

Decision 12-04-035 April 19, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CONOCOPHILLIPS PIPE LINE COMPANY (PLC25) for an Exemption Pursuant to Section 853 of the Public Utilities Code or, Alternatively, for an Order Under Section 854 Authorizing the Transfer of Direct and Indirect Control of a Public Utility.

Application 12-02-015
(Filed February 17, 2012)

DECISION GRANTING APPLICATION

Summary

In this decision we grant the application of ConocoPhillips Pipeline Company (CPPL) for an exemption, pursuant to Section 853(b) of the Public Utilities Code (Pub. Util. Code), from the otherwise applicable requirements of Section 854 of the Pub. Util. Code regarding the proposed transfers of CPPL's California public utility operations (i) from ConocoPhillips, CPPL's current ultimate corporate parent, to a newly created, publicly traded holding company, Phillips 66, and (ii) from CPPL's current direct corporate parent, ConocoPhillips Company, to Phillips 66's principal operating subsidiary, Phillips 66 Company (the Proposed Transfers). We also authorize CPPL to submit a Tier 1 Advice Letter to implement a change in CPPL's corporate form and name (to Phillips 66 Pipeline LLC) also contemplated as part of the Proposed Transfers. The ownership and name changes will have no effects on the business or operations of CPPL.

Background

The Proposed Transfers form part of a larger corporate repositioning to be undertaken by ConocoPhillips (CP) that will result in two separate, stand-alone, publicly traded holding companies (CP and Phillips 66) that will conduct business in the upstream and midstream/downstream energy industry market segments, respectively. The CP repositioning process currently is expected to be completed by the end of the second quarter, 2012.

Information about the Parties to the Proposed Transaction

ConocoPhillips Pipeline Company (CPPL) is a Delaware corporation authorized to do business in California, and a public utility as the term is defined under Pub. Util. Code § 216(a). CPPL's principal place of business is 600 North Dairy Ashford, Houston, Texas 77252-2197, and its mailing address is P.O. Box 2197, Houston, Texas 77252-2197. Incorporated in 1923, CPPL is engaged in the business of transporting crude oil, petroleum products, and natural gas liquids by pipeline. CPPL operates more than 11,000 miles of pipelines and more than 60 storage terminals in the United States. CPPL also holds equity interests in wholly owned subsidiaries and joint-venture companies that are engaged in the pipeline transportation business. In California, CPPL provides intrastate gathering and transportation services for crude petroleum by pipeline pursuant to a tariff on file with the Commission. CPPL's four major regulated crude oil pipeline systems in California are:

- Line 100 - A 78-mile, 8"/10"/12" crude line with a capacity of 80 thousand barrels per day (MBD).
- Line 200 - A 227-mile, 12"/16" crude line with a capacity of 96 MBD.
- Line 300 - A 43-mile, 8"/10"/12" crude line and an 11-mile, 4"/6"/8" crude line with a capacity of 48 MBD.

- Line 400 - A 153-mile, 8"/10"/12" intermediate line with a capacity of 42 MBD.

CPPL is a direct, wholly owned subsidiary of ConocoPhillips Company (COP). COP, a Delaware corporation, is a direct, wholly owned subsidiary of CP. COP functions as CP's principal domestic operating subsidiary. Within the continental United States, COP engages primarily in the following activities: (1) exploration for and production of oil and natural gas, and (2) petroleum refining, marketing, supply and transportation. CP is a widely-held publicly traded holding company and an international, integrated energy company that operates in more than 30 countries. As of March 31, 2011, CP had 29,600 employees worldwide, assets of \$160 billion, annualized revenues of \$226 billion, and a market capitalization of approximately \$113 billion. Through its subsidiaries, CP operates four key business activities: (1) petroleum exploration and production, (2) petroleum refining, marketing supply and transportation, (3) natural gas gathering, processing and marketing, and (4) chemicals and plastics production and distribution.

Discussion

Pub. Util. Code § 854 requires a company to obtain Commission authorization before it may "merge, acquire, or control...any public utility organized and doing business in this state..." The purpose of this section is to enable the Commission, before any transfer of control of a public utility is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. Pub. Util. Code § 853(b) permits an exemption to this approval requirement based on a fact-specific determination

of whether the proposed transaction is a transfer of control necessitating Section 854 review and approval.¹

In determining whether such a change necessitates Section 854 review and approval, the Commission's fact specific, case-by-case assessment may consider a variety of factors, including: whether the anticipated change in direct control would affect the day-to-day operations or management of the public utility;² whether the acquiring entity has the ability to direct management and the policies of the utility; and the impact of the change on the public interest.³

Here, the transition from COP to Phillips 66 Company will produce no change in the day-to-day operations or management of CPPL. Existing employees with working control over the utility will continue in their roles after the CP repositioning process is completed. While Phillips 66 Company will be financially robust and fully capable of supporting CPPL's continued operations as Phillips 66 Pipeline LLC, it will play no greater role in the day-to-day affairs of

¹ Compare PG&E, Decision (D) 96-11-017, 69 CPUC2d 167, 183-84, 1996 Cal. PUC LEXIS 1141 at *13-14 (citing D.95-05-021, 59 CPUC2d 697, 1995 Cal. PUC LEXIS 440, at *2-3 (1995)) (relying on provisions of Section 854(a) to determine that 854 approval not required); D.08-12-021, 2008 Cal. PUC LEXIS 469, at *14-15 (2008) (noting that the Commission has no "bright line" test for determining when a transfer of control subject to Section 854 has occurred).

² See D.92-05-006, 44 CPUC2d 197, 1992 Cal. PUC LEXIS 487 at *4 (1992) (finding that a public stock offering did not constitute a change in control under Section 854 because operations and senior management remained unchanged).

³ See D.08-12-021, 2008 Cal. PUC LEXIS 469 at *23-24 (2008) (at *16 (citing D.96-02-061, 65 CPUC2d 8 (1996)) (adopting a threshold public interest inquiry to determine if the proposed change in control had any public policy implications regardless of whether the then-existing management remained intact).

CPPL than has COP. Thus, the substitution of Phillips 66 Company for COP as CPPL's immediate corporate parent represents the type of change in legal control, as opposed to actual control, to which the Commission has declined to apply Section 854, particularly where other jurisdictional bases exist to protect the public interest.⁴ Nor will the contemplated transfer of CPPL to Phillips 66 Company negatively affect the quality of service provided to the public. Indeed, as shown in the application, the vast majority of the barrels transported by CPPL are owned by its affiliate COP. The CP repositioning process will not change these circumstances; most barrels transported by Phillips 66 Pipeline LLC will be owned by its affiliate, Phillips 66 Company. In addition, CPPL's current terms and conditions of intrastate service will remain in place and the Commission will retain regulatory authority over CPPL. Similarly, no repositioning-related rate changes are anticipated to the rates currently on file with the Commission, and any future intrastate rate changes proposed would remain subject to Commission review and approval. No change, alteration or sale of the CPPL pipeline infrastructure and related physical plant is anticipated. Only ministerial changes to CPPL's tariff are planned to facilitate a change in corporate form to a limited liability company and name change to Phillips 66 Pipeline LLC. Thus, the rates, day-to-day operations and management of CPPL will remain unchanged as a result of the Proposed Transfers, and the public interest will not be affected. The Commission will continue to oversee CPPL's rates, terms and

⁴ See D.95-05-021, (SDG&E Interim Decision), 59 CPUC2d 697, 1995 Cal. PUC LEXIS 440 at *4-5(1995)(finding a change in legal control from existing shareholders of a public utility to a newly created immediate parent company does not constitute a change in actual control subject to Section 854 review); D.96-11-017, 69 CPUC2d167, 1996 Cal. PUC LEXIS 1141 (same).

conditions of service in the same manner and to the same extent as it does today. Under these circumstances, the contemplated change in CPPL's immediate corporate parent does not warrant Section 854 review.

A similar analysis applies to the contemplated change in CPPL's ultimate parent. As described earlier, the CP repositioning process will culminate in the public spin-off of a new holding company, Phillips 66, from CP through the distribution of 100% of Phillips 66 common stock to existing CP shareholders. The Commission previously has concluded that this type of corporate reorganization does not warrant Section 854 review.⁵ Since neither the change of immediate parent nor the change of ultimate parent requires Section 854 approval, we will grant the application for an exemption under Section 853(b) subject to the terms and conditions set out below.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

Categorization and Need for Hearings

In Resolution ALJ 176-3290, dated March 8, 2012 the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. Based on the information contained in the application, we affirm the preliminary determinations in Resolution ALJ 176-3290.

⁵ See *e.g.*, D.93-11-063, 52 CPUC2d 127, 1993 Cal. PUC LEXIS 794 at *7 (1993) (finding Section 854 inapplicable to the proposed transaction and dismissing the application); D.92-05-006, 44 CPUC2d 197, 1992 Cal. PUC LEXIS 487 (1992) (same); D.93-11-011, 51 CPUC2d 728, 1993 Cal. PUC LEXIS 850 (1993) (Section 854 approval *not* required for spin-off transaction so long as certain conditions are met).

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Karl J. Bemederfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of this application appeared in the Commission's Daily Calendar of February 27, 2012.

2. Applicants seek an exemption pursuant to Pub. Util. Code § 853(b) from the requirements of Pub. Util. Code § 854 otherwise applicable to a proposed corporate reorganization of the ConocoPhillips family of companies.

3. CPPL is a public utility corporation subject to the jurisdiction of this Commission.

4. There will be no change in current operations, management, services or rates provided by CPPL as a result of the proposed corporate reorganization.

Conclusions of Law

1. The proposed corporate reorganization is not adverse to the public interest.

2. This proceeding is designated a ratesetting proceeding; no protests having been received, no hearing is necessary.

3. The application for an exemption from Pub. Util. Code § 854 should be approved.

O R D E R

IT IS ORDERED that:

1. Pursuant to the provisions of Pub. Util. Code § 853(b), the proposed reorganization of ConocoPhillips Pipeline Company and its direct and indirect parent corporations is exempted from review under Pub. Util. Code § 854.

2. Promptly upon completion of the proposed corporate reorganization, Applicant shall file a Tier 1 advice letter to implement its contemplated change in corporate form to a limited liability company and change in name to Phillips 66 Pipeline LLC.

3. ConocoPhillips Pipeline Company shall make all books and records available for review and inspection upon Commission staff request.

4. The authority granted herein shall expire if not exercised within one year of the date of this order.

5. Application 12-02-015 is closed.

This order is effective today.

Dated April 19, 2012, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners