STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

November 15, 2005

Agenda ID #5117
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 05-08-031

This is the draft decision of Administrative Law Judge (ALJ) McKenzie. It will appear on the Commission's agenda for December 1, 2005. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Pursuant to Rule 77.7(f) of the Commission's Rules of Practice and Procedure, the otherwise-applicable 30-day period for public review and comment is being reduced to allow comments within seven (7) days of the mailing of the draft decision, with no provision for reply comments.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. In addition to service by mail, parties should send comments in electronic form to those appearances and the state service list that provided an electronic mail address to the Commission, including ALJ McKenzie at mck@cpuc.ca.gov. Finally, comments must be served separately on the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious methods of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:avs

Attachment

Decision **DRAFT DECISION OF ALJ MCKENZIE (Mailed 11/15/2005**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Lodi Gas Storage, L.L.C. (U-912-G), Western Hub Properties L.L.C. and WHP Acquisition Company II, L.L.C. for Expedited *Ex Parte* Authorization to Transfer Western Hub Properties' Control of Lodi Gas Storage, L.L.C. to WHP Acquisition Company II, L.L.C. Through the Sale of Western Hub Properties' 50% Interest in Lodi Holdings, L.L.C. to WHP Acquisition Company II, L.L.C., Pursuant to Public Utilities Code Section 854(a).	Application 05-08-031 (Filed August 24, 2005)

OPINION APPROVING TRANSFER OF 50% INTEREST IN LODI HOLDINGS, L.L.C.

A. Summary

We approve, subject to the conditions set forth below, the unopposed request of the joint applicants, Lodi Gas Storage, L.L.C. (LGS), Western Hub Properties L.L.C. (Western Hub) and WHP Acquisition Company II, L.L.C. (WHP Acquisition II), for authorization to transfer Western Hub's 50% interest in Lodi Holdings, L.L.C. (Lodi Holdings), the parent company of LGS, to WHP Acquisition II, which is a wholly-owned subsidiary of ArcLight Energy Partners Fund II, L.P. (ArcLight Fund II). LGS was granted a certificate of public convenience and necessity (CPCN) by this Commission to construct and operate

an underground natural gas storage facility (and ancillary pipeline) in Decision (D.) 00-05-048.[1]

Applicants request the authorization pursuant to § 854(a) of the Public Utilities Code. They point out that in D.03-02-071, this Commission approved the transfer of the other 50% interest in Lodi Holdings to WHP Acquisition Company (WHP Acquisition), which is a wholly-owned subsidiary of ArcLight Energy Partners Fund I, L.P. (ArcLight Fund I). Applicants state that ArcLight Fund I and ArcLight Fund II were both formed to invest in the power and energy industries, and that both are managed by ArcLight Capital Partners, L.L.C. (ArcLight Capital Partners), an investment manager headquartered in Boston, Massachusetts. Thus, the practical effect of granting the instant application will be to bring Lodi Holdings and LGS under unified control and management.

In addition to approving the proposed transfer, we conclude that the transactions underlying the transfer qualify for an exemption from the California Environmental Quality Act (CEQA), and that additional environmental review is therefore not required. However, we will retain the restrictions that prevent persons with a beneficial interest in LGS or Western Hub from monitoring implementation of the environmental mitigation measures. In addition, we will prohibit LGS from engaging in any storage or hub service transactions with its ultimate parents, ArcLight Fund I and ArcLight Fund II, or with ArcLight Capital Partners or any of its affiliates.

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[1] This CPCN was subsequently modified in D.03-08-048, 04-05-034 and D.04-05-046.

Today's decision will not affect the rates, terms, or conditions under which LGS operates pursuant to previous Commission decisions.[2] LGS will continue to offer market-based rates to noncore natural gas customers in accordance with the requirements of its tariff and the orders of this Commission.

B. Background

As noted above, LGS first received a CPCN from this Commission in D.00-05-048. That authority was to develop, construct and operate an underground storage facility (and ancillary pipeline) for natural gas storage known as the Lodi Facility. The Lodi Facility is located in San Joaquin County, approximately 5.4 miles northeast of Lodi. In D.00-05-048, the Commission authorized LGS to provide both firm and interruptible gas storage services at market-based rates. D.00-05-048 also certified the Environmental Impact Report (EIR) for the Lodi Facility, and conditioned the authority granted therein on compliance with the mitigation measures set forth in the EIR.

The instant application states that the Lodi Facility "began commercial operation in 2002 and has since operated without incident." (Application, p. 2.) The joint applicants state that under LGS's CPCN as amended, the Lodi Facility has a total storage capacity of 21 billion cubic feet (Bcf), and a working capacity of 17 Bcf. The facility also has maximum firm deliverability of 500 million cubic

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[2] On this question, the application states:

"The change in ownership at the holding company level will not result in the transfer of any certificates, assets, or customers of LGS. LGS will continue to be bound by the terms and conditions prescribed by the Commission in D.00-05-048, as amended . . . LGS will also continue to be subject to the reporting requirements and affiliate transaction prohibitions prescribed by the Commission in D.03-02-071." (Application, p. 2; footnote omitted.)

feet per day (MMcf/d), and a maximum firm injection capacity of 400 MMcf/d. (*Id.*) However, the joint application continues,

> ". . . all of LGS' current storage capacity is fully subscribed, evidencing a need for development of additional natural gas storage capacity to serve the State's growing energy needs. WHP Acquisition II will provide LGS the necessary financial resources to expand its storage facilities to meet these needs." (*Id.* at 7-8.)

To meet the need for additional gas storage, LGS proposes to construct and operate the Kirby Hills Gas Storage Facility (Kirby Hills Facility), which is the subject of Application (A.) 05-07-018. The Kirby Hills Facility will be located in Solano County, California, and will have a total storage capacity of up to 7 Bcf, of which about 5.5 Bcf will be working capacity. The new facility's firm injection and withdrawl capacity will be 100 MMcf/d. LGS states that construction of the Kirby Hills Facility will require six to eight months, and that LGS seeks to have the facility operational in time for the 2006-2007 winter heating season.

In addition to the authorization sought here for a change of control, LGS has also filed a third application, A.05-08-030, which seeks Commission authorization for LGS to issue or otherwise incur up to $110 million in long-term debt, and to "enter into one or more contracts for the purpose of managing and hedging the variable interest rate risk association with [LGS's] debt, including, without limitation, interest rate swaps, caps, collars, options" or similar interest rate management methods.[3]

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[3] A.05-07-018 and A.05-08-030 are separate proceedings. This decision addresses the merits of A.05-08-031 only.

C. The Purchaser and Seller of the 50% Interest in LGS

As noted above, the proposed seller in this transaction is Western Hub. It is a Delaware limited liability company with its principal place of business in Houston, Texas. The application states that Western Hub "is owned principally by three entities" – Haddington/Chase Energy Partners (WHP) L.L.C., a Delaware limited liability company, and two Delaware limited partnerships, Haddington Energy Partners LP and Haddington Energy Partners II LP. As noted in D.03-02-071, Western Hub is the manager of LGS's parent, Lodi Holdings.[4]

The proposed purchaser in this transaction is WHP Acquisition II, also a Delaware limited liability company. It was formed for the specific purpose of acquiring Western Hub's ownership interest in Lodi Holdings -- for which it proposes to pay $125 million -- and its principal place of business is Boston, Massachusetts. WHP Acquisition II is wholly owned by ArcLight Fund II, which, as noted in the summary, is a private equity fund formed to invest in the power and energy industries. The joint applicants state that ArcLight Fund II has $1.6 billion in committed capital from its investors and currently owns a variety of energy investments, including approximately 350 megawatts of net

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[4] On the question of who will manage LGS if the proposed transfer is approved, the application states:

> "Because Western Hub will no longer have any ownership interest, all operating and management functions will be transitioned to [Lodi Holdings.] The existing management team is expected to transition to [Lodi Holdings] or will be replaced by individuals with similar qualifications and experience." (*Id.* at 6.)

generation qualifying facilities (QFs) located mainly in Bakersfield, California. (*Id.* at 4.)

D. Legal Standards Under Pub. Util. Code § 854

As we noted in D.03-02-071, our earlier decision regarding a change of control of LGS, § 854 of the Public Utilities Code requires authorization by the Commission before a company may "merge, acquire, or control . . . any public utility organized and doing business in this state . . . ." The purpose of this and related statutes is to enable the Commission, before any transfer of public utility authority is consummated, to review the situation and to take such action (as a condition of approving the transfer) as the public interest may require. (*San Jose Water Co.* (1916) 10 CRC 56.)

We also pointed out in D.03-02-071 that § 854 does not define the term "control," and that the Commission has not promulgated any regulations defining this term in connection with a percentage of stock ownership. As a result of this, some of our decisions have held that where there is a change in the form of ownership but no change in the actual control of a public utility, § 854 is inapplicable and the application should be dismissed.[5] However, we also noted in D.03-02-071 that in "diverse fact situations where a public utility owner has either transferred or proposed to transfer a 50% interest in the utility, or has

[5] *See Crico Communications*, D.92-05-006, 1992 Cal.PUC LEXIS 487 (dismissal appropriate because Pub. Util. Code § 854 inapplicable to public stock offering where original owners retain 20% of utility and no other person or entity acquires control); *Paging Network of San Francisco*, D.93-11-063, 52 CPUC2d 127, 1993 Cal. PUC LEXIS 794 (dismissal appropriate because Pub. Util. Code § 854 inapplicable to distribution of shares of utility's parent corporation from a limited partnership investment fund directly to its partners where no effect on actual or working control of utility's service or operations).

acquired a 50% interest in another utility, the Commission has asserted jurisdiction to review the transaction under § 854 and has approved or disapproved the transfer."[6] (*Mimeo.* at 11.)

E. Discussion

We begin our discussion with the appropriate standard of review under Pub. Util. Code § 854. As noted above, some of our decisions have held that where there is a change in the form of ownership but no change in actual control of a public utility, review of the transfer under § 854 is not appropriate. However, in view of our decisions favoring Commission review of a transfer of a 50% interest in a utility, and the fact that we chose to review the transfer of the other 50% interest in LGS in D.03-02-071, we think it is appropriate for us to exercise our § 854 jurisdiction in this case. As we stated in D.03-02-071:

> "Generally, we think it is prudent public policy to review and approve changes in the ownership and control of certificated natural gas storage facilities, whether those changes occur directly, or indirectly through corporate intermediaries. Such review should help to ensure the continued economic viability of such utilities and to prevent market manipulations that may affect not only their own customers but also larger ratepayer groups." (*Mimeo.* at 12-14.)

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[6] As examples of such rulings, D.03-02-071 cited *Application of PacTel Cellular for control of Bay Area Cellular Telephone through Bay Area Cellular Telephone Company*, D.87-09-028, 25 CPUC2d 350, 1987 Cal. PUC LEXIS 197 (definitions of term "control" in the Corporations Code are instructive for purposes of Pub. Util. Code § 854); *Gale* v. *Teel*, D.87478, 81 CPUC 817, 1977 Cal. PUC LEXIS 152 (public policy implication of transfer warrants review of acquisition of 50% interest in public utility for purposes of Pub. Util. Code § 854); *Dana Point Marin Telephone Co.*, D.83493, 77 CPUC 347, 1974 Cal. PUC LEXIS 829 (Pub. Util. Code § 854 requires Commission authorization of relinquishment of 100% ownership for 50% ownership).

The "market manipulations" to which D.03-02-071 referred are those made possible by the highly-concentrated nature of the natural gas storage market. As D.03-02-071 noted, we had previously found evidence in D.02-07-036[7] "of a highly concentrated market for storage injection and withdrawl in both the northern California and statewide California markets." (*Mimeo.* at 16.) Although these concerns were reduced in LGS's case because of the passive nature of the investment by WHP Acquisition and ArcLight Fund I, we nonetheless imposed the following restrictions on the transfer:

> "So that we may better monitor the evolving natural gas market, and as a condition of our approval of the change of ownership (with continued market-based rate authority), we will impose the same reporting requirements on LGS that we have imposed on Wild Goose. Specifically, with the exception of the agreement by which Western Hub will serve as Company Manager for Lodi Holdings, we will prohibit LGS from engaging in any storage or hub services transactions with its ultimate parents, Western Hub and ArcLight (or their successors) or any other affiliate owned or controlled by either of those entities. In addition, we will direct LGS to promptly inform the Commission of the following changes in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing: LGS' own purchase of other natural gas facilities, transmission facilities, or substitutes for natural gas, like liquefied natural gas facilities; an increase in the storage capacity or in the interstate or intrastate transmission capacity held by affiliates of its parents or their successors; or, merger or other acquisition involving affiliates of its parents, or their successors, and another entity that owns gas storage or

[7] In D.02-07-036, we granted a CPCN to Wild Goose Storage, Inc. (Wild Goose) for a natural gas storage facility. The CPCN was subject to a number of conditions.

> transmission facilities or facilities that use natural gas as an input, such as electric generation." (*Id.* at 17-18.)

Nothing in the application here suggests that the gas storage injection and withdrawl markets are any less concentrated today than they were when D.03-02-071 was decided. Accordingly, we will incorporate the restrictions quoted above as a condition of our approval of the transfer proposed here. We will also incorporate the requirements in Ordering Paragraphs (OPs) 3(d) and 3(e) of D.03-02-071 that LGS file its service agreements for both short-term and long-term transactions with the Director of the Commission's Energy Division.

F. CEQA Compliance

The principal remaining issue is whether, as the joint applicants assert, the proposed transfer qualifies for an exemption from CEQA. Under CEQA and Rule 17.1 of the Commission's Rules of Practice and Procedure, we are required to consider the environmental consequences of projects that are subject to our discretionary approval. (*See,* Pub. Resources Code § 21080.)

We acknowledge that in some cases, it is possible that a change of ownership and/or control may alter an approved project, result in new projects, or change facility operations in ways that have an environmental impact. However, based upon the application here, the change of ownership at issue in this proceeding will have no significant effect upon the environment. As the joint applicants have stated, the Lodi Facility will continue to be operated as previously authorized by the Commission, all environmental mitigation measures contained in the certified EIR will continue to apply, and all monitoring requirements and restrictions imposed in the decision that certified the EIR, D.00-05-048, will continue to apply. Accordingly, the proposed project qualifies for an exemption from CEQA pursuant to § 15061(b)(3) of the CEQA guidelines, and the Commission need perform no further environmental review.

In certifying the EIR for the Lodi Facility, D.00-05-048 restricted persons and entities with a beneficial interest in LGS (or its present owners) from monitoring the implementation of the required environmental mitigation measures. The restriction applies to any person or entity

> ". . . who beneficially owns any security of, or has received during the past five years or is presently entitled to receive at any time in the future more than a de minimis amount of compensation for consulting services [from LGS or its owners.]" (D.00-05-048, OP 16.)

We will continue to apply this restriction to such persons and entities following the transfer of Western Hub's 50% interest in Lodi Holdings to WHP Acquisition II, and we will extend the restriction to ArcLight Fund II and ArcLight Capital Partners as well as WHP Acquisition II.

G. The Motion to File the Purchase-and-Sale Agreement and the Applicants' Financial Statements Under Seal

The joint applicants have asserted that both their purchase-and-sale agreement and their respective financial statements contain competitively-sensitive information, and so should be filed under seal pursuant to Pub. Util. Code § 583 and General Order (GO) 66-C. The joint applicants' motion seeking such treatment was filed contemporaneously with the application on August 24, 2005. The financial statements have been designated as Exhibit 6 to the application, and the purchase-and-sale agreement (with accompanying schedules and exhibits) as Exhibit 7.

While we have no difficulty finding that the applicants' financial statements are confidential and should be filed under seal, we are not persuaded by their claim that the entire purchase-and-sale agreement should receive the same treatment. While many of the schedules attached to the purchase-and-sale

agreement contain competitively-sensitive information (such as the names of LGS's storage customers and details about their contracts), the main agreement itself appears to consist almost entirely of routine corporate boilerplate.

No good reason occurs to us – and joint applicants have suggested none – why such routine material should be filed under seal. Accordingly, with respect to pages 1-49 and the signature pages of the purchase-and-sale agreement, the joint applicants' motion for leave to file under seal is denied. The motion to file under seal is granted with respect to Schedules 1.1, 3.3, 3.4, 3.9, 3.10, 4.4, 4.6, 4.7, 4.14, 4.15, 6.1, 6.6 and 6.8 of the purchase-and-sale agreement, along with Exhibit 6.1 thereto (entitled "Kirby Hills Expansion Plan"). The joint applicants' motion to file under seal is also denied with respect to the other schedules attached to the purchase-and-sale agreement, as well as with respect to Exhibits A, B and C to the purchase-and-sale agreement.

Pending the filing of a redacted, public version of the purchase-and-sale agreement as set forth below, the Commission's Docket Office is instructed to hold the joint applicants' August 24, 2005 motion for leave to file under seal and to treat all the material accompanying it as confidential. Within 10 days after the effective date of this decision, the applicants shall file with the Commission's Docket Office a public, redacted version of the purchase-and-sale agreement that includes the contract language, schedules and appendices with respect to which joint applicants' motion to file under seal has been denied, as set forth above. Upon receipt of the public, redacted version of the purchase and sale agreement by the Docket Office, such public, redacted version shall become part of the public files in this case. The complete version of the purchase-and-sale agreement that applicants filed along with their August 24, 2005 motion shall continue to be treated as a non-public, confidential file.

As noted above, we are incorporating herein the requirement of D.03-02-071 that LGS file its service agreements for both short-term and long-term transactions with the Director of the Commission's Energy Division. (D.03-02-071, *mimeo.,* at 18-20.) Because these filings will involve the disclosure of competitively sensitive, confidential information to the Commission, LGS may make these filings under seal, in accordance with GO 66-C and Pub. Util. Code § 583.

H. Miscellaneous Procedural Matters

Notice of this application appeared in the Commission's Daily Calendar on August 29, 2005. As noted above, no protests have been received.

In Resolution ALJ 176-3158, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. These determinations were confirmed in the Assigned Commissioner and Administrative Law Judge's (ALJ) Ruling and Scoping Memo issued in this proceeding on October 19, 2005.

I. Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Rule 77.7(f) of the Commission's Rules of Practice and Procedure, the otherwise-applicable 30-day period for public review and comment is being reduced to allow comments within seven (7) days of the mailing of the draft decision, with no provision for reply comments.

J. Assignment of Proceeding

John Bohn is the Assigned Commissioner and A. Kirk McKenzie is the assigned ALJ in this proceeding.

Findings of Fact

1. The joint application is unopposed.

2. On July 16, 2005, Western Hub and WHP Acquisition II executed a Purchase and Sale Agreement, whereby Western Hub agrees to sell its 50% interest in Lodi Holdings, the parent company of LGS, to WHP Acquisition II for $125 million. ArcLight Fund II has guaranteed the payment of the purchase price by WHP Acquisition II to Western Hub.

3. The proposed transfer will result in a change of ownership of LGS and the Lodi Facility, but will not result in the transfer of any certificates, assets, or customers of LGS. LGS will continue to be bound by the terms and conditions prescribed by the Commission in D.00-05-048, as modified, which granted LGS a CPCN and certified the EIR for the Lodi Facility, and by the terms and conditions of LGS's filed tariff.

4. The owner of WHP Acquisition II is ArcLight Fund II, which has no active involvement in energy markets. As of the filing date of the application, ArcLight Fund II had capital commitments of approximately $1.6 billion from its investors.

5. The proposed transaction will bring Lodi Holdings and LGS under sole management by ArcLight Capital Partners, and in so doing will facilitate the proposed expansion of LGS's natural gas storage and injection facilities.

6. Following the proposed transaction, the existing management team from Western Hub, which has served as Company Manager of LGS, will either transition to Lodi Holdings or will be replaced by individuals with similar qualifications and experience.

7. Although the passive nature of the investment by WHP Acquisition II and ArcLight Fund II serve to reduce concern about the possible exercise of market power and the possible abuse of affiliate relationships, the fact remains that the natural gas storage and injection market in California is a highly-concentrated market.

8. To continue the necessary monitoring of the natural gas storage and injection market, the reporting requirements that were imposed on LGS in D.03-02-071 should be retained.

9. To ensure that the performance bond required by D.00-05-048 will continue without interruption, the applicants should provide the Director of the Commission's Energy Division with a written representation that the bonding entities will continue to bond LGS and the Lodi Facility after the proposed transfer. This representation should be verified and should be submitted prior to the transfer of the 50% interest in Lodi Holdings from Western Hub to WHP Acquisition II.

10. The proposed change of ownership of Western Hub's 50% interest in Lodi Holdings will have no significant effect on the environment, because the Lodi Facility will continue to be operated as previously authorized by the Commission, all environmental mitigation measures contained in the EIR certified in D.00-05-048 (as amended) will continue to apply, and all monitoring requirements and restrictions imposed in D.00-05-048 will continue to be applicable.

11. The Commission should extend the environmental mitigation monitoring restrictions imposed by Ordering Paragraph (OP) 16 of D.00-05-048 to persons and entities with a beneficial interest in WHP Acquisition II, ArcLight Fund II or ArcLight Capital Partners.

12. No hearing is necessary.

Conclusions of Law

1. Under the circumstances here, the proposed transfer of a 50% interest in Lodi Holdings constitutes a change of control within the meaning of Pub. Util. Code § 854.

2. The joint application should be granted, subject to the conditions set forth in this opinion.

3. With the conditions set forth herein, the joint application is in the public interest.

4. Following the change of ownership, LGS will continue to be bound by all of the terms and conditions of the CPCN it was granted in D.00-05-048, by all of the modifications to that CPCN set forth in subsequent Commission decisions, and by the tariff filed by LGS with the Commission, as approved and subsequently modified by any approved amendments.

5. The proposed change of ownership should be authorized on the condition that LGS, Lodi Holdings and their owners comply with all of the reporting requirements and with the prohibition on affiliate transactions for storage and hub services set forth in D.03-02-071.

6. The proposed transfer qualifies for an exemption from CEQA pursuant to CEQA Guidelines § 15061(b)(3), so additional environmental review is not required.

7. The restriction preventing persons and entities with a beneficial interest in LGS or its owners from monitoring implementation of the environmental mitigation measures contained in the EIR certified in D.00-05-048 (as amended) should be extended to persons and entities with a beneficial interest in WHP Acquisition II, ArcLight Fund II or ArcLight Capital Partners, or any of their respective affiliates.

8. The proposed transfer should not occur until the joint applicants provide the Director of the Commission' Energy Division with a written, verified representation that the bonding entities will continue to bond LGS and the Lodi Facility under the $20 million performance bond required by D.00-05-048.

9. The joint applicants' motion for leave to file confidential material under seal, dated August 24, 2005, should be granted in part and denied in part, as set forth in Section G of this decision.

10. As set forth in Section G of this decision, applicants should be required to submit a public, redacted version of their purchase and sale agreement, which constitutes Exhibit 7 to the joint application, within 10 days of the effective date of this decision.

11. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The application of Lodi Gas Storage, L.L.C. (LGS), Western Hub Properties L.L.C. (Western Hub) and WHP Acquisition Company II, L.L.C. (WHP Acquisition II), collectively referred to herein as the Joint Applicants, for authorization to transfer Western Hub's 50% interest in Lodi Holdings, L.L.C. (Lodi Holdings) to WHP Acquisition II, is approved pursuant to Pub. Util. Code § 854, subject to the terms and conditions set forth in the following Ordering Paragraphs (OPs).

2. LGS and its owners shall continue to be bound by all the terms and conditions of the certificate of public convenience and necessity (CPCN) granted to LGS by Decision (D.) 00-05-048, and as modified by subsequent decisions of the Commission.

3. The authority granted in OP 1 is conditioned upon compliance with the following subparagraphs. Disclosure of the information required herein, including contracts and other documents, shall be made by LGS and its owners to the Director of the Commission's Energy Division. Competitively sensitive,

confidential information may be submitted under seal in accordance with General Order 66-C and Pub. Util. Code § 583. LGS shall:

a. Provide a clear representation in writing, prior to the transfer, that the bonding entities will continue to bond LGS and the Lodi Facility under the $20 million performance bond required by D.00-05-048;

b. Provide prompt disclosure of the following changes in status that reflect a departure from the characteristics the California Public Utilities Commission has relied upon in approving market-based pricing for LGS: (i) the purchase by LGS of natural gas facilities, transmission facilities, or substitutes for natural gas, such as liquefied natural gas facilities; (ii) an increase in the storage capacity or in the interstate or intrastate transmission capacity held by affiliates of LGS's ultimate parents, ArcLight Energy Partners Fund I, L.P. (ArcLight Fund I) and ArcLight Energy Partners Fund II, L.P. (ArcLight Fund II), or their respective successors; or (iii) a merger or other acquisition involving ArcLight Fund I or ArcLight Fund II, or their respective affiliates or successors, and any other entity that owns gas storage or transmission facilities, or facilities that use natural gas as an input, such as electric generation.

c. Provide, 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 LGS enters into multiple service agreements within a 30-day period, LGS may file these service agreements together so as to conserve the resources of both LGS 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 LGS and the customer, and the total charge to the customer.

d. Provide, 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.

e. Not engage in any storage or hub service transactions with ArcLight Fund I, ArcLight Fund II or ArcLight Capital Partners, L.L.C. (ArcLight Capital Partners) or their respective successors, or with any entity owned, affiliated with, or controlled by any one or more of them.

4. The change of ownership approved herein qualifies for an exemption from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines § 15061(b)(3), so additional environmental review is not required.

5. OP 16 of D.00-05-048, which prohibits persons and entities with a beneficial interest in LGS or its owners from monitoring the implementation of the environmental mitigation measures, shall continue and apply to all persons and entities with a beneficial interest in ArcLight Fund I, ArcLight Fund II or ArcLight Capital Partners.

6. The Joint Applicants' Motion for Leave to file Confidential Material Under Seal, dated August 24, 2005, is granted with respect to the financial statements of LGS for 2004 and 2003 (as restated), Western Hub for 2004 and 2003 (as restated), and ArcLight Fund II for 2004. Said motion is also granted with respect to Schedules 1.1, 3.3, 3.4, 3.9, 3.10, 4.4, 4.6, 4.7, 4.14, 4.15, 6.1, 6.6 and 6.8 attached to the July 16, 2005 Purchase and Sale Agreement between Western Hub and WHP Acquisition II (Purchase and Sale Agreement), which Purchase and Sale Agreement comprises Exhibit 7 to the application. In addition, the Joint Applicants' motion is granted with respect to Exhibit 6.1 to the Purchase and Sale

Agreement, which exhibit is entitled "Kirby Hills Expansion Plan." The aforesaid materials should be placed under seal for a period of two years from the effective date of this decision, through and including December 1, 2007, and during that period the material so protected shall not be made accessible or disclosed to anyone other than Commission staff except upon the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge. If the Joint Applicants believe that further protection of the aforesaid materials is needed after December 1, 2007, any one or more of them may file a motion stating the justification for further withholding of these materials from public inspection, or for such other relief as the Commission's rules may then provide. Such a motion shall explain with specificity why the designated materials still need protection in light of the passage of time involved, and shall attach a clearly-identified copy of the ordering paragraphs of this decision to the motion. Such a motion shall be filed at least 30 days before expiration of the protective order set forth in this paragraph.

7. With respect to all other portions of the Purchase and Sale Agreement, the Joint Applicants' August 24, 2005 Motion for Leave to file Confidential Material Under Seal is denied. Within 10 days after the effective date of this decision, Joint Applicants shall file a redacted, public version of the Purchase and Sale Agreement, as set forth in Section G of this decision.

8. Joint Applicants shall provide written notification of the transfer of ownership authorized herein to the Director of the Commission's Energy Division within 30 days after the date of the transfer. A true copy of the instruments of transfer shall be attached to the notification.

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

10. This application remains open for the purpose of receiving the redacted, public version of the Purchase and Sale Agreement required by OP 7.

This order is effective today.

Dated _____, at San Francisco, California.