

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of NRG Energy Center San Francisco LLC (U909H) and NRG Energy, Inc. for Authority for NRG Holdco and/or NRG Newco to Acquire Indirect Control over NRG Energy Center San Francisco LLC.

Application 07-09-013
(Filed September 21, 2007)

**OPINION GRANTING APPLICATION TO TRANSFER
INDIRECT CONTROL OF NRG ENERGY CENTER SAN FRANCISCO LLC****1. Summary**

This opinion grants conditional authority under Pub. Util. Code § 854(a)¹ to restructure the chain of companies that own NRG Energy Center San Francisco LLC (NRG Energy Center). The restructuring will not affect the ultimate ownership or control of NRG Energy Center. The authority granted by this opinion is conditioned on the restructuring having no effect on current litigation between the State of California and affiliates of NRG Energy Center concerning the California energy crisis of 2000 - 2001.

2. Background

NRG Energy Center is a public utility that provides steam heating to several hundred customers in San Francisco, California. The company is organized in Delaware and is authorized to do business in California. Its

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

principal place of business is in San Francisco. The company had \$23 million of revenues in 2006 and assets of \$10 million at the end of 2006.

NRG Energy Center is owned by NRG Thermal LLC (NRG Thermal),² which is owned by NRG Energy, Inc. (NRG). The Commission authorized this chain of ownership in Decision (D.) 00-06-055.

NRG is a Fortune 500 company whose common stock is traded on the New York Stock Exchange. Its primary line of business is wholesale power generation in the United States and internationally.

On September 21, 2007, NRG Energy Center and NRG (together, "Applicants") filed Application (A.) 07-09-013 for authority under § 854(a) to implement two separate transactions to reorganize the chain of companies that own and control NRG Energy Center. Notice of A.07-09-013 appeared in the Commission's Daily Calendar on September 26, 2007. There were no protests or other responses to the application.

3. Summary of A.07-09-013

The Applicants request authority under § 854(a) for two transactions they call Transaction A and Transaction B. Each transaction is designed to restructure the chain of companies that own NRG Energy Center while having no affect on the ultimate ownership and control of NRG Energy Center. Appended to this opinion is an organization chart that shows the ownership relationships that currently exist and that are proposed in Transactions A and B.

² NRG Thermal is also the direct parent company of several project-specific entities that own and operate exempt wholesale generators and qualifying facilities, including several in California.

The Applicants state that both Transaction A and Transaction B are being explored and that NRG may implement one or both transactions. Consequently, the Applicants request Commission authorization for both transactions.

Under Transaction A, NRG will form a new holding company with the tentative name of NRG Holdco. The existing shareholders of NRG's common stock will have proportional ownership of NRG Holdco's common stock, and all of NRG's common stock will be owned by NRG Holdco. Transaction A has already been approved by the Federal Energy Regulatory Commission (FERC), and the New York Public Service Commission (NYPSC) has determined that no approval is required under New York Public Service Law.³ Another request for regulatory approval is currently pending at the Nuclear Regulatory Commission.

Under Transaction B, NRG will form NRG Newco as a wholly-owned subsidiary. NRG will then transfer its 100% ownership interest in NRG Thermal to NRG Newco. NRG Newco will remain in the chain of ownership over NRG Thermal and NRG Energy Center.

The purpose of the proposed transactions is to revise the capital structure for the NRG family of companies in order to enhance their ability to obtain financing to renovate and expand existing generation facilities and to acquire new power plants. The change in indirect control over NRG Energy Center is incidental to, but not a reason for, the either Transaction A or Transaction B.

The Applicants offer several reasons why the proposed transactions will not adversely affect NRG Energy Center. First, there will be little effect on the ownership and control of NRG Energy Center. Direct ownership will remain with NRG Thermal, and NRG will remain the parent company of all the

³ See 120 FERC ¶ 62,025 (2007) and NYPSC Case 07-E-0584 (July 23, 2007).

operating companies for which it is presently the holding company. Ultimate ownership and control will stay with the current NRG shareholders.

Second, the proposed transactions will not affect NRG Energy Center's operations, costs, assets, liabilities, or revenue requirement. NRG Energy Center's management team will remain in place, and the directors and officers of NRG and NRG Thermal will not be changed as a result of the transactions.

Third, the proposed transactions will not affect NRG Energy Center's customers or the Commission's jurisdiction. NRG Energy Center will remain a public utility and continue to provide steam heating services to customers in San Francisco. There will be no changes to the rates, terms, and conditions of service as a result of the transactions. Any changes in NRG Energy Center's rates and services will remain subject to the Commission's prior approval.

Finally, the Applicants believe the proposed transactions will benefit the state and national economies. This is because the transactions will help NRG to acquire financial resources to (1) renovate and expand numerous power production facilities in California and elsewhere; and (2) build new generation facilities that do not add to global climate change. The transactions may also help NRG Energy Center to access capital for its public utility operations.

4. Discussion

The Applicants request approval under § 854(a) for two transactions that will transfer indirect control of NRG Energy Center within the same corporate family. Section 854(a) states, in relevant part, as follows:

No person or corporation . . . shall merge, acquire, or control . . . any public utility organized and doing business in this state without first securing authorization to do so from the commission. . . . Any merger, acquisition, or control without that prior authorization shall be void and of no effect.

The primary standard used by the Commission to determine if a transaction should be authorized under § 854(a) is whether the transaction will adversely affect the public interest.⁴ The Commission may also consider if the transaction will serve the public interest.⁵ Where necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.⁶

The record of this proceeding indicates that the proposed transactions will not have an adverse impact on the regulated utility, NRG Energy Center. In particular, the proposed transactions will not affect NRG Energy Center's operations, costs, assets, liabilities, or revenue requirement. The utility will continue to provide services under its own name and at the same rates, terms, and conditions. The existing management team will remain in place, which will help to ensure continuity of service. Finally, there will be no effect on the Commission's jurisdiction over NRG Energy Center.

The record also suggests that the public may benefit from the proposed transactions by enhancing the ability of NRG and its subsidiaries to raise capital. Improved access to capital should help NRG Energy Center to maintain its public utility services. It should also help NRG to maintain, expand, and construct electric generation facilities serving California.

For the preceding reasons, we will approve A.07-09-013 pursuant to § 854(a). We note, however, that NRG's SEC Forms 10K and 10Q, which are referenced in the application, disclose that certain subsidiaries of NRG have been

⁴ D.00-06-079, *mimeo.*, p. 13.

⁵ D.00-06-005, 2000 Cal. PUC LEXIS 281, *4.

⁶ D.95-10-045, 62 CPUC 2d 160, 167-68.

sued in various legal venues for alleged misconduct during the California energy crisis in 2000 - 2001.⁷ The plaintiffs include the California Public Utilities Commission and the California Department of Water Resources.⁸ The authority granted by today's opinion is conditioned on the authorized transactions having no effect on the litigation or the ability of the State of California to obtain monetary awards and other relief from the affiliates of NRG Energy Center should California prevail in the litigation.

5. The California Environmental Quality Act

The California Environmental Quality Act (CEQA) requires state and local public agencies to conduct an environmental review when contemplating the approval of a discretionary project.⁹ A "project" is defined by CEQA as an activity that may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.¹⁰ Under CEQA, the Commission must act as either a Lead Agency or Responsible Agency. Because there is no other agency involved at this time, the Commission is the Lead Agency with respect to A.07-09-013.

The scope of today's opinion is limited to approving the transfer of indirect control of NRG Energy Center. The Applicants represent that the transfer will not result in (1) any changes to the operations of NRG Energy Center, or (2) any expansion, alteration, or construction of new facilities.¹¹ Based

⁷ A.07-09-013, p. 5, Fn. 1.

⁸ See, e.g., Calif. Pub. Util. Comm. et al. v. Fed. Energy Reg. Comm., Nos. 03-74246 and 03-74207, FERC Nos. EL 02-60-000, EL 02-60, and EL 02-62.

⁹ California Public Resources (Cal. Pub. Res.) Code, § 21080(a).

¹⁰ Cal. Pub. Res. Code § 21065. See also 14 Cal. Code Regs. (CEQA Guidelines), § 15378.

¹¹ A.07-09-013, pp. 16 - 17.

on these representations, we conclude that approval of the transfer will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Therefore, the transfer is not a “project” as defined by CEQA, and no environmental review is required. Alternatively, based on § 15061(b)(3) of the CEQA Guidelines,¹² because it can be seen with certainty that the transfer will not have a significant effect on the environment, A.07-09-013 is exempt from environmental review under CEQA.

6. Categorization and Need for Hearing

In Resolution ALJ 176-3200, issued on October 4, 2007, the Commission preliminarily determined that the category for this proceeding is ratesetting and that evidentiary hearings were not necessary. Based on the record for this proceeding, we affirm these preliminary determinations.

7. Waiver of Comments on the Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2) and Rule 14.6(c)(2) of the Commission’s Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

8. Assignment of the Proceeding

Timothy Alan Simon is the assigned Commissioner and Timothy Kenney is the assigned Administrative Law Judge in this proceeding.

¹² Section 15061(b)(3) of the CEQA Guidelines states: “CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

Findings of Fact

1. A.07-09-013 requests authority under Pub. Util. Code § 854(a) to restructure the chain of companies that indirectly own NRG Energy Center. The restructuring will not affect the ultimate ownership or control of NRG Energy Center.
2. Notice of A.07-09-013 appeared in the Commission's Daily Calendar on September 26, 2007. There were no protests or other responses to the application.
3. Approval of A.07-09-013 will not have an adverse impact on NRG Energy Center, its customers, or the public interest.
4. Approval of A.07-09-013 may benefit the public interest to the extent it enhances the ability of (i) NRG Energy Center to obtain capital for its public utility operations, and (ii) the affiliates of NRG Energy Center to raise capital to maintain, expand, and construct electric generation facilities serving California.
5. Approval of A.07-09-013 will not result in (i) any changes to the operations of NRG Energy Center, (ii) any new construction by NRG Energy Center, or (iii) any changes in use of existing public utility property or facilities.
6. It can be seen with certainty that granting A.07-09-013 will not have an adverse impact on the environment.
7. There is ongoing litigation between certain affiliates of NRG Energy Center and the State of California regarding the California energy crisis of 2000 - 2001.

