

ORIGINAL

Decision 82 12 040 DEC 1 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of:)
 FOUR CORNERS PIPELINE COMPANY)
 A Delaware Corporation)
 (1) for authority to issue notes payable)
 at periods of more than 12 months after)
 the date of issue pursuant to Section)
 816 et. seq. of the Public Utilities)
 Code, or in alternative, (2) for a)
 decision of the Commission stating)
 that such authority is not required.)

Application 82-10-38
(Filed October 18, 1982)

O P I N I O N

Four Corners Pipe Line Company (Applicant), a Delaware Corporation, requests, in the alternative, (1) a finding by the Commission that approval of the Commission is not required in order for Applicant to borrow up to \$60,000,000 on a long-term basis or (2) approval by the Commission of such transaction.

Applicant operates as a common carrier by pipeline of crude petroleum and refined petroleum products between points in California. It also operates as an interstate common carrier of crude petroleum under the jurisdiction of the Federal Energy Regulatory Commission (FERC). Applicant's most recent financial statement filed with FERC, its 1981 annual report, is attached as Exhibit C to the application. The revenues and expenses shown there are not segregated as to intrastate and interstate operations. Exhibit A is a comparative balance sheet as of June 30, 1981 and June 30, 1982. Exhibit B is comparative income statement for the six-month period ending June 30, 1981 and June 30, 1982.

The borrowing arrangement involved in this proceeding is as follows:

1. Applicant will enter into a transaction with various commercial bank lenders located outside California to borrow up to \$60,000,000 in exchange for execution of a note or notes in substantially the form set forth in Exhibit D to the application.
2. The proposed transaction, as more specifically described in Exhibit E to the application, involves a maximum eight-year term with an interest rate to be selected by Applicant from the lowest of then applicable prime rate, the London Interbank Offered Rate (LIBOR) plus 3/8 of 1%, or the rate for certificates of deposit plus 1/2% of Citibank, N.A., of New York, N.Y.
3. The note or notes will not be secured but will be guaranteed by Applicant's sole shareholder, Atlantic Richfield Corporation (ARCO), a Pennsylvania corporation.

The proceeds to be derived from the transaction will be used to discharge and refund obligations currently outstanding. These obligations are short-term notes as described in Exhibit F to the application. The purpose of the short-term indebtedness was to fund construction of new and expanded facilities, the substantial portion of which were constructed to serve the needs of interstate shippers.

Notice of the filing of the application appeared on the Commission's Daily Calendar of October 19, 1982. No protests have been received.

History of Pipeline Company

Applicant became a pipeline company subject to jurisdiction of this Commission as a result of a stipulation reached between ARCO and the Commission staff in an investigation proceeding (Case (C.) 9893) to determine whether certain pipelines transporting petroleum in California were transportation companies or public utilities.

That stipulation was approved by the Commission in Decision (D.) 88640 dated March 31, 1978 (83 CPUC 542). That decision states (at page 586):

"The primary public interest served by accepting the proposed stipulation is that the shippers of crude oil in California will hereafter be guaranteed public utility transportation service. That guarantee of the availability of non-discriminatory transportation will, in the long run, be in the interest of this state's oil producers and independent refiners. We would not want a situation to develop where because of changes in oil marketing dynamics and economics independent refiners and small producers could not move oil and be financially squeezed. If that situation were to develop the remedy of pursuing regulatory jurisdiction would possibly be too slow, and cause economic harm to an important segment of California's economy."

D.88640 ordered ARCO to file maps of its crude oil and petroleum products pipeline facilities which were to be dedicated to public use. It also ordered ARCO to transfer that pipeline system to a subsidiary corporation which would operate the system as a public utility, and which would file its tariffs, rules, and regulations with this Commission, and "will do all other things required in order to operate [the pipeline system] as a public utility subject to the jurisdiction of both the Public Utilities Commission of the State of California and the United States Federal Energy Regulatory Commission."

ARCO accepted the Commission order in D.88640 by creating Applicant, filing its tariffs and regulations, and operating Applicant's pipeline system as a public utility.

Request for Determination That
The Transaction May Be Undertaken
Without Commission Authority

Applicant states it is a Delaware corporation authorized to do business within California. It argues that it is covered by the rule enunciated by the California Supreme Court in Southern Sierras Power Co. v Railroad Commission of California (1928) 205 Cal 479.

In Southern Sierras the court found that:

1. The issuance of stock by a corporation is essentially an internal function, cognizable and regulatable only under the laws of the state or nation creating the corporation; and while the language employed in Section 52 of the Public Utilities Act (now Section 816 of Public Utilities (PU) Code) is broad and comprehensive and makes no distinction in express terms between foreign and domestic corporations, it was never intended to subject foreign corporations to regulation concerning the exercise of the inherent corporate powers conferred upon them by the legislative power of the incorporating state.
2. Courts will refuse to exercise visitorial powers over foreign corporations or interfere with the management of their strictly internal affairs, and all such matters must be settled by the courts of the state creating the corporation.
3. The issuance of stock by a corporation is purely an internal affair, and to entertain an action to compel its issuance would constitute the exercise of visitorial powers over the corporation or an interference with the management of its internal affairs.

Applicant also cites California Electric Power Company (1943) 44 CRC 824, and California Electric Power Company (1948) 48 CPUC 165 in support of its request.

In the 1943 proceeding, although we stated that "in view of the fact that applicant (California Electric Power Company) is a foreign corporation, the Railroad Commission (predecessor to the Public Utilities Commission) has no jurisdiction over the issue of applicant's stock," citing Southern Sierras, that decision granted Applicant authority to execute and deliver first mortgage bonds in the amount of \$16,000,000.

In the 1948 proceeding, we determined that where a foreign corporation proposes to negotiate for the sale of its stock in the State of California, the proposed stock purchase agreement is to be executed and delivered in California and the greater part of the stock is to be delivered to brokers in California for sale as far as possible to ultimate investors in California, the Commission has jurisdiction over the issue of such stock. (Distinguished on the facts from Southern Sierras.)

Discussion on Jurisdiction Issue

PU Code Section 818 states in part as follows:

"No public utility may issue stocks and stock certificates...or other evidences of indebtedness payable at periods of more than 12 months after the date thereof unless...it shall first have secured from the commission an order authorizing the issue..."

The question presented by Applicant is whether Section 818 applies to foreign as well as domestic corporations. As Applicant points out, the California Supreme Court in Southern Sierras approved a Commission decision which had denied a request by a foreign corporation operating as an electric utility in California for authority to issue preferred stock to refund existing debts. The court found that the Commission lacked authority over securities issued by foreign corporations because the Legislature had not granted such authority to the Commission in the predecessor section of the Public Utilities Act and concluded that the Legislature lacked the power to do so.

The court held that the issuance of securities is a wholly internal act of a corporation and, as such, is subject solely to the control of the state of incorporation, even though the corporation may engage in business elsewhere.

Although never expressly overruled, we do not believe the Southern Sierras opinion issued in 1927 would be decided in the same way today. The Southern Sierras rule has not been followed in other jurisdictions. The Illinois Supreme Court in United Air Lines v Illinois Commerce Comm. 32 Ill. 2d 516; 207 N.E. 2d 433, upheld the power of the Illinois Legislature to enact regulatory statutes over foreign corporations which transact business within that state. That court specifically noted that it did not concur with the rule in the Southern Sierras opinions.

Both the California Supreme Court and this Commission have substantially limited the effect of Southern Sierras. In Gillis et al. v Pan American Western Petroleum Co., et al. (1935) 3 C 2d 249, the court held that Southern Sierras does not apply when the issuance and sale of stock takes place in California and upheld the power of the State to enact and apply the Corporate Securities Act to foreign corporations in such cases. The court in the Gillis case emphasized the State's power to protect its citizens from fraudulent actions and concluded that it would be illogical to permit foreign corporations to escape protective statutes to which domestic corporations are held. It cited from an earlier United States Supreme Court decision in Williams v Gaylord (1902) 186 US 157, 165, which stated: "...when a corporation sells or encumbers its property, incurs debts, or gives securities; it does business; and a statute regulating such transaction does not regulate the internal affairs of the corporation."

Although the PU Code was not at issue in Gillis, there is a direct parallel between PU Code Section 818 regulating security issues and similar provisions of the Corporate Security Act. Both statutes are primarily designed to protect the public interest. The

purpose of PU Code Section 818 goes beyond the prevention of fraudulent acts. Our regulation of security issues protects the ratepayers by ensuring that issuance costs of new stock issues and long-term securities are kept at the lowest possible level; that long-term notes bear the most favorable interest rates at time of issuance; and that the utility maintains a balanced capital structure to ensure that overall financing costs are reasonable.

In re California Electric Power Co. (1948) 48 CPUC 165 (cited by Applicant), this Commission, although not expressly relying on the Gillis decision, concluded that it had jurisdiction over the issuance of stock in a Delaware corporation operating as a public utility in California where the negotiations for and the sale of stock would take place in California. In doing so, the Commission expressly distinguished Southern Sierras on its facts. The California Electric decision was not appealed.

This Commission currently accepts and decides applications from foreign corporations for authority to issue securities on a routine basis. Some recent examples are: In re Southern Pacific Communications Co. (D.82-07-095 dated July 21, 1982, in A.82-05-61), In re I.M.L. Freight Lines (D.82-07-106 dated July 21, 1982, in A.82-06-47) and In re Sierra Pacific Power Company (D.82-09-071 dated September 22, 1982, in A.82-08-31). S.P. Communications is a Delaware corporation and is wholly owned subsidiary of Southern Pacific Company. I.M.L., a Utah corporation, is a wholly owned subsidiary of A&W, a Utah corporation. Sierra Pacific, a Nevada corporation, provides electric utility service in California, and gas, electric, and water utility service in Nevada. Sierra Pacific derived 10.95% of its 1981 operating revenues from business conducted in California. These recent decisions did not distinguish the location where the security issues were negotiated or were to be sold.

It is clear that while Southern Sierras has not been expressly overturned, that decision is contrary to more recent court

decisions in California and in other jurisdictions and has not been relied upon by this Commission or by utilities subject to our regulation. We conclude, therefore, that the holding in Southern Sierras should not be controlling in this proceeding and that we should exercise jurisdiction over the issuance of new debt securities by Applicant. Such action will be consistent with our exercise of jurisdiction over new security issues of other foreign corporations, such as S.P. Communications, I.M.L., and Sierra Pacific, and will be in conformity with the California Supreme Court holding in Gillis.

The portion of the application requesting a finding that approval of the Commission is not required in order for Applicant to borrow up to \$60,000,000 on a long-term basis will be denied.

Request for Approval of
To Borrow \$60,000,000
On a Long-Term Basis

Applicant proposes to borrow up to \$60,000,000 in exchange for execution of a note or notes issued to Citibank or other banks.

Applicant's comparative balance sheet as of June 30, 1982 and June 30, 1981 shows the following:

	<u>June 30, 1982</u>	<u>June 30, 1981</u>
<u>Assets</u>		
Net Plant	\$76,972,565	\$63,272,533
Current Assets	13,452,558	13,456,071
Deferred Charges	121,834	121,834
Total	<u>\$90,546,957</u>	<u>\$76,850,438</u>
<u>Liabilities and Equity</u>		
Shareholder's Equity	\$26,144,368	\$45,855,231
Long-term Debt	46,000,000	-
Current Liabilities	13,719,589	27,372,207
Deferred Income Taxes	4,683,000	3,623,000
Total	<u>\$90,546,957</u>	<u>\$76,850,438</u>

The proceeds to be derived from the transaction will be used to discharge and refund outstanding short-term obligations issued to fund new construction.

The new notes will not be secured but will be guaranteed by ARCO, Applicant's sole shareholder.

The Commission's Revenue Requirements Division has analyzed the application and has concluded that Applicant has need for long-term financing to replace existing short-term notes, and that proposed borrowing is for proper purposes.

Approval of Applicant's long-term financing will be granted.

Findings of Fact

1. Applicant, a Delaware corporation, provides service as pipeline common carrier of petroleum and petroleum products in California, and between California and other states.
2. Applicant is a pipeline company subject to the jurisdiction of this Commission.
3. The issuance of long-term debt in the amount of \$60,000,000 is for proper purposes.
4. Applicant has need for external funds for the purposes set forth in the application.
5. The money, property, or labor to be provided or paid for by issuance of Applicant's long-term notes is reasonably required for those purposes.
6. There is no known opposition to this proceeding and no reason to delay action on Applicant's requests.

Conclusions of Law

1. A public hearing is not necessary.
2. Applicant is a foreign corporation licensed to do business in California.
3. Applicant is subject to the jurisdiction of this Commission by the acceptance by ARCO (Applicant's sole shareholder) of the

conditions set forth in D.88640 (supra), by the creation of Applicant by ARCO to perform intrastate common carrier transportation of petroleum and petroleum products by pipeline within California, and by Applicant's filing its tariffs of rates and charges with this Commission.

4. Regulation by this Commission of the security issues of foreign corporations operating as public utilities and pipeline common carriers 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 and common carriers.

5. The rule enunciated in Southern Sierras, (supra) concerning our lack of jurisdiction over the issuance of securities by foreign corporations operating in this State is no longer controlling in view of the California Supreme Court's holding in Gillis (supra), the holding by the U.S. Supreme Court in Williams v Gaylord (supra), and because foreign corporations operating as public utilities and common carriers have routinely submitted themselves to the jurisdiction of this Commission with respect to approval of security issues.

6. This Commission should exercise jurisdiction over the issuance of security by foreign corporations operating as public utilities or common carriers within this State.

7. Applicant's request that this application be dismissed on jurisdictional grounds should be denied.

8. The application should be granted to the extent as provided in the order which follows.

The proposed security issue is for lawful purposes and the money, property, or labor to be obtained by it is required for these purposes. Proceeds from the security issue may not be charged to operating expenses or income.

The following order should be effective on the date of signature and payment of the fee set by PU Code Section 1904(b) to enable Applicant to issue debt securities expeditiously.

O R D E R

IT IS ORDERED that:

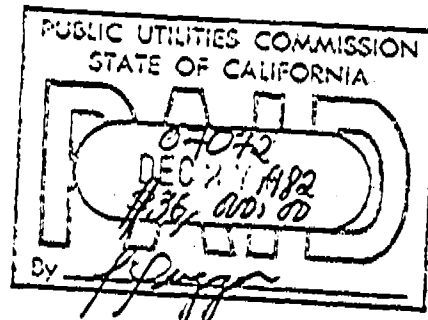
1. The loan transactions proposed by Four Corners Pipe Line Company in A.82-10-38 in an amount not exceeding \$60,000,000 is approved.
2. Applicant is authorized to pay on such notes an interest rate in excess of the maximum annual interest rate otherwise permitted under the California Usury Law, as contained in Article XV of the California Constitution and the Usury Law Initiative Act, if market conditions so require.
3. Neither Applicant nor any person purporting to act on its behalf shall at any time assert in any manner, or attempt to raise as a claim or defense in any proceeding, that the interest on the notes exceeds the maximum permitted to be charged under the

California Usury Law or any similar law establishing the maximum rate of interest that can be charged to or received from a borrower.

This order shall become effective when Applicant pays \$36,000, the fee set by PU Code Section 1904(b).

Dated DEC 1 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C GREW
Commissioners



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

Joseph E. Bodovitz
Joseph E. Bodovitz, Executive Director