

ALJ/JJJ/sid

Decision 98-02-093 February 19, 1998

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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of Unocal California Pipeline Company and Tosco Corporation for authority to sell and acquire public utility assets pursuant to Section 851 of the Public Utilities Code and to transfer control of a public utility pursuant to Section 854 of the Public Utilities Code.

Application 97-04-005  
(Filed April 3, 1997)

(See Appendix A for a list of appearances.)

**OPINION APPROVING APPLICATION**

**Description of the Application**

Unocal California Pipeline Company (UNOCAP), a wholly-owned subsidiary of Union Oil Company of California (Unocal), and Tosco Corporation (Tosco), jointly referred to as applicants, seek approval pursuant to Section 854 of the Public Utilities (PU) Code to transfer control of UNOCAP from Unocal to Tosco through a stock transfer, as more fully discussed below. Applicants also seek approval under PU Code § 851 to transfer a portion of the UNOCAP pipeline system, namely, the Avila Station facilities, to Unocal.

Applicants explain that through a stock transfer, all of UNOCAP's public utility assets, excluding pumps, tanks, and related appurtenances which comprise UNOCAP's Avila Station, located at Avila, California (Avila Station facilities),<sup>1</sup> will be sold to Tosco. The subsidiaries and investments included in the stock transfer are listed in Attachment VIII to the Sale and Purchase Agreement, which is Exhibit D to the

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<sup>1</sup> The Avila Station facilities consist of storage tanks, pumping facilities, and pipelines within the Avila Station property line as set forth in Exhibit D to the July 14, 1997 Supplement to Application.

application. In acquiring the ownership of UNOCAP through purchase of its stock, Tosco will acquire the operating authority granted by this Commission to UNOCAP and under which UNOCAP has operated since January 1, 1992.

Applicants state that the ultimate disposition of a portion of UNOCAP's public utility assets, the Avila Station facilities, is the subject of a separate application, Application (A.) 97-06-016. The transfer of control of the Avila Station facilities is not part of the Unocal-Tosco transaction and will not be transferred to Tosco as part of Tosco's purchase of UNOCAP's stock. Therefore, applicants request that if the Commission resolves this application before it resolves A.97-06-016, it also grant authority pursuant to § 851 for the transfer of the Avila Station facilities public utility assets from UNOCAP to Unocal. Applicants stress that this request made pursuant to § 851 is necessary only in the event that the Commission's approval of this application under § 854 predates the Commission's disposition of A.97-06-016, where Unocal requests authority to withdraw the Avila Station facilities from common carrier service.<sup>2</sup>

Although the application was protested initially, protestants later withdrew these protests.

#### **Statutory Authority**

Section 851 provides that no public utility other than a common carrier by railroad may sell any part of its plant, system, or other property necessary or useful in the performance of its duties to the public without first having secured from the Commission an order authorizing it to do so. The relevant portion of § 854 provides that no person or entity should acquire control of a public utility without first having secured from the Commission an order authorizing it to do so.

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<sup>2</sup> Applicants' request is set forth in their application, as clarified by a December 15, 1997 letter from counsel for UNOCAP to the assigned Administrative Law Judge (ALJ).

**Description of the Property**

The UNOCAP facilities and operations which are the subject of this application consist of approximately 1,100 miles of crude oil pipelines which are broken down into seven major pipeline systems, designated as Lines 100, 200, 300, 400, 600, 700, and 830. The UNOCAP system was originally designed and operated to provide pipeline delivery of crude petroleum from various oil fields in California to three refineries owned and operated by Unocal. Applicants state that currently, UNOCAP's pipeline system provides transportation service to Unocal's Santa Maria and San Francisco refineries (Lines 100, 200, 300, and 400), which are the only refinery destinations that receive barrels from the designated lines, while the UNOCAP pipeline system that serves Unocal's Los Angeles refinery (Lines 600 and 700) also can serve four non-affiliated refineries.

Through the stock transfer, all of UNOCAP's public utility assets, excluding the Avila Station facilities, will be sold to Tosco. Exhibit D to a July 14, 1997 Supplement to the Application more fully describes the demarcation between Avila Station, which is addressed in A.97-06-016 and is not a part of this application, and the pipelines connecting to Avila Station, which are addressed by this application.

**Description and Purpose of the Agreement**

Applicants state that in November, 1996, Unocal and Tosco announced the execution of a letter of intent to sell Unocal's West Coast petroleum refining, marketing and transportation assets to Tosco. The planned sale is valued at \$1.4 billion for the refining, marketing, and transportation fixed assets. The fixed assets which are the subject of the sale include Unocal's California refineries in San Francisco, Santa Maria and Los Angeles (which have a combined capacity of 251,000 barrels per day), various terminals, service stations, and pipelines. The pipelines operated by UNOCAP under the jurisdiction of this Commission are the subject of this application.

Applicants state that net book value of the subject pipeline as of December 31, 1996 was \$66,198,000. Given that the sale of Unocal's interest in the subject pipeline is part of a larger transaction involving the sale of all of Unocal's West Coast petroleum

refining, marketing and transportation assets for the amount of \$1.4 billion, there is not an agreed purchase price specifically attributable to the subject pipeline in the Sale and Purchase Agreement. Of the total sale price, applicants state that it is reasonable to allocate \$125 million to the subject property.

Applicants represent that the requested authorization is appropriate because (1) Tosco, with 1996 revenues of approximately \$10 billion, has the financial capability and integrity to maintain and continue the viability of common carrier oil pipeline services as currently provided by UNOCAP; (2) Tosco has the technical capability and expertise to provide common carrier pipeline services in a safe and efficient manner and consistent with the requirements of this Commission, since it is the second largest independent refiner of petroleum products in the United States, the operator of four refineries, and the operator of an interstate petroleum products pipeline; and (3) approval of this application will not affect the rates, terms and conditions for any shipper currently receiving service from UNOCAP.

Applicants state that after the sale becomes effective, Tosco proposes to operate the subject pipeline through UNOCAP as a common carrier system. Applicants represent that the proposed sale will not have an effect on the quality of the human environment. Applicants also state that the property to be transferred is located, in part, on land subject to various franchises granted by governmental bodies and the consent of these governmental bodies to assign such franchises may be necessary.

#### **Protests and Evidentiary Hearings**

The California State Lands Commission (State Lands) and the County of San Luis Obispo (the County) filed timely protests to this application. By pleadings dated October 7 and October 31, respectively, State Lands and the County withdrew their protests and stated that they did not object to the relief sought in the application.

During the protest period, Ultramar, Inc. (Ultramar), an independent petroleum refining and marketing company operating almost exclusively in California, filed a petition for participation without intervention and request for conditions on approval. Ultramar, Inc. did not state any grounds for an evidentiary hearing. At the first

prehearing conference held on July 2, 1997, Assigned Commissioner Bilas and Assigned Administrative Law Judge (ALJ) Econome granted Ultramar appearance status. Ultramar's requested conditions are discussed below.

Prior to the State Lands' and the County's withdrawal of protests, the ALJ set interim hearings to be held jointly with A.97-06-016. The ALJ did not consolidate the proceedings. The interim hearings were to address whether further proceedings or steps were necessary pursuant to the California Environmental Quality Act or otherwise, and to address issues underlying whether the relief requested should be granted. The specific issues addressed at the hearing included: (1) the use of Lines 300 and 400; (2) the physical changes applicants plan to make to the pipeline system or to Avila Station if the applications are approved by the Commission; and (3) Tosco's fitness to operate the pipeline system. These issues encompassed issues relevant to either this application or A.97-06-016. Only the issues relevant to this application are discussed in this decision.

Applicants timely served testimony on these issues. Prior to the interim hearings, protestants withdrew their protests, and therefore, no party other than applicants served testimony. The Commission held evidentiary hearings on November 12, 1997, after which this application was submitted.

#### *Applicants' Testimony*

According to applicants' uncontroverted testimony, the Avila Station facilities have rarely been used in the past and will probably not be needed again. Therefore, the stock transfer, which does not include the Avila Station facilities, will not destroy the system's ability to serve as a common carrier since the Avila Station facilities are not being used, and will no longer be used. (See Direct Testimony of Peter L. Schnieders, Manager of the Northern Pipeline District for Tosco Distribution Company, a division of Tosco Corporation.) According to Mr. Schnieders' uncontroverted testimony:

"There will be no material physical or operational changes to the UNOCAP pipeline system as a result of the Commission's approval of either the UNOCAP stock purchase transaction or the UNOCAP/Avila Application. Tosco intends that the current operation of the UNOCAP pipeline system as I have described in my testimony will continue without change. Such continued operation of the UNOCAP system does not include any use of the Avila station. Thus, the Tosco purchase of UNOCAP stock contemplates the transfer of the Avila station by UNOCAP to Unocal." (Schnieders' Testimony at pp. 9-10.)

After the removal of the Avila Station from common carrier service and the transfer of the Avila Station from UNOCAP to Unocal, the pipelines at the Avila Station will be cut and capped within the Avila station property line. At the hearings, Mr. Schnieders explained that this will occur only if A.97-06-016 is granted by the Commission.

Mr. David E. Wright, the chief operating officer of the West Coast Pipeline Division of Tosco Distribution Company, presented testimony addressing Tosco's ability to operate the UNOCAP system. Mr. Wright explains that Tosco is one of the largest independent refiners and marketers of petroleum products in the United States. Currently, Tosco operates seven refineries, including five on the west coast of the United States. Tosco has a history of experience in the pipeline industry. It operates over 90 miles of oil pipelines on the East Coast, including the Inter-Refinery Pipeline in New York and New Jersey (since 1993), the Long Island Pipeline in New York (since 1993), and the East Line in Pennsylvania and New Jersey (since February 1996). Also, since April 1, 1997, pursuant to an operating agreement between Tosco and UNOCAP, Tosco has operated the UNOCAP pipeline system in California using essentially the same personnel who have operated the system for Unocal. Mr. Wright believes that Tosco has proven its managerial and technical fitness to operate the UNOCAP system because, among other reasons, it has operated it for the past nine months.

Mr. Wright also believes that Tosco is fit to operate the UNOCAP system because it plans to continue and enhance the environmental, safety, and emergency response programs which Unocal had put in place while it controlled UNOCAP, and it

plans to continue to use the same key experienced personnel. Of the 184 positions necessary to operate the UNOCAP system, Tosco has hired about 140 employees from Unocal's pipeline group. Mr. Wright explains that the experience of 24 key Tosco managers, supervisors, and technical support personnel totals to nearly 500 person-years of pipeline operating experience. Mr. Wright states that he has been associated with and has reviewed the operations of many pipeline systems and operators and believes that the Tosco organization is just as effective as other peer groups in the pipeline industry.

Mr. Wright also states that for the year ending December 31, 1996, Tosco had sales of \$9.2 billion, net income of \$146.3 million, and reported assets of \$3.55 billion, and thus has the financial, as well as managerial and technical, ability to operate the UNOCAP system.

***Requested Conditions***

As stated above, all protests have been withdrawn. Ultramar filed a petition for participation without intervention and request for conditions on approval. Ultramar requests that (1) the present published tariff rates for the UNOCAP system remain in effect for at least two years from the date of approval of this application; (2) that the Commission hold evidentiary hearings when Tosco does apply to this Commission for an increase in tariff rates; and (3) that no portion of a pipeline in the UNOCAP system be removed from common carrier status if it has been used by any shipper not affiliated with Tosco during the prior 36 months, and any removal from common carrier status be subject to an evidentiary hearing. Ultramar did not present testimony or otherwise participate in the evidentiary hearings.

Ultramar's requested conditions are denied. We do not have any record in this proceeding regarding the existing tariffed rates on the UNOCAP system, or to determine when and if it is appropriate for Tosco to increase the tariffed rates on the UNOCAP system. It would therefore be arbitrary for us to keep such tariffed rates fixed for two years based upon this record. For instance, it may be appropriate to continue the existing tariffed rates longer than two years, or to raise them sooner. The

Commission can only make this determination when presented with the appropriate application.

Ultramar's remaining requested conditions are premature. If Tosco believes in the future that a rate increase is necessary on the UNOCAP system, it should comply with all applicable laws regarding any proposed actions. Similarly, Tosco should comply with all applicable laws governing future proposals to remove any of its existing facilities from common carrier status. In the event Tosco applies to this Commission for a rate increase or for authority to remove any of its existing facilities from common carrier status, the Commission can determine at that time whether evidentiary hearings are necessary.

#### **CEQA**

Applicants argue that CEQA is not applicable to this transaction. They state that the authority requested is a paper transaction, does not constitute an activity that may have a reasonably foreseeable impact on the environment, and is not an essential step in any proposal or plan having such potential.

The Commission's CEQA policy appears at Rule 17.1 of the Commission's Rules of Practice and Procedure. Rule 17.1 relies heavily on the CEQA Guidelines, which appear at 14 Cal. Code Regs. § 15000 et seq. rule 17.1(a) states that the Commission "adopts and shall adhere to ... the Guidelines."

Under § 15061 of the CEQA Guidelines, an activity is exempt if the activity is not a "project" as defined in § 15378. Section 15378 defines "project" as the "whole of an action which has a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and that is any of the following ...an activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies."

Sections 15061 and 15378 establish a two-part test for determining whether an activity is exempt from CEQA. First, in order to activate CEQA, an agency must have some degree of discretion in approving a project - mere "ministerial"

approvals are not sufficient. This test is met in this application, even if it is not protested, because the Commission still has the authority to deny the application if it is persuaded that the requested approval is not in the public interest.

Second, the uncontroverted testimony established that the Avila Station facilities are not being used, and will no longer be used, to operate the UNOCAP pipeline system. Therefore, the stock transfer, which does not include the Avila Station facilities, will not destroy the system's ability to serve as a common carrier since the Avila Station facilities are not being used, and will no longer be used. Based upon the facts as represented by applicants, the proposed transfer of control of the utility operations of the UNOCAP system from Unocal to Tosco would not adversely affect UNOCAP's performance of its duties to the public. Based upon this uncontroverted testimony, the activity does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Therefore, this application does not constitute a "project" for CEQA purposes.

#### **Conclusion**

Based upon the facts as represented by applicants, the proposed transfer of control of the utility operations of the UNOCAP system from Unocal to Tosco would not adversely affect UNOCAP's performance of its duties to the public. Therefore, we authorize the transfer as proposed. Because we grant the authority requested by applicants in A.97-06-016 to remove the Avila Station facilities from common carrier status contemporaneously with this decision, we do not grant applicants' requested authority under § 851, since, by applicants' own admission, such authority is not necessary.

#### **Findings of Fact**

1. UNOCAP is a public utility within the jurisdiction and regulation of the Commission.
2. Unocal currently controls UNOCAP.

3. The transfer of control of UNOCAP to Tosco will not have a significant impact on the environment or negatively affect UNOCAP's ability to provide service to the public.

4. Because we grant the authority requested by applicants in A.97-06-016 to remove the Avila station facilities from common carrier status contemporaneously with this decision, we do not grant applicants' requested authority under § 851, since, by applicants' own admission, such authority is not necessary.

5. Applicants state that the property to be transferred is located, in part, on land subject to various franchises granted by governmental bodies and that the consent of these governmental bodies to assign such franchises may be necessary.

6. There are no outstanding protests to this application.

7. This order should be made effective immediately.

#### **Conclusions of Law**

1. Applicants' requested transfer of control of the UNOCAP system from Unocal to Tosco pursuant to PU Code § 854 should be granted. We expect applicants to obtain approval from all other necessary governmental bodies for this transfer.

2. Within 30 days of the effective date of this order, UNOCAP should file an advice letter with any necessary amendments of its tariffs as a result of the approvals in this decision and in our approvals of A.97-06-016.

#### **O R D E R**

##### **IT IS ORDERED that:**

1. Applicants' request, under Public Utilities Code Section 854, to transfer control of the operating authority granted by the Commission to Unocal California Pipeline Company (UNOCAP), pursuant to the Sales and Purchase Agreement for 76 Products between Union Oil Company of California and Tosco Corporation, is approved. We expect applicants to obtain approval from all other necessary governmental bodies for this transfer.

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2. Within 30 days of the effective date of this order, UNOCAP shall file an advice letter with any necessary amendments of its tariffs as a result of the approvals in this decision and in our approvals of Application 97-06-016.

3. Since this order disposes of all matters raised in the application, this proceeding is closed.

This order is effective today.

Dated February 19, 1998, at San Francisco, California.

RICHARD A. BILAS  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners

\*\*\*\*\* SERVICE LIST \*\*\*\*\*

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