

Decision 05-02-044 February 24, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Expedited Application of LB Pacific, LP, PPS
Holding Company and Pacific Terminals LLC for
Authorization for LB Pacific, LP to Acquire
Control of Pacific Terminals LLC.

Application 04-11-014
(Filed November 15, 2004)

Expedited Application of LB Pacific, LP, PPS
Holding Company and Pacific Pipeline System
LLC for Authorization for LB Pacific, LP to
Acquire Control of Pacific Pipeline System LLC.

Application 04-11-015
(Filed November 15, 2004)

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O P I N I O N

1. Summary

LB Pacific, LP (LB Pacific or Buyer), PPS Holding Company (PPS Holding or Seller) and Pacific Pipeline System LLC (PPS or the Pipeline) together request authorization pursuant to Pub. Util. Code¹ § 854(a) for LB Pacific to acquire control of PPS. In addition, LB Pacific (again as Buyer), PPS Holding (again as Seller) and Pacific Terminals LLC (PT or the Terminal) together request authorization pursuant to § 854(a) for LB Pacific to acquire control of PT. Collectively all four companies are the Joint Applicants. These applications are consolidated. In addition to § 854(a), it is also necessary to consider § 851 and the California Environmental Quality Act (CEQA) in order to authorize transfer of control.

The joint applications are both unopposed, in the public interest, and are both granted.

2. Background

PPS (the Pipeline) and PT (the Terminal) share a common but extremely complex ownership structure, and these two applications seek to transfer ultimate control of both companies to a new parent company, LB Pacific, as a result of several transactions. Pipeline and Terminal are affiliates. For administrative ease, LB Pacific and PPS Holding together filed motions with PPS and PT respectively to consolidate the two applications. The applications are virtually identical in scope and seek virtually identical outcomes.

¹ Unless otherwise noted, all Code references are solely to the Public Utilities Code.

a. The Pipeline - PPS

PPS is a Delaware limited liability company authorized to do business in the State of California. Its principal place of business is 5900 Cherry Avenue, Long Beach, CA, 90805-4408. PPS is a public utility subject to the Commission's jurisdiction pursuant to the provisions of § 216 and § 228.

PPS owns and operates two separate common carrier crude oil pipeline systems. Both systems are pipelines as defined in § 227. The first system, Line 2000 or the Pacific System, transports crude oil produced in the San Joaquin Valley (SJV) and California Outer-Continental Shelf (OCS) to refineries and terminal facilities in the Los Angeles Basin. Line 2000, which began operation in 1999, is a 130 mile, 20-inch insulated trunk pipeline originating at the Emidio Pump Station in Kern County. Line 2000 delivers crude oil directly and indirectly to refineries and terminal facilities in the Los Angeles Basin. Line 2000's permitted annual throughput capacity is 130,000 barrels per day. Line 2000 currently transports SJV heavy crude oil, California OCS crude oil and mid-barrel crude oil.

The second system that is owned and operated by PPS is the Line 63 System. The Line 63 System transports OCS crude oil and multiple grades of SJV light crude oil to refineries and terminal facilities in the Los Angeles Basin and in Bakersfield, but does not transport heavy crude oil. The Line 63 System consists of a 107-mile trunk pipeline, originating at the Kelly Pump Station in Kern County and terminating at the West Hynes Station in Long Beach. The Line 63 System includes 60 miles of distribution pipelines in the Los Angeles Basin and the Bakersfield area, 156 miles of gathering pipelines in the San Joaquin Valley, and 22 storage tanks with approximately 1.2 million barrels of storage capacity. These storage assets, the majority of which are located in the San Joaquin Valley,

are used primarily to facilitate the transportation of the crude oil on the Line 63 System.

b. The Terminal - PT

PT is also a Delaware limited liability company authorized to do business in the State of California. Its principal place of business is also 5900 Cherry Avenue, Long Beach, CA, 90805-4408. PT is a public utility subject to the Commission's jurisdiction pursuant to the provisions of § 216 and § 228.

PT owns and operates certain oil pipeline and storage facilities in Southern California that were originally built by Southern California Edison Company (Edison) to supply its electric generation stations. PT acquired the facilities from Edison in 2003. The facilities consist of 120 miles of pipeline (75 miles of which are active), with connections to a marine berth at the Port of Long Beach and to Los Angeles area refineries; oil storage tanks totaling 9.4 million barrels of nominal capacity, and eleven pumping and heating stations. PT provides oil storage and transportation services to third party users pursuant to the terms of a Commission approved tariff which allows for negotiated contracts between PT and its customers. The Commission approved PT's acquisition and operation of the facilities in Decision (D.) 03-07-031.

c. Current Owners of PPS and PT

Both PPS and PT are owned 100% by Pacific Energy Group LLC (PEG), a Delaware limited liability company that is in turn owned 100% by Pacific Energy Partners, L.P. (Pacific Partners), a Delaware limited partnership. The ownership of Pacific Partners is comprised of a 2% general partnership interest that is held by Pacific Energy GP, Inc. (Pacific GP), a Delaware corporation, and a 98% limited partnership interest that is represented by common and subordinated units, with the subordinated units representing 34.7%

of the ownership of Pacific Partners and the common units, which are publicly owned and traded on the New York Stock Exchange, representing the remaining 65.3% of Pacific Partners. The principal place of business for Pacific Partners, Pacific GP and PEG is also 5900 Cherry Avenue, Long Beach, CA 90805-4408, along with the utilities PPS and PT.

d. PPS Holding's Current Role

PPS Holding (the Seller) owns 100% of Pacific GP, the sole general partner of Pacific Partners. PPS Holding is in its turn owned 100% by The Anschutz Corporation (TAC), a Kansas Corporation headquartered in Denver, Colorado. TAC is also the owner of 10,465,000 outstanding subordinated units, which represent the entire 34.7% subordinated limited partner interest in Pacific Partners described above.

3. The Proposed Transactions

a. The Buyer - LB Pacific

LB Pacific is a newly established limited partnership formed pursuant to Delaware's Revised Uniform Limited Partnership Act. Its purpose will be to own Pacific GP. Its principal place of business is 399 Park Avenue, 9th Floor, New York, NY, 10022.

LB Pacific is owned and controlled by Lehman Brothers' Merchant Banking Group and an investment fund under its management. Lehman Brothers' Merchant Banking Group is part of the Private Equity Division of Lehman Brothers, a global financial institution. The equity ownership of LB Pacific will ultimately be held by Lehman Brothers and various investment funds managed by Lehman Brothers, and, potentially, third party investors, but according to the Joint Applicants, Lehman Brothers will retain control of LB Pacific.

As a result of all of the above transaction, Lehman Brothers' Merchant Banking Group will own and control LB Pacific which will own Pacific GP thereby severing and replacing PPS Holding and its owner TAC in this multi-layered corporate structure. It is by this transaction that Joint Parties propose for LB Pacific to acquire control over both PPS and PT.

4. Appropriate Review of Transfer

a. CEQA

Joint Applicants did not specifically cite CEQA in the applications. Joint Applicants believe that PPS and PT will continue to operate as they are now, and Commission-approved tariffs will not be changed by the transfer transactions. Counsel for applicants represents² that the new owner does not plan for either company, PPS or PT, to be the subject of new construction or other operational changes as a consequence of the transfers of control.

b. Required Commission Authority

Pub. Util. Code § 854(a)³ and § 851⁴ require Commission authorization before a company may “merge, acquire, or control...any public

² Letter dated December 8, 2004, from Morrison & Foerster LLP, attorney for Joint Applicants.

³ 854. (a) No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission. (In part.) (Emphasis added.)

⁴ 851. No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49, U.S.C.) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its

Footnote continued on next page

utility organized and doing business in this state....” The purpose of these 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.) The consolidated applications did not cite § 851 in the request for authority; however, we consider § 851 as applicable and therefore include its provisions in any authority granted by this decision.

5. Procedural History

Notice of these applications appeared in the Commission’s Daily Calendar on November 19, 2004. No protests were received.

a. Motions to Consolidate

Concurrent with the applications, Joint Applicants filed motions to consolidate the two applications. The applications are unopposed, the issues and the parties are identical or related, and pursuant to Rule 55, it is reasonable to grant the motions to consolidate these proceedings.

b. Motion for Confidential Treatment

Concurrent with the applications, Joint Applicants filed motions seeking to maintain confidentiality over certain aspects of the two transfers of control pursuant to Rule 45, § 583 and General Order No. 66-C.

For A.04-11-014, the Joint Applicants request an order to file under seal and maintain the confidentiality of (1) Purchase and Sale Agreement, dated

duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. (In part.) (Emphasis added.)

as of October 29, 2004 by and among PPS Holding, TAC and LB Pacific (Purchase and Sale Agreement) and (2) LB Pacific's Pre- and Post-Closing Capitalization Table. Pursuant to Rules 35 and 36 Joint Applicants are required to file the full terms and conditions of the agreement pursuant to which LB Pacific will acquire this interest as well as LB Pacific's financial statements. The terms and conditions that are set forth in the Purchase and Sale Agreement, which according to the motion, contains confidential, commercially sensitive information, includes the purchase price paid by LB Pacific. LB Pacific's Pre- and Post-Closing Capitalization Table shows the effect of the acquisition, including the purchase price. Joint Applicants argue that disclosure of this information would result in substantial competitive harm to LB Pacific in the future when negotiating other commercial agreements related to PPS and the acquisition or sale of other assets or companies within and beyond California.

Joint Applicants cite two recent Commission decisions,⁵ in the competitive communications industries, where comparable data for stock purchase agreements was accorded confidential treatment and filed under seal.

For A.04-11-015, the Joint Applicants also request an order to file under seal and maintain the confidentiality of substantially the same documents for the transfer of control over PT. Joint applicants make the same arguments.

Neither PPS nor PT offer utility service on a cost of service basis. Rather, the terms are competitive compared to the natural gas pipeline services

⁵ D.02-04-021, *Application of VarTec Telecom, Inc. et. al for Authority for Transfers of Control* (A.01-10-026), and D.00-05-016, *Joint Application of FoxTel, Inc. and AMI Telecommunications Acquisition Corporation for Approval of Stock Purchase Agreement* (A.99-11-028).

of other regulated utilities such as Southern California Gas Company or Pacific Gas & Electric Company where the utility-related costs are subject to economic rate regulation. Because of the competitive nature of business for PPS and PT for both companies' pipeline services and also PT's oil storage operations, we will grant the motions and file under seal the following items for two years⁶:

1. Exhibit D: Purchase and Sale Agreement (PPS - A.04-11-015)
2. Exhibit M: LB Pacific's financial statements contained in LB Pacific's Pre- and Post-Closing Capitalization Table (PPS)
3. Exhibit G: PT's Balance Sheet (PT – A.04-11-014)
4. Exhibit H: PT's Income Statement (PT)
5. Exhibit D: Purchase and Sale Agreement (PT)
6. Exhibit M: LB Pacific's financial statements contained in LB Pacific's Pre- and Post-Closing Capitalization Table (PT).

6. Approval of Transfer

a. CEQA

Under the California Environmental Quality Act (CEQA) and Rule 17.1 of the Commission's Rules of Practice and Procedure, we must consider the environmental consequences of projects that are subject to our discretionary approval. (Pub. Resources Code § 21080.) It is possible that a change of ownership and/or control may alter an approved project, result in new projects, or change facility operations, etc., in ways that have an environmental impact.

Joint Applicants state that they do not intend post-transfer of control, to make any changes to operations that were not discussed in the Joint Applications or that could have potential adverse effects on the environment.

⁶ Two years is consistent with our similar treatment for motions: see, for example, D.02-04-021, Conclusion of Law 5, (*mimeo.*, p. 9).

Nor will employees will be laid-off as a result of these transfers; thus the systems will continue to be operated by experienced and technically competent personnel.

Based upon the record, the proposed transfers will have no significant effect on the environment because the facilities will continue to be operated as they are now, and the Commission-approved tariffs will be unchanged by these transactions. Therefore, the proposed projects qualify for an exemption from CEQA pursuant to § 15061(b)(3)(1) of the CEQA guidelines and the Commission need perform no further environmental review. (See CEQA Guidelines § 1506(b)(3)(1).)⁷

b. Authority

Code § 854(a) and § 851 require Commission authorization before a company may “merge, acquire, or control...any public utility organized and doing business in this state....” The purpose of these 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.)

