

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight & Programs Branch**

**RESOLUTION T-17334
January 12, 2012**

R E S O L U T I O N

Resolution T-17334. Sierra Telephone Company. This resolution denies Advice Letters 388 and 389 seeking authority under Public Utilities Code Section 851 to sell property to its affiliate Sierra Telephone Business Systems.

By Advice Letters 388 and 389. Filed on April 7, 2011.

Summary

This resolution denies Sierra Telephone Company's (Sierra) Advice Letters (AL) 388 and 389 seeking authority under Public Utilities Code Section (Section) 851 to sell certain facilities to its affiliate Sierra Telephone Business Systems (Business Systems). Sierra seeks to transfer a 384 square foot structure on approximately 1,465 acres leased from the United States Forest Service and a 2,377 square foot storage building on approximately one acre of land owned by Sierra. AL 388 and 389 were processed pursuant to the guidelines provided by Resolution ALJ-244.

Background

Utilities proposing to sell, lease, dispose of, or otherwise encumber property must comply with Section 851. Ordinarily, such a proposal, in the past, would have entailed a full Application to the Commission, including a review pursuant to California Environmental Quality Act (CEQA) or a demonstration that such a review is not necessary. The Commission, on August 25, 2005, initiated a 24-month pilot program per Resolution ALJ-186 that provides for an expedited review process for certain transactions meeting criteria specified in the Resolution. The Commission has extended the pilot program by Resolution ALJ-202 approved on August 23, 2007, and by Resolution ALJ-244, approved on February 25, 2010. Most recently, Resolution ALJ-272, approved on August 18, 2011, extended the pilot program an additional year to August 23, 2012.

This pilot program has not been widely used by telecommunications carriers.

For proposals that meet the requirements, an AL may be filed in lieu of an Application and the utility must demonstrate the applicability of the pilot program to the utility's proposal and request an expedited review of the AL. The AL request may result in a Resolution confirming that the proposal meets the requirements of ALJ-244 and grant approval to the proposed project.

Notice/Protests

AL 388 and AL 389

Notice of AL 388 and AL 389 was published in the Commission's Daily Calendar on April 13, 2011.

As per General Order 96-B, Section 7.4.1, protests were due to the Commission on April 27, 2011, and reply comments were due May 3, 2011.

On April 26, 2011, Division of Ratepayer Advocates (DRA) filed a protest to AL 388 and AL 389.

DRA's protest of AL 388 asserts:

- Sierra's explanation of how the asset is not used or useful is contradictory.
- Sierra states it no longer needs to own the building to conduct network activities; however, the company further states the telecommunications facilities belonging to Sierra will continue to be used just as before.
- Section 851 is clear that a public utility shall not sell, lease, assign, mortgage, or otherwise dispose of or encumber...line, plant, system, or other property necessary or useful in the performance of its duties to the public.
- Commission should reject AL 388 or recommend that Sierra file a formal application before the Commission.

DRA's protest of AL 389 asserts:

- The asset in question may remain used or useful to the customers and the public.
- Sierra states that Business Systems will continue to use the building for the same or essentially the same use without improvements or changes to the property.
- Questions the characterization of property as non-essential storage. Where did Sierra relocate the telephone poles.

- AL 389 is unclear as to why the property has become dispensable to Sierra. If it was non-essential, it should have never been in rate base and subsidized by ratepayer funds.
- The burden is on the seeking entity to provide sufficient justification. AL 389 seeks to sell an asset seemingly used and useful for the provision of regulated telephone service.
- Commission should reject AL 389 or recommend that Sierra file a formal application before the Commission.

On May 3, 2011, Sierra responded to DRA's protest of AL 388 and AL 389.

Sierra's response to DRA's protest of AL 388 asserts:

- Sierra's AL 388 contains a specific explanation as to each of the enumerated criteria in Section 851 to show the AL satisfies those requirements and is therefore in the public interest.
- Sierra provided an independent appraisal of its interest in the property and an explanation of how it proposes to divide the proceeds between ratepayers and stockholders.
- The proposed transfer will reduce rate base and expenses on an ongoing basis in future rate cases.

Sierra's response to DRA's protest of AL 389 asserts:

- DRA's comments fail to state that Sierra's AL 389 contains specific explanation as to each of those enumerated criteria how its AL satisfies those requirements and is therefore in the public interest.
- Sierra explains at page 2 that "the current use of the property is for non-essential storage".
- Sierra provided an independent appraisal of the property and states how it proposes to divide the proceeds of the sale between ratepayers and shareholders in conformance with D.06-12-043.
- Sierra further describes that the proposed transfer will reduce rate base and expenses on an ongoing basis in future rate cases.

Discussion

AL 388

On April 7, 2011, Sierra filed Tier III AL 388 pursuant to the pilot program requesting approval of transfer by sale of a building to its affiliate Business Systems. Business Systems is a deregulated, affiliate company that sells, installs, and services a variety of technologies primarily to commercial customers. Business Systems provides telephone

and voice mail systems, intrusion alarms, surveillance cameras and recorders, entry point access control systems, computer network design and administration, computer network security services, fiber and low-voltage cabling services, and GPS tracking systems. Business Systems delivers its services throughout central California.

The building is owned by Sierra and located approximately one mile west of State Highway 49 South, immediately north of the County line dividing Mariposa and Madera Counties. The land on which the building is located is owned by the United States Government and administered by the United States Forest Service (Forest Service). In lieu of a traditional leasehold interest, Sierra operates and maintains the subject building via a "special use permit" granted by the Forest Service.

The property proposed for sale was initially put in service on November 1, 1977, and houses depreciable assets used for carrier site equipment and termination of plenum connections to distribution plant. Sierra proposes to retain ownership of all regulated telecommunications facilities and equipment used to provide local exchange services to end-users and the public. The parcel is administered by the Sierra National Forest and is approximately 1,465 acres. The concrete block building is a 384 square feet enclosed structure surrounded by chain link fence. The zoning of the parcel upon which the building is situated is Public Domain.

The original cost, present book value, fair market value, sales price and initial date put into service are shown in the table below:

| AL 388 | |
|-----------------------------------|------------------|
| Original Cost | \$43,643 |
| Present Book Value | \$1,663 |
| Fair Market Value (cost approach) | \$48,000 |
| Sales Price | \$49,100 |
| Initially Put into Service | November 1, 1977 |

Sierra established a valuation of the proposed sale based upon a third-party appraisal conducted by licensed appraisers, dated August 24, 2010, and a copy is included in AL 388. The appraisers reached a valuation of the property by the cost approach. The appraisal report states, "That approach in appraisal analysis which is based on the proposition that the informed purchaser would pay no more than the cost of producing a substitute property with the same utility as the subject property."

The agreed upon contract sales price is \$49,100 which includes the fair market value of \$48,000 and includes \$600 for reimbursement for the cost of the appraisal, and \$500 for legal expenses related to the sale. The user permit is currently pending renewal and Sierra intends to transfer the permit to Business Systems name. Business Systems

would be required to obtain Forest Service authorizations on its own and the sale is not contingent on the acquisition of those authorizations from the Forest Service.

Sierra proposes that the proceeds of the sale be shared between Sierra's ratepayers and shareholders, pursuant to D.06-12-043, apportioned on a 67% to 33% basis between ratepayers and shareholders, respectively.

In AL 388, Sierra stated, "This building was fully utilized as our digital microwave hub until Sierra transferred its transport facilities to a fiber platform". "No used or useful depreciable telecommunications assets are being sold in connection with this proposed transaction". However, Sierra has confirmed that the facilities are "used and useful" because they are not selling the telecommunications assets as described on page 3, item no. 6., where Sierra states that ". . . the telecommunications facilities located in and leading to the building will remain property of and under the control of Sierra Telephone..."

Though Sierra is not selling the telecommunications assets, the building itself is part of the proposed sale. CD questions why Sierra is proposing to sell a building that has been funded by ratepayers since 1977 when it could now serve as a low-cost asset for Sierra and ratepayers.

Responding to a CD data request, Sierra responded, "Currently, Sierra Telephone provides tariffed telecommunications services to customers in the area from digital loop equipment that occupies a small portion of the building. The management of the building including yearly permit requests with the United States Forest Service is an example of a "non-business endeavor"."

Sierra also states in AL 388 that, "No change in the current use of the building will result if the proposed ownership transfer is allowed".

Section 851 clearly states that a public utility shall not sell or otherwise dispose of property that is used and useful without prior Commission approval. CD finds that the property is used and useful because, as Sierra's states, no change in the current use of the building will result. An important part of providing telephone service includes the management of telecommunications facilities that are stored in on this property and thus, this property is used and useful in the provision of regulated telephone service for Sierra.

In response to DRA's protest, Sierra stated, it will continue to use the existing improvements pursuant to a lease from the transferee. In other words, Sierra proposes to sell a building that the ratepayers have subsidized since 1977, and in exchange, pay rent on a lease from its affiliate. We see the benefit of this transaction accruing to Sierra's affiliate, Business Services, but not to Sierra's ratepayers.

If Business Systems needs facilities, Sierra could lease part of the building to its affiliate. However, in response to a CD data request, Sierra stated that Business Systems is not using the facilities, in any capacity.

In closing, Sierra has not provided sufficient information that demonstrates that this transaction is in the best interest of ratepayers and CD therefore recommends denial of AL 388.

AL 389

On April 7, 2011, Sierra filed Tier III AL 389 pursuant to the pilot program requesting approval of a proposed sale of real property and a structure attached to the property located at 5314 State Highway 49 North, Mariposa, California, to its affiliate Business Systems. The property proposed for sale is a commercially zoned one-acre lot with an attached 2,377 square foot storage building. The property is surrounded by a chain link fence and gate with an established encroachment directly onto Highway 49 North. The property was purchased on July 3, 1958. The property is located outside the unincorporated town of Mariposa in an area of lots that range from less than one acre to over 20 acres.

AL 389 states that, “the improvements on the site include a building and area that was previously used to store poles prior to installation. “ Sierra states that the property has never been used to directly facilitate Sierra Telephone’s network for providing local exchange telecommunications service to end-user customers. Sierra further states that the current use of the property is for non-essential storage.

| AL 389 | | | |
|--|---------------|-----------|-----------|
| | Real Property | Buildings | Total |
| Original Cost | \$19,458 | \$2,184 | \$21,642 |
| Present Book Value | -- | \$2,184 | -- |
| Fair Market Value (market value approach) | \$234,345 | \$35,655 | \$270,000 |
| Sales Price | | | \$270,925 |
| Purchased | July 3, 1958 | | |

Sierra established a valuation of the proposed sale based upon a third-party appraisal conducted by licensed appraisers, dated August 24, 2010, and included a copy in its filing. The appraisers reached a valuation of \$270,000 using the market value approach which used sales comparables to determine the value of the subject property. The agreed upon sales price between Sierra and Business Systems includes \$425 for the

appraisal cost and \$500 for legal expenses related to the sale for a total sales price of \$270,925.

Sierra proposes that the proceeds of the sale be shared between Sierra's ratepayers and shareholders, pursuant to D.06-12-043, apportioned on a 67% to 33% basis between ratepayers and shareholders, respectively.

In AL 389 Sierra stated, "The property has never been used to directly facilitate Sierra Telephone's network for providing local exchange telecommunications service to end-user customers. The current use is for non-essential storage." Sierra stated that the facilities were previously used to store poles prior to installation.

In response to a CD data request, Sierra responded that this property has been in Sierra's rate base for ratemaking purposes to store aerial material such as poles, cross arms, down guys, open wire, and glass insulators. Most of Sierra's facilities are now underground and this shed and land has become an unnecessary expense to Sierra.

CD acknowledges DRA's concerns that the property remains used and useful and contends that the storage of aerial facilities is a usage that directly facilitates Sierra's network for providing local exchange telecommunications to customers. As such, the property would still appear to be used and useful. AL 389 does not address how Sierra proposes to store aerial facilities if the property is sold; however, CD is concerned that it may be leased back as a charge for Sierra and its ratepayers. CD also questions at what point the aerial facilities were removed and where are they currently stored. These issues warrant a more thorough review.

In response to a CD request, Sierra stated that Business Systems is not using this property at this time; however, in AL 389, item 11.1 CEQA checklist, Sierra asserted that, "Business Systems proposes to operate the building and continue the existing use without change". CD questions how Business Systems will use the property, "without change" when it is not currently using the property.

In closing, Sierra has not provided sufficient information that demonstrates that this transaction is in the best interest of ratepayers and recommends denial of AL 389.

Comments

In compliance with Section 311 (g), notice letters were e-mailed on December 9, 2011, to the service list, informing these parties that this draft resolution is available at the Commission's website <http://www.cpuc.ca.gov/> and is available for public comments. In addition, CD informed these parties of the availability of the conformed resolution at the same website.

Findings and Conclusions

1. Public Utilities Code Section 851 addresses compliance requirements regarding utilities proposing to sell, lease, dispose of, or otherwise encumber property.
2. Resolution (R.) ALJ-186 initiated a 24-month pilot program which expedites the process for certain transactions meeting criteria specified in the Resolution and most recently R.ALJ-272 extended the pilot program through August 23, 2012.
3. On April 7, 2011, Sierra Telephone Company (Sierra) filed Advice Letter (AL) 388 and AL 389 seeking authority to transfer by sale of a building to Sierra Telephone Business Systems (Business Systems) an affiliate of Sierra and transfer by sale real property and improvements to Business Systems, respectively.
4. Notice of AL 388 and AL 389 was published in the Commission's Daily Calendar on April 13, 2011.
5. On April 26, 2011, Division of Ratepayer Advocates filed comments on AL 388 and AL 389 and on May 3, 2011, Sierra filed reply comments.
6. Sierra stated that the telecommunications facilities in AL 388 will remain property of Sierra and only the building will be sold. CD finds that the facilities including the building housing the facilities are "used and useful" and cannot be sold.
7. Sierra stated that the property in AL 389 has never been used to directly facilitate Sierra Telephone's network for providing local exchange telecommunications service to end-user customers. CD believes a more thorough review is necessary to determine if the property should have ever been in rate base and subsidized by ratepayers.
8. Sierra stated that in AL 389, Business Systems proposes to operate the building and continue the existing use without change of non-essential storage but did not indicate if Sierra will be invoiced for services performed. CD believes a more thorough review is necessary to determine if the property should be retained by Sierra even if the storage is non-essential and also to review the relationship between Business Systems and Sierra after the proposed sale.
9. CD recommends denial of AL 388 and AL 389 because Sierra has not provided sufficient information that demonstrates that the properties are no longer used and useful and that these transactions are in the best interest of ratepayers.

THEREFORE, IT IS ORDERED that:

1. Sierra Telephone Company's Advice Letter 388 and Advice Letter 389 are denied.
2. Sierra Telephone Company may file a formal application pursuant to Public Utilities Code Section 851.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on January 12, 2012. The following Commissioners approved it:

PAUL CLANON
Executive Director