

ALJ/JJJ/sid

Decision 98-02-094 February 19, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Unocal California Pipeline Company for Authority to Remove its Avila Station Facilities from Common Carrier Service.

Application 97-06-016
(Filed June 2, 1997)

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ORIGINAL

(See Appendix A for a list of appearances.)

OPINION APPROVING APPLICATION

Description of the Application

Applicant Unocal California Pipeline Company (UNOCAP), a wholly-owned subsidiary of Union Oil Company of California (Unocal), seeks this Commission's authority to withdraw from common carrier service certain facilities relating to the operation of UNOCAP's Avila Station (Avila Station facilities). 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. The California State Lands Commission (State Lands) and the County of San Luis Obispo (the County) filed timely protests to the 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.

Background

Applicant states that in November, 1996, Unocal announced its intention to sell its west coast petroleum, refining, marketing, and transportation assets to Tosco Corporation (Tosco). The proposed sale is valued between \$1.9 billion and \$2.1 billion, including \$1.4 billion for the refining, marketing, and transportation assets. Among the transportation assets that Unocal sold to Tosco is the common carrier oil pipeline system operated by UNOCAP and subject to this Commission's jurisdiction. The sale of UNOCAP to Tosco (which will be accomplished by a transfer of stock ownership) does not include the Avila Station facilities. On March 31, 1997, the proposed sale was

consummated, with transfer of ultimate control of UNOCAP from Unocal to Tosco subject to approval by the Commission in Application (A.) 97-04-005.

Commission Authority

A utility must obtain Commission approval before it may discontinue public utility operations. (*See Lakewood Civic Group, Inc. v. Homestead Land & Water Co.*, 56 CPUC 31, 42 (1957).) Where a utility seeks to discontinue service, the principal issue is whether the public convenience and necessity require the continuation of the service which the utility seeks to abandon or reduce. (*See AT & SF Ry. Co.*, 67 CPUC 653, 659 and 670 (1967).)

Protests and Evidentiary Hearings

As stated above, State Lands and the County filed timely protests to this application, which they later withdrew. Prior to the State Lands' and the County's withdrawal of protests, the Administrative Law Judge (ALJ) set interim hearings to be held jointly with Application (A.) 97-04-005. The interim hearings were to address whether further proceedings or steps were necessary pursuant to the California Environmental Quality Act (CEQA) 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.97-04-005. Only the issues relevant to this application are discussed in this decision.

Applicant served timely 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 the parties filed supplemental briefs. On November 17, 1997, this application was submitted.

UNOCAP's Rationale Supporting Its Request

UNOCAP's application and testimony set forth three reasons supporting its requested relief. First, UNOCAP states that there is no significant public need for the continued operation of Avila Station as common carrier facilities. For the past several years, shippers' use of Avila Station has been limited to two occasions. On one occasion, surplus crude oil was transported via the Avila Station for Unocal to its Santa Maria refinery during a refinery outage in the San Francisco Bay Area. On the other occasion, crude oil was transported via the Avila Station for temporary storage at the Avila Tank Farm during an outage at the Santa Maria refinery. Since these occasions, there has been a substantial increase in storage capacity at the Santa Maria refinery and alternative refining options have been made available for the single shipper that was affected by the San Francisco Bay Area refinery outage. Thus, applicant explains that Avila Station would not be needed today for any of the purposes for which it has been needed in the past, and that it is therefore no longer necessary for UNOCAP to maintain the Avila Station as part of its facilities dedicated to the public.

According to the joint applicants' uncontroverted testimony at the hearing, the Avila Station facilities have rarely been used in the past and will probably not be needed again. Therefore, the transfer of control of UNOCAP to Tosco by means of a stock transfer, which transfer 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. Schneiders' uncontroverted testimony:

"Removal of the Avila station from common carrier service will eliminate the possibility of movements that currently are not being made, including Line 300 crude oil movements from the Summit station to the Avila station for temporary storage or tanker loading, Line 400 crude oil movements from the Junction station through the Avila station for movement to Tosco's Santa Maria refinery, and Line 400 gas oil movements from Tosco's Santa Maria refinery to the Avila station for tanker loading. Because sufficient storage exists elsewhere on the

UNOCAP system to accommodate emergency and refinery maintenance conditions, temporary storage capacity at the Avila station is not needed. Unocal has ceased operating its Avila wharf facilities so tanker loading of crude oil or gas oil is no longer possible from the Avila station. In addition, no shipper has expressed an interest in making movements to or from the Avila station. Thus, there is no present use, nor is there any foreseeable future use for the Avila station, and nothing will change as a result of the Commission's approval of either the stock purchase transaction or the removal of the Avila station from common carrier service." (Schnieders' Testimony at pp. 10-11.)

The second reason UNOCAP now seeks to remove the Avila Station facilities from common carrier service is that for business reasons, Unocal has decided to retain and Tosco has declined to assume ownership of the Avila Station facilities. The Avila Station facilities will not be transferred to Tosco nor will they continue to function as part of the UNOCAP public utility operation once UNOCAP's stock and related assets are transferred to Tosco. Also, following the anticipated transfer of UNOCAP's assets - other than Avila Station - to Tosco, Unocal will have no property other than Avila Station devoted to common carrier oil transportation service and consequently, will have no capability to continue the provision of any common carrier service.

Third, UNOCAP states that to the extent the Commission withholds the authority sought by this application, any environmental remediation that included removal of what are currently common carrier facilities could be precluded. Applicant states that Avila Station and its immediate environs are the subject of ongoing administrative proceedings relating to environmental impacts associated with Unocal's crude oil operations in the area. Proposals for remediating the local environmental impacts of crude oil operations include the removal of certain of the Avila Station common carrier facilities.

At the hearings, the witnesses addressed the anticipated actions at the Avila Station facilities if the Commission grants this application and A.97-04-005. After the removal of the Avila Station from common carrier service and the transfer of the Avila Station from UNOCAP to Unocal, Mr. Schnieders explained that the pipelines at the

Avila Station will be cut and capped within the Avila Station property line, and that any subsequent use of the Avila Station facilities will be Unocal's responsibility.

Timothy R. Thomas, Senior Deputy General Counsel for Unocal, addressed Unocal's plans regarding potential remediation and other activities concerning the Avila Station facilities following their removal from common carrier service. Unocal has applied for permits from the County to decommission and dismantle the storage tanks on the Avila Station facilities. Unocal has also been in communication with the state Regional Water Quality Control Board regarding the need to conduct an environmental assessment of the property, and Unocal is in the process of so doing. With respect to any other plans that Unocal may have for the site, Mr. Thomas states that Unocal will consider other options, including any needed remediation of the site that may be required by cognizant government agencies. At this point, Unocal does not have final plans for the site beyond the removal of the storage tanks.

CEQA

UNOCAP argues that CEQA is not applicable to this transaction. Applicant states 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. Applicant argues that cutting and capping the pipes are minor modifications exempt from CEQA. Applicant initially conceded that Commission approval of this application is a discretionary action. However, in its supplemental application, applicant now argues that Commission approval is not a discretionary act, since there are no longer any outstanding protests.

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. Contrary to appellant's assertion, this test is clearly met in this application, even if it is not protested, because the Commission still has the authority to deny the application if it is not persuaded that the requested approval is not in the public interest.

Second, the activity should have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. 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. According to the uncontroverted testimony at hearings, the physical changes which will occur are cutting and capping the lines at the Avila Station property line. On this record, we find this activity exempt under CEQA pursuant to § 15301, which provides an exemption for "the operation, repair, maintenance or minor alterations of ... (b) facilities ... used to provide ... public utility service." (See also Rule 17.1 (h)(1)(A)(2) of the Commission Rules of Practice and Procedure.)

The next issue necessary to address is whether the facts that Unocal (1) has stated its intention to decommission and dismantle the storage tanks at the Avila Station site, and (2) has applied for certain permits to do so, somehow makes this application a "project" under CEQA. We conclude that it does not, since our action on this application will not impact or influence the activities to dismantle the facilities at the Avila Station. UNOCAP here requests authority to remove the Avila Station facilities from common carrier service. As a result of this decision determining whether the Avila Station is necessary and useful in the provision of common carrier service, neither

applicant nor Unocal is bound or committed to undertake the dismantling of the tanks at Avila Station. (See *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School District*, 9 Cal.App.4th 464, 11 Cal.Rptr.2d 792 (1992).)

In *Kaufman*, the court concluded that the formation of a new school district in order to raise funds to acquire new school sites and other school properties was not itself a "project" for CEQA purposes. Instead, the court held that the formation of the new district for financing purposes merely positioned the school board to make future decisions that might themselves constitute projects requiring CEQA review:

"[F]ormation of CFD 1 does not commit the District to any definite course of action. It does not dictate how funds will be spent, nor in any way narrow the field of options and alternatives available to the District. In cases such as this where funding issues alone are involved, courts should look for a binding commitment to spend in a particular manner before requiring environmental review." (*Kaufman*, 9 Cal.App.4th at 476, 11 Cal.Rptr.2d at 799.)

Here, our action in determining whether the Avila Station is necessary and useful in the provision of common carrier service will not commit Unocal to any definite course of action regarding the removal of the facilities at Avila Station. Therefore, we do not find this application to constitute a project under CEQA. This result might be different under a different set of circumstances, for example, if we were to approve an application for authority to provide common carrier service and to construct or enlarge service on a pipeline. Moreover, applicant's uncontroverted testimony established that Unocal must apply to other governmental agencies to obtain permission to dismantle the tanks, and is pursuing the CEQA process with those agencies. Because of this conclusion, it is unnecessary for us to address the issue of whether the dismantling and removal of the Avila Station facilities are statutorily exempt from CEQA.

Conclusion

Based upon the facts as represented by applicant, the public convenience and necessity does not require the continuance of the service sought to be reduced or abandoned by this application.

The removal of the Avila Station facilities from common carrier service will not have a significant impact on the environment or negatively affect UNOCAP's ability to provide service to the public. Therefore, we grant UNOCAP's application and authorize the withdrawal from common carrier service of the Avila Station facilities identified in the application and supplement thereto.

Findings of Fact

1. UNOCAP is a public utility within the jurisdiction and regulation of the Commission.
2. The withdrawal from common carrier service of the Avila Station facilities will not have a significant impact on the environment or negatively affect UNOCAP's ability to provide service to the public. Therefore, the public convenience and necessity does not require the continuance of the service sought to be reduced or abandoned by this application.
3. All protests to the application have been withdrawn.
4. This order should be made effective immediately.

Conclusions of Law

1. UNOCAP's request to remove the Avila Station facilities from common carrier service should be granted.
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 A.97-04-005.

O R D E R

IT IS ORDERED that:

1. Applicant Unocal California Pipeline Company (UNOCAP) is authorized to remove the Avila Station facilities, as more particularly described in its application and in this decision, from common carrier service.

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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 Application 97-04-005.

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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