Both the PPS and PT facilities will continue to be operated in accordance with Commission-approved tariffs and with no changes in the terms and conditions of service or rates are requested as part of these Joint Applications. We therefore determine that the transfers are not adverse to the

⁷ This is consistent with, among other decisions, D.03-02-071 for Lodi Gas Storage and D.03-06-069 for Wild Goose Storage.

public interest and we can approve them. We also conclude that no further actions or conditions to the sale are necessary.

c. Conclusion

Based on these findings, the proposed transaction is in the public interest as required by § 854(a). We will authorize under our authority in § 851 the transfers of control over PPS and PT from PPS Holding to LB Pacific.

7. Categorization and Need for Hearings

In Resolution ALJ 176-3143, dated December 3, 2004, the Commission preliminarily categorized these proceedings 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. 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 these proceedings.

8. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Douglas M. Long is the assigned Administrative Law Judge in this proceeding.

9. Comments on Draft Decision

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 being waived.

Findings of Fact

1. PPS is a pipeline corporation as defined in § 228, and operates as a common carrier intrastate pipeline company between points in California under tariffs on file with the Commission.

2. PT is a pipeline corporation as defined in Pub. Util. Code § 228, and operates as a common carrier intrastate pipeline company between points in California under tariffs on file with the Commission.

3. Through a series of companies and partnerships (PEG controls PPS, Pacific Partners controls PEG, and Pacific GP controls Pacific Partners), PPS is a wholly owned subsidiary of PPS Holding because PPS Holding owns 100% of Pacific GP. As a result, PPS Holding controls PPS.

4. Through a series of companies and partnerships (PEG controls PT, Pacific Partners controls PEG, and Pacific GP controls Pacific Partners), PT is a wholly owned subsidiary of PPS Holding because PPS Holding owns 100% of Pacific GP. As a result, PPS Holding controls PT.

5. A transfer of control over PPS and PT will result in no change to their operations or loss of jobs. The systems will continue to be operated by experienced and technically competent personnel.

6. After the transfers, PPS and PT will both be operated in accordance with Commission-approved tariffs because no changes in terms and conditions of service or rates were requested as part of these Joint Applications.

7. These transfers of control will have no effect on the environment because facilities will continue to be operated as they are now and there will be no new construction or expansion.

8. There were no protests to the application.

Conclusions of Law

1. The proposed transactions result in no change in utility service and are therefore not adverse to the public interest.

2. To the extent the Joint Applications seeks authorization for a change of control pursuant to § 854(a), § 851 is also applicable, and the application should be approved.

3. The assets remain subject to Commission jurisdiction after the transfer of their control.

4. Article 2.5 of the Commission's Rules of Practice and Procedure ceases to apply to these consolidated proceeding, as this matter has been resolved without evidentiary hearings.

5. These transfers of control do not require further CEQA review by the Commission as they qualify for a categorical exemption under CEQA Guidelines § 1506(b)(3)(1.).

6. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The application of LB Pacific, LP (LB Pacific) to acquire Pacific Pipeline System LLC (PPS) pursuant to Pub. Util. Code §§ 854(a) and 851 is approved.

2. The application of LB Pacific, LP (LB Pacific) to acquire Pacific Terminals LLC (PT) pursuant to Pub. Util. Code §§ 854(a) and 851 is approved.

3. The following documents are filed under seal for two years pursuant to Pub. Util. Code § 583 and General Order No. 66-C:

1. Exhibit D: Purchase and Sale Agreement (PPS - A.04-11-015)
2. Exhibit M: LB Pacific's financial statements contained in LB Pacific's Pre- and Post-Closing Capitalization Table (PPS)
3. Exhibit G: PT's Balance Sheet (PT – A.04-11-014)
4. Exhibit H: PT's Income Statement (PT)
5. Exhibit D: Purchase and Sale Agreement (PT)

6. Exhibit M: LB Pacific's financial statements contained in LB Pacific's Pre- and Post-Closing Capitalization Table (PT).

4. LB Pacific shall notify the Director of the Commission's Energy Division in writing of the transfer of authority over PPS, 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.

5. LB Pacific shall notify the Director of the Commission's Energy Division in writing of the transfer of authority over PT, 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.

6. LB Pacific shall make all books and records available for review and inspection upon Commission staff request.

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

8. Application (A.) 04-11-014 and A.04-11-015 are closed.

This order is effective today.

Dated February 24, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners