

Date of Issuance: January 12, 2012

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 T-17334
CD/MWC

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.

Resolution T-17334
CD/MWC

- 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.

Sierra filed comments on December 27, 2011, in response to the draft Resolution asserting the following three points:

1. Sierra asserts the Draft Resolution's focus on whether or not the subject properties are "used and useful" is misplaced. The Pilot Program is precisely the place that Commission approval is rendered for straightforward, lower-value transactions such as these. The fact that an asset is "used or useful" does not disqualify it for disposition under the Section 851 Pilot Program. It is not a valid objection to these advice letters that they address properties that are "used or useful". The assets in question are non-depreciable assets that have been "necessary or useful" to Sierra's regulated operations historically, but which will not be "necessary or useful" to Sierra going forward.
2. Sierra asserts its filings supplied sufficient information and justification to merit approval under the Pilot Program. However, to the extent that the proposed rejection of these advice letters is driven by the fact that Sierra has not provided sufficient information about the properties or the transactions for the Commission to conclude that approval is in the public interest, the Commission should deny the advice letters without prejudice and give Sierra the option to resubmit advice letters that respond in detail to all the Commission concerns.

Alternatively, the Commission should withdraw this Draft Resolution and permit Sierra to provide additional data and explanation to support AL 388 and AL 389.

3. A full application should not be required to answer questions raised in the Draft Resolution. If the Commission would like to understand more about how the regulated uses of these properties will be fulfilled using Sierra's other assets, that type of information could be supplied. An Application process under Section 851 should be reserved for matters that present complex issues or involve proposed dispositions of utility property that is currently used to perform critical functions for end users. Neither of these conditions is present here. The advice letters should be processed pursuant to the Section 851 Pilot Program, either by issuing a revised Draft Resolution or by dismissing the advice letters without prejudice to their being refiled along with additional information responsive to the Commission's concerns.

The Commission has considered the comments of Sierra in response to the revised draft Resolution and upon further review addresses their comments as follows.

In response to Sierra's first point shown above:

AL 388

CD asserts that no amount of additional information will make the current proposed sale in the best interest of ratepayers. If the contents of the building are used and useful telecommunications equipment then the building and property are used and useful. Sierra is turning a fully depreciated building that is "used and useful" and provided by the ratepayers into an income generating asset for their affiliate and an expense for Sierra. This expense for Sierra is included in the GRC process while the revenue for the affiliate is not. Sierra wants to earn a rate of return on the property over its depreciable life and then sell the property when it is depreciated to its affiliate and generate revenue outside of the GRC process. The purpose of the Section 851 Pilot Program is to ensure that the proposed transactions are not adverse to the public interest.

The purpose of the Section 851 Pilot Program was to expedite and simplify the Commission's review and approval of non-controversial transactions that did not warrant a more extensive review by the Commission through the more formal application process.

CD asserts this proposed sale is adverse to the public interest and does not qualify for the Section 851 Pilot Program because it is controversial and requires a more thorough review by the Commission through the application process.

CD does not recommend changes to the draft Resolution.

AL 389

CD is concerned with Sierra's statement that "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." There needs to be a more thorough review to determine if this property should have ever been in Sierra's rate base and subsidized by ratepayers and this draft Resolution is not the forum for such a review.

CD contends that the property is used and useful as Sierra states that most of their facilities are underground. Some facilities are aerial and as AL 389 did not address at what point the aerial facilities were removed and where they are currently stored. DRA stated the burden is on the seeking entity to provide sufficient justification.

This proposed sale does not qualify for the Section 851 Pilot Program because it is a controversial transaction to determine if the property should have ever been in rate base and requires a more formal review through the application process. CD does not recommend changes to the draft Resolution.

In response Sierra's second point shown above:

AL 388

CD asserts that Sierra is selling a "used and useful" depreciated asset and that management of such assets is the responsibility of a small ILEC. CD finds that no additional information would change our decision and that a formal Application is the appropriate process for this proposed sale. CD does not recommend changes to the draft Resolution.

AL 389

The important issues that must be resolved through the Application process are whether this property ought to have ever been in rate base and the issue that this property is still "used and useful". CD does not recommend changes to this draft Resolution.

In response to Sierra's third point shown above:

AL 388 and AL 389

CD asserts that the issues discussed above will not be resolved by more information and that the only venue to resolve these issues will be through a formal Application by Sierra. CD does not recommend changes to the draft Resolution.

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 and leased property are "used and useful" and also find that the sale is adverse to the public interest against the requirements in Section 851 Pilot Program as it was intended to expedite and simplify the approval of non-controversial transaction and, in addition, this proposed sale is controversial by selling assets that will increase costs for Sierra and the ratepayers.
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. Section 851 Pilot Program was intended to expedite and simplify the non-controversial transactions and this proposed sale is controversial and warrants a more extensive review by the Commission through the

formal application process. 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. Sierra has not provided sufficient information that demonstrates that the properties are no longer used and useful and in opposition to Section 851 Pilot Program the transactions are controversial and these transactions are adverse to the public interest.
10. 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.
11. Sierra commented on the draft Resolution on December 27, 2011.

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:

/s/ Paul Clanon

PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners