Goose, which provides no refined petroleum products or services in California.

Ordering Paragraph 6:

6. Wild Goose and its owners shall continue to be bound by all terms and conditions of Wild Goose's certificate of public convenience and necessity, as granted by Decision (D.) 97-06-091 and modified by subsequent decisions of the Commission~~, including D.02-07-036~~ and by the tariff filed with the Commission, as approved and subsequently modified by any approved amendments. *Paragraph 3(c) of Decision 02-07-036 is expressly superseded by this Ordering Paragraph and Ordering Paragraph 7, below.*

Ordering Paragraph 7:

7. *Semi-annually, on April 30 and on October 31,* Wild Goose shall ~~semi-annually~~ report to the Director of the Commission's Energy Division the following information *about transactions which are not already subject to Sections 852 and 854 of the Public Utilities Code: (a)*

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~~, to the extent such transactions are not already captured by Decision 02-07-036, Ordering Paragraph 3(c)~~; *and (b)* 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 (a) and (b) 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.* For the purposes of this Ordering Paragraph, *the following definitions apply: "affiliate" means any direct or indirect parent entity of Wild Goose, any entity controlled by Wild Goose whether directly or indirectly, any entity under common control with Wild Goose by a direct or indirect parent entity (e.g. any subsidiary of any Wild Goose parent entity) and* "Western North America" ~~is defined to~~ mean*s*, in addition to California, the states of Oregon, Washington, Arizona, New Mexico, Texas, Nevada, Colorado, Wyoming and Utah, as well as the provinces of British Columbia and Alberta in Canada and the State of Baja California Norte in Mexico.

(END OF ATTACHMENT 2)