

ENERGY/RHG

Decision 00-03-049 March 16, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SIERRA)
PACIFIC POWER COMPANY U-903-E, for an)
Order exempting its securities issuance transact-)
ions from Commission authorization pursuant to)
Sections 829 and 853 of the Public Utilities Code)
or, in the alternative, for an Order authorizing it)
to issue securities having an aggregate principal)
amount not to exceed \$200,000,000, consisting of)
one or more series of debt securities (including)
debt securities issued in connection with a tax)
advantaged preferred security arrangement); to)
execute and deliver one or more indentures; and to)
guarantee securities.)
_____)

Application 99-12-028
(Filed December 16, 1999)

OPINION

Summary of Decision

This decision grants Sierra Pacific Power Company (Sierra Pacific) the exemption requested in Application (A.) 99-12-028 (Application).

Pursuant to § 829¹ and § 853² of the Public Utilities (PU) Code, Sierra Pacific requests an exemption from the provisions of the PU Code relating to stocks and securities transactions and the encumbrance of utility property.

¹ This article shall not apply to any person or corporation which transacts no business subject to regulation under this part, except performing services or delivering commodities for or to public utilities or municipal or other public corporations primarily for resale or use in serving the public or any portion thereof but shall nevertheless apply to any public utility if the commission finds, in a proceeding to which the public utility is or may become a party, that the application of this article is required by the public interest. The commission may from time to time by order or rule, and subject to such terms and conditions as may be prescribed therein exempt any public utility or class of public utility from the provisions of this article if it finds that the application thereof to such public utility or class of public utility is not necessary in the public interest.

² The commission may from time to time by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if it finds that the

Notice of the filing of the Application appeared on the Commission's Daily Calendar of December 22, 1999. No protests have been received.

Background

Sierra Pacific was incorporated under the laws of the State of Nevada on January 15, 1965, as Sierra Nevada Power Company. Its name was changed on March 31, 1965, to Sierra Pacific Power Company. Through a merger on or about that date, it became the successor in interest to Sierra Pacific Power Company, a Maine corporation, which was incorporated on March 13, 1912, as the Truckee River General Electric Company. Sierra Pacific is engaged in public utility electric operations in California and Nevada, and is also engaged in public utility gas and water operations in Nevada.

Sierra Pacific's total operating revenues for the year ended December 31, 1998 were \$734,332,000, of which \$38,998,000 (5.3%) were derived from California operations.

Exemption Sought

Sierra Pacific seeks an order exempting its securities issuance transactions from the provisions of Article 5. Stocks and Security Transactions. Sierra Pacific claims that (1) securities issuance transactions are reviewed and regulated fully by the Public Utilities Commission of Nevada (PUCN); (2) it has minimal contact with California in relation to its Nevada operations and that greater than 94 percent of Sierra Pacific's revenues are derived from Nevada customers; and (3) it would relieve the utility from the legal and administrative expenses it incurs and management time it devotes in filing applications for securities issuances (that are already reviewed and regulated by the PUCN).

Sierra Pacific also cites in the Application that in Decision (D.) 88-04-062, dated April 27, 1988, the Commission granted PacifiCorp Oregon an exemption from the financing provisions of the PU Code based solely on its de minimis operations and revenues in California.

application thereof with respect to the public utility or class of public utility is not necessary in the public interest...

Discussion

In D.85-11-044 issued November 6, 1985 in A.84-03-092 and D.90-08-032, dated August 8, 1990 in Rulemaking 85-08-042, the Commission addressed issues concerning the regulation of telecommunication utilities and, on its own motion, granted exemptions from the requirements of §§ 816 to 830 and § 851 of the PU Code to the non-dominant interexchange carriers' stocks and securities transaction and transfer or encumbrance of property. There is no current exemption for electric utilities with minimal operations in California. However, in the specific case of D.88-04-062, dated April 27, 1988 in A.87-09-043, the Commission authorized the merger of two electric service utilities and exempted the emerging new entity from the provisions of the PU Code relating to stocks and securities transaction and the encumbrance of utility property. As indicated in D.88-04-062, PacifiCorp Oregon's (the emerging new entity) California customers will provide only 2.56% of its total electric revenues (based upon 1986 recorded data).

Sierra Pacific's historical operating revenues in California are as follows:

<u>Period ending</u>	<u>Total Operating Revenues</u>	<u>California Revenues</u>	<u>Percent</u>
12/31/98	\$734,332,000	\$38,998,000	5.3%
12/31/96	\$627,711,000	\$42,428,000	6.8%
12/31/94	\$603,193,339	\$46,979,744	7.8%
12/31/93	\$521,567,509	\$43,937,589	8.4%
12/31/89	\$439,422,029	\$35,936,050	8.2%
12/31/88	\$327,000,000	\$40,173,000	12.3%
12/31/87	\$356,726,081	\$38,042,285	10.7%

Staff advises us that Sierra Pacific's request for exemption from the provisions of the PU Code relating to stocks and securities transactions is not adverse to the California public interest. The Nevada Revised Statute (NRS) §§ 704.322 through 704.328, inclusive, provide for full review and regulation of Sierra Pacific's securities issuance's by the PUCN.

Therefore, whatever securities issuance transactions this Commission will authorize will be the same financing transactions simultaneously reviewed and regulated by the PUCN.

NRS 704.323 states:

1. No privately owned public utility organized under the laws of and operating in the State of Nevada shall issue any security, or assume any obligation as guarantor, endorser, surety or otherwise, in respect of any security of any other person, firm or corporation, unless and until, and only to the extent, authorized by a written order of the commission.

NRS 704.324 provides:

1. Upon receipt of an application for an order authorizing the issuance of any security or the assumption of any obligation in respect to any security of another, the commission may grant the application in whole or in part and with such modifications and upon such terms and conditions as it may find necessary or appropriate.
5. The commission shall not make any order or supplemental order granting any application hereunder unless it finds that the issue or assumption:
 - (a) Is for some lawful object, within the corporate purposes of the applicant and compatible with public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service.

NRS 704.325 provides:

No public utility shall, without the consent of the commission, apply any security or any proceeds thereof to any purpose not specified in the commission's order, or supplemental order, or to any purpose in excess of the amount allowed for such purpose in such order, or otherwise in contravention of such order.

Sierