

Decision 90 09 046 SEP 12 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
Gulf Interstate Energy Systems of )  
California, Inc. and Leehan )  
Transportation to transfer, and of )  
J. L. Kinley Corporation and Kinley )  
of California, Inc. to acquire )  
control of Gulf Interstate )  
California Pipelines. )

ORIGINAL

Application 90-07-045  
(Filed July 13, 1990)

O P I N I O N

This decision grants applicants' request for approval of a transfer of control of an oil pipeline company, Gulf Interstate California Pipelines (Gulf) and project financing for an oil pipeline to be constructed between Fresno and Lemoore.

The Application

By this application, Gulf Interstate Energy Systems of California, Inc. (GIESC) and Leehan Transportation, and J. L. Kinley Corporation and Kinley of California, Inc. (Kinley) file for approval of a transfer of control of Gulf.

Gulf is a pipeline company which has contracted with the Department of Defense to move jet fuel from Fresno, California to the United States Naval Air Station at Lemoore, California. Gulf's activities to date have been limited to designing the pipeline and securing franchises, permits, leases, and other necessary government approvals. In January 1989, Gulf filed tariffs with the Commission to act as a pipeline common carrier. On February 24, 1990, the Commission issued Resolution G-2860 permitting Gulf to use the Federal Energy Regulatory Commission tariff format for Gulf's intrastate tariffs.

GIESC requests approval to transfer Gulf to Kinley which has holdings in oil and gas corporations in various states. By the same application, Kinley seeks approval of the plans to finance the

pipeline project. Kinley plans to finance the \$5.3 million project by loans from two banks. The loans have ten year terms and would be guaranteed by Kinley subsidiaries and by the assets of Gulf and Kinley.

The application seeks an ex parte ruling by the Executive Director in order to permit the completion of the sale by July 31, 1990. No protest to the application was received.

Gulf's Public Utility Status

By way of ruling dated July 30, 1990 the assigned administrative law judge (ALJ) directed applicants to amend the application by providing information regarding its status as a public utility. The ruling stated that nothing in the application indicates that Gulf intends to dedicate its pipeline to public use, or that the Commission had, as the application asserted, "authorized" Gulf to design, construct, or operate the pipeline.

On August 6, 1990, applicants amended the application in response to the ALJ ruling. The amendment states that the Commission accepted its tariffs following advice from Commission legal counsel that Gulf was a public utility. Commission staff also stated in a letter to the City of Fresno, dated July 21, 1989, that Gulf "became a public utility, subject to the jurisdiction of the California Public Utilities Commission on January 27, 1989."

Gulf states that it has represented itself as a public utility and common carrier before various government agencies and private parties. It also states it has offered to extend its pipeline to other areas in Kings County to ship compatible petroleum products if a demand developed for such shipments.

Discussion

The original application in this proceeding did not demonstrate that Gulf intended to dedicate its property to the public's use which is required for a corporation to be granted the privileges and obligations of a public utility (Richfield Oil Corporation v. Southern California Edison Company, 354 P.2d 4,

(1960)). We therefore sought additional information from Gulf regarding its regulatory status. The amended application clarifies that Gulf does intend to dedicate its pipeline to public use and that the pipeline may in fact be useful to customers other than the Department of Defense.

Section 1001 notes certain specific types of public utilities which are required to receive a certificate of public convenience and necessity prior to constructing, expanding or operating utility plant. Pipeline companies such as Gulf are public utilities pursuant to Section 216. Although pipeline companies are public utilities, they are not among those listed in Section 1001 which require formal Commission authority to operate in California. Accordingly, Gulf had never been granted any formal Commission authority to operate as a public utility. Gulf has filed tariffs and received informal advice of Commission staff that it is a public utility. The filing of tariffs and staff letters, however, do not by themselves confer utility status on a corporation.

We are concerned that pipeline companies such as Gulf may represent themselves as public utilities for purposes of asserting the power of eminent domain when in fact the corporation's status as a public utility is unclear. In the case of Gulf, this does not appear to have occurred. We will grant applicants' request for approval of the transfer and the project's financing.

To address applicants' request for an ex parte decision by the Executive Director, we note that the Executive Director has authority to approve noncontroversial property transfers of competitive telecommunications companies which are the subjects of Code Sections 851-855. This delegation of authority applies only to competitive telecommunications companies.

Findings of Fact

1. Applicants seek transfer of Gulf, an intrastate oil pipeline company, pursuant to Section 854.

2. Applicants seek authority to encumber assets of Gulf for the purposes of constructing a pipeline between Fresno and Lemoore, pursuant to Section 851.

3. Gulf's amended application indicates that Gulf intends to dedicate its property to public use and therefore operate as a public utility.

4. No protest to this application was received.

5. The Executive Director's authority to approve noncontroversial property transfers under Sections 851-855 extends only to competitive telecommunications companies.

Conclusion of Law

The application should be granted.

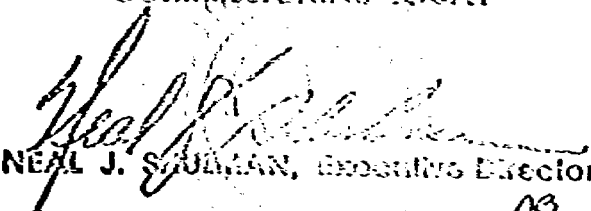
O R D E R

IT IS ORDERED that the application of Gulf Interstate Energy Systems of California, Inc., and Leehan Transportation, to transfer, and of J. L. Kinley Corporation and Kinley of California, Inc., to acquire control of Gulf Interstate California Pipelines (Gulf), and to encumber the assets of Gulf is granted.

This order is effective today.

Dated SEP 12 1990, at San Francisco, California.

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

  
NEAL J. SULLIVAN, Executive Director  
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G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
PATRICIA M. ECKERT  
Commissioners

Commissioner John B. Ohanian,  
being necessarily absent, did  
not participate.