

Decision 02-07-025 July 17, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Phillips Petroleum Company and ConocoPhillips Pursuant to Section 854(a) of the Public Utilities Code for Expedited, *Ex Parte* Authorization to Transfer Control of Union Pipeline Company (California) from Phillips Petroleum Company to ConocoPhillips.

Application 02-04-044
(Filed April 25, 2002)

O P I N I O N

1. Summary

Phillips Petroleum Company (Phillips) and ConocoPhillips (together, Joint Applicants) seek authorization under Section 854(a) of the Public Utilities Code to transfer control of Union Pipeline Company (California) (UNOCAP), a common carrier intrastate oil pipeline company, from Phillips to ConocoPhillips. The transfer of control would occur as a result of a proposed merger of Phillips and Conoco, Inc. (Conoco). The Joint Application is unopposed and is granted.

2. Background

Phillips is a Delaware corporation, authorized to do business in California and with headquarters in Bartlesville, Oklahoma. It has owned and operated oil (including crude oil, refined petroleum products, and natural gas liquids) pipelines since its formation in 1917 and currently owns and operates over 6,800 miles of pipelines and pipeline-related facilities in the United States. Phillips is an integrated oil company with interests around the world and has

extensive experience and expertise in all facets of oil pipeline ownership and operations.

UNOCAP is a California corporation with its principal place of business in Santa Fe Springs, California. A wholly owned subsidiary of Tosco Corporation, UNOCAP is an intrastate pipeline company with 1100 miles of oil pipelines between points in California which are comprised of six major pipeline systems, designated as Lines 100, 200, 300, 400, 600, and 700.¹ It provides service under tariffs on file with the Commission. In Decision (D.) 01-05-021, dated May 3, 2001, the Commission authorized Phillips to obtain indirect control of UNOCAP through its acquisition of Tosco Corporation. With that acquisition, Phillips has been the indirect owner of UNOCAP since 2001.

ConocoPhillips is a newly formed Delaware corporation with its principal place of business in Houston, Texas. If the merger is completed, ConocoPhillips will be the parent company of both Phillips and Conoco and will be the ultimate parent of UNOCAP.

3. Description of Transaction

An Agreement and Plan of Merger (Agreement) was executed on November 18, 2001 and was approved by the shareholders of Phillips and Conoco on March 10, 2002.² Under the Agreement, Phillips and Conoco will

¹ Maps of the UNOCAP pipeline system were provided as Exhibit 9 to the Joint Application.

² The Agreement was provided as Exhibit 10 to the Joint Application. The Agreement was executed by Phillips, CorvettePorsche Corp. (subsequently renamed ConocoPhillips), Porsche Merger Corp. (subsequently renamed P Merger Corp.), Corvette Merger Corp. (subsequently renamed C Merger Corp.), and Conoco. Under the terms of the Agreement, P Merger Corp., which is a wholly owned subsidiary of ConocoPhillips, will merge with Phillips and C Merger Corp., which is also a wholly

Footnote continued on next page

become wholly owned subsidiaries of ConocoPhillips. Tosco Corporation will continue to be a wholly owned subsidiary of Phillips, and UNOCAP will continue to be a wholly owned subsidiary of Tosco Corporation. As a result, the ultimate control of UNOCAP will pass from Phillips to ConocoPhillips.

Joint Applicants state that UNOCAP will continue to be managed by its own officers and directors, will continue to own and operate its pipelines and related facilities, and will maintain its operating offices in Santa Fe Springs, California. UNOCAP will continue to offer service pursuant to its Commission-approved tariffs. No change in rates, terms, or conditions of service is requested at this time.

Joint Applicants report that, because the merger of Phillips and Conoco is a stock transaction merger, individual assets have not been valued separately and there is no agreed-upon price specifically ascribable to UNOCAP in the agreement. They note that UNOCAP's most recent balance sheet indicated that it had approximately \$100 million in assets.

Phillips and ConocoPhillips assert that the merger of Phillips and Conoco is in the public interest for several reasons. They state that the merger will create a stronger major integrated oil company with the benefits of increased size and scale and with significant recurring synergies. Joint Applicants state that the merger will not affect the day-to-day management and operation of UNOCAP appreciably, with the only appreciable difference being that Phillips will be a

owned subsidiary of ConocoPhillips, will merge with Conoco, with Phillips and Conoco each surviving as a wholly owned subsidiary of ConocoPhillips. Following the planned conversion of shares of Conoco and Phillips common stock, former Conoco stockholders will hold approximately 43.4% and former Phillips stockholders will hold approximately 56.6% of the outstanding shares of ConocoPhillips.

wholly owned subsidiary of ConocoPhillips. They assert that ConocoPhillips will have increased financial capability and integrity to maintain the viability of UNOCAP's oil pipeline services. The parties state that UNOCAP will continue to be operated by experienced and technically competent personnel and will also be able to draw upon the technical capability and expertise of ConocoPhillips to provide common carrier pipeline services in a safe and efficient manner and consistent with the requirements of the Commission. Finally, they state that no changes in rates or terms and conditions of service are expected to be requested as a result of the merger.

The proposed merger between Phillips and Conoco has been reviewed and approved by a number of regulatory agencies, including the European Commission and the Canadian Commission of Competition. Joint Applicants state that they expect Federal Trade Commission (FTC) approval of the merger in the second half of 2002, possibly as early as July 2002. As a result, they request that the Commission consider the Joint Application on an expedited, *ex parte* basis. Joint Applicants request that the Commission's order approving the change of control of UNOCAP be subject to the approval by the FTC of the merger between Phillips and Conoco on terms that are acceptable to the merging parties.

Joint Applicants state that only the UNOCAP pipeline assets fall under the jurisdiction of the Commission and are subject to the Joint Application. The parties state that they are not requesting authorization from the Commission for the merger *per se* or for the transfer of any facilities. The only permission requested by the Joint Applicants is the transfer of ultimate control of UNOCAP from Phillips to ConocoPhillips.

Joint Applicants contend that the Commission need not provide further environmental review, pursuant to California Environmental Quality Act (CEQA) Guideline 15061(b)(3) because UNOCAP will continue to be operated as it is now and because the Commission-approved tariffs will not be changed by the merger transaction. The parties point to D.01-05-021, in which the Commission determined that a CEQA review was not required when Tosco Corporation merged with Phillips, which they view as a similar situation.

4. Discussion

Pub. Util. Code § 854 requires Commission authorization before a company may “merge, acquire, or control...any public utility organized and doing business in this state....” The purpose of this and related sections is to enable the Commission, before any transfer of public utility authority is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

Through the merger, ConocoPhillips will obtain the facilities and expertise of Phillips and Conoco and is expected to be the third-largest integrated energy company in the United States, based on market capitalization and hydrocarbon reserves. While Joint Applicants have not provided information regarding Conoco’s operations and expertise, they have described the extensive operations, experience, and expertise of Phillips. On that basis, it is clear that ConocoPhillips will have the technical expertise and financial resources to assume control of UNOCAP. The increased financial capability and the opportunity for significant synergies are benefits that are expected to accrue from the merger.

UNOCAP’s tariffs will not be affected by this transaction. UNOCAP will continue to be operated in accordance with its Commission-approved tariffs; no

changes in terms and conditions of service or rates are requested as part of this Joint Application.

Under CEQA and Rule 17.1 of the Commission's Rules of Practice and Procedure (Rules), we must consider the environmental consequences of projects that are subject to our discretionary approval. (Public Resources Code Section 21080.) The Assigned Administrative Law Judge issued a ruling on June 26, 2002 which directed Joint Applicants to provide a verified statement addressing whether Joint Applicants intend, post-merger, to make any changes in UNOCAP's operations (e.g., alterations of the pipeline and related physical plant) which are not discussed in the Application and which could have potential effects on the environment. On July 2, 2002, Joint Applicants submitted a verified statement of Supplemental Information on Intended Operations. Joint Applicants state that they do not intend, post-merger, to make any changes to UNOCAP's operations which were not discussed in the Joint Application and which could have potential effects on the environment.

Based upon the record, the proposed transfer of control will have no significant effect on the environment because UNOCAP will continue to be operated as it is now, and its Commission-approved tariffs will be unchanged by this transaction. Consequently, the proposed project qualifies for an exemption from CEQA pursuant to Section 15061(b)(3) of the CEQA guidelines, and the Commission need not perform further environmental review.

Based on the expected synergies and increased financial capability, we find that the proposed transaction is in the public interest as required by Section 854(a). We will authorize the transfer of control of UNOCAP to ConocoPhillips. We will not, however, make this order subject to the approval of the FTC, as Joint Applicants request. Joint Applicants may or may not choose to

exercise the authority granted today. If not exercised within one year of the date of this order, this Commission's authorization expires.

Notice of this application appeared in the Commission's Daily Calendar on May 1, 2002. No protests were received.

In Resolution ALJ 176-3087, dated May 2, 2002, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3087. As no hearing is required, and pursuant to Rule 6.6 of the Commission's Rules, Article 2.5 of the Rules ceases to apply to this proceeding.

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

Findings of Fact

1. UNOCAP is a pipeline corporation as defined in Public Utilities Code Section 228, and operates as a common carrier intrastate pipeline company between points in California under tariffs on file with the Commission.
2. UNOCAP is a wholly owned subsidiary of Tosco Corporation, which is a wholly owned subsidiary of Phillips. As a result, Phillips controls UNOCAP.
3. Phillips is an integrated oil company with extensive experience and expertise and currently owns and operates over 6,800 miles of pipelines and pipeline-related facilities in the United States.
4. If the merger occurs, Phillips will become a wholly owned subsidiary of ConocoPhillips.

5. Because of its acquisition of Phillips, ConocoPhillips will have the technical expertise and financial resources to assume control of UNOCAP.

6. Merging Phillips and Conoco is expected to create a stronger major integrated oil company with increased financial capability, increased size and scale, and the opportunity for significant synergies.

7. After the merger, UNOCAP will continue to be operated in accordance with its Commission-approved tariffs; no changes in terms and conditions of service or rates are requested as part of this Joint Application.

8. This transfer of control will have no effect on the environment because UNOCAP will continue to be operated as it is now.

Conclusions of Law

1. The proposed transaction is in the public interest.

2. To the extent the Joint Application seeks authorization for a change of control pursuant to Public Utilities Code Section 854, the application should be approved.

3. Article 2.5 of the Commission's Rules of Practice and Procedure ceases to apply to this proceeding.

4. This transfer of control does not require further CEQA review by the Commission.

5. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The application of Phillips Petroleum Company (Phillips) and ConocoPhillips for authority to transfer control of Union Pipeline Company

(California) (UNOCAP) from Phillips to ConocoPhillips pursuant to Public Utilities Code Section 854 is approved.

2. Joint Applicants shall notify the Director of the Commission's Energy Division in writing of the transfer of authority, as authorized herein, within 30 days of the date of the transfer. A true copy of the instruments of transfer shall be attached to the notification.

3. UNOCAP 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 02-04-044 is closed.

This order is effective today.

Dated July 17, 2002, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

CARL W. WOOD

GEOFFREY F. BROWN

MICHAEL R. PEEVEY

Commissioners