Letter I36

Richard Bilas
President, California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Dear Mr. Bilas:

I would like to submit to your attention the following comments concerning the EIR prepared for the proposed Lodi Gas Storage Project:

The EIR fails to recognize that Lodi is a prime grape growing area, to be exact, an area recognized by the Federal Government as an appellation since 1986. A gas storage facility with all its "trimmings" does not fit into the picture. Whereas every act and law concerning utilities emphasizes the importance of impacting the environment in the least possible way, the proposed project literally destroys the image of the region. According to the EIR there will always be a bad smell and noise that can not be mitigated. I36-1

The noise section of the EIR was prepared by Hoover & Keith Inc. for the proponents of Lodi Gas Storage and reported as is in the EIR. It is a mockery to expect ordinary people to understand the contents. The CPUC should review it and offer the public a comprehensible version. I36-2

The EIR proposes to halt work on the project during harvest time to minimize the interference with working labor crews. We have crews working in vineyards all year round. The impact on our liability toward farm laborers will be tremendous. I36-3

As submitted by various individuals during the public hearings the relief valves proposed by the project pose serious hazard as well as the pressure proposed at the connection points where pipe sizes differ. I36-4

I find it absurd to plead the inadequacies of the EIR when the choice of the location for the project is totally inappropriate. If the purpose of the project is to encourage competition among utility companies, should that be at the expense of impairing this region's ability to compete in what it was geared for, and has been doing, growing quality wine grapes, for more than a hundred and fifty years? I36-5

I also fail to comprehend the economic sense of building a thirty three-mile pipeline to connect with the PG&E line, which services Sacramento.Is the so called old well of Lodi needed to qualify for the tax credit under section 29 and the connection between a City and a contiguous County required under section 142 to qualify for the exempt bond? Please do not ignore the fact that this area already has five storage facilities. I36-6

Sincerely,

Laila Sorour L Sorour

CC: Hon Judge Janet Econome
Joel Hyatt, Commission Member
Joe Meeper, Commission Member
Carl Wood, Commission Member
Henry Duque, Commission Member
Judith Ikle, Project Manager

Ps. Added to the list of enclosures is a copy of an article published in the Sentinel today.

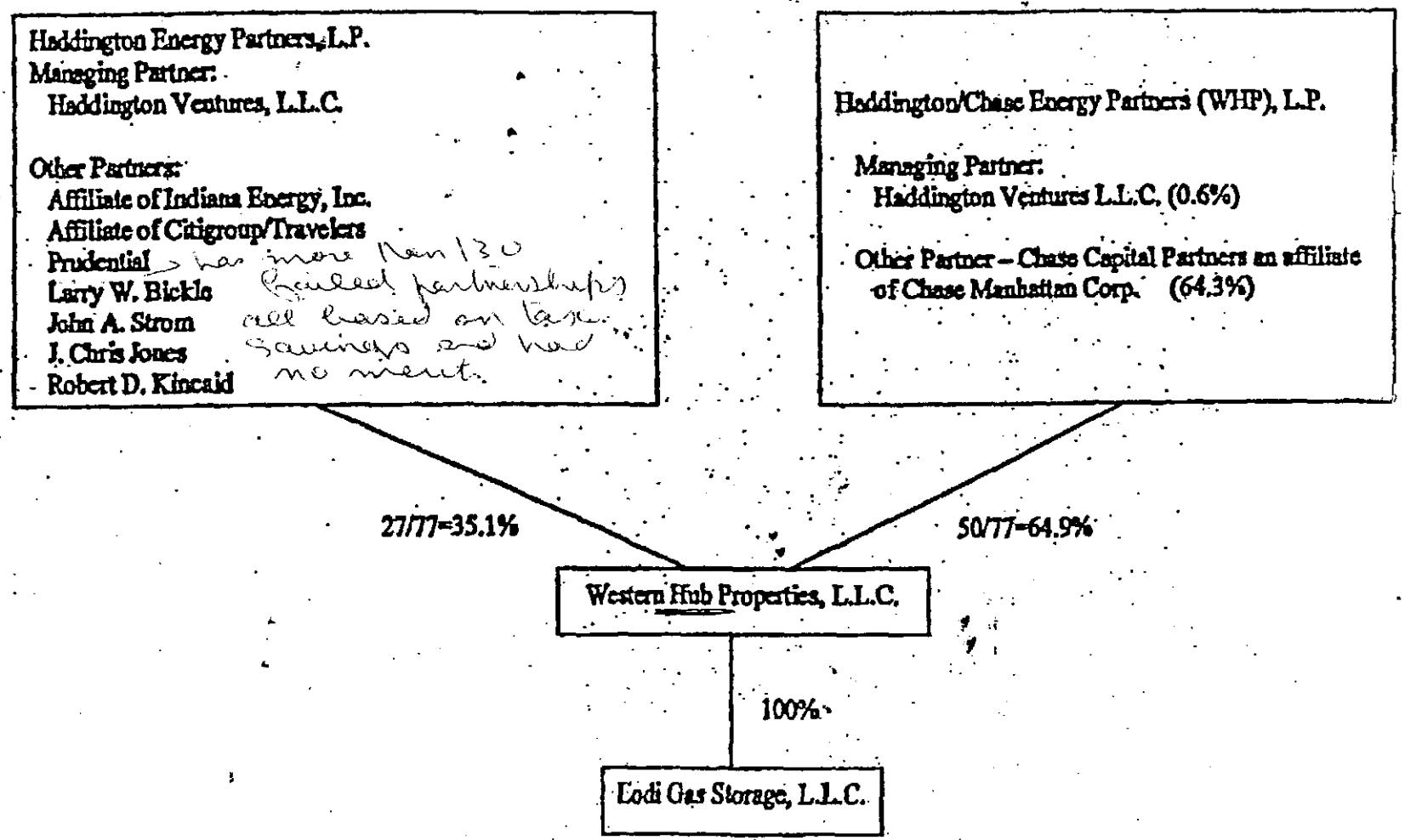
Ms. Judith Ikle.

Thanks for the copy of the EIR. I hope I have enclosed everything I used in my testament Re - Cartel : Yes they are illegal but mergers are not. Anti Trust laws are very intriguing. for example take the scenario of a physician if he forms a ~~partner~~ group and contract with Ins. Companies for lives, it ~~then becomes legal~~ so he gets x amount of dollars per patient regardless of how much is spent on the patient, but still he ~~has~~ makes the decision to send the patient to a specialist this flagrant

conflict of interest is not anti-trust

ATTACHMENT A

LODI GAS STORAGE, L.L.C.
OWNERSHIP EFFECTIVE APRIL, 1999



organizational chart 40199

Attachment to Letter I36

For immediate release

February 9, 1998

For further information contact:

NEWS CONTACT: Marc Carmichael
317/321-0595

INVESTOR CONTACT: Jeff Whiteside
317/321-0588

INDIANAPOLIS-IEI Investments, Inc. announced today (February 9) that its subsidiary, IEI Synfuels, Inc., became an investor along with four other national corporations in a Delaware-based partnership that will develop, own and operate four facilities to produce and sell coal-based synthetic fuel. The initial IEI investment is expected to be in the $7.5 million range.

IEI Investments, Inc., president, Carl L. Chapman, said that IEI Synfuels, Inc. purchased one of 12 limited partnership units in Pace Carbon Synfuels Investors, L.P., which will operate three projects in West Virginia and one in Virginia. IEI Investments is a subsidiary of Indiana Energy, Inc., a publicly traded holding company whose other principal operating unit is Indiana Gas Company, Inc.

Pace Carbon will convert coal fines-small coal particles-into coal pellets that can be sold to major coal users such as utilities and steel companies. The production facilities are expected to be in operation by June 30 of this year.

Additional investments will be funded out of federal tax savings that are realized upon the sale of the coal pellets. The tax savings are provided for under Section 29 of the Internal Revenue Code, which was adopted several years ago to encourage increased domestic fuel production and less dependence on foreign energy. Pace Carbon has secured a private letter ruling from the Internal Revenue Service regarding the projects, which are fully subscribed.

Chapman said that in addition to the positive impact on Indiana Energy's net income, Pace Carbon will provide environmental benefits by reducing coal fines deposits that are sometimes referred to as slurry ponds and gob hills.

[Home Page]

estimate of the upper risk limit. Resolution of the above proceedings may also impact future operations and earnings contributions from ProLiance. Based on the IURC's findings described above, management believes the ProLiance issues may be resolved near the levels that are already being reserved, and therefore, while these proceedings are pending, does not anticipate changing the level at which it reserves ProLiance earnings. However, no assurance of this outcome can be provided.

Pace Carbon Synfuels Investors, L.P. On February 5, 1998, IEI Synfuels, Inc. (IEI Synfuels), a wholly-owned, indirect subsidiary of IEI Investments, purchased one limited partnership unit in Pace Carbon Synfuels Investors, L.P. (Pace Carbon), a Delaware limited partnership formed to develop, own and operate four projects to produce and sell coal-based synthetic fuel. Pace Carbon converts coal fines (small coal particles) into coal pellets that are sold to major coal users such as utilities and steel companies. This process is eligible for federal tax credits under Section 29 of the Internal Revenue Code (Code) and the Internal Revenue Service has issued a private letter ruling with respect to the four projects.

IEI Synfuels has committed an initial investment of $7.5 million in Pace Carbon (of which $5.4 million was paid through December 31, 1998) for an 8.3 percent ownership interest in the partnership. The balance of the initial investment will be paid following the satisfaction by Pace Carbon of certain project milestones regarding the operation of the coal pellet production plants and long-term feedstock acquisition. In addition to its initial investment, IEI Synfuels has a continuing obligation to invest in Pace Carbon up to approximately $43 million, with any such additional investments expected to be funded solely from federal tax credits that are realized from the production and sale of coal pellets by the projects.

The realization of the tax credits from this investment is dependent upon a number of factors including among others (1) the production facilities must have been in operation by June 30, 1998, (2) adequate coal fines must be available to produce the coal pellets, and (3) the coal pellets must be produced and sold. All four of Pace Carbon's coal-based synthetic fuel production facilities were placed into service by June 30, 1998, and are currently producing and selling pellets in a ramp up mode, while continuing to improve the production process. Generally all pellets produced through December 31, 1998, have been sold. Management believes that significant project benefits, primarily in the form of tax savings and tax credits realized, will be achieved in the future but cannot be assured.

Haddington Energy Partners, L.P. On October 9, 1998, IEI Investments committed to invest $10 million in Haddington Energy Partners, L.P. (Haddington). Haddington, a Delaware limited partnership, plans to raise $100 million to invest in six to eight projects that represent a portfolio of development opportunities, including natural gas gathering and storage and electric power generation. Haddington's investment opportunities will focus on acquiring and building on projects in progress rather than start-up ventures. Haddington's initial closing achieved $72 million in commitments. Through December 31, 1998, IEI Investments had paid approximately $300,000 of its commitment in Haddington, with additional amounts to be paid as Haddington's portfolio grows.

The Year 2000 Issue

Many existing computer programs use only two digits to identify a year in the date field. These programs were designed and developed without considering the impact of the upcoming change in the century. If not corrected, many computer applications could fail or create erroneous results by or at the year 2000. This issue relates not only to information technology (IT) but also to non-IT related equipment

AGRICULTURE

seed companies could stop [illegible]

Winery proposal clears 1st hurdle

By Brian Ross
News-Sentinel staff writer

STOCKTON — The San Joaquin County Board of Supervisors on Tuesday gave its unofficial blessing to a proposal aimed at encouraging small wineries to locate here.

The proposal, which seeks to create a special set of ordinances specifically governing small wineries, has been embraced by a broad consortium of local government and wine industry representatives, who feel the changes are long overdue.

Several supervisors said they would support the plan, which goes to the county Planning Commission.

Board Chairman Robert Cabral said the changes represent a major departure from the county's existing ordinances.

"I'm very excited about this," he said. "I think these points need to be recognized."

If ultimately approved, the changes would relax county ordinances governing things such as building materials and permits for serving wine.

Russ Matthews, director of the San Joaquin Farm Bureau Federation, said the time is ripe to make the changes.

"It is because of the changes in agriculture and tourism that we have come to you," he told the board. "We need to do more than just plant grapes. We need to create a place for those grapes to go that is desired and accepted by consumers."

The industry is blossoming in San Joaquin County and could grow further if given the right conditions, said Mark Chandler, executive director of the Lodi-Woodbridge Wine grape Commission.

Private Letter Ruling 9635010

UIL Number(s) 0142.06-00
Date: 05/22/96

Refer Reply to: CC:P&SI:6 - TR-31-2215-94

LEGEND:

State = * * *

Commission = * * *

City = * * *

County = * * *

Subsidiary = * * *

Agreement = * * *

Utilities = * * *

Area = * * *

Cooperative Mains = * * *

Dear * * *

This is in reply to your letter dated May 9, 1996, and prior submissions, submitted on behalf of the above-named taxpayer, requesting that our office issue a private letter ruling that certain proposed contracts for gas sales, storage, and transportation will not cause the taxpayer's gas system facilities to be other than facilities for the local furnishing of gas for purposes of section 142 of the Internal Revenue Code.

FACTS

The taxpayer is a public gas utility incorporated in State and subject to the ratemaking authority of Commission. Its service area includes portions of City and contiguous County. It is required to provide retail gas service to customers located within the service area who request gas service. In addition, the taxpayer is required to transport and deliver gas to parties within the service area who purchase gas from other sources.

Subsidiary is a wholly-owned gas marketing subsidiary of the taxpayer. Subsidiary is not a regulated public utility and does not hold assets except on a transitory basis.

The taxpayer's system includes transportation mains and appurtenant facilities, distribution facilities, and a wholly-owned gas storage facility. The distribution facilities include high-pressure spur mains, regulator stations, and low-pressure distribution mains. Gas enters the distribution facilities both through the transportation mains and through direct connections with several interstate pipelines located in County. The taxpayer's gas storage facility is located within the service area and connected to the transportation mains.

The taxpayer's transportation mains and appurtenant facilities are interconnected with those of two other utilities ("Utilities") and are subject to the terms of Agreement. Agreement is a

cooperative agreement between the taxpayer and Utilities, one of which operates in City and the other in Area. The interconnected network of transportation mains and appurtenant facilities owned by the parties and subject to Agreement are known collectively as the Cooperative Mains. Under Agreement, in general, each party must install, own, and operate the Cooperative Mains within their respective service areas for the benefit of all three parties, and all costs with respect to facilities operated for the benefit of a particular party are allocated under Agreement to that party. There are several connections, both within and outside the taxpayer's gas service area, between the Cooperative Mains and interstate gas transportation mains. None of the Cooperative Mains, including the taxpayer's transportation mains and appurtenant facilities, have been financed with the proceeds of tax-exempt bond issues.

The taxpayer will occasionally make emergency transfers of gas on a temporary basis to other utilities by allowing a utility to draw, from an interstate pipeline, gas otherwise due for delivery to the taxpayer, provided that the taxpayer has supply in excess of that required to serve its customers' current demands (including amounts available to the taxpayer by drawing from the gas storage plant located within its service area) and that the taxpayer is fully reimbursed for the gas and the costs of the transfer.

The taxpayer wishes to engage in a range of transactions involving the provision of tariff services to customers within the taxpayer's service area and the purchase, sale, and brokerage of gas supply and gas transportation and storage services to customers located outside of the taxpayer's service area. Although Subsidiary is prohibited under current law from selling gas within taxpayer's service area, it intends to buy, sell, and broker gas supply and gas transportation and storage services to customers located outside of the taxpayer's service area.

The taxpayer has represented that the proposed transactions with non-franchise customers will not involve the distribution facilities, and will not harm the rights or interests of franchise customers. No tax-exempt bond proceeds will be expended, and no augmentations or alterations will be made to the taxpayer's transportation mains and appurtenant facilities, distribution facilities, or to its gas storage facility, in order to accomplish the proposed transactions. In addition, the taxpayer has represented that when the taxpayer or Subsidiary contracts with non-franchise customers to sell gas outside of the taxpayer's franchise, service area, the taxpayer's titled portion of the Cooperative Mains will not be physically used to deliver the gas to those customers; i.e. the gas will be physically delivered entirely by pipelines that are not part of the Cooperative Mains titled to the taxpayer.

RULING REQUESTED

The taxpayer has requested a ruling that the sales, transfers, and releases of gas or gas transportation or gas storage capacity described in the foregoing section, and related activities of the taxpayer with regard to such transactions, will not cause the taxpayer's system to be other than a "system for the local furnishing of gas" for purposes of section 142(a)(8) and (f) of the Code.

LAW AND ANALYSIS

Section 142(f) of the Code provides that, for purposes of section 142(a)(8), the local furnishing of electric energy or gas shall only consist of furnishing solely within the area consisting of a city and one contiguous county, or two contiguous counties.

Section 1.103-8(a)(2) of the Federal Income Tax Regulations provides that to qualify as an exempt facility, a facility must serve or be available on a regular basis for general public use, or be a part of a facility so used.

Section 1.103-8(f)(1)(ii) of the regulations provides that a facility for the local furnishing of electric energy or gas is, for purposes of applying the public use test in section 1.103-

8(a)(2), available for use by the general public if (a) the owner or operator of the facility is obligated, by a legislative enactment, local ordinance, regulation, or the equivalent thereof, to furnish electric energy or gas to all persons who desire such services and who are within the service area of the owner or operator of such facility, and (b) it is reasonably expected that such facility will serve or be available to a large segment of the general public in such service area.

Section 1.103-8(f)(2)(iii) of the regulations provides that the term "facilities for the local furnishing of electric energy or gas" means property which --

(a) Is either property of a character subject to the allowance for depreciation provided in section 167 or land,

(b) Is used to produce, collect, generate, transmit, store, distribute, or convey electric energy or gas,

(c) Is used in the trade or business of furnishing electric energy or gas, and

(d) Is a part of a system providing service to the general populace of one or more communities or municipalities, but in no event more than 2 contiguous counties (or a political equivalent) whether or not such counties are located in one State. The facilities need not be located in the area served by them.

Section 142 and the regulations thereunder permit the provision of service to customers located within an area no greater than a city and a contiguous county, or two contiguous counties. However, the taxpayer generally may not utilize its assets to provide service to customers beyond this area. On the condition that the transactions proposed by the taxpayer do not involve the use of the gas distribution facilities, the transportation mains (i.e. the taxpayer's interest in the Coordinated Mains) and appurtenant facilities, and the wholly-owned gas storage facility in the provision of gas sales and gas transportation and storage services to non-franchise customers, and on the condition that all gas that is supplied to customers outside the service area is transferred to the customer without entering any of those assets, the transactions will not cause the taxpayer's assets to be a part of a system providing service to the general populace of an area greater than a city and a contiguous county.

Therefore, based upon the facts and representations outlined in this letter and in the taxpayer's submissions, and provided the foregoing conditions are met, sales, transfers, or releases by the taxpayer of gas or gas transportation or gas storage capacity, and related activities of the taxpayer with respect to the transactions, will not cause the taxpayer's system to be other than a "system for the local furnishing of gas" for purposes of section 142(a)(8) and (f) of the Code.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the above- described facts. Specifically, we express no opinion concerning whether the bonds issued to finance the taxpayer's facilities are exempt from federal taxation, whether the taxpayers assets qualify as facilities for the local furnishing of gas, or whether the provision of system gas to another utility in emergency or other circumstances is a disqualifying event. The taxpayer did not request, and we do not express, any opinion concerning whether gas transactions entered into by Subsidiary may be attributed to the taxpayer.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,
CHARLES B. RAMSEY
Chief, Branch 6
Office of the Assistant
Chief Counsel
(Passthroughs and
Special Industries)

Enclosures: 2

Copy of this letter

Copy for section 6110 purposes

Sec. 142. Exempt Facility Bond

(a) General Rule

For purposes of this part, the term "exempt facility bond" means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide--

(1) airports,

(2) docks and wharves,

(3) mass commuting facilities,

(4) facilities for the furnishing of water,

(5) sewage facilities,

(6) solid waste disposal facilities,

(7) qualified residential rental projects,

(8) facilities for the local furnishing of electric energy or gas,

(9) local district heating or cooling facilities,

(10) qualified hazardous waste facilities,

(11) high-speed intercity rail facilities, or

(12) environmental enhancements of hydroelectric generating facilities. 1

(b) Special Exempt Facility Bond Rules

For purposes of subsection (a)--

(1) Certain Facilities Must Be Governmentally Owned

(A) In General

A facility shall be treated as described in paragraph (1),(2), (3), or (12) of subsection (a) only if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit. 1

(B) Safe Harbor For Leases And Management Contracts

For purposes of subparagraph (A), property leased by a governmental unit shall be treated as owned by such governmental unit if--

(i) the lessee makes an irrevocable election (binding on the lessee and all successors in interest under the lease) not to claim depreciation or an investment credit with respect to such property,

(ii) the lease term (as defined in section 168(i)(3)) is not more than 80 percent of the reasonably expected economic life of the property (as determined under section 147(b)), and

(iii) the lessee has no option to purchase the property other than at fair market value (as of the time such option is exercised). Rules similar to the rules of the preceding sentence shall apply to management contracts and similar types of operating agreements.

☒(2) Limitation On Office Space

An office shall not be treated as described in a paragraph of subsection (a) unless--

(A) the office is located on the premises of a facility described in such a paragraph, and

(B) not more than a de minimis amount of the functions to be performed at such office is not directly related to the day-to-day operations at such facility.

(c) Airports, Docks And Wharves, Mass Commuting Facilities And High-speed Intercity Rail Facilities

For purposes of subsection (a)--

☒(1) Storage And Training Facilities

Storage or training facilities directly related to a facility described in paragraph (1), (2), (3) or (11) of subsection (a) shall be treated as described in the paragraph in which such facility is described.

☒(2) Exception For Certain Private Facilities

Property shall not be treated as described in paragraph (1), (2), (3) or (11) of subsection (a) if such property is described in any of the following subparagraphs and is to be used for any private business use (as defined in section 141(b)(6)).

(A) Any lodging facility.

(B) Any retail facility (including food and beverage facilities) in excess of a size necessary to serve passengers and employees at the exempt facility.

(C) Any retail facility (other than parking) for passengers or the general public located outside the exempt facility terminal.

(D) Any office building for individuals who are not employees of a governmental unit or of the operating authority for the exempt facility.

(E) Any industrial park or manufacturing facility.

(d) Qualified Residential Rental Project

For purposes of this section--

(1) In General

The term "qualified residential rental project" means any project for residential rental property if, at all times during the qualified project period, such project meets the requirements of subparagraph (A) or (B), whichever is elected by the issuer at the time of the issuance of the issue with respect to such project:

(A) 20-50 Test

The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

(B) 40-60 Test

The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income.

For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) Definitions And Special Rules

For purposes of this subsection--

(A) Qualified Project Period

The term "qualified project period" means the period beginning on the 1st day on which 10 percent of the residential units in the project are occupied and ending on the latest of--

(i) the date which is 15 years after the date on which 50 percent of the residential units in the project are occupied,

(ii) the 1st day on which no tax-exempt private activity bond issued with respect to the project is outstanding, or

(iii) the date on which any assistance provided with respect to the project under section 8 of the United States Housing Act of 1937 terminates.

(B) Income Of Individuals; Area Median Gross Income

The income of individuals and area median gross income shall be determined by the Secretary in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937 (or, if such program is terminated, under such program as in effect immediately before such termination). Determinations under the preceding sentence shall include adjustments for family size. Section 7872(g) shall not apply in determining the income of individuals

under this subparagraph.

(3) Current Income Determinations

For purposes of this subsection--

(A) In General

The determination of whether the income of a resident of a unit in a project exceeds the applicable income limit shall be made at least annually on the basis of the current income of the resident.

(B) Continuing Resident's Income May Increase Above The Applicable Limit

If the income of a resident of a unit in a project did not exceed the applicable income limit upon commencement of such resident's occupancy of such unit (or as of any prior determination under subparagraph (A)), the income of such resident shall be treated as continuing to not exceed the applicable income limit. The preceding sentence shall cease to apply to any resident whose income as of the most recent determination under subparagraph (A) exceeds 140 percent of the applicable income limit if after such determination, but before the next determination, any residential unit of comparable or smaller size in the same project is occupied by a new resident whose income exceeds the applicable income limit.

(4) Special Rule In Case Of Deep Rent Skewing

(A) In General

In the case of any project described in subparagraph (B), the 2d sentence of subparagraph (B) of paragraph (3) shall be applied by substituting--

(i) "170 percent" for "140 percent", and

(ii) "any low-income unit in the same project is occupied by a new resident whose income exceeds 40 percent of area median gross income" for "any residential unit of comparable or smaller size in the same project is occupied by a new resident whose income exceeds the applicable income limit".

(B) Deep Rent Skewed Project

A project is described in this subparagraph if the owner of the project elects to have this paragraph apply and, at all times during the qualified project period, such project meets the requirements of clauses (i), (ii), and (iii):

(i) The project meets the requirements of this clause if 15 percent or more of the low-income units in the project are occupied by individuals whose income is 40 percent or less of area median gross income.

(ii) The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed 30 percent of the applicable income limit which applies to individuals occupying the unit.

(iii) The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed 1/2 of the average gross rent with respect to units of comparable size which are not occupied by individuals who

meet the applicable income limit.

(C) Definitions Applicable To Subparagraph (b)

For purposes of subparagraph (B)--

(i) Low-income Unit

The term "low-income unit" means any unit which is required to be occupied by individuals who meet the applicable income limit.

(ii) Gross Rent

The term "gross rent" includes--

(I) any payment under section 8 of the United States Housing Act of 1937, and

(II) any utility allowance determined by the Secretary after taking into account such determinations under such section 8.

(5) Applicable Income Limit

For purposes of paragraphs (3) and (4), the term "applicable income limit" means--

(A) the limitation under subparagraph (A) or (B) of paragraph (1) which applies to the project, or

(B) in the case of a unit to which paragraph (4)(B)(*i*) applies, the limitation which applies to such unit.

(6) Special Rule For Certain High Cost Housing Area

In the case of a project located in a city having 5 boroughs and a population in excess of 5,000,000, subparagraph (B) of paragraph (1) shall be applied by substituting "25 percent" for "40 percent".

(7) Certification To Secretary

The operator of any project with respect to which an election was made under this subsection shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual certification as to whether such project continues to meet the requirements of this subsection. Any failure to comply with the provisions of the preceding sentence shall not affect the tax-exempt status of any bond but shall subject the operator to penalty, as provided in section 6652(j).

(e) Facilities For The Furnishing Of Water

For purposes of subsection (a)(4), the term "facilities for the furnishing of water" means any facility for the furnishing of water if--

(1) the water is or will be made available to members of the general public (including electric utility, industrial, agricultural, or commercial users), and

(2) either the facility is operated by a governmental unit or the rates for the furnishing or sale of the water have been established or approved by a State or political subdivision

thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

(f) Local Furnishing Of Electric Energy Or Gas.

For purposes of subsection (a)(8) --

(1) In General.

The local furnishing of electric energy or gas from a facility shall only include furnishing solely within the area consisting of --

(A) a city and 1 contiguous country, or

(B) 2 contiguous counties.

(2) Treatment Of Certain Electric Energy Transmitted Outside Local Area.

(A) In General.

A facility shall not be treated as failing to meet the local furnishing requirement of subsection (a)(8) by reason of electricity transmitted pursuant to an order of the Federal Energy Regulatory Commission under section 211 or 213 of the Federal Power Act (as in effect on the date of the enactment of this paragraph) if the portion of the cost of the facility financed with tax-exempt bonds is not greater than the portion of the cost of the facility which is allocable to the local furnishing of electric energy (determined without regard to this paragraph).

(B) Special Rule For Existing Facilities.

In the case of a facility financed with bonds issued before the date of an order referred to in subparagraph (A) which would (but for this subparagraph) cease to be tax-exempt by reason of subparagraph (A), such bonds shall not cease to be tax- exempt bonds (and section 150(b)(4) shall not apply) if, to the extent necessary to comply with subparagraph (A) –

(i) an escrow to pay principal of, premium (if any), and interest on the bonds is established within a reasonable period after the date such order becomes final, and

(ii) bonds are redeemed not later than the earliest date on which such bonds may be redeemed. 2

(3) Termination Of Future Financing.–

For purposes of this section, no bond may be issued as part of an issue described in subsection (a)(8) with respect to a facility for the local furnishing of electric energy or gas on or after the date of the enactment [August 20, 1996] of this paragraph unless--

(A) the facility will--

(i) be used by a person who is engaged in the local furnishing of that energy source on January 1, 1997, and

(ii) be used to provide service within the area served by such person on January 1,1997 (or within a county or city any portion of which is within such area), or

(B) the facility will be used by a successor in interest to such person for the same use and within the same service area as described in subparagraph (A).

(4) Election To Terminate Tax-exempt Bond Financing By Certain Furnishers.--

(A) In General.--

In the case of a facility financed with bonds issued before the date of the enactment [August 20, 1996] of this paragraph which would cease to be tax-exempt by reason of the failure to meet the local furnishing requirement of subsection (a)(8) as a result of a service area expansion, such bonds shall not cease to be tax-exempt bonds (and section 150(b)(4) shall not apply) if the person engaged in such local furnishing by such facility makes an election described in subparagraph (B).

(B) Election.--

An election is described in this subparagraph if it is an election made in such manner as the Secretary prescribes, and such person (or its predecessor in interest) agrees that--

(i) such election is made with respect to all facilities for the local furnishing of electric energy or gas, or both, by such person,

(ii) no bond exempt from tax under section 103 and described in subsection (a)(8) may be issued on or after the date of the enactment of this paragraph with respect to all such facilities of such person,

(iii) any expansion of the service area--

(I) is not financed with the proceeds of any exempt facility bond described in subsection (a)(8), and

(II) is not treated as a nonqualifying use under the rules of paragraph (2), and

(iv) all outstanding bonds used to finance the facilities for such person are redeemed not later than 6 months after the later of--

(I) the earliest date on which such bonds may be redeemed, or

(II) the date of the election.

(C) Related Persons.--

For purposes of this paragraph, the term 'person' includes a group of related persons (within the meaning of section 144(a)(3)) which includes such person.

(g) Local District Heating Or Cooling Facility

(1) In General

For purposes of subsection (a)(9), the term "local district heating or cooling facility" means property used as an integral part of a local district heating or cooling system.

(2) Local District Heating Or Cooling System

(A) In General

For purposes of paragraph (1), the term "local district heating or cooling system" means any local system consisting of a pipeline or network (which may be connected to a heating or cooling source) providing hot water, chilled water, or steam to 2 or more users for--

(i) residential, commercial, or industrial heating or cooling, or

(ii) process steam.

(B) Local System

For purposes of this paragraph, a local system includes facilities furnishing heating and cooling to an area consisting of a city and 1 contiguous county.

(h) Qualified Hazardous Waste Facilities

For purposes of subsection (a)(10), the term "qualified hazardous waste facility" means any facility for the disposal of hazardous waste by incineration or entombment but only if--

(1) the facility is subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act (as in effect on the date of the enactment of the Tax Reform Act of 1986), and

(2) the portion of such facility which is to be provided by the issue does not exceed the portion of the facility which is to be used by persons other than--

(A) the owner or operator of such facility, and

(B) any related person (within the meaning of section 144(a)(3)) to such owner or operator.

(i) High-speed Intercity Rail Facilities

(1) In General

For purposes of subsection (a)(11), the term "high-speed intercity rail facilities" means any facility (not including rolling stock) for the fixed guideway rail transportation of passengers and their baggage between metropolitan statistical areas (within the meaning of section 143(k)(2)(B)) using vehicles that are reasonably expected to operate at speeds in excess of 150 miles per hour between scheduled stops, but only if such facility will be made available to members of the general public as passengers.

(2) Election By Nongovernmental Owners

A facility shall be treated as described in subsection (a)(11) only if any owner of such facility which is not a governmental unit irrevocably elects not to claim--

(A) any deduction under section 167 or 168, and

(B) any credit under this subtitle, with respect to the property to be financed by the net proceeds of the issue.

(3) Use Of Proceeds

A bond issued as part of an issue described in subsection (a)(11) shall not be considered an

exempt facility bond unless any proceeds not used within a 3-year period of the date of the issuance of such bond are used (not later than 6 months after the close of such period) to redeem bonds which are part of such issue.

(j) Environmental Enhancements Of Hydroelectric Generating Facilities.

(1) In General.

For purposes of subsection (a)(12), the term "environmental enhancements of hydroelectric generating facilities" means property --

(A) the use of which is related to a federally licensed hydroelectric generating facility owned and operated by a governmental unit, and

(B) which -- (i) protects or promotes fisheries or other wildlife resources, including any fish by-pass facility, fish hatchery, or fisheries enhancement facility, or (ii) is a recreational facility or other improvement required by the terms and conditions of any Federal licensing permit for the operation of such generating facility.

(2) Use Of Proceeds.

A bond issued as part of an issue described in subsection (a)(12) shall not be considered an exempt facility bond unless at least 80 percent of the net proceeds of the issue of which it is a part are used to finance property described in paragraph (1)(B)(i). 3

(Added Pub. L. 99-514, title XIII, Sec. 1301(b), Oct. 22, 1986, 100 Stat. 2606, and amended Pub. L. 100-647, title I, Sec. 1013(a)(1), (39), title VI, Sec. 6180(a)-(b)(2), Nov. 10, 1988, 102 Stat. 3537, 3544, 3727, 3728; Pub. L. 101-239, title VII, Sec. 7108(e)(3), (n)(1), 7816(s)(1), Dec. 19, 1989, 103 Stat. 2313, 2318, 2423; Pub. L. 104-188, Sec. 1608, Aug. 20, 1996, 110 Stat. 1755; Pub. L. 105-206, title VI, Sec. 6023(5), July 22, 1998, 112 Stat 685.)

Sec. 143. Mortgage Revenue Bonds: Qualified Mortgage Bond And Qualified Veterans' Mortgage Bond

(a) Qualified Mortgage Bond 1

(1) Qualified Mortgage Bond Defined. --

For purposes of this title, the term `qualified mortgage bond' means a bond which is issued as part of a qualified mortgage issue.

(2) Qualified Mortgage Issue Defined

Sec. 29. Credit For Producing Fuel From A Nonconventional Source

(a) Allowance Of Credit

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to--

(1) $3, multiplied by

(2) the barrel-of-oil equivalent of qualified fuels--

(A) sold by the taxpayer to an unrelated person during the taxable year, and

(B) the production of which is attributable to the taxpayer.

(b) Limitations And Adjustments

(1) Phaseout Of Credit

The amount of the credit allowable under subsection (a) shall be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as--

(A) the amount by which the reference price for the calendar year in which the sale occurs exceeds $23.50, bears to

(B) $6.

(2) Credit And Phaseout Adjustment Based On Inflation

The $3 amount in subsection (a) and the $23.50 and $6 amounts in paragraph (1) shall each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. In the case of gas from a tight formation, the $3 amount in subsection (a) shall not be adjusted.

(3) Credit Reduced For Grants, Tax-exempt Bonds, And Subsidized Energy Financing

(A) In General

The amount of the credit allowable under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1) and (2)) shall be reduced by the amount which is the product of the amount so determined for such year and a fraction--

(i) the numerator of which is the sum, for the taxable year and all prior taxable years, of--

(I) grants provided by the United States, a State, or a political subdivision of a State for use in connection with the project,

(II) proceeds of any issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under section 103, and

(III) the aggregate amount of subsidized energy financing (within the meaning of section 48(a)(4)(C)) provided in connection with the project, and

(ii) the denominator of which is the aggregate amount of additions to the capital account for the project for the taxable year and all prior taxable years.

(B) Amounts Determined At Close Of Year

The amounts under subparagraph (A) for any taxable year shall be determined as of the close of the taxable year.

(4) Credit Reduced For Energy Credit

The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1), (2), and (3)) shall be reduced by the excess of--

(A) the aggregate amount allowed under section 38 for the taxable year or any prior taxable year by reason of the energy percentage with respect to property used in the project, over

(B) the aggregate amount recaptured with respect to the amount described in subparagraph (A)--

(i) under section 49(b) or 50(a) for the taxable year or any prior taxable year, or

(ii) under this paragraph for any prior taxable year. The amount recaptured under section 49(b) or 50(a) with respect to any property shall be appropriately reduced to take into account any reduction in the credit allowed by this section by reason of the preceding sentence.

(5) Credit Reduced For Enhanced Oil Recovery Credit

The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after application of paragraphs (1), (2), (3), and (4)) shall be reduced by the excess (if any) of --

(A) the aggregate amount allowed under section 38 for the taxable year and any prior taxable year by reason of any enhanced oil recovery credit determined under section 43 with respect to such project, over

(B) the aggregate amount recaptured with respect to the amount described in subparagraph (A) under this paragraph for any prior taxable year.

(6) Application With Other Credits

The credit allowed by subsection (a) for any taxable year shall not exceed the excess (if any) of--

(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and section 27, over

(B) the tentative minimum tax for the taxable year.

(c) Definition Of Qualified Fuels

For purposes of this section--

(1) In General

The term "qualified fuels" means--

(A) oil produced from shale and tar sands,

(B) gas produced from--

(i) geopressured brine, Devonian shale, coal seams, or a tight formation, or

(ii) biomass, and

(C) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks.

(2) Gas From Geopressured Brine, Etc.

(A) In General

Except as provided in subparagraph (B), the determination of whether any gas is produced from geopressured brine, Devonian shale, coal seams, or a tight formation shall be made in accordance with section 503 of the Natural Gas Policy Act of 1978.

(B) Special Rules For Gas From Tight Formations

The term "gas produced from a tight formation" shall only include gas from a tight formation--

(i) which, as of April 20, 1977, was committed or dedicated to interstate commerce (as defined in section 2(18) of the Natural Gas Policy Act of 1978, as in effect on the date of the enactment of this clause), or

(ii) which is produced from a well drilled after such date of enactment.

(3) Biomass

The term "biomass" means any organic material other than--

(A) oil and natural gas (or any product thereof), and

(B) coal (including lignite) or any product thereof.

(d) Other Definitions And Special Rules

For purposes of this section--

(1) Only Production Within The United States Taken Into Account

Sales shall be taken into account under this section only with respect to qualified fuels the production of which is within--

(A) the United States (within the meaning of section 638(1)), or

(B) a possession of the United States (within the meaning of section 638(2)).

(2) Computation Of Inflation Adjustment Factor And Reference Price

(A) In General

The Secretary shall, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for the preceding calendar year in accordance with this paragraph.

(B) Inflation Adjustment Factor

The term "inflation adjustment factor" means, with respect to a calendar year, a fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 1979. The term "GNP implicit price deflator" means the first revision of the implicit price deflator for the gross national product as computed and published by the Department of Commerce.

(C) Reference Price

The term "reference price" means with respect to a calendar year the Secretary's estimate of the annual average wellhead price per barrel for all domestic crude oil the price of which is not subject to regulation by the United States.

(3) Production Attributable To The Taxpayer

In the case of a property or facility in which more than 1 person has an interest, except to the extent provided in regulations prescribed by the Secretary, production from the property or facility (as the case may be) shall be allocated among such persons in proportion to their respective interests in the gross sales from such property or facility.

(4) Gas From Geopressured Brine, Devonian Shale, Coal Seams, Or A Tight Formation. --

The amount of the credit allowable under subsection (a) shall be determined without regard to any production attributable to a property from which gas from Devonian shale, coal seams, geopressured brine, or a tight formation was produced in marketable quantities before January 1, 1980.

(5) Barrel-of-oil Equivalent

The term "barrel-of-oil equivalent" with respect to any fuel means that amount of such fuel which has a Btu content of 5.8 million; except that in the case of qualified fuels described in subparagraph (C) of subsection (c)(1), the Btu content shall be determined without regard to any material from a source not described in such subparagraph.

(6) Barrel Defined

The term "barrel" means 42 United States gallons.

(7) Related Persons

Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling qualified fuels to an unrelated person if such fuels are sold to such a person by another member of such group.

(8) Pass-thru In The Case Of Estates And Trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(e) Application With The Natural Gas Policy Act Of 1978

(1) No Credit If Section 107 Of The Natural Gas Policy Act Of 1978 Is Utilized

Subsection (a) shall apply with respect to any natural gas described in subsection (c)(1)(B)(i) which is sold during the taxable year only if such natural gas is sold at a lawful price which is determined without regard to the provisions of section 107 of the Natural Gas Policy Act of 1978 and subtitle B of title I of such Act.

(2) Treatment Of This Section

For purposes of section 107(d) of the Natural Gas Policy Act of 1978, this section shall not be treated as allowing any credit, exemption, deduction, or comparable adjustment applicable to the computation of any Federal tax.

(f) Application Of Section

This section shall apply with respect to qualified fuels --

(1) which are --

(A) produced from a well drilled after December 31, 1979, and before January 1, 1993, or

(B) produced in a facility placed in service after December 31, 1979, and before January 1, 1993, and

(2) which are sold before January 1, 2003.

(g) Extension For Certain Facilities.

(1) In General.

In the case of a facility for producing qualified fuels described in subparagraph (B)(ii) or (C) of subsection (c)(1) --

(A) for purposes of subsection (f)(1)(B), such facility shall be treated as being placed in service before January 1, 1993, if such facility is placed in service before July 1, 1998 pursuant to a binding written contract in effect beforeJanuary 1, 1997, and

(B) if such facility is originally placed in service after December 31, 1992, paragraph (2) of subsection (f) shall be applied with respect to such facility by substituting "January 1, 2008" for "January 1, 2003".

(2) Special Rule.

Paragraph (1) shall not apply to any facility which produces coke or coke gas unless the original use of the facility commences with the taxpayer.

(Added Pub. L. 96-223, title II, Sec. 231(a), Apr. 2, 1980, 94 Stat. 268, Sec. 44D, and amended Pub. L. 97-34, title VI Sec. 611(a), Aug. 13, 1981, 95 Stat. 339; Pub. L. 97-354, Sec. 5(a)(1), Oct. 19, 1982, 96 Stat. 1692; Pub. L. 97-448, title II, Sec. 202(a), Jan. 12, 1983, 96 Stat. 2396; renumbered Sec. 29 and amended Pub. L. 98-369, div. A, title IV, Sec. 471(c), 474(h), title VI, Sec. 612(e)(1), title VII, Sec. 722(d)(1), (2), July 18, 1984, 98 Stat. 826, 831, 912, 973; Pub. L. 99-514, title VII, Sec. 701(c)(3), title XVIII, Sec. 1879(c)(1), Oct. 22, 1986, 100 Stat. 2340, 2906; Pub. L. 100-647, title VI, Sec. 6302, Nov. 10, 1988, 102 Stat. 3755; Pub. L. 101-508, title XI, Sec. 11501(a), (b)(1), (c)(1), 11813(b)(1), 11816, Nov. 5, 1990, 104 Stat. 1388-479, 1388-550, 1388-558; Pub. L. 102-486, title XIX, Sec. 1918, Oct. 24, 1992, 106 Stat. 2776 ; Pub. L. 104-188, title I, Sec. 1205(d)(3), 1207(a), Aug. 20, 1996, 110 Stat. 1755.)

Responses to Comments from Laila Sorour

I36-1. As discussed in Section 3.12, "Visual Resources", of the draft EIR mitigation for the visual impacts of the compressor facility requires the development of a site design and landscape buffer to shield views of this facility from adjacent vantage points. The development of a site plan and the landscape buffer includes consideration of undergrounding a portion of this facility to reduce its visibility, creating a berm to shield this structure from view and to serve as a base for the landscape buffer and other measures used to minimize the visibility of the compressor. Additionally, the mitigation measure requires the planting of landscaping prior to the construction of the facility and ongoing maintenance and monitoring of the landscaping to ensure that it effectively screens views of this facility from adjacent vantage points. Figure 3.12-2 depicts a photosimulation of the compressor facility with the implementation of the mitigation. Venting of the compressor facility, as discussed in Chapter 2, "Clarification of Major Issues", of this final EIR, would occur infrequently. While the proposed project does have some significant impacts, as described in the draft EIR, most of these impacts are localized to the area immediately surrounding the project facilities. Other facilities are nearby that are similar in scope and scale to the proposed project, including an airport, with its attendant facilities, dairy operations, fish farming facilities, and a major freeway.

I36-2. Section 3.10, "Noise", of the draft EIR was prepared by the consultant hired by the CPUC to prepare the rest of the EIR. Information provided by Hoover and Keith, a well-respected firm with acknowledged expertise in noise impact evaluations, was used in preparing the EIR's noise analysis. Other sources were also used by the noise expert who prepared Chapter 3.10. Hoover & Keith's report is included as Appendix D to the draft EIR for those readers who want to review the technical material used to conduct the analysis presented for the general reader in Chapter 3.10.

I36-3. Standard construction practice is for crews to cover trenches and ensure that the site is safe when construction activities are halted for extended periods. Such practices would be followed by the Applicant. Other agencies, such as the California Occupational Safety and Health Administration have direct responsibility for addressing construction-related safety and liability issues.

I36-4. The CPUC is unaware of any serious hazard presented by the emergency blowdown valves. The valves will be located in an enclosed area where the public will not have access. There are no safety issues related to joining pipes of different sizes. Throughout the draft EIR, it is stated that the pipeline would be constructed in accordance with 49 CFR 192, which are the federal safety standards for natural gas pipelines.

I36-5. The CPUC will address the impacts of the proposed project on the local community in its decision making process.

I36-6. Under CEQA, an EIR must consider environmental effects of a project. An analysis of economic and competitive effects is not appropriate for inclusion in an environmental document. The economic viability or tax treatment of the proposed project is not directly subject to CPUC jurisdiction. Customers of the Lodi Gas Storage project could include any entity in the State of California.