

Decision 10-10-001 October 14, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Application 09-08-008
(Filed August 19, 2009)

**DECISION GRANTING APPLICATION FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO CONSTRUCT AND OPERATE A GAS STORAGE FACILITY**

TABLE OF CONTENTS

<u>Title</u>	<u>Page</u>
DECISION GRANTING APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT AND OPERATE A GAS STORAGE FACILITY.....	2
1. Summary of Decision.....	2
2. Procedural Background and Chronology.....	2
3. Summary of the Application.....	4
3.1. Description of the Applicant.....	4
3.2. Description of the Proposed Project.....	6
3.3. Reporting Requirements and Affiliate Transaction Rules.....	9
3.4. CEQA.....	10
4. Summary of Intervenor Positions.....	10
4.1. DRA.....	10
4.2. Enerland.....	11
4.3. Gill Ranch.....	12
4.4. Lodi.....	13
4.5. PG&E.....	13
4.6. SoCalGas.....	14
4.7. Wild Goose.....	14
5. Applicant’s Response to the Intervenor’s.....	15
5.1. Response to Enerland’s Safety Concerns.....	15
5.2. Response to SoCalGas’s Proposed Reporting Requirements.....	17
6. Discussion.....	18
6.1. Designation as a Public Utility.....	18
6.2. CPCN.....	19
6.2.1. Pub. Util. Code § 1001.....	19
6.2.2. Pub. Util. Code § 1002(a).....	21
6.2.3. CPCN Granted.....	23
6.2.4. Waiver of § 1005.5(a).....	23
6.2.5. Waiver of Rule 3.1(f).....	24
6.3. Market-Based Rates.....	25
6.4. Tariff.....	26
6.5. Waiver of § 818, § 851, and the Competitive Bidding Rule.....	27
6.6. Public Safety, Insurance, and Indemnification.....	27
6.7. SoCalGas’s Proposed Reporting Requirements.....	34
6.8. The Settlement Agreement.....	36

TABLE OF CONTENTS (cont.)

<u>Title</u>	<u>Page</u>
6.8.1. Summary of the Settlement Agreement	36
6.8.2. Responses to the Settlement Agreement	39
6.8.3. Approval of the Settlement Agreement.....	39
6.8.3.1 Reasonable in Light of the Record	40
6.8.3.2 Consistent with the Law	40
6.8.3.3 The Public Interest.....	41
6.8.4. Waiver of Rule 12.1(b)	42
7. Environmental Review	43
7.1. Proponent’s Environmental Assessment	43
7.2. Initial Study and Draft Mitigated Negative Declaration	44
7.3. Mitigation Monitoring, Compliance, and Reporting Program.....	44
7.4. Public Notice and Review.....	45
7.5. Comments on Draft IS/MND	45
7.6. Final MND	46
8. Proceeding Category and Need for Hearings	47
9. Comments on the Proposed Decision.....	48
10. Assignment of the Proceeding.....	48
Findings of Fact.....	48
Conclusions of Law	50
ORDER	53

Appendix A: Settlement Agreement

**DECISION GRANTING APPLICATION FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO CONSTRUCT AND OPERATE A GAS STORAGE FACILITY**

1. Summary of Decision

This decision grants the application filed by Central Valley Gas Storage, LLC (CVGS) for a certificate of public convenience and necessity to construct and operate an underground natural gas storage facility in Colusa County, including a 14.7-mile pipeline to connect with Pacific Gas and Electric Company's (PG&E) natural gas transmission system (CVGS Project or Project). This decision also grants CVGS's requests to be designated a public utility pursuant to Pub. Util. Code § 216 and § 222, and to charge market-based rates. In addition, this decision adopts a settlement agreement in which CVGS agrees to pay all costs to connect with PG&E's gas transmission system and to provide specified reports to Commission Staff. Finally, this decision certifies the Mitigated Negative Declaration for the CVGS Project and authorizes the issuance of a Notice of Determination for the Project pursuant to the California Environmental Quality Act.

2. Procedural Background and Chronology

Central Valley Gas Storage, LLC (CVGS) filed Application (A.) 09-08-008 on August 19, 2009 for a certificate of public convenience and necessity to construct and operate an underground natural gas storage facility in Colusa County, including a 14.7-mile pipeline to connect with Pacific Gas and Electric Company's (PG&E) natural gas transmission system (CVGS Project or Project). Notice of A.09-08-008 appeared in the Daily Calendar on August 21, 2009. CVGS served a copy of A.09-08-008 on (1) all likely competitors, and (2) the cities and counties in which service will be rendered. CVGS also mailed a notice of

availability of A.09-08-008 to all known owners of record of land on which the pipeline to connect the storage field to PG&E's gas transmission Line 400/401 will be placed or abut.

Pacific Gas and Electric Company (PG&E) filed a response to the application on September 18, 2009. The Division of Ratepayer Advocates (DRA) filed a protest on September 21, 2009. Each of the following parties filed a motion for party status that was granted by the assigned Administrative Law Judge (ALJ): Enerland, LLC (Enerland), Gill Ranch Storage, LLC (Gill Ranch), Lodi Gas Storage, L.L.C. (Lodi), Southern California Gas Company (SoCalGas), and Wild Goose Storage, LLC (Wild Goose).

A prehearing conference (PHC) was held on February 10, 2010. Written PHC statements were filed by CVGS, DRA, Enerland, Gill Ranch, PG&E, SoCalGas, and Wild Goose. The assigned Commissioner issued a ruling and scoping memo on March 5, 2010 (Scoping Memo). There were no evidentiary hearings.

On March 24, 2010, CVGS filed a motion to adopt a settlement agreement that resolves all issues raised by DRA, Lodi, and PG&E. Comments regarding the settlement agreement were filed by Enerland and SoCalGas. CVGS filed reply comments on May 10, 2010.

Opening briefs were filed on April 9, 2010, by CVGS, Enerland, and SoCalGas. Reply briefs were filed on April 22, 2010, by CVGS, Enerland, Gill Ranch, SoCalGas, and Wild Goose.

On May 20, 2010, CVGS filed updated information regarding the planned capacity of the gas storage field.

3. Summary of the Application

In A.09-08-008, CVGS requests the following:

1. A certificate of public convenience and necessity (CPCN) to CVGS to construct and operate an underground natural gas storage field in Colusa County, including a pipeline to connect the storage field to PG&E's gas transmission Line 400/401.
2. Designation as a public utility gas company under Pub. Util. Code § 216 and § 222.¹
3. Authority to provide gas storage services at market-based rates and approve CVGS's proposed tariff.
4. A waiver of the requirement in Rule 3.1(f) of the Commission's Rules of Practice and Procedure (Rule) to submit a statement of (i) estimated construction costs, and (ii) estimated annual fixed costs and operating costs.
5. A waiver of the requirement in § 1005.5(a) to specify a maximum reasonable cost for the CVGS Project.
6. An exemption from (i) § 816 et seq., and § 851 et seq., and (ii) the Commission's Competitive Bidding Rule for the issuance of debt and equity securities.
7. Approval of CVGS's proposed reporting requirements.
8. Approval of a mitigated negative declaration (MND) and issuance of a notice of determination pursuant to the California Environmental Quality Act (CEQA) for the CVGS Project.

CVGS intends to bear all risks associated the CVGS Project.

3.1. Description of the Applicant

CVGS is a Delaware company with licenses to do business in California and Illinois. Its principal place of business is Lisle, Illinois.

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

CVGS is owned by Nicor Energy Ventures Company, which in turn is owned by Nicor Inc. (Nicor). Nicor is a publicly traded company listed on the New York Stock Exchange. Nicor's major wholly owned subsidiaries are:

- Northern Illinois Gas Company d/b/a Nicor Gas Company (NGC), a regulated gas utility in Illinois. NGC owns 150 billion cubic feet (Bcf) of gas storage capacity in Illinois.
- Nicor Energy Ventures Company, which has various subsidiaries including Nicor Services, LLC, a retail gas marketer and a heating, ventilation and air conditioning warranty, maintenance and repair provider; Prairie Point Energy, LLC, a retail gas marketer in Illinois; and Nicor Enerchange, LLC, a wholesale and retail gas marketer located in Illinois that conducts business primarily in the Midwest.
- Tropical Shipping USA, LLC, a cargo carrier located in Florida that conducts business in the Caribbean and the Bahamas.
- Nicor Horizon, LLC, which holds a 50% interest in Horizon Pipeline Company, an interstate natural gas pipeline located in Illinois. Horizon Pipeline Company is a joint venture managed by Kinder Morgan Energy Partners, LP, which holds the other 50% ownership interest.

CVGS will contract with Nicor Enerchange, LLC to manage CVGS's tariffed services and marketing from its Illinois office.

With two exceptions, the Nicor corporate family does not conduct any business or own any assets on the West Coast. One exception is CVGS. The other exception is Nicor Services of California, LLC (NSC), which offers appliance safety inspections.² CVGS is a separate legal entity and is dedicated exclusively to developing and operating the CVGS Project.

² CVGS reports that NSC's revenues have been negligible.

3.2. Description of the Proposed Project

CVGS requests Commission authorization to convert the depleted Princeton Gas Field into a gas storage field. The proposed storage field is located on the western bank of the Sacramento River near the unincorporated town of Princeton in Colusa County, approximately 60 miles northwest of Sacramento. The depleted gas reservoir lies 1,980 to 2,280 feet below the surface, and has a surface area of approximately 677 acres, including buffer acreage.

The Princeton Gas Field was discovered in 1953 and produced approximately 9.7 Bcf of natural gas from 1954 to 1991 from five wells. Currently, three wells are suspended (not producing but open), and the remaining wells have been plugged and abandoned. CVGS drilled a test well in May 2009 which has been cased but not completed.

CVGS proposes to drill nine injection/withdrawal wells to achieve injection and withdrawal rates of up to 300 million cubic feet per days (Mcf/d). The wells will be drilled from a single pad and connected to the compressor station by approximately 1,400 feet of 16-inch pipeline.

CVGS also proposes to convert four existing gas wells (including the recently drilled test well) to observation wells. Prior to converting these wells, CVGS will determine the integrity of casing and wellhead equipment, and perform any required remedial work.

To dispose of salt water produced during the withdrawal of gas, CVGS plans to drill one well to re-inject salt water into the water-bearing formation below the gas storage zone. A salt water storage/surge tank will be on site to collect excess salt water that cannot be immediately injected.

The storage field will have an initial capacity of 9 Bcf, and 11 Bcf within two years. There will be an additional 1.4 Bcf of base gas to achieve the design

withdrawal rate of 300 Mcf/d. CVGS anticipates operating with a reservoir pressure of 400 to 1,400 pounds per square inch to achieve design capacities and to displace water from the reservoir.

Most surface facilities will be located on a 10-acre site that is currently a cultivated rice field. The major surface facilities at the site will include: (1) three 3,550 horsepower (hp) natural gas engines to drive three compressors; (2) three gas-fired dehydration units; (3) safety and emergency shut down devices; (4) a 640-kilowatt standby gas-fired generator; (5) metering and regulation facilities; (6) an electric motor control center and utility building; (7) an auxiliary building for the field control room, office, and workshop; (8) an electric power line; and (9) a domestic water well.

The natural gas engines and compressors will be installed in a building designed to minimize noise emissions and meet applicable Colusa County noise standards. The natural gas engines will be equipped with Best Available Control Technology to meet Colusa County Air Pollution Control District emission requirements. The building will be guarded by fire, heat and gas detection systems that, when activated, will commence an alarm sequence with automatic shut down of the compressor station.

The compressor station is designed for a fourth compressor unit to allow for the future expansion of the storage facility beyond 11 Bcf. Installation of the fourth expansion unit is contingent on market demand and reservoir technical considerations, and would be subject to a future application to the Commission.

CVGS proposes to construct 14.7 miles of 24-inch pipeline to connect the storage field with PG&E's Line 400/401 gas transmission pipeline near PG&E's Delevan compressor station. The connecting pipeline will be bidirectional,

allowing natural gas to flow to and from the storage field. The connecting pipeline easement will be 30 feet wide and cover approximately 54 acres.

The connection with PG&E's Line 400/401 will provide CVGS's customers with access to Alberta, Rockies, San Juan, and Permian gas supplies through the numerous pipelines that connect to PG&E's system. Customers holding CVGS capacity will also have access to potential supplies from new liquefied natural gas (LNG) facilities under development on the West Coast.

In order to inject gas into the storage field before construction of the connecting pipeline to PG&E's Line 400/401 is completed, CVGS proposes to install approximately 300 feet of 12-inch pipeline to temporarily connect to PG&E's Line 172, a nearby gas distribution line. Gas from Line 172 will be used to displace water from the reservoir and provide base gas and gas for the initial fill. CVGS will not deliver gas back into Line 172. CVGS will disconnect from Line 172 after the initial fill. CVGS understands that its use of Line 172 will be limited to capacity that is not being utilized by PG&E's end-use customers.

To provide electric power to storage field facilities, CVGS will connect to an existing PG&E 12-kilovolt line on Dodge Road. PG&E will design, install and maintain this component. The 3,500-foot power line connection may be a buried cable or an overhead line on existing poles depending on PG&E's requirements.

The CVGS Project will require approximately 269 acres of new land use, including temporary workspace and permanent right-of-way (ROW). CVGS continues to secure temporary surface use agreements and permanent ROW easements from landowners. CVGS is also finalizing the acquisition of rights to use the underground formation to store gas (approximately 677 acres) from property owners through underground lease agreements. The estimated cost of the Project is \$78 million.

3.3. Reporting Requirements and Affiliate Transaction Rules

CVGS requests an exemption from the following: (1) the Commission's affiliate transaction rules, which impose various restrictions and reporting requirements on transactions between energy utilities and their affiliates; (2) General Order (GO) 65-A, which requires utilities to file a monthly financial and operating report; (3) GO 77-M, which requires utilities to file an annual report containing data on dues, donations, subscriptions, contributions, legal fees, and employee compensation; and (4) GO 104-A, which requires utilities to file an annual financial report.

In lieu of these requirements, CVGS proposes to submit reports similar to those required of Wild Goose by Decision (D.) 02-07-036, and of Lodi by D.03-02-071 and D.06-03-012. Under its proposal, CVGS will promptly notify the Commission of the following: (1) CVGS's own purchase of other natural gas storage facilities, transmission facilities, or substitutes for natural gas (e.g., LNG facilities); (2) an increase in the storage capacity or pipeline transmission capacity held by affiliates to the extent any such increase is in, or directly connected to, California; and (3) a merger or other acquisition involving affiliates and another entity that owns gas storage or transmission facilities, or facilities that use natural gas as an input such as electric generation, to the extent such facilities are in, or directly connected to, California.

In addition, CVGS will submit quarterly summaries for all short-term transactions (one year or less). For each transaction, the summaries will list the purchaser, the transaction period, the type of service (e.g. firm, interruptible, balancing, etc.), the rate, the volume, whether the customer is an affiliate, and the total charge to the customer. For long-term transactions (longer than one year) in compliance with the pro forma agreements, CVGS will submit the actual service

agreement for each transaction within 30 days of the date of commencement of service. For all transactions that deviate from the pro forma agreements, CVGS will submit the individual service agreements for approval prior to commencement of service.

3.4. CEQA

Consistent with Rule 2.4 of the California Environmental Quality Act (CEQA)³ CVGS submitted a Proponent's Environmental Assessment (PEA) that evaluated all potential environmental impacts of the CVGS Project. Commission staff (Staff) reviewed the PEA and conducted an initial study of the Project. Based on the initial study, Staff determined that Project-related environmental impacts could be reduced to a less-than-significant level with certain mitigation measures. Today's decision adopts an MND as described in more detail below.

4. Summary of Intervenor Positions

4.1. DRA

DRA supports CVGS's application because, in DRA's opinion, the proposed gas storage field will enhance supply security and price stability. To help the Commission to monitor CVGS's operations, DRA recommends that CVGS file an annual report that contains the following information:

1. The capacities of the storage facility, injection, and withdrawal.
2. Average monthly inventory in storage, injections, and withdrawals.
3. Daily operating records.
4. Annual firm capacity under contract.

³ CEQA is contained in Cal. Pub. Res. Code § 21000 et seq.

5. Annual interruptible capacity sold.
6. Annual safety report describing all safety-related incidents.

DRA states the Commission has previously adopted similar reporting requirements for other gas storage providers.⁴ DRA does not object to treating the reports as confidential pursuant to GO 66-C and § 583.

4.2. Enerland

Enerland owns real property underlying the site where CVGS plans to interconnect with PG&E's Line 400/401. The interconnection point is near the 660 megawatt Colusa Power Plant that PG&E is currently building on land leased from Enerland.

Enerland states that a serious accident at the interconnection point could cause catastrophic harm to PG&E's Colusa Power Plant, with the potential loss in the range of one billion dollars. If a large loss were to occur, legal claims are likely to be directed at any conceivable defendants, including underlying property owners such as Enerland. Enerland avers that it is only fair that CVGS be adequately insured, compensate third parties for losses, and indemnify parties against potential liability.

Although CVGS will be covered by the corporate insurance policy of its parent company, Nicor, in the amount of \$35 million, Enerland states the amount is inadequate and the policy only protects CVGS, not Enerland or other third parties. In addition, the coverage is subject to a self-insured retention (SIR) of \$2 million. Under the SIR, the insurance policy will provide protection only to

⁴ D.08-02-035, Ordering Paragraph (OP) 6; D.03-02-071, OP 3(c); D.05-12-006, OP 3(b); D.06-11-019 at 18-19; and D.08-01-018, Appendix A.

the extent that CVGS's parent company has incurred and paid costs exceeding \$2 million. If the parent company fails to pay the SIR, the insurance policy will be useless to CVGS or any injured third parties.

Finally, Enerland states that even though the draft Initial Study/Mitigated Negative Declaration (Draft IS/MND) has over 100 pages devoted to safety issues, the proposed mitigation measures do not address the concerns raised by Enerland. Accordingly, Enerland urges the Commission to not grant a CPCN or adopt a MND for the CVGS Project until CVGS has taken all appropriate steps to protect property owners and the public at large against the risks of harm presented by its Project, including adequate insurance and indemnification of landowners against potential liability.

4.3. Gill Ranch

Gill Ranch opposes SoCalGas's proposal, described below, to require CVGS to post on a public web site the same information about executed transactions that SoCalGas is required to post. Gill Ranch believes that SoCalGas' motive is to subject all California gas storage providers to the same reporting requirements that apply to SoCalGas.

Gill Ranch states that CVGS is not similar to SoCalGas and should not be subject to the same reporting requirements. SoCalGas is the only gas storage provider in southern California. In contrast, PG&E and two independent providers (Lodi and Wild Goose) currently offer storage services in northern California, and Gill Ranch recently received authorization to provide storage services. CVGS and Sacramento Natural Gas Storage, LLC currently seek such authorization. The presence of multiple gas storage providers in northern California enables customers to compare pricing options, thereby ensuring that no single provider is manipulating the market.

Gill Ranch acknowledges that independent storage providers are subject to certain reporting requirements. For example, Gill Ranch is required to submit (1) copies of all short-term and long-term service agreements, and (2) annual reports that include information regarding capacity, average monthly storage inventory, injections and withdrawals, daily operating records, and firm and interruptible capacity under contract.⁵ CVGS is willing to provide similar information. Additionally, storage providers are required to provide detailed information to the U.S. Department of Energy.

4.4. Lodi

Lodi is an independent provider of gas storage services. To ensure a level playing field, Lodi recommends that CVGS be subject to the same regulatory requirements that apply to Lodi.

4.5. PG&E

PG&E does not oppose CVGS's application so long as all risks and costs for the proposed gas storage facility are borne by CVGS. These costs include expenses incurred by PG&E to (1) construct a permanent interconnection with PG&E's Line 400/401; (2) construct a temporary interconnection with Line 172; (3) install metering equipment; and (4) update PG&E's computer model of its gas transportation system to reflect CVGS's new gas storage facility. To ensure that the end-use customers served by Line 172 are unaffected, PG&E will require CVGS to use capacity on Line 172 within parameters established by PG&E.

⁵ D.09-10-035, OPs 22(b), 22(c), 22(e), and 24.

4.6. SoCalGas

SoCalGas generally supports CVGS's application. SoCalGas also recommends that CVGS be required to post on a public web site the following information that SoCalGas is required to post:

1. Information concerning all storage deals.
2. Information on trades and/or assignments of storage rights in the secondary market.
3. A weekly summary of volumetric hub positions.
4. Total storage inventory levels on a daily basis.
5. Index of firm capacity storage rights.
6. Daily contracted firm storage capacity rights and remaining firm capacity.
7. Scheduled injections and withdrawals per scheduling cycle.

SoCalGas believes that uniform posting requirements will result in lower prices because customers will be able to compare prices among competing storage providers. Based on its own experience, SoCalGas is confident that the cost to CVGS would only be a few thousand dollars per year and that the customer benefits would far outweigh the small cost.

4.7. Wild Goose

Wild Goose opposes SoCalGas's proposal to require CVGS to comply with the same information posting requirements that apply to SoCalGas. Wild Goose states the posting requirements that apply to SoCalGas stem from two settlement agreements that SoCalGas executed with numerous parties, including the Commission, to resolve antitrust and market abuse allegations.

According to Wild Goose, the parties to the SoCalGas settlements were concerned about SoCalGas's market power in the gas storage market for southern California and how that could lead to market abuses. Wild Goose

asserts that such conditions do not exist in northern California where, unlike in southern California, there are multiple providers of gas storage services. This level of competition has allowed the northern California storage market to operate effectively in the absence of the posting requirements requested by SoCalGas. Thus, the conditions which led to the imposition of posting requirements on SoCalGas do not exist with respect to independent storage providers in northern California such as CVGS.

Wild Goose disputes SoCalGas's statement that it will cost only a few thousand dollars per year to comply with posting requirements. Wild Goose estimates the annual costs would be approximately \$40,000, excluding internal personnel cost to input and verify the data. Unlike SoCalGas which can recover such costs from its captive ratepayers, independent storage providers may not be able to recover the costs in the rates they charge their customers.

5. Applicant's Response to the Intervenors

CVGS concurs with the positions advocated by DRA, Lodi, and PG&E, and CVGS was able to reach a settlement agreement with these parties that effectively adopts their positions. The settlement is addressed later in today's decision.

Gill Ranch and Wild Goose generally support CVGS's application, and their pleadings did not elicit any substantive response from CVGS.

The only contested issues were those raised by Enerland and SoCalGas. What follows is a summary of CVGS's response to these intervenors.

