Decision **DRAFT DECISION OF ALJ THOMAS (Mailed 4/12/04)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of Wild Goose Storage Inc. and California Natural Gas Producers Association for an Order Instituting Rulemaking to Establish the Rates Governing the Interconnection Between and Among California Gas Production, Independent Storage Providers and Incumbent Utility Companies.	Petition 03-10-046 (Filed October 20, 2003)

DECISION DENYING PETITION OF WILD GOOSE STORAGE INC. AND CALIFORNIA NATURAL GAS PRODUCERS ASSOCIATION TO ESTABLISH RULES GOVERNING THE INTERCONNECTION BETWEEN AND AMONG CALIFORNIA GAS PRODUCTION, INDEPENDENT STORAGE PROVIDERS AND INCUMBENT UTILITY COMPANIES

Introduction

This matter is a petition for rulemaking filed under Pub. Util. Code § 1708.5, and Rule 14.7 of our Rules and Practice and Procedure.[1] For reasons discussed below, we deny the petition.

Background

The petition focuses on three issues. The first issue is whether third party gas storage providers can interconnect with non-utilities such as California gas producers and end-use customers, and whether such connections amount to a

[1] All "section" references in today's decision are to the Public Utilities Code.

pipeline transportation service. The second issue is whether third party storage facilities and private pipelines are being used to avoid or bypass utility backbone or local transmission tariffs. The third issue is whether third party storage encourages the development of in-state gas production by allowing lower British Thermal Unit (btu) gas to mix in storage with higher btu gas.

The petitioners note that the need for the requested rulemaking was "heightened" by a complaint brought by Pacific Gas and Electric Company (PG&E) against Lodi Gas Storage, LLC (an independent storage provider) and Calpine Corporation (and a number of Calpine's affiliates).[2] PG&E alleged violations of California law, Commission orders, and various tariff provisions in relation to interconnection, and related transactions, between the named defendants. The petitioners assert that although certain of the matters raised in the PG&E Complaint concern only the named parties, some issues have serious implications for third party storage providers, private producers of natural gas owners and operators of gas fired power plants, and owners and operators of private natural gas pipelines. The petitioners assert that the issues "of industry-wide importance" should be addressed in a generic rulemaking in which all affected interests may be represented.

We note regarding the PG&E Complaint that the parties have reached a settlement and have filed a motion requesting our approval of the settlement. Consideration of the motion is pending.

---

[2] *Pacific Gas and Electric Co. v. Calpine Corporation, CPN Pipeline Company, Calpine Energy Services, L.P.; Calpine Natural Gas Company; Lodi Gas Storage, LLC; and DOES 1-10,* Case 03-07-031 (July 22, 2003).

Discussion

We are committed to optimizing use of our utilities' gas storage facilities in serving California's energy needs, and we support continuance of gas storage programs as a component of overall supply planning. Nevertheless, embarking on the specific rulemaking proposed in this petition is not feasible or desirable at this time.

The Commission's available resources are fully engaged in long-term supply planning for gas and electricity. We simply do not have the resources to address the narrower issues raised by the petition. Even if our resource constraints were less binding, now would not be the time to address these issues. When broader issues of supply planning are resolved, we will be better able to assess which (if any) of the issues that petitioners raise are critical and should be addressed generically.

In the meantime, the PG&E Complaint will not adversely affect the petitioners. Even if the petitioners are uncomfortable with the settlement, we note that a decision on a complaint binds only the parties to the complaint; and even if we adopt the proposed settlement, our adoption is not precedential. (See Rule 51.8.)

Accordingly, we find no urgency in addressing the petitioners' issues. The petition is denied.

Public Review and Comment

Under § 1708.5(b)(1), we are required to respond within six months to a petition for rulemaking proceeding. The six-month deadline for responding to this petition is April 20, 2004, but pursuant to § 1708.5(b)(2), we have extended the deadline to allow public review and comment, as provided under § 311(g)(1).

Accordingly, we circulated the draft decision, and received opening and reply comments as follows: Wild Goose filed comments on the draft decision on

May 3, 2004, and PG&E filed reply comments on May 10, 2004. Wild Goose does not oppose the draft decision's denial of the petition, but asks for changes in the language of the draft decision. PG&E opposes any change in the draft decision. The language Wild Goose wishes changed relates to the scope of another Commission proceeding, Rulemaking (R.) 04-01-025. However, the Commission will establish the scope of R.01-04-025 in that proceeding, and we see no need to modify the draft decision on this issue.

Assignment of Proceeding

This petition is assigned to Commissioner Geoffrey F. Brown and Administrative Law Judge Sarah R. Thomas.

Findings of Fact

1. The Commission is systematically reviewing and updating its long-term supply planning policies for gas and electricity.
2. The petition asks the Commission to generically address various issues specific to third party gas storage.
3. Opening a rulemaking to address the petitioner's issues is not feasible or desirable at this time.

Conclusion of Law

The petition for rulemaking should be denied, effective immediately.

O R D E R

1. The petition of Wild Goose Storage Inc. and California Natural Gas Producers Association for an Order Instituting Rulemaking is denied.
2. Petition 03-10-046 is closed.

This order is effective today.

Dated _____, at San Francisco, California.