

Decision 84 03 020

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SIERRA PACIFIC POWER COMPANY for an
order authorizing it to enter into
a Plan of Reorganization.

Application 83-12-31
(Filed December 19, 1983)

O P I N I O N

Sierra Pacific Power Company (Sierra Pacific, applicant) is a Nevada corporation, whose principal place of business is Reno, Nevada. Sierra Pacific is engaged in public utility electric operations in California and Nevada and in public utility gas and water operations in Nevada.

Sierra Pacific has three wholly owned Nevada corporation subsidiaries; Lands of Sierra, Inc. (LOS), Sierra Energy Company (SECO), and Valmy 2 Construction Company (Valmy 2). LOS is engaged in real estate development; SECO is engaged in exploration and development of natural resources; Valmy 2 was formed to finance a portion of a coal-fired electric generating plant at Valmy, Nevada.

Reorganization Plan

In this application, Sierra Pacific seeks approval of a plan of corporate reorganization. Under this plan, Sierra Pacific has formed S.P. Merger Company, Inc. (Merger Company) and Sierra Pacific Resources (Resources Company), both Nevada corporations. Merger Company will issue all of its shares to the Resources Company becoming the latter's wholly owned subsidiary. Merger Company will then be merged into Sierra Pacific, disappearing following this merger. Sierra Pacific shares will then be exchanged, on a one-for-one basis, for the shares of the Resources Company. To complete the reorganization, Sierra Pacific will "dividend up" its holdings in its nonregulated subsidiaries, LOS, SECO, and Valmy 2, to Resources Company.

At the close of these transactions, Resources Company will emerge as the parent holding company of Sierra Pacific, LOS, SECO, and Valmy 2. Individual shareholders in Sierra Pacific will hold equal interests in Resources Company as they formerly held in Sierra Pacific. Sierra Pacific will continue to provide utility services and to be regulated by this Commission; however, it will have divested itself of its direct interests in the three nonregulated entries.

Applicant avers that the principal reason for the reorganization is its desire to respond to the expressions of members of the Nevada Legislature¹ that subsidiaries of utilities have their own capital structures and their own sources of funding.² The application further states that since applicant and its subsidiaries constitute different businesses with different operating requirements, different risks, different markets, and different financing needs, applicant's board of directors concluded that a corporate reorganization is desirable to give recognition to these circumstances, and that such reorganization will provide a more sharply delineated separation between utility and nonutility activities. Applicant is also motivated by the fact that financing can be more advantageously arranged through a holding company corporate structure.

¹ During the 1983 Nevada Legislative Session, Assembly Bill 617 was introduced to address the requirement that public utilities have separately funded subsidiaries. The bill was not passed.

² A similar application is now pending before the Nevada Public Service Commission in Docket No. 83-1226.

Applicant believes that the proposed reorganization responds effectively to these concerns and that the net result is in the public interest, providing protection to the utility's ratepayers while at the same time allowing flexibility in corporate management.

Applicant alleges that the proposed reorganization will follow a pattern utilized by utilities in other parts of the United States. Applicant further alleges that the proposed reorganization plan is a well-recognized practical method which will have the desired result without causing adverse tax consequences and without diminishing utility regulatory control by this Commission or the Nevada Public Service Commission.

Statutory Authority

Applicant believes that there is no express provision by which this Commission is given regulatory authority to approve or disapprove a reorganization such as that proposed herein. The application states there is little doubt that Resources Company would, by owning all of the stock of applicant, "acquire control either directly or indirectly" of applicant. Applicant asserts, however, that the language of Public Utilities (PU) Code § 854 applies only to control of a "public utility organized and doing business in this state."³ While applicant does business in California, it claims it is not organized in California.

³ PU Code § 854, so far as pertinent here, states as follows:

"No person or corporation, whether or not organized under the laws of this state, shall, after the effective date of this section, 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."

Applicant asserts that no other section of the PU Code expressly covers the proposed plan of reorganization, as no new issuance of stock by applicant is involved (§ 818), nor will applicant dispose of or encumber any part of its utility property (PU Code § 851), nor will it merge or consolidate its system with another public utility.

The application states that while applicant questions whether the Commission technically has jurisdiction in the premises, it recognizes the Commission's broad powers of supervision and it wishes to observe the spirit of the Commission's authority; accordingly, it seeks an order from the Commission authorizing the plan of reorganization to the extent the Commission has jurisdiction.

Discussion

We need not address the merits of applicant's legal arguments concerning the inapplicability of PU Code §§ 851 and 854, because we find this matter subject to the provisions of PU Code § 818, which states as follows:

"No public utility may issue stocks and stock certificates, or other evidence of interest or ownership, or bonds, notes, or other evidences of indebtedness payable at periods of more than 12 months after the date thereof unless, in addition to the other requirements of law it shall first have secured from the commission an order authorizing the issue, stating the amount thereof and the purposes to which the issue or the proceeds thereof are to be applied, and that, in the opinion of the commission, the money, property, or labor to be procured or paid for by the issue is reasonably required for the purposes specified in the order, and that, except as otherwise permitted in the order in the case of bonds, notes, or other evidences of indebtedness, such purposes are not, in whole or in part reasonably chargeable to operating expenses or to income."

While it may be true that following the close of this series of transactions we will have no direct authority over the parent Resources Company, there can be no question that until close there is constructively but one corporate actor here, Sierra Pacific. That actor is fully subject to our jurisdiction under the Public Utilities Act and in two respects the reorganization for which it seeks our approval is subject to § 818. The issuance of both Merger Company and Resources Company shares may be imputed to be the acts of Sierra Pacific. Such issuances are therefore subject to our approval.

Though applicant has raised the foreign corporation exception in connection with § 854 it is significant to note that we have in the past determined that PU Code § 818 applies to corporations not organized under the laws of this State. In Decision 82-12-040 issued December 1, 1982 in Application 82-10-38, we found that PU Code § 818 applied to a debt issuance by Four Corners Pipeline Company, a Delaware corporation. In Four Corners, we concluded that regulation by this Commission of security issues of foreign corporations operating as public utilities within California protects the public interest through prevention of fraudulent acts and ensures that issuance costs and interest rates of new security issues are reasonable and will result in the lowest possible rates to the public for the services provided by such utilities. We, therefore, denied Four Corners' motion to dismiss on jurisdictional grounds.

We have reviewed the application, the reasons advanced for the reorganization of the utility and other supporting data and conclude that granting this application would not be adverse to the public interest. In the circumstances, the application should be granted. There is no material effect on either the pecuniary interests of the shareholders of Sierra Pacific or the regulatory authority of this Commission. We therefore find that the purposes of

the various issuances subject to § 818 are reasonable and that these issuances will result in neither capital nor ordinary expenses chargeable to California ratepayers.

Findings of Fact

1. Sierra Pacific operates as a public utility electric corporation in California.
2. Sierra Pacific is a corporation organized under the laws of the State of Nevada.
3. Sierra Pacific has formed two Nevada corporations, S.P. Merger Company and Sierra Pacific Resources. These corporations will, during the course of the proposed corporate reorganization, issue stock.
4. The acts of Merger Company and Resources Company are the constructive acts of Sierra Pacific under the proposed reorganization plan.
5. Placing Sierra Pacific under the control of a parent would not be adverse to the public interest.
6. Stockholders of Sierra Pacific were notified of the proposed reorganization and notice of the filing of this application appeared on the Commission's Daily Calendar.
7. No protests were received. A public hearing is not necessary.

Conclusions of Law

1. The issuances of common stock by Resources Company, into which outstanding shares of Sierra Pacific common stock will be converted for purposes of corporate reorganization, and Merger Company are imputable to Sierra Pacific for purposes of this Commission's jurisdiction under PU Code § 818.
2. As the approval of this application will not be adverse to the public interest, the application shall be granted on an ex parte basis.

O R D E R

IT IS ORDERED that in accordance with the above findings and conclusions Application 83-12-31 is granted.

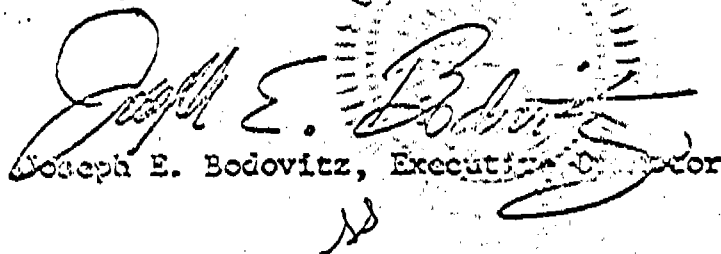
This order becomes effective 30 days from today.

Dated MAR 7 1984, at San Francisco, California.

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

Commissioner Leonard M. Grimes, Jr.,
being necessarily absent, did not
participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director

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