Conclusions of Law

1. This is a ratesetting proceeding. Hearings are not necessary.
2. A.07-09-013 should be approved pursuant to § 854(a).

3. Approval of A.07-09-013 should be conditioned on there being no effect on (i) current litigation related to the California energy crisis that is described in the body of this opinion, and (ii) the ability of the State of California to obtain monetary awards and other relief should California prevail in the litigation.

4. Approval of A.07-09-013 is exempt from environmental review under the California Environmental Quality Act because it can be seen with certainty that granting A.07-09-013 will not have an adverse impact on the environment.

5. The following order should be effective immediately so that the transactions contemplated in A.07-09-013 may be implemented expeditiously.

O R D E R

IT IS ORDERED that:

1. Application (A.) 07-09-013 is granted pursuant to Pub. Util. Code § 854(a), subject to the condition that approval of A.07-09-013 have no effect on (i) current litigation related to the California energy crisis of 2000 - 2001 that is described in the body of this opinion, and (ii) the ability of the State of California to obtain monetary awards and other relief should California prevail in the litigation.

2. NRG Energy Center San Francisco LLC shall file and serve a notice of the indirect transfer of control authorized herein no later than ten (10) business days after the transfer occurs. A true copy of the instruments of transfer shall be attached to the notification.

3. The authority granted herein shall expire if not exercised within one year from the effective date of his order.

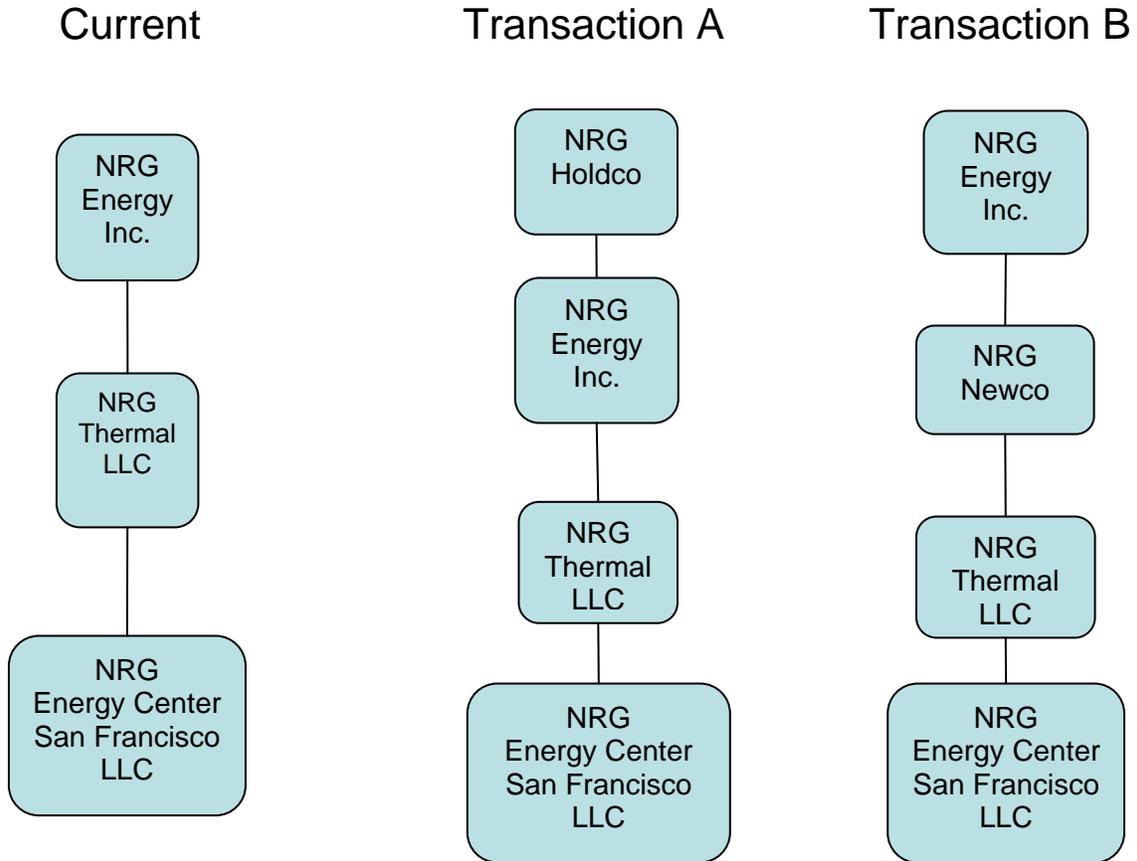
4. Application 07-09-013 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

Proposed Transactions



(END OF ATTACHMENT A)