5.1. Response to Enerland's Safety Concerns

CVGS does not believe that Enerland's concern about safety is credible. On several occasions Enerland has tried unsuccessfully to have the California Energy Commission approve the placement of natural gas-related facilities on its property, including an interstate gas pipeline, a gas-fired power plant, and a hub

connecting multiple gas pipelines. CVGS opines that Enerland's eagerness to place these facilities on its property belies its concern about the purported dangers of CVGS's proposed interconnection with PG&E's Line 400/401.

Moreover, there are already significant energy facilities located on Enerland's property where CVGS plans to interconnect with PG&E's Line 400/401. These include PG&E's Line 400/401, PG&E's 660 MW Colusa Generation Station, PG&E's Delevan Compressor Station, PG&E's primary north-south, high-voltage electric transmission line, and Wild Goose's interconnection with PG&E's Line 400/401.⁶ With so many facilities already located on Enerland's property, CVGS finds it hard to believe that Enerland has a genuine concern about the safety of CVGS's proposed facility.

CVGS represents that its proposed construction and operating activities at the Enerland site are commonplace, and most will be undertaken by PG&E, not by CVGS. Specifically, the following will occur on or near the Enerland site:

- CVGS will construct approximately 1,000 feet of 24-inch diameter pipeline that leads to the meter station. The pipeline will comply with all state and federal safety regulations and seismic standards. The pipeline will be constructed of API 5L grade X-60 or X-65 steel pipe, and will use epoxy coating and cathodic protection to resist corrosion.
- PG&E will construct and operate a meter station on a one-acre site immediately adjacent to Wild Goose's meter station.
- PG&E will construct a 600-foot, 24-inch diameter pipeline from the meter station to PG&E's Line 400/401. PG&E will also construct the interconnection with Line 400/401.

⁶ Wild Goose's meter station and pipeline feeding into the meter station are located in close proximity to the Enerland site on land owned by Enerland's lessor.

None of CVGS's proposed storage field is located on Enerland's property.

CVGS represents that it will maintain \$35 million of comprehensive general liability insurance. The policy will cover injuries and damages to third parties to the extent CVGS is found liable. Thus, if there is ever an accident causing damage to Enerland property or injury to Enerland personnel and CVGS is at fault, the policy would pay up to \$35 million per incident.

The policy will be issued to Nicor, the ultimate parent of CVGS, and will cover Nicor's subsidiaries, including CVGS. The coverage includes a SIR of \$2 million, which means that Nicor is responsible for paying the first \$2 million of a claim and the insurance company pays all covered expenses beyond that, up to the \$35 million limit. Nicor (the named insured) will be responsible for paying the premiums and the \$2 million SIR.

CVGS asserts there can be no legitimate concern about Nicor's ability to pay the premiums and SIR, as Nicor has a market capitalization of approximately \$1.9 billion and a debt rating of AA.

5.2. Response to SoCalGas's Proposed Reporting Requirements

CVGS submits that it is unreasonable for it to comply with the same information posting requirements that apply to SoCalGas. CVGS states that SoCalGas agreed to these posting requirements in order to settle a lawsuit and a Commission enforcement proceeding triggered by SoCalGas's role in the California energy crisis. The posting requirements address alleged market abuses by SoCalGas and were never intended to apply to another entity.

CVGS asserts that its situation is very different than SoCalGas's. CVGS's proposed facility is small compared to SoCalGas' five storage fields. In addition, CVGS will own no gas transportation, will have no captive ratepayers, will be

completely at-risk for project costs, and have no affiliates that own natural gas transportation or storage assets in the western United States. In short, there are none of the market power concerns that led to SoCalGas's posting requirements.

CVGS contends that the posting requirements proposed by SoCalGas are burdensome for small players such as CVGS. For example, the daily posting obligations will require both up-front costs to build and test a web site, and ongoing operational costs. CVGS sees these costs as unduly onerous for small providers that lack market power and economies of scale.

6. Discussion

6.1. Designation as a Public Utility

CVGS requests to be designated a "public utility" pursuant to Pub. Util. Code § 216(a) and § 222, which state in relevant part, as follows:

§ 216(a). "Public utility" includes every...gas corporation...where the service is performed for, or the commodity is delivered to, the public or any portion thereof.

§ 222. "Gas corporation" includes every corporation or person owning, controlling, operating, or managing any gas plant for compensation within this state, except where gas is made or produced on and distributed by the maker or producer through private property alone solely for his own use or the use of his tenants and not for sale to others.

As discussed in more detail below, today's decision grants a CPCN to CVGS to construct and operate a gas storage field for the purpose of selling gas storage services to the public. Therefore, we find that CVGS is a public utility gas corporation as defined by § 216(a) and § 222. As such, CVGS is subject to the Commission's jurisdiction, control, and regulation, and has all the rights and obligations of a public utility.

6.2. CPCN

CVGS requests a CPCN to construct and operate the CVGS Project pursuant to § 1001 et seq. We address the applicable statutory provisions below.

6.2.1. Pub. Util. Code § 1001

Section 1001 states, in relevant part, as follows:

§ 1001. No...gas corporation...shall begin the construction of a...of a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction.

The Commission considers several factors to decide if “public convenience and necessity require” the construction of gas storage facilities. First, the Commission assesses the need for the proposed facilities. In D.93-02-013, the Commission held there is a presumptive need for gas storage facilities if the owners of the proposed facilities will not have a captive customer base and accept all financial risk.⁷ The CVGS Project meets these criteria.

More recently, the Energy Action Plan (EAP) II adopted by the Commission in October 2005 determined there is a need to develop in-state natural gas storage to enhance reliability and mitigate price volatility. The 2008 EAP Update affirmed this need.⁸ The proposed CVGS Project will help meet the need for additional gas storage facilities found in the EAP II and EAP Update.

⁷ D.93-02-013, 48 CPUC 2d 10, at 118-119 and 140, Finding of Fact 37. See also D.02-07-036 at 8-9.

⁸ EAP Update at 17.

No party contests the need for the CVGS Project. The market demand for the Project is evident from the response that CVGS received in its open season held in May 2008. CVGS reports that it received 17 bids for 26 Bcf of working capacity, or more than 200% of the planned 11 Bcf of capacity.⁹

Second, the Commission considers if the developer has the financial resources and technical expertise to construct and operate a gas storage field. CVGS clearly does. As explained in the Application, CVGS is a subsidiary of Nicor, a Fortune 500 company that owns a public utility gas company in Illinois with 150 Bcf of storage capacity in Illinois.¹⁰

Finally, the Commission considers if the proposed gas storage field will be constructed and operated in a way that protects the safety of workers and the general public. Here, the design, construction, and operation of the proposed CVGS Project will be subject to a comprehensive array of safety regulations at both the federal and state level, including the Commission's GO 112-E.

Pursuant to GO 112-E, at least 30 days prior to the start of construction of its pipeline, CVGS must file a report with the Commission's Consumer Protection and Safety Division, Utilities Safety and Reliability Branch (USRB) containing the information specified in GO 112-E, Section 125.1.¹¹ Pursuant to GO 112-E, Section 125.2, CVGS must also file with USRB a report of any failures

⁹ A.09-08-008 at 27.

¹⁰ A.09-08-008 at 8.

¹¹ *See*, GO 112-E, Section 125.1. Also, Section 162.3 requires any operator that is planning to build an LNG facility in California to notify the USRB 90 days prior to commencing construction of that LNG facility.

that occur during the strength testing of pipeline to be operated at hoop stresses of 20% or more of the specified minimum yield strength of the pipe used.

A complete list and summary of the applicable safety regulations is contained in Section 5.8 of the MND adopted by today's decision. We find these regulations will ensure a high degree of safety for employees and the general public.

We conclude for the previous reasons that public convenience and necessity require the construction of the proposed CVGS Project.

6.2.2. Pub. Util. Code § 1002(a)

Section 1002(a) states as follows:

§ 1002(a). The commission, as a basis for granting any certificate pursuant to Section 1001 shall give consideration to the following factors:

- (1) Community values.
- (2) Recreational and park areas.
- (3) Historical and aesthetic values.
- (4) Influence on environment, except that in the case of any line, plant, or system or extension thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (Chapter 55 (commencing with Section 4321) of Title 42 of the United States Code) or similar state laws in the other state, the commission shall not consider influence on the environment unless any emissions or discharges therefrom would have a significant influence on the environment of this state.

CVGS provided the following information regarding these four factors:

1. Community Values. The CVGS Project will be located in a rural agricultural area. The closest incorporated city is Colusa, which is 11 miles from

the compressor site. The City of Colusa has a population of approximately 5,698, and Colusa County has a population of approximately 21,302.

To inform the community about the Project, CVGS has been interviewed by a local newspaper on three occasions, and has made presentations at Colusa County Board of Supervisors meetings. CVGS also hosted two informational meetings that were widely advertised. Invitations were sent by U.S. Mail to (1) all identified landowners for surface rights and easements, (2) all elected and appointed officials, and (3) citizens who had requested that they be informed of the Project's status. Approximately 100 people attended the meetings.

CVGS estimates the Project will generate 370 jobs during the construction phase. Some of these jobs will be filled by local residents. Approximately five to seven permanent local jobs will be created at the Project site. The Project will also provide increased property tax and sales tax revenues.

2. Recreational and Park Areas. None of the Project is located on recreational and park lands. CVGS represents that the construction and operation of the Project will not affect, or interfere with the use of, any recreational and park areas surrounding the Project area.

3. Historical and Aesthetic Values. CVGS believes the proposed gas storage field is consistent with the site's historic use as a natural gas field. Further, in conducting its PEA, CVGS did not find anything of historic significance at the gas storage field site or along the pipeline easement.

CVGS acknowledges the Project will have visual aesthetic impacts, but these impacts will be mitigated to less than significant as described in the PEA.

4. Influence on the Environment. CVGS states the CVGS Project will not have a significant adverse influence on the environment for the reasons set forth in Chapter 3 of the PEA. The PEA is attached to its application as Exhibit D.

Also, the MND adopted in this decision (discussed in Section 7) concludes that the Project will not have an adverse effect on the environment because the mitigation measures described therein assure that the Project's potentially significant environmental impacts will remain at less-than-significant levels.

Conclusion. We find pursuant to § 1002(a) that the CVGS Project is consistent with community values; will not adversely affect recreational and park areas; is consistent with historical uses of the Project site and community aesthetic values; and will not have a significant adverse influence on the environment. Our finding is consistent with, and informed by, the MND that is adopted by today's decision.

6.2.3. CPCN Granted

We conclude that the CVGS should be granted a CPCN pursuant to § 1001 and § 1002(a) to construct and operate the CVGS Project. The CPCN is subject to several conditions that are discussed below, and to the mitigation measures in the MND adopted by today's decision.

6.2.4. Waiver of § 1005.5(a)

CVGS asks the Commission to waive the requirement in § 1005.5(a) to specify a cost cap for the CVGS Project. Section 1005.5(a) states, in relevant part, as follows:

§ 1005.5(a). Whenever the commission issues to an electrical or gas corporation a certificate authorizing the new construction of any addition to or extension of the corporation's plant estimated to cost greater than fifty million dollars (\$50,000,000), **the commission shall specify in the certificate a maximum cost determined to be reasonable and prudent for the facility.** (Emphasis added.)

CVGS states the Commission has previously waived the requirement in § 1005.5(a) to specify a cost cap for independent gas storage providers like CVGS who bear all the risks for a project. There is no opposition to CVGS's request.

The clear purpose of § 1005.5(a), when read together with § 1005.5(d),¹² is to set the maximum cost for a project that can be recovered from captive ratepayers. That purpose is not the relevant here. CVGS will not have captive ratepayers and will bear all financial risks for the CVGS Project. Thus, there is no regulatory need to specify the maximum cost for the CVGS Project. Consistent with Commission precedent for other independent gas storage projects,¹³ we grant CVGS's request to waive the requirement in § 1005.5(a) to set a maximum cost for the CVGS Project.

6.2.5. Waiver of Rule 3.1(f)

CVGS requests a waiver of the requirement in Rule 3.1(f) to provide certain cost data. Rule 3.1(f) states:

Rule 3.1(f). Applications, under Section 1001 of the Public Utilities Code, to construct or extend facilities shall contain the following information...(f) A statement detailing the estimated cost of the proposed construction or extension and the estimated annual costs, both fixed and operating associated therewith. In the case of a utility which has not yet commenced service or which has been rendering service for less than twelve months,

¹² Section 1005.5(d) states: "In any decision establishing rates for...[a] gas corporation reflecting the reasonable and prudent costs of the new construction...of the corporation's plant...the commission shall consider whether or not the actual costs of construction are within the maximum cost specified by the commission."

¹³ D.09-10-035 at 55, 70 (Conclusion of Law [COL] 21), and 72 (OP 6); D.03-04-038 at 12-13; D.02-07-036 at 55 (COL 9); and D.00-05-048 at 75 (COL 16).

the applicant shall file as a part of the application supporting statements or exhibits showing that the proposed construction is in the public interest and whether it is economically feasible.

CVGS notes the Commission has previously waived the cost data requirement in Rule 3.1(f) for independent storage providers that charge market-based rates and lack market power.¹⁴ There is no opposition to CVGS's request.

We grant the requested waiver of Rule 3.1(f). The chief purpose of Rule 3.1(f) is to provide the Commission with data needed to set cost-based rates for utilities. CVGS will not have cost-based rates. As described in more detail below, CVGS will have market-based rates. Thus, there is no need for CVGS to provide the cost data required by Rule 3.1(f) for ratemaking purposes.

6.3. Market-Based Rates

CVGS requests authority to charge market-based rates for storage services. There is no opposition to CVGS's request.

CVGS's request is consistent with Commission precedent.¹⁵ For example, in D.00-05-048 the Commission authorized Lodi to charge market-based rates because Lodi lacked market power. The determination that Lodi lacked market power was based on three facts: (1) Lodi was a newcomer to the California gas storage market; (2) Lodi was starting with a customer base of zero; and (3) Lodi was not in a position to force other utilities to exit the market.¹⁶

¹⁴ D.00-05-048 at 39 (citing D.98-06-083 at 3-6).

¹⁵ D.97-06-091 as modified by D.98-06-083; D.02-07-036; D.00-05-048; D.06-03-012; D.08-02-035; and D.09-10-035.

¹⁶ D.00-05-048 at 38-39.

The same circumstances are present here. First, CVGS is a new entrant into a market that has several established providers of gas storage services. The additional storage capacity provided by the CVGS Project will make the market even more competitive. Second, CVGS will start with a customer base of zero. Finally, as a new entrant, CVGS will not be able to force other gas storage providers to exit the market because CVGS will be adding a relatively small amount of incremental capacity to a market with well-established competitors.

We conclude for the previous reasons that it is reasonable to grant CVGS's request to charge market-based rates for its services. Consistent with our prior decisions, we will require CVGS to establish a rate zone for each service that includes pre-set minimum and maximum rates.¹⁷ CVGS may revise its rate zones in response to changing market conditions.

6.4. Tariff

CVGS requests approval of its proposed tariff appended to A.09-08-008 as Exhibit E. There is no opposition to the proposed tariff. We find the proposed tariff is reasonable and approve it. CVGS must file its initial tariff using the Tier 1 advice letter process at least 30 days prior to offering services to the public. The initial tariff must be substantially similar to the draft tariff appended to A.09-08-008. CVGS does not need to provide cost justification with the tariff it files pursuant to today's decision or with future revisions to its tariff.

¹⁷ D.09-10-035 at 54. CVGS's proposed tariff appended to A.09-08-008 includes a rate zone for each service.

6.5. Waiver of § 818, § 851, and the Competitive Bidding Rule

CVGS requests that its issuance of debt and equity be exempt from § 818, § 851, and from the Commission's Competitive Bidding Rule.¹⁸ CVGS states that the requested exemption is reasonable given that it will assume all financial risks. There is no opposition to CVGS's request.

The Commission routinely grants exemptions from § 818, § 851, and the Competitive Bidding Rule for debt and equity issued by utilities that (1) possess no market power, and (2) bear all risks for their business activities.¹⁹ CVGS possesses both of these characteristics. Therefore, consistent with Commission precedent, we grant CVGS's request for an exemption from § 818, § 851, and the Competitive Bidding Rule for the limited purpose of issuing debt and equity to finance utility-related investments and operations.

6.6. Public Safety, Insurance, and Indemnification

Enerland opposes CVGS's request for a CPCN because CVGS has allegedly failed to show that it "evaluated and provided for all risks to the public safety that its project may present."²⁰ Although CVGS proposes to obtain general liability insurance of \$35 million, Enerland asserts the amount is inadequate and protects only CVGS. Enerland recommends that CVGS be required to obtain an adequate amount of insurance and to indemnify parties against potential liability.

¹⁸ The Competitive Bidding Rule is in Resolution F-616, dated October 1, 1986.

¹⁹ See, for example, D.10-04-007, D.10-02-021, and D.09-10-035.

²⁰ Enerland Opening Brief at 4.

We disagree with the premise that the CVGS Project is unsafe. The Project will be designed to meet the requirements of (1) the U.S. Department of Transportation's Office of Pipeline Safety, which oversees pipeline and natural gas facility construction, operation, and safety; (2) the California Department of Conservation Division of Oil, Gas and Geothermal Resources, which oversees the design, installation, and operation of gas wells and underground gas injection projects; and (3) the California Building Code seismic safety standards.

Enerland did not provide an analysis of the safety risks of the CVGS Project other than a few newspaper articles of accidents involving natural gas. Conversely, CVGS's application contained extensive information documenting how the CVGS Project would be constructed and operated in a manner that meets all safety requirements.²¹ The MND that is adopted by today's decision contains a thorough analysis of the safety hazards posed by the Project.²² The adopted MND finds that with the implementation of required safety measures, the CVGS Project can be constructed and operated safely.

It is significant that PG&E will be responsible for the construction, operation, and maintenance of the interconnection of the CVGS Project with PG&E's Line 400/401 at a location that is somewhat near PG&E's Colusa Power Plant.²³ As a large natural gas utility, PG&E has extensive expertise and experience with interconnections. PG&E has been an active party in this proceeding but has not expressed any concerns about the potential risks of the

²¹ A.09-08-008, Proponent's Environmental Assessment, Section 3.7.

²² MND, Section 5.8 and Appendix D.

²³ CVGS Opening Brief at 8.

CVGS Project. This undermines Enerland's claim that the Project could cause "catastrophic harm to PG&E's Colusa Power Plant."²⁴

In its comments on the proposed decision, Enerland claims the MND fails to properly evaluate what Enerland describes as the "extraordinary risk" of interconnecting the CVGS Project with PG&E's gas transmission system in the vicinity of PG&E's Colusa Power Plant.²⁵ This assertion lacks merit. The MND contains a thorough analysis of the risks that the CVGS Project poses to PG&E's Colusa Power Plant and the public at large, and finds that the likelihood of a dangerous release of natural gas from the CVGS Project from a ruptured pipeline or other causes is extremely low and less than accepted significance criteria.²⁶

In the event there were a large-scale release of natural gas from the CVGS Project that resulted in a fire or explosion, it is very unlikely that PG&E's Colusa Power Plant would suffer any significant damage. This is because the MND finds that potentially harmful torch fire impacts to property would extend up to 720 feet from the point of rupture, and potentially harmful flash fire impacts to property (i.e., harmful impacts from the explosive ignition of a natural gas vapor cloud) would extend up to 443 feet.²⁷ The CVGS Project will interconnect with

²⁴ Enerland Opening Brief at 6.

²⁵ Enerland Comments at 8.

²⁶ MND, Appendix D, System Safety and Risk of Upset, Section 6.

²⁷ MND, Appendix D, System Safety and Risk of Upset, Section 6.

PG&E gas-transmission system at a location that places PG&E's Colusa Power Plant beyond the damaging reach of torch fires and explosions.²⁸

With respect to the risks to individuals, the MND finds that the aggregate risk of death from the accidental release of natural gas is 1-in-250,000,²⁹ which is less than generally accepted significance criteria.³⁰

Enerland asserts in its comments on the Proposed Decision that the MND's analysis of safety risks is deficient because the MND did not consider the following catastrophic accidents involving natural gas: the destruction of the Kleen Energy Power Plant in February 2010; an explosion in June 2009 at a ConAgra Foods plant in North Carolina that killed four workers; an explosion in August 2009 at an El Paso Natural Gas pipeline that caused 12 deaths; the Deepwater Horizon oil rig catastrophe in April 2010 that killed 11 people; and the recent explosion of a PG&E natural gas pipeline in San Bruno, California, that killed eight people.

We disagree that the MND's risk analysis is inadequate. The risk analysis is based, in part, on the United States Department of Transportation's (USDOT) extensive database of gas pipeline accidents. The MND used the USDOT's database to develop the anticipated frequency and consequences of unintentional

²⁸ MND, Section 4, Figure 2 and Appendix A, Sheet 11. See also CVGS's Reply Comments on the Proposed Decision at 2 and Exhibit A.

²⁹ MND, Appendix D at D-65. The aggregate risk of death is the sum of the frequency of anticipated fatalities from each possible risk, for each of the project components, over the entire project length, over a given period of time. (MND, Appendix D at D-61.)

³⁰ MND, Appendix D, Sections 7.2 and 7.3.

releases of natural gas from the CVGS Project. We concur with the following explanation contained in the MND regarding why it is appropriate to exclude the accidents cited by Enerland from the MND's risk analysis:³¹

Kleen Energy Systems Power Plant, February 2010 – This incident occurred during the construction of a combined cycle gas- and oil-fired power plant, which is a different type of project than the CVGS gas storage project. Since the USDOT does not regulate power plants, this incident is not included in the USDOT gas transmission pipeline database. However, construction accidents have occurred on natural gas transmission pipelines that are more comparable to the CVGS Project. These incidents are included in the USDOT database that was used to prepare the MND. As a result, incidents similar to the Kleen Energy Systems Power Plant incident were considered in the MND, to the extent that they relate to natural gas transmission and compression facilities.

ConAgra Foods Plant, North Carolina, June 2009 – This incident occurred at a food-processing plant. It was likely caused by an accidental venting and subsequent ignition of natural gas inside the building during the installation of a water heater. Since the USDOT does not regulate food-processing facilities, this incident is not included in the USDOT gas transmission pipeline database and, therefore, was not considered in the MND. Additionally, a food-processing facility is not the same type of facility as a gas storage project. The only common factor is natural gas. To help prevent these types of incidents at natural gas transmission, compression, and storage facilities, there are a number of applicable laws, ordinances, regulations, and standards (LORS). These LORS prohibit ignition devices within specified distances from possible natural gas sources (e.g., flanges, compressors, and valves) and require numerous safeguards that were not applicable to the ConAgra Foods Plant. Many of these LORS are outlined in the

³¹ MND, Attachment 1, Response to Comments, Item E2-4 at E2-10 and 11.

MND, Appendix D, Section 2.0. For example, a compressor building must be equipped with gas-detection and alarm equipment; an emergency shutdown system must be installed; vent and pressure relief lines must be routed to a location where the gas can be discharged without hazard; and ventilation must be provided to ensure that employees are not endangered by the accumulation of gas in rooms or other areas.

El Paso Natural Gas, Carlsbad, New Mexico, August 2000 – This incident resulted in 12 fatalities and is included in the USDOT gas transmission pipeline database. However, it occurred before the period evaluated in the MND risk assessment (January 2002 through December 2008). The period prior to January 2002 was not analyzed in the risk assessment because these records do not include reporting fields for fires or explosions. As a result, they could not be used to determine the conditional probabilities of ignition. During the 7-year period considered in the MND, the USDOT database included seven incidents that resulted in fatalities. Further, the MND included modeling of a full bore pipeline rupture and subsequent ignition, similar to the El Paso incident. As a result, the likelihood and consequences of a full bore pipeline rupture are presented in the MND.

Deepwater Horizon, Gulf of Mexico, April 2010 – This incident occurred during the drilling of a deep-water exploration well in the Gulf of Mexico. The CVGS project does not include any deep-water drilling. Also, this incident occurred after the MND was prepared. As a result, this incident was not included in the MND.

The explosion of PG&E's gas pipeline in San Bruno on September 9, 2010, also occurred too late to be addressed by the MND. There are several investigations currently underway regarding the San Bruno incident. Until the investigations are complete, we decline to speculate on what lessons should be drawn from the San Bruno incident with respect to the CVGS Project.

We take very seriously the risks associated with natural gas storage and transport. Such accidents can kill and injure without warning and devastate communities. At the same time, we recognize that it is impossible to eliminate

all of the safety risks associated with natural gas infrastructure projects. If that were the standard, there would be no natural gas infrastructure in California. Here, we find the safety risks associated with the CVGS Project have been identified and reduced to a level of less than significant. The residual risks to public safety are very low and, on balance, reasonable in light of the public benefits of the project.

For the preceding reasons, we decline to adopt Enerland's recommendation to deny a CPCN for the CVGS Project on the basis of safety concerns. However, we agree with Enerland that CVGS should be required to maintain an adequate amount of liability insurance. We further agree that \$35 million is insufficient. Consistent with previous decisions, we will require CVGS to maintain \$50 million of general liability insurance per occurrence and in aggregate.³² We believe this amount is adequate given the Project's rural location, the remote risk of large-scale catastrophic damage to property, and the extremely low risk of death and injury to people. The required insurance shall increase every five (5) calendar years by an amount equal to inflation during the previous five years, rounded to the nearest million. The first five-year period shall start on January 1, 2011. The measurement of inflation shall be the gross domestic product deflator. Regardless of its insurance, CVGS must indemnify Enerland and other parties for any costs and losses they incur due to accidents associated with the construction or operation of the CVGS Project where CVGS is found to be liable.

³² The Commission adopted a \$50 million insurance requirement in D.09-10-035 at 47 - 48, and in D.00-05-048 at 79, OP 5.

CVGS may obtain the required insurance directly or through Nicor. If the former, the deductible or self insured retention must not exceed \$250,000. If the latter, the insurance policy must always provide \$50 million of coverage to CVGS, escalated by inflation as described previously, regardless of any claims paid to other affiliates under the policy.

In its comments on the proposed decision, Enerland argues that the Proposed Decision's insurance and indemnity requirements are inadequate, given Enerland's position that the CVGS Project is unsafe. We disagree; the required amount of insurance is sufficient for all plausible scenarios. As discussed above, the MND determined that there is a very low risk that the CVGS Project will harm people or cause significant damage to property. The insurance coverage we require for the Project is similar to what we have required for similarly situated gas storage projects, and the indemnification requirement goes beyond what we have previously required for such projects.³³

6.7. SoCalGas's Proposed Reporting Requirements

SoCalGas recommends that the Commission require CVGS to comply with the same information-posting requirements that apply to SoCalGas. The recommendation is opposed by CVGS, Gill Ranch, Lodi, and Wild Goose. No party expressed support for SoCalGas's recommendation.

We decline to adopt SoCalGas's recommendation for the following reasons. First, as explained in CVGS's Brief,³⁴ SoCalGas voluntarily agreed to the information-posting requirements in settlement agreements that it executed with

³³ See D.00-05-048 re: Lodi Gas Storage; D.09-10-035 re: Gill Ranch Storage.

³⁴ CVGS Opening Brief at 11-12.

numerous parties. Many of the provisions of these settlement agreements, including the information-posting requirements, were adopted by the Commission in D.07-12-019.

In general, the Commission does not treat settlement agreements as precedents unless the Commission indicates otherwise. There is no indication in D.07-12-019 that the Commission intended to treat the information-posting requirements adopted therein as a precedent for other gas-storage providers. Therefore, the fact that SoCalGas agreed to implement information-posting requirements has no bearing on whether the same requirements should apply to CVGS.

Second, CVGS and SoCalGas are not similarly situated. SoCalGas is the largest storage provider in the California with over 130 Bcf of capacity, which is approximately 44% of the entire storage capacity in California and more than ten times the planned capacity of CVGS. And unlike CVGS, SoCalGas controls the gas transportation system connected to its storage fields, has captive ratepayers, is not fully at-risk for its investment in storage facilities, and has extensive affiliate connections in California. In light of these materially different circumstances, we are not convinced that it is necessary or desirable for CVGS to comply with the same information-posting requirements that apply to SoCalGas.

Finally, adopting SoCalGas's recommendation would result in information-posting requirements that apply to SoCalGas and CVGS, but not to the other gas-storage providers in California (i.e., PG&E, Gill Ranch, Lodi, Wild Goose, and Sacramento Natural Gas Storage, LLC.) We conclude that it is inappropriate to require CVGS, but not other gas-storage providers, to comply with the same information-posting requirements that apply to SoCalGas.

6.8. The Settlement Agreement

6.8.1. Summary of the Settlement Agreement

On March 24, 2010, CVGS, DRA, Lodi, and PG&E (collectively, the Settling Parties) filed a Settlement Agreement and a motion to adopt the Settlement Agreement pursuant to Rule 12.1. A copy of the Settlement Agreement is contained in Attachment A of today's decision.

The Settlement Agreement resolves all issues raised by DRA, Lodi, and PG&E, and contains three conditions which the Settling Parties seek to include, without modification, in the Ordering Paragraphs of today's decision. The three conditions are summarized below.

Condition 1: To resolve issues raised by PG&E, CVGS agrees to the following:

- a. All costs of the CVGS Project shall fall entirely on CVGS and its storage customers, not on PG&E and its ratepayers. Such costs include the construction of all facilities for the Line 400/401 and Line 172 interconnections, and all necessary changes to PG&E's computer and allocation modeling systems.
- b. CVGS will be an independent storage provider (ISP) under the Commission's regulations, and will be subject to the ISP Interconnections Agreement described in D.06-09-039 as well as other Commission decisions setting policy for ISPs.
- c. CVGS must deliver gas into PG&E's transmission pipeline system in conformance with the specifications in PG&E's Commission-approved gas quality tariff, Gas Rule 21.C., ¶ 4.
- d. CVGS acknowledges that (i) the temporary interconnection to PG&E's Line 172 will be disconnected when the Line 400/401 interconnection and compressor facilities are completed; (ii) CVGS will bear all costs for disconnecting from Line 172; (iii) the Line 172 interconnection is not bi-directional, and that CVGS cannot deliver gas back into Line 172; and (iv) CVGS must operate its facility within the available parameters and capacity

of Line 172 as determined by PG&E to ensure that PG&E's end-use customers served by Line 172 receive reliable gas service.

Condition 2: To resolve issues raised by Lodi, CVGS agrees to the following:

- a. CVGS shall submit a semi-annual report to the Director of the Commission's Energy Division, with a copy to DRA, that contains the following information about transactions which are not already subject to § 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 (A) produces natural gas or provides natural gas storage, transportation or distribution services; or (B) generates electricity, or provides electric transmission or distribution services. Information reported pursuant to (A) and (B) shall include the nature, name, and location of the asset acquired or the investment made, and the amount of the acquisition or investment.
 - ii. For the purposes of Condition 2(i) above, the following definitions apply: "affiliate" means any direct or indirect parent entity of CVGS, any entity controlled by CVGS whether directly or indirectly, any entity under common control with CVGS by a direct or indirect parent entity (e.g. any subsidiary of any CVGS parent entity); and "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. Competitively sensitive, confidential information may be submitted under seal in accordance with GO 66-C and § 583.
- b. CVGS shall 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 CVGS enters into multiple service agreements within a 30-day period, CVGS may file these service agreements together so as to conserve the resources of both CVGS 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 CVGS and the customer, and the total charge to the customer. Competitively sensitive, confidential information, including the short-term service agreements, may be submitted under seal in accordance with GO 66-C and § 583.

- c. CVGS shall 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. Competitively sensitive, confidential information, including the long-term service agreements described herein, may be submitted under seal in accordance with GO 66-C and § 583.

Condition 3: To resolve issues raised by DRA, CVGS agrees to provide an annual report to the DRA that contains the following information:

- a. The capacity of the CVGS Project storage facilities, i.e., total inventory, and injection and withdrawal rights.
- b. A summary showing average monthly storage inventory, injections, and withdrawals for the CVGS Project. The summary shall be based on the Energy Information Reports that CVGS submits to the U.S. Department of Energy.

- c. Daily operating records, aggregated on a weekly basis, based on the Energy Information Reports submitted to the U.S. Department of Energy.
- d. A copy of the annual safety report, including a description of all safety-related incidents that is submitted to the U.S. Department of Transportation.
- e. The aggregate firm storage capacity under contract (with monthly and annual data) and aggregate interruptible storage capacity sold (with monthly and annual data).
- f. Competitively sensitive, confidential information shall be identified by CVGS and treated by DRA as confidential pursuant to GO 66-C and § 583.

The reporting requirements in the Settlement Agreement replace the reporting requirements proposed by CVGS in A.09-08-008 at pages 42-43.

The Settling Agreement provides that upon the issuance of a Commission decision adopting the three 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 by one of the Settling Parties.

6.8.2. Responses to the Settlement Agreement

Responses to the Settlement Agreement were filed by Enerland and SoCalGas. They both note that the Settlement Agreement does not address any issues they raised. We addressed these issues previously in today's decision.

Enerland does not oppose the Settlement Agreement. SoCalGas opposes the Settlement Agreement to the extent it would allow CVGS to submit reports under seal. SoCalGas asserts that the reports should be made public.

6.8.3. Approval of the Settlement Agreement

The Settlement Agreement is subject to Rule 12.1(d), which states:

The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

As set forth below, we find that the Settlement Agreement is reasonable in light of the record of this proceeding, is consistent with the law, and in the public interest. We therefore approve the Settlement Agreement.

6.8.3.1 Reasonable in Light of the Record

The Settlement Agreement adopts the positions advocated by PG&E, Lodi, and DRA. By doing so, the Settlement Agreement will help ensure that CVGS will bear all costs to interconnect with PG&E's Line 400/401 and Line 172; will operate in a manner that does not adversely affect PG&E's system or end-use customers; and will provide the Commission with information needed to monitor CVGS's market activities in California and CVGS's affiliate transactions and relationships. These outcomes are not only reasonable in light of the record, they are reasonable per se.

6.8.3.2 Consistent with the Law

With one clarification, the Settlement Agreement is consistent with the Public Utilities Code, prior Commission decisions, and other applicable law. The one clarification concerns the provision in the Settlement Agreement that it "may only be modified, revised, or eliminated by the Commission in a Decision issued in response to a formal petition to the Commission."³⁵

³⁵ Settlement Agreement, Section III.C.

We interpret this provision as applying to the Settling Parties and not the Commission. The Commission's authority to revise the Settlement Agreement, once adopted, is set forth in § 1708, which states as follows:

The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

Pursuant to § 1708, our power to modify, revise, or eliminate the Settlement Agreement is not limited to situations where one of the Settling Parties has filed a formal petition. Under § 1708, we may rescind, alter, or amend the Settlement Agreement adopted by today's decision after providing notice to the parties. We will adopt the Settlement Agreement with this understanding.

6.8.3.3 The Public Interest

We find the Settlement Agreement is in the public interest because (1) it allows new gas storage facilities to be approved and built in a timely manner, consistent with the EAP II and EAP Update; (2) it provides Commission Staff with information on a regular basis about the CVGS Project that is pertinent to the Commission's regulatory responsibilities; (3) CVGS's shareholders will bear all the risks for the CVGS Project; and (4) the Project will not adversely affect PG&E or PG&E's end use costumers.

SoCalGas opposes the provision in the Settlement Agreement that allows CVGS to submit competitively sensitive, confidential information to Commission Staff under seal. SoCalGas argues that without a clear showing on the need for confidentiality, the information should be made public.

We agree with SoCalGas that information submitted to Commission Staff should be available to the public unless there is a persuasive showing on the need for confidentiality. However, unlike SoCalGas, we interpret the Settlement Agreement as complying with this principle. Specifically, the Settlement Agreement does not state that all information will be submitted under seal. Rather, it states that only competitively sensitive, confidential information may be submitted under seal in accordance with GO 66-C and § 583.

GO 66-C and § 583 provide a framework for utilities to submit information to Commission staff under seal and for parties to request public disclosure of such information.³⁶ If CVGS submits information under seal pursuant to § 583, and a party requests public disclosure of that information pursuant to GO 66-C, CVGS will have the burden at that time to demonstrate why the information should be afforded confidential treatment.

6.8.4. Waiver of Rule 12.1(b)

CVGS filed concurrently with the Settlement Agreement a motion to waive Rule 12.1(b), which requires the parties to a settlement agreement to hold at least one settlement conference before submitting a settlement for Commission approval. CVGS states that it is unnecessary to hold a settlement conference because it provided a draft copy of the Settlement Agreement to the service list on March 17, 2009. On March 18, 2009, CVGS held an all-party conference call in which CVGS stated its intent to file the Settlement Agreement on March 24, 2010. CVGS reports that no party expressed objections to the Settlement Agreement at that time. There is no opposition to CVGS's motion to waive Rule 12.1(b).

³⁶ D.07-05-032 and D.06-06-066 provide a useful summary of GO 66-C and § 583.

Given that the motion is unopposed, we see no point in requiring the Settling Parties to hold a settlement conference pursuant to Rule 12.1(b).

Therefore, we grant CVGS's motion to waive Rule 12.1(b).

7. Environmental Review

The Commission is required by CEQA to consider the environmental consequences before acting on the CVGS Project.³⁷ Under CEQA, the Commission must act as either the Lead Agency or a Responsible Agency. The Lead Agency is the public agency with the most responsibility for supervising or approving the project as a whole.³⁸ Here, the Commission is the Lead Agency.

7.1. Proponent's Environmental Assessment

A.09-08-008 included a PEA pursuant to Rule 2.4(b). The PEA provided a description of the proposed CVGS Project, an evaluation of the environmental impacts of the Project, and measures to mitigate the potentially significant environmental impacts.³⁹ The PEA concluded that with mitigation, the proposed CVGS Project would have either a less than significant impact or no impact on every resource category for which CEQA requires an analysis.

We consider all of the PEA-proposed mitigation measures to be a part of the proposed CVGS Project. Our approval of the CVGS Project in today's decision incorporates by reference every mitigation measure in the PEA.

³⁷ California Code of Regulations, Title 14, Chapter 3, (CEQA Guidelines), Section 15050(b).

³⁸ CEQA Guidelines, Section 15050(b).

³⁹ PEA, Chapter 1, Table ES-1.

7.2. Initial Study and Draft Mitigated Negative Declaration

The Staff reviewed the PEA and prepared an Initial Study (IS) to address environmental issues related to the CVGS Project. The IS determined the Project would not have a significant adverse impact on the environment if specific, feasible mitigation measures were taken in addition to those proposed in the PEA.

Based on the IS, Staff prepared a Draft IS/MND and released the Draft IS/MND for public review on April 22, 2010.⁴⁰ The Draft IS/MND found that the CVGS Project would have either no environmental impact or a less than significant environmental impact in the following areas: geology and soils; land use and planning; mineral resources; population and housing; public services; and recreation.

The Draft IS/MND also found that with mitigation incorporated, the CVGS Project would result in less than significant impacts in the following areas: aesthetics; agricultural resources; air quality and climate change; biological resources; cultural resources; hazards and hazardous materials; hydrology and water quality; noise; transportation and traffic; and utilities and service systems.

7.3. Mitigation Monitoring, Compliance, and Reporting Program

As required by CEQA, the Draft IS/MND included a Mitigation Monitoring, Compliance, and Reporting Program (MMCRP) that describes the mitigation measures CVGS must implement for the proposed CVGS Project, the

⁴⁰ The August 3, 2010 ALJ ruling identified, marked, and received into the record the Draft IS/MND as Exhibit 1.

actions required to implement each mitigation measure, how implementation will be monitored, and the timing of each mitigation measure. The Commission uses the MMCRP as a guide for expected performance and requires Commission-designated environmental monitors to record such performance. CVGS has agreed to each mitigation measure in the MMCRP. Consistent with CEQA, we adopt the final MMCRP as part of our approval of the proposed CVGS Project.

7.4. Public Notice and Review

On April 22 , 2010, Staff filed a Notice of Completion with the State Office of Planning and Research; published a Notice of Intent to Adopt an MND; and released the Draft IS/MND for a 30-day public review and comment period.

The Draft IS/MND was distributed to federal, state, and local agencies; property owners within 300 feet of the CVGS Project; and other interested parties listed in the Draft IS/MND. A Public Notice of the Project was also published in the local newspaper announcing the availability of the Draft IS/MND.

The 30-day comment period was subsequently extended by two weeks in response to requests received from the attendees of the public workshop regarding the Draft IS/MND that was held on May 5, 2010, in Princeton. The extended comment period ended on June 7, 2010.

7.5. Comments on Draft IS/MND

Comments letters on the Draft IS/MND were received from the Native American Heritage Commission, California State Senate, County of Colusa Department of Planning and Building Administration, Department of Conservation - Division of Oil, Gas, & Geothermal Resources, Princeton Fire Department, Princeton Volunteer Fire Department, Colusa Basin Drainage District, Colusa County Fair, Nossaman, LLP, Hogan Lovells, Lucas Law, Pacific

Gas and Electric Company, and Chris Torres.⁴¹ Those comments and the Commission's responses to those, comments are contained in the Final MND.

7.6. Final MND

A Final MND was prepared pursuant to CEQA guidelines and released by Staff on July 28, 2010.⁴² The Final MND addresses all aspects of the Draft IS/MND; includes comments received on the Draft IS/MND and the Lead Agency's (i.e., the Commission's) responses to those comments; corrects errors in the Draft IS/MND; and includes the Final MMCRP.

The Final MND does not identify any new significant environmental impacts and does not omit any existing mitigation measures identified in the Draft IS/MND. The Final MND concludes that the CVGS Project will not have a significant adverse impact on the environment because the mitigation measures described therein, which CVGS has agreed to incorporate into the proposed CVGS Project, will ensure that any potentially significant impacts that have been identified for the Project will remain at less-than-significant levels.

Before granting A.09-08-008, we must consider the Final MND.⁴³ We have done so and find that the Final MND (which incorporates the Draft IS/MND and

⁴¹ The Central Valley Flood Protection Board sent a late comment letter dated August 2, 2010. In addition, the following members of the public commented during the public meeting on May 5, 2010, but did not submit written comments letters: Gary Teragawa, Family Water Alliance, Henry Rodegerdts, Colusa County Counsel; Scott Hansen; Kim Dolbow-Vann, Chair, Colusa County Board of Supervisors; Tim Crews, Sacramento Valley Mirror; Mark Spannagel, Representing Assemblyman Nielsen.

⁴² The August 3, 2010 ALJ ruling identified, marked, and received into the record the Final MND as Exhibit 2.

⁴³ CEQA Guidelines Section 15004(a).

the MMCRP) was prepared in compliance with CEQA and meets the requirements of CEQA. We further find that there is no substantial evidence in the record of this proceeding that the proposed CVGS Project, as mitigated in accordance with the Final MMCRP, will have a significant effect on the environment.

The Final MND reflects the Commission's independent judgment and analysis.⁴⁴ Our order today adopts the Final MND for the CVGS Project, subject to all the conditions therein. Before starting construction of the CVGS Project, CVGS must secure all required permits, easements, and any other legal authorization to develop the Project.

The Final MND is available for inspection at the Commission's website at: http://www.cpuc.ca.gov/environment/info/dudek/cvgs/CVGS_HOME.htm.

8. Proceeding Category and Need for Hearings

In Resolution ALJ 176-3240, dated September 10, 2009, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were needed. However, at the PHC held on February 10, 2010, the parties agreed that hearings were not needed because there were no material issues of fact. Accordingly, the Scoping Memo affirmed the Commission's preliminary determination on the category of this proceeding, but reversed the preliminary determination on the need for hearings, and determined that hearings were not needed. Today's decision affirms that evidentiary hearings are not needed in this proceeding.

⁴⁴ CEQA Guidelines Section 15074(b).

9. Comments on the Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on September 20, 2010 by SoCalGas, and on September 21, 2010 by Enerland.⁴⁵ Reply comments were filed on October 1, 2010 by CVGS, Gill Ranch, and Wild Goose. The comments have been considered and appropriate changes have been made.

10. Assignment of the Proceeding

Dian M. Grueneich is the assigned Commissioner for A.09-08-008 and Timothy Kenney is the assigned ALJ.

Findings of Fact

1. CVGS requests a CPCN to construct and operate the CVGS Project that includes: (i) an 11 Bcf underground natural gas storage field and associated injection/withdrawal, observation, and salt water disposal wells; (ii) a compressor station with three 3,550 hp gas-fired compressors; (iii) a 14.7-mile, 24-inch pipeline to transport gas to and from the storage field and PG&E's Line 400/401; (iv) a metering station near PG&E's Line 400/401; and (v) a 300-foot, 12-inch gas pipeline, meter skid, and compressor to temporarily transport gas one way from PG&E's Line 172 to the gas storage field to inject base gas and the initial fill prior to connecting to PG&E's Line 400/401.

⁴⁵ The September 27, 2010 ALJ ruling granted Enerland permission to file comments on the proposed decision a day late, and established October 1, 2010 as the deadline for filing reply comments on the proposed decision.

2. The purpose of the CVGS Project is to provide gas storage services to the public for compensation. CVGS will not have captive customers, and agrees to bear all risks for the CVGS Project.

3. The CVGS Project will improve the reliability of natural gas supplies in California and reduce volatility in natural gas prices.

4. There is strong market demand for the CVGS Project.

5. CVGS has the necessary financial resources and technical expertise to develop and operate the CVGS Project.

6. The CVGS Project will be designed, constructed, and operated in a way that provides a high degree of safety to employees and the public.

7. With respect to the four factors the Commission must consider pursuant to § 1002(a), the CVGS Project (i) is consistent with community values; (ii) will not adversely affect recreational and park areas; (iii) is consistent with historical uses of the Project site and community aesthetic values; and (iv) will not have a significant adverse influence on the environment.

8. There is no regulatory need to specify a maximum reasonable cost for the CVGS Project or for CVGS to provide the cost data to set cost-based rates.

9. There is no regulatory need at this time for CVGS to comply with the information posting requirements that apply to SoCalGas.

10. The Settlement Agreement will help ensure that CVGS will bear all costs to interconnect with PG&E's Line 400/401 and Line 172; will operate in a manner that does not adversely affect PG&E's system or end-use customers; and will provide the Commission with information needed to monitor CVGS's operations, market activities, and affiliate transactions and relationships.

11. The proposed reporting requirements in the Settlement Agreement would, if adopted, replace the reporting requirements contained in Commission's affiliate transaction rules, GO 65-A, GO 77-M, and GO 104-A.

12. There is no objection to CVGS's motion to waive Rule 12.1(b), and there is no need to hold a settlement conference pursuant to Rule 12.1(b).

13. The Final MND demonstrates that the safety hazards associated with the CVGS Project will be mitigated to a non-significant level.

14. The Final MND for the CVGS Project identified no significant environmental impacts that could not be avoided or reduced to non-significant levels with the mitigation measures described therein. The MMCRP that is incorporated in the Final MND describes the mitigation measures to be taken.

15. CVGS agrees to comply with the mitigation measures in the Final MND.

16. The Commission considered the Final MND in deciding to approve the CVGS Project. The Final MND reflects the Commission's independent judgment.

17. Based on the mitigation measures included in the Final MND, the CVGS Project will not have a significant impact upon the environment.

18. In Resolution ALJ 176-3240, dated September 10, 2009, the Commission preliminarily determined that there was a need for evidentiary hearings in this proceeding. However, the parties agreed at the PHC that hearings were not needed. The Scoping Memo affirmed that hearings were not needed.

Conclusions of Law

1. CVGS should be deemed a public utility gas corporation pursuant to § 216(a) and § 222.

2. Public convenience and necessity require the construction of the proposed CVGS Project.

3. CVGS should be granted a CPCN pursuant to § 1001 et seq., to construct and operate the CVGS Project.

4. Pursuant to GO 112-E, at least 30 days prior to the start of construction of its pipeline, CVGS should file a report with the Commission's Consumer Protection and Safety Division, Utilities Safety and Reliability Branch containing the information specified in GO 112-E, Section 125.1.

5. Pursuant to GO 112-E, Section 125.2, CVGS should file with USRB a report of any failures that occur during the strength testing of pipeline to be operated at hoop stresses of 20 percent or more of the specified minimum yield strength of the pipe used.

6. CVGS should bear all risks associated with the CVGS Project.

7. CVGS's request to waive the requirement in § 1005.5(a) to specify a maximum reasonable cost for the CVGS Project should be granted.

8. CVGS's request to waive the requirement in Rule 3.1(f) to provide cost data for the CVGS Project should be granted.

9. CVGS's request to charge market-based rates should be granted. The market-based rates should be limited to the minimum and maximum rates set forth in CVGS's tariff.

10. CVGS should file its initial tariff using the Tier 1 advice letter process. The initial tariff should be similar in all substantial respects to the proposed tariff contained in Exhibit E of A.09-08-008.

11. CVGS should be authorized to file its initial tariffs, and any future revisions to its tariffs, without cost justification.

12. CVGS's request for an exemption from § 818, § 851, and the Commission's Competitive Bidding Rule set forth in Resolution F-616 should be granted with

respect to the issuance of debt and equity used to finance utility-related investments and operations.

13. Consistent with Commission precedent, CVGS should be required to maintain general liability insurance of \$50 million. The liability insurance should increase over time to reflect inflation.

14. CVGS should be required to indemnify other parties for any losses they incur due to accidents associated with the construction and/or operation of the CVGS Project where CVGS is found to be liable.

15. The Settlement Agreement is reasonable in light of the record, consistent with the law, and in the public interest, and should be adopted.

16. The Commission under § 1708 may modify or rescind the Settlement Agreement adopted by today's decision after providing notice to the parties.

17. CVGS's motion for a waiver of Rule 12.1(b) should be granted.

18. The Commission is the Lead Agency under CEQA for the CVGS Project.

19. A Draft IS/MND analyzing the environmental impacts of the proposed CVGS Project was prepared in compliance with CEQA. The Final MND for the Project was processed and completed in compliance with CEQA and conforms to the requirements of CEQA.

20. The Final MND, which incorporates the Draft IS/MND and the MMCRP, should be adopted in its entirety.

21. The CPCN granted by today's decision should be subject to the mitigation measures set forth in the Final MND.

22. CVGS should be required to obtain all necessary permits, easement rights, and other legal authorization to develop the CVGS Project prior to the start of construction.

23. There is no need for evidentiary hearings. The changed determination on the need for hearings should be approved.

24. A.09-08-008 should be closed.

25. The following Order should be effective immediately so the construction of the CVGS Project can begin.

O R D E R

IT IS ORDERED that:

1. Central Valley Gas Storage, LLC (CVGS) is a public utility gas corporation as defined by Pub. Util. Code § 216(a) and § 222. As such, CVGS is subject to the Commission's jurisdiction, control, and regulation, and has all the rights and obligations of a public utility.

2. Central Valley Gas Storage, LLC (CVGS) is assigned utility identification number U915G, which CVGS must include in the caption of all future filings at the Commission.

3. Central Valley Gas Storage, LLC (CVGS) is granted a Certificate of Public Convenience and Necessity (CPCN) to construct and operate the CVGS Project that is described in Application 09-08-008. The CPCN is subject to the requirements contained in the following Ordering Paragraphs 4 through 15.

4. At least 30 days prior to the start of construction of its pipeline, Central Valley Gas Storage, LLC (CVGS) must file a report with the Commission's Consumer Protection and Safety Division, Utilities Safety and Reliability Branch (USRB) containing the information specified in General Order (GO) 112-E, Section 125.1. Pursuant to GO 112-E, Section 125.2, CVGS must also file with USRB a report of any failures that occur during the strength testing of pipeline to

be operated at hoop stresses of 20% or more of the specified minimum yield strength of the pipe used.

5. Central Valley Gas Storage, LLC (CVGS) must bear all risks related to the construction and operation of the CVGS Project.

6. Public Utilities Code Section 1005.5(a) is waived with respect to the provision therein to specify the maximum reasonable cost for the Central Valley Gas Storage Project.

7. Rule 3.1(f) of the Commission's Rules of Practice and Procedure is waived with respect to the provision therein for Central Valley Gas Storage, LLC, to provide cost data.

8. Central Valley Gas Storage, LLC (CVGS) is authorized to charge market-based rates for gas storage services. CVGS must file its initial tariffs using the Tier 1 advice letter process at least 30 days before commencing service. The initial tariff must be substantially similar to the draft tariff contained in Exhibit E of Application 09-08-008. The initial tariff and all future tariff revisions may be filed without cost support.

9. Central Valley Gas Storage, LLC, is exempt from Public Utilities Code Sections 818 and 851, and from the Commission's Competitive Bidding Rule set forth in Resolution F-616, for the limited purpose of issuing debt and equity to finance utility-related investments and operations.

10. Central Valley Gas Storage, LLC (CVGS) must maintain \$50 million of general liability insurance per occurrence and in aggregate. The required amount of insurance must increase every five calendar years by an amount equal to inflation during the previous five years, rounded to the nearest million. The first five-year period must start on January 1, 2011. The measurement of inflation must be the gross domestic product deflator. CVGS may obtain the

required general liability insurance directly or through Nicor, Inc. If the former, the deductible or self insured retention must be not exceed \$250,000. If the latter, the insurance policy must always provide \$50 million of coverage to CVGS, escalated by inflation as described previously, regardless of any claims paid to other affiliates under the policy.

11. Central Valley Gas Storage, LLC (CVGS) must indemnify other parties for any losses they incur due to accidents associated with the construction and/or operation of the CVGS Project where CVGS is found to be liable.

12. The March 24, 2010, Joint Motion of Central Valley Gas Storage, LLC, the Division of Ratepayer Advocates, Lodi Gas Storage, L.L.C., and Pacific Gas and Electric Company for Approval of Settlement Agreement is granted. The Settlement Agreement attached to this decision as Appendix A is adopted without modification. Central Valley Gas Storage, LLC, must comply with Conditions 1, 2, and 3 that are listed in the adopted Settlement Agreement, as well as all other aspects of the Settlement Agreement.

13. The Final Mitigated Negative Declaration (which incorporates the Draft Initial Study/ Mitigated Negative Declaration and the Final Mitigation Monitoring Plan) for the Central Valley Gas Storage Project is adopted pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 et seq.

14. The Certificate of Public Convenience and Necessity to construct and operate the Central Valley Gas Storage Project is subject to the mitigation measures set forth in the Final Mitigated Negative Declaration, including the Final Mitigation Monitoring Plan.

15. Central Valley Gas Storage, LLC, must have in place, prior to commencing construction, all of the necessary permits, easement rights, and any other legal authority, to develop the Central Valley Gas Storage Project.

16. Central Valley Gas Storage, LLC's motion for a waiver of Rule 12.1(b) of the Commission's Rules of Practice and Procedure is granted.

17. There is no need for evidentiary hearings in this proceeding.

18. Application 09-08-008 is closed.

19. This Order is effective today.

Dated October 14, 2010, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

TIMOTHY ALAN SIMON

NANCY E. RYAN

Commissioners

APPENDIX A

Appendix A: Settlement Agreement

I. INTRODUCTION

Pursuant to Article 12 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Central Valley Gas Storage, LLC (“Central Valley”), the Division of Ratepayer Advocates (“DRA”), Lodi Gas Storage, L.L.C. (“LGS”), and Pacific Gas and Electric Company (“PG&E”) (collectively, “Settling Parties” and, individually, “Settling Party”) by and through their undersigned representatives, enter into this Settlement Agreement resolving all issues raised by DRA, LGS and PG&E in Limited Protest, Motion, Response and Prehearing Conference (“PHC”) Statements filed in Application (“A.”) 09-08-008 (the “Application”). As a compromise among their respective litigation positions regarding the Application, the Settling Parties agree to and support all of the terms of this Settlement Agreement, including the conditions which the Settling Parties agree should be included, without modification, by the Commission as Ordering Paragraphs (“Conditions”) in any decision the Commission issues granting the Application.

II. RECITALS

A. WHEREAS, on August 19, 2009, Central Valley filed an application for a certificate of public convenience and necessity (“CPCN”) authorizing the construction and operation of an underground natural gas storage facility in Colusa County, California (the “Project”).

B. WHEREAS, on September 18, 2009, PG&E filed a Response to the Application arguing that all costs associated with the Project should be borne by Central Valley and its customers, including PG&E’s related costs and that PG&E’s Line 172 has limited capacity for the injection of cushion gas.

C. **WHEREAS**, on September 21, 2009, DRA filed a Limited Protest to the Application requesting that Central Valley file certain annual reports detailing storage operations. DRA did not object to the issuance of the requested CPCN if the reporting requirements were met.

D. **WHEREAS**, on September 21, 2009, LGS filed a Motion requesting that Central Valley be subject to the same affiliate restrictions and reporting requirements as have been imposed on LGS.

E. **WHEREAS**, on October 1, 2009, Central Valley filed a Response to LGS' Motion agreeing to voluntarily provide the Commission with reports similar to those required of Wild Goose Storage, LLC in D.02-07-036 and LGS in D.03-02-071 and D.06-03-012.

F. **WHEREAS**, on October 1, 2009, Central Valley also filed a Reply to the Limited Protest of DRA agreeing to provide reports as requested by DRA to the extent such reports do not go beyond those that have been required of other similarly situated storage providers and subject to clarification of the reporting requirements from DRA. In its Reply, Central Valley also addressed concerns raised by PG&E confirming that its customers and shareholders alone will bear the cost of Central Valley's storage facility, including the cost of any interconnection and metering facilities with PG&E and acknowledging its understanding that PG&E Line 172 has limited capacity for the injection of cushion gas and agreeing to work with PG&E to address this issue without interfering with service to PG&E's end use customers.

G. **WHEREAS**, on January 15, 2010, the Administrative Law Judge ("ALJ") issued a "Ruling Setting a Prehearing Conference ("PHC"), Requiring Written PHC Statements, and Instructing Staff to Report on the Environmental Review" directing parties to file PHC Statements on or before February 5, 2010:

(1) identifying which issues should be decided in this proceeding, (2) which issues should be excluded from this proceeding, and (3) submitting a schedule that results in a proposed decision being ready for the last Commission meeting in May 2010.

H. WHEREAS, on February 5, 2010, parties filed PHC Statements. On February 10, 2010, a PHC was held at the Commission during which parties to the proceeding responded to questions regarding the remaining CPCN-related issues, the potential for resolving such issues through settlement or other agreement, and other issues relating to the Application.

I. WHEREAS, on March 5, 2010, the Assigned Commissioner issued the Assigned Commissioner's Ruling and Scoping Memo stating that there was agreement among the parties at the PHC that hearings are not needed pending final decision on this issue by the Commission and directing Central Valley to file and serve a Joint Stipulation to address any issue within the scope of the proceeding, if any, between Central Valley and other parties by March 17, 2010.

J. WHEREAS, on March 17, 2010, Central Valley filed a Motion to Modify Procedural Schedule stating that the Settling Parties have come to an Agreement in Principle with respect to all issues raised by DRA, LGS and PG&E in this proceeding but requesting until March 24 to file a final a Joint Stipulation.

K. WHEREAS, since the PHC, the Settling Parties have engaged in further negotiations and arrived at the agreed-upon Conditions and related terms as set forth in the attached Settlement Agreement.

L. WHEREAS, the Settling Parties agree that if the Commission approves the Settlement Agreement and includes the agreed-upon Conditions set forth therein without modification in the Ordering Paragraphs in the

Commission decision granting the Application, then all of the outstanding issues among the Settling Parties in this proceeding will be resolved.

THEREFORE, in consideration of the foregoing Recitals and the mutual terms, obligations, and conditions contained in this Settlement Agreement, the Settling Parties agree as set forth herein.

III. AGREEMENT

As a compromise of their respective litigation positions, and subject to the Recitals and Reservations set forth in this Settlement Agreement, the Settling Parties hereby agree to resolve all issues raised by DRA, LGS and PG&E related to the Application as follows:

A. The Settling Parties agree to jointly request that the Commission adopt all of the Conditions as set forth in this Settlement Agreement. The Settling Parties shall by joint motion request Commission approval of this Settlement Agreement and implementation thereof by inclusion of the Conditions, as written, as Ordering Paragraphs in the decision granting the Application. The Settling Parties have agreed to the substance and form of the pleading to be submitted to the Commission seeking approval and implementation of the Settlement Agreement by the Commission through adoption of the agreed-upon Conditions. The Settling Parties shall file such pleading without delay after execution of the Settlement Agreement. The Settling Parties agree that the Conditions set forth herein shall apply to Central Valley, and that Central Valley shall abide by such Conditions, effective upon the Commission's granting of the Application and issuance of a Commission decision containing such Conditions.

The Conditions are as follows:

CONDITION 1

1. To address concerns raised in the proceeding by PG&E relating to construction and operation of the Project and related costs, Central Valley agrees to the following:
 - a. All costs of the proposed construction and operation of the Project fall entirely on Central Valley and its storage customers, not on PG&E and its ratepayers. Such costs include the construction and installation of all facilities for the Line 400/401 and Line 172 interconnections, as well as necessary changes to PG&E's computer and allocation modeling systems.
 - c. Upon approval by the Commission, Central Valley will become an independent storage provider ("ISP") and a gas utility under the Commission's regulations, and will be subject to the provisions of the ISP Interconnections Agreement as described in Decision 06-09-039 issued on September 21, 2006, as well as other Commission decisions setting policy for ISPs in California.
 - c. Central Valley must deliver gas into PG&E's transmission pipeline system in conformance with the specifications described in PG&E's Commission-approved gas quality tariff, Gas Rule 21.C. ¶ 4.
 - d. Central Valley acknowledges that the temporary interconnection to PG&E's Line 172 will be disconnected from Central Valley's system when the Line 401 interconnection and compressor facilities are completed and the gas storage facility is placed into service, and that Central Valley will bear all of the costs for disconnecting Line 172 from Central Valley's system. Central Valley further acknowledges that the Line 172 interconnection is not bi-directional, and that Central Valley is prohibited from delivering gas back into Line 172. Finally, Central Valley acknowledges that Line 172 has limited operational capacity and therefore Central Valley will be required to operate its facility within the available parameters and capacity of Line 172 as determined by PG&E to ensure that PG&E's end-use customers served by Line 172 continue to receive reliable gas service.

CONDITION 2

2. To address reporting concerns raised by LGS, Central Valley agrees to the following:
 - a. Semi-annually, on April 30 and on October 31, Central Valley shall 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 Sections 852 and 854 of the Public Utilities Code:
 - 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.

For the purposes of this Condition 2(a) above, the following definitions apply: "affiliate" means any direct or indirect parent entity of Central Valley, any entity controlled by Central Valley whether directly or indirectly, any entity under common control with Central Valley by a direct or indirect parent entity (e.g. any subsidiary of any Central Valley parent entity); and "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. Competitively sensitive, confidential information may be submitted under seal in accordance with General Order 66-C and Public Utilities Code section 583.

- 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 thirty (30) days after commencement of the short-term service, to be followed by quarterly transaction summaries of specific sales. If Central Valley enters into multiple service agreements within a 30-day period, Central Valley may file these service agreements together so as to conserve the resources of both Central Valley 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 Central Valley and the customer, and the total charge to the customer. Competitively sensitive, confidential information, including the short-term service agreements described herein, may be submitted under seal in accordance with General Order 66-C and Public Utilities Code section 583.
- 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 thirty (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. Competitively sensitive, confidential information, including the long-term service agreements described herein, may be submitted under seal in accordance with General Order 66-C and Public Utilities Code section 583.

CONDITION 3

3. To address reporting concerns raised by the DRA, Central Valley agrees to provide an annual report to the DRA containing the following information for the Project:
 - a. The capacity of the Project storage facilities, i.e., total inventory, injection and withdrawal rights.

- b. A summary showing average monthly storage inventory, injections and withdrawals for the Project, which summary shall be based on the Energy Information Reports Central Valley submits to the U.S. Department of Energy.
- c. Daily operating records, aggregated on a weekly basis, based on the Energy Information Reports submitted to the U.S. Department of Energy.
- d. A copy of the annual safety report, including a description of all safety-related incidents that is submitted to the U.S. Department of Transportation.
- e. A report showing aggregate firm storage capacity under contract (containing monthly and annual data) and aggregate interruptible storage capacity sold (also containing monthly and annual data).

Competitively sensitive, confidential information shall be identified by Central Valley and treated by DRA as confidential pursuant to General Order 66-C and Public Utilities Code section 583.

B. The Settling Parties agree to actively support prompt approval of the Settlement Agreement and implementation thereof by inclusion of the Conditions without modification as Ordering Paragraphs in the decision granting the Application. The Settling Parties further agree to participate jointly in teleconference briefings to Commissioners and their advisors, to the extent necessary, regarding the Settlement Agreement and the issues resolved therein. Prior to a Commission decision in this proceeding, the Settling Parties further agree that they shall not directly or indirectly advocate or otherwise seek any modification to or elimination of any or all of the Conditions.

C. 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, which petition shall be served on all of the parties to this proceeding, including DRA, LGS and PG&E. Any such petition shall state

with specificity the need and basis for any proposed modification, revision, or elimination of any Condition or Conditions. Prior to filing any such petition, the Settling Parties agree to cooperate in good faith to try and reach agreement on any proposed modification, revision, or elimination of any Condition or Conditions and, to the extent that any Settling Party petitions to modify the Conditions, all Settling Parties reserve the right to protest any such filing.

D. The Settling Parties agree and state their intent that upon Commission approval of this Settlement Agreement and implementation thereof by inclusion of the Conditions as Ordering Paragraphs in the decision granting the Application, all of the issues raised in the Limited Protest, Motion, Response and PHC Statements of DRA, LGS and PG&E shall be deemed resolved for purposes of this proceeding and that Central Valley shall abide by such Conditions.

E. The Settling Parties agree and state their intent 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.

IV. RESERVATIONS.

A. This Settlement Agreement embodies the entire understanding and agreement of the Settling Parties with respect to the matters described herein, and supersedes and cancels any and all prior oral or written agreements, principles, negotiations, statements, representations, or understandings among the Settling Parties.

B. Except as provided in Section III.C., above regarding the Conditions, this Settlement Agreement may be amended or changed only by a written agreement signed by the Settling Parties.

C. The Settling Parties have bargained earnestly and in good faith to achieve this Settlement Agreement. The Conditions included in the Settlement Agreement are the result of comprehensive negotiations between the Settling Parties and reflect carefully considered compromises on important issues to the parties. The Settling Parties therefore agree that, if the Commission does not adopt the Conditions set forth above (other than changes which do not expand, narrow, or otherwise alter the substance of the Condition or Conditions) in a Proposed Decision or the Final Commission Decision granting the Application, any Settling Party may terminate this Settlement Agreement and may take any lawful steps to challenge the Proposed Decision, the Final Decision, or the Application. Prior to termination of the Settlement Agreement, but within three business days of issuance of a Proposed Decision or a Final Decision, the Settling Parties agree to meet and confer in good faith to consider options other than termination of the Settlement Agreement, including, but not limited to, the submission of a modified Settlement Agreement, joint ex parte discussions, or joint comments on a Proposed Decision. In addition, if the Commission rejects the Settlement Agreement in its entirety, the Settling Parties may pursue all rights under Commission Rule 12.4 and applicable law.

D. Each of the Settling Parties and their respective counsel has contributed to the preparation of this Settlement. Accordingly, the Settling Parties agree that no provision of this Settlement Agreement shall be construed against any Settling Party because that party or its counsel drafted the provision.

E. This Settlement Agreement shall become effective among the Settling Parties on the date the last Settling Party executes the Settlement Agreement as indicated below, provided however, that the Conditions shall only be effective upon the effective date of a Commission decision granting the Application and adopting the Conditions.

F. The Settlement Agreement may be executed in counterparts, all of which shall be one instrument and all of which shall be considered duplicate originals.

G. By signing below, each signatory for a Settling Party represents and warrants that he/she is authorized to sign this Settlement Agreement on such entity's behalf and to thereby bind such entity to the terms of this Settlement Agreement.

[SIGNATURE PAGE NOT ATTACHED]

(End of Appendix A)