

Decision 07-11-050 November 16, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of SFPP, L.P. (PLC-9 Oil), CALNEV PIPE LINE, L.L.C., KINDER MORGAN, INC., and KNIGHT HOLDCO LLC for Review and Approval under Public Utilities Code Section 854 of the Transfer of Control of SFPP, L.P. and CALNEV PIPE LINE, L.L.C.).

Application 06-09-016  
(Filed September 18, 2006)

Joint Application of The Goldman Sachs Group, Inc., American International Group, Inc., Carlyle Partners IV, L.P., Carlyle/Riverstone Global Energy and Power Fund III, L.P., for Exemption Under Section 852 of the Public Utilities Code for Certain Future Transactions Involving Non-Controlling Interests in California Public Utilities.

Application 06-09-021  
(Filed September 22, 2006)  
[Formally Consolidated]

**ORDER DISMISSING APPLICATION**  
**FOR REHEARING OF DECISION (D.) 07-05-061**

On September 22, 2006 The Goldman Sachs Group, Inc., American International Group, Inc., Carlyle Partners IV, L.P., and Carlyle/Riverstone Global Energy and Power Fund III, L.P. (collectively, "Applicants") filed an application seeking an exemption under section 852 of the Public Utilities Code for themselves and their affiliates.<sup>1</sup> In relevant part, section 852 provides:

No public utility, and no subsidiary or affiliate of, or corporation holding a controlling interest in, a public utility, shall purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or existing under

<sup>1</sup> All statutory references are to the Public Utilities Code, unless otherwise noted.

or by virtue of the laws of this state, without having been first authorized to do so by the commission; provided, however, that the commission may establish by order or rule categories of stock acquisitions which it determines are exempt from this section.

The Applicants are affiliated with certain funds, investment vehicles and/or special purpose entities, which along with individual investors, will each own minority interests in Knight Holdco, LLC (“Knight”). Knight has entered into a merger agreement pursuant to which it will acquire Kinder Morgan, Inc. (“Kinder Morgan”) upon the satisfaction of certain conditions. Kinder Morgan, in turn, through its subsidiaries, indirectly owns interests in Santa Fe Pacific Pipeline Partners, L.P. (“SFPP”), and Calnev Pipe Line Company (“Calnev”). Both are California petroleum pipeline utilities. Applicants sought the exemption on claims that under a literal reading they and their affiliates may arguably be subject to section 852, and this would essentially eliminate their ability to buy securities of any other California public utility without additional applications and approvals. Among other things, Decision (“D.”) 07-05-061 grants two of the Applicants, the affiliates they individually or jointly control, and the affiliates that individually or jointly control them the requested exemption.<sup>2</sup>

Twenty-nine days after D.07-05-061 was mailed, the Consumer Federation of California (“CFC”), a party in the underlying proceeding, filed an application for rehearing. CFC’s claims fall into two groupings. CFC’s first group of claims relate to its broad allegations that the “Commission acted arbitrarily, unreasonably, and abused its discretion in granting Application 06-09-021 without issuing a reasoned decision explaining the basis for its decision.” (Application for Rehearing, p. 2.) The common thread within this first group of claims is CFC’s assertion that the Commission failed to address various issues and items. Specifically, CFC alleges that the Commission failed to consider: (1) its evidence going to corporate malfeasance, (2) the need to establish a standard of control, (3) evidence of the applicant’s prior failure to comply with federal

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<sup>2</sup> D07-05-061 defers the issue of whether to grant the section 852 exemption to the two Carlyle entities.

regulations, (4) the Commission's inability to adequately monitor the Applicants acquisitions, and (5) this Commission's inability to obtain jurisdiction over and obtain information from the Applicants' out-of-state affiliates. (Application for Rehearing, pp. 2-3.)

CFC's second group of claims goes to the public interest determinations antecedent to an exemption to section 852's reporting requirements. CFC's claims in this regard are three-fold. First CFC claims that D.07-05-071 is unsupported by substantial evidence in that it requires, but lacks, a finding that the exemption will not harm the public interest. Second, CFC claims that this Commission unlawfully delegated its authority to determine what acquisitions of an ownership interest in a public utility will not harm the public interest. Third, CFC questions this Commission's authority and jurisdiction to grant an exemption to the section 852 reporting requirements. (Application for Rehearing, pp.3-4.)

Upon review of CFC's application for rehearing, it appears that CFC failed to meet the requisite deadline under section 1731(b), for the reasons stated below. Accordingly, we dismiss the rehearing application without resolving the substantive issues raised therein.

In relevant part, section 1731(b) provides:

No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 30 days after the date of issuance or within 10 days after the date of issuance in the case of an order issued pursuant to either Article 5 (commencing with Section 816) or Article 6 (commencing with Section 851) of chapter 4 relating to security transactions and the transfer or encumbrance of utility property. (Pub. Util. Code, § 1731(b), emphasis added.)

D.07-05-061 approves, pursuant to section 854, the transfer of indirect ownership and control over jurisdictional portions of two common carrier pipeline utilities and grants

two of the Applicants an exemption to the section 852 reporting requirements. Both sections 852 and 854 fall within Article 6 of the California Public Utilities Act. Consistent with section 1731(b), CFC was required to file its application for rehearing within 10 days of D.07-05-061 being mailed to parties. D.07-05-061 was mailed to parties on May 30, 2007 and CFC filed its application for rehearing 29 days later, on June 29, 2007. Having failed to file its application within the required 10 day time period, section 1731(b) bars consideration of CFC's application for rehearing. CFC's application for rehearing must therefore be dismissed as untimely.

**THEREFORE, IT IS ORDERED** that:

1. The application for rehearing of D.07-05-061, filed by CFC, is dismissed as untimely.

This order is effective today

Dated November 16, 2007, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners