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

March 23, 2006 Agenda ID #5483

TO: PARTIES OF RECORD IN APPLICATION 06-01-002

This is the draft decision of Administrative Law Judge (ALJ) Bemesderfer. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. 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.

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 www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN BY J. A. ECONOME
Angela K. Minkin, Chief
Administrative Law Judge

ANG:tcg

Attachment

Decision **DRAFT DECISION OF ALJ BEMESDERFER** **(Mailed 3/23/2006)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Crimson California Pipeline, L.P., pursuant to Section 817 and Section 851 of the Public Utilities Code for authority to issue evidences of indebtedness and to encumber public utility property.	Application 06-01-002 (Filed January 5, 2006)

O P I N I O N

Summary

Crimson California Pipeline, L.P. (Applicant or Crimson) seeks *nunc pro tunc* authority for the issuance of approximately $4 million in debt secured by a lien on public utility property. We grant the requested authority on a prospective basis only, subject to the terms and conditions herein, and impose a fine of $5,000 for violation of Pub. Util. Code § 851.

Background

Applicant is a California limited partnership authorized to do business in the State of California. Its general partner is Crimson Pipeline Management, Inc., a California corporation, whose parent, Crimson Resource Management Corp. (CRMC), a Colorado corporation, currently operates in excess of thirty petroleum production properties located in four different California counties, with the bulk of its operations in Kern County. Crimson is a public utility, subject to the Commission's jurisdiction pursuant to Pub. Util. Code § 216. Specifically,

Crimson is a pipeline corporation as defined by Pub. Util. Code § 228, which owns and operates certain oil pipeline facilities in southern California.

In Decision (D.) 05-04-006, we authorized Crimson to acquire the following public utility assets from Shell California Pipeline Company, LLC (Shell): (1) the Ventura 10" crude line, (2) the Thums common, (3) the Filmore to Ventura 8" line (active from the Sespe tie-in to Ventura), (4) the Ventura gathering line (C&D Block, San Miguelito), and (5) a portion of the Brea East line (about one mile of active pipe). Certain idle public utility assets were acquired by Crimson from Shell at the same time, including (1) a portion of the Brea East line (idle from Leffingwell/Imperial to Site Dr/Central), (2) the Newhall-to-Ventura line (idle from Newhall to the Sespe tie-in), (3) the Ventura gathering line, and (4) the Van Nuys-to-Ventura products line.

The book cost of the regulated and unregulated assets together is $7,941,000. The original cost of the unregulated assets alone is unknown.

Following the issuance of D.05-04-006, Crimson, its general partner and an affiliated partnership, Cardinal Pipeline, L.P. that owns and operates non-public-utility pipeline assets in California, entered into a Credit Agreement with the Bank of Oklahoma (BOK). The three Crimson entities are co-borrowers under the Credit Agreement, which calls for BOK to extend up to $4 million in revolving credit with any outstanding loan due and payable May 1, 2010. The Credit Agreement further provides that BOK may, at its sole discretion, increase the maximum credit available from $4 million to $10 million. Four million dollars in credit has been extended to date.

The co-borrowers, including Applicant, signed a note to BOK evidencing the indebtedness. The Credit Agreement also requires the debtors to pledge

assets to secure the note. Applicant has signed the note but has not pledged any public utility assets as security.

Crimson states that it was aware that it had to obtain our approval before pledging public utility assets to secure a debt, but was unaware that it had to obtain our approval before signing a note without a concurrent pledge of assets. Crimson now recognizes that both the execution of the promissory note and the proposed pledge of public utility property require our prior approval and are void in the absence of such approval. Crimson also recognizes that it needs our prior approval before entering into a co-borrowing arrangement with entities that are not public utilities subject to our jurisdiction. Crimson's application recites that in the future it will neither enter into a financing arrangement on its own or with others without first obtaining our approval.

Given that the purpose of the financing was to obtain money to maintain and improve public utility transportation services, Crimson now asks for *nunc pro tunc* approval of the void financing. It further asks that we waive any penalty for non-compliance with the Pub. Util. Code because the violation was inadvertent and had no adverse impact on Crimson's public utility operations.

Discussion

The application includes a copy of the void financing agreement previously entered into and the related security agreement. If we approve Crimson's execution of these agreements, whether *nunc pro tunc* or prospectively, all of Crimson's public utility assets will be pledged as security for the loan. While Crimson, its general partner and its affiliated company are co-borrowers on the void note and would continue as co-borrowers under a credit arrangement approved by us, the application does not make clear whether either of the other entities has tangible assets that could be realized by the creditor in

the event of a default on the note, nor does the agreement require the creditor to look first to the other assets of the co-borrowers before foreclosing on Crimson's public utility assets. The application does make clear that the Shell assets purchased by Crimson have a book value substantially below the maximum loan that might be extended by BOK pursuant to these arrangements.

On the other hand, Crimson's balance sheet as of September 2005 shows long-term debt of $2,493,000; total indebtedness of $3,434,000; and a positive net worth of $2,220,000. Current assets exceed current liabilities by $387,000. Thus, even with a portion of the void debt obligation on its books, Crimson appears to be a financially solvent entity capable of paying its debts as they come due.

Applicant recognizes that the Credit Agreement with BOK is void under the terms of Pub. Util. Code § 851.[1] Nonetheless, Applicant asks us to retroactively validate the transaction. This we are unable to do. Applicant and its counsel should have known that financing public utility assets requires prior Commission approval. Given Applicant's apparent financial solidity, there is little doubt that we would have granted approval had it been sought. But we see no reason to reward bad behavior. Whatever negative consequences may flow from our refusal to retroactively sanction this agreement are for Applicant to deal with.

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[1] "No public utility…shall sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its…line, plant, system, or other property necessary or useful in the performance of its duties to the public…without first having secured from the commission an order authorizing it to do so. Every such sale, lease, assignment, mortgage, disposition, [or] encumbrance…made other than in accordance with the order of the commission authorizing it is void."

We will grant approval of the transaction on a prospective basis. Applicant is authorized to encumber its public utility assets pursuant to a set of financing documents in substance equivalent to the credit agreement, note and mortgage attached to the application in Exhibits 4 and 5. Though it should be unnecessary to do so, we add that any significant deviation from the form or substance of those documents should be brought to our attention and our approval should be sought in advance of entering into agreements that differ in any material way from those attached to the application.

We have considered whether any purpose is served by imposing a fine in addition to refusing to grant retroactive authority for this transaction. Applicant failed to comply with § 851 by executing a promissory note without Commission authorization. Violations of § 851 are subject to monetary penalties under § 2107 which states that any public utility that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the Commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars nor more than twenty thousand dollars for each offense.

For the following reasons, we conclude that Crimson should be fined for its failure to comply with § 851. First, any violation of § 851, regardless of the circumstances, is a serious offense that should be subject to fines. Second, the imposition of a fine will help to deter future violations of § 851 by Crimson and others.

Ignorance of a statute as fundamental to practice before this Commission as § 851 is no excuse for failing to comply with its requirements. On the other

hand, the violation was unintentional. Crimson called it to our attention and has pledged to abide by our statutes and rules in the future.

In keeping with our practice in cases involving unintentional violations of the prohibition against unapproved changes in control in § 854(a), we will impose a fine $5,000 in this case. *See e.g.,* D.06-01-003, *Decision Granting Approval of the Transfer of Control of FreedomStarr Communications, Inc. to AmericanFone, LLC.*

Categorization and Need for Hearings

In Resolution ALJ 176-3165, dated January 12, 2006, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. No protests have been received. Given this status, public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3165.

Comments on Draft Decision

The draft decision of the administrative law judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Assignment of Proceeding

Michael Peevey is the Assigned Commissioner and Karl Bemesderfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Applicant's violation of § 851 was inadvertent.
2. Applicant did not file the application before the transaction took place.
3. In analogous cases, the Commission has fined utilities for inadvertent failures to obtain advance approval under § 854(a) for transfers of control.

4. A notice of the filing of the application appeared in the Daily Calendar on January 10, 2006.

5. There were no protests to this application.

6. A hearing is not required.

7. This proceeding should be closed.

Conclusions of Law

1. The application should be granted to the extent set forth below.

2. The purpose of § 851 is to enable the Commission to review a proposed sale or encumbrance of utility property before it takes place in order to take such action as the public interest may require.

3. Granting the application on a retroactive basis would thwart the purpose of § 851.

4. The application should be denied to the extent it requests retroactive authority under § 851 for Crimson's borrowing from BOK.

5. Since the Commission's approval of the application is prospective only, the Credit Agreement between Crimson and BOK is void under § 851 for the period of time prior to the effective date of this decision, and Crimson is at risk for any adverse consequences that may result from having entered into the Credit Agreement without Commission authority.

6. Applicant failed to comply with § 851 by entering into a borrowing transaction without Commission authorization.

7. Violations of § 851 are subject to monetary penalties under § 2107 of not less than five hundred dollars, nor more than twenty thousand dollars for each offense.

8. Any violation of § 851, regardless of the circumstances, is a serious offense that should be subject to fines.

9. Applicant should be fined $5,000 for violating § 851.
10. The application should be granted to the extent set forth herein.
11. The following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Crimson California Pipeline, L.P. is authorized to execute a Credit Agreement with the Bank of Oklahoma for up to $4 million in revolving credit with any outstanding loan due and payable May 1, 2010. The Credit Agreement may also provide for an increase in the maximum credit available from $4 million to $10 million at the sole discretion of the Bank of Oklahoma.
2. The Credit Agreement previously entered into between Crimson California Pipeline, L.P. and the Bank of Oklahoma with terms and conditions substantially equivalent to those approved in this order is void.
3. Crimson shall pay a fine in the amount of $5,000 for violating Pub. Util. Code § 851. Crimson shall pay the fine within 20 days from the effective date of this order by tendering to the Fiscal Office of the California Public Utilities Commission a check in the amount of $5,000 made payable to the State of California General Fund.
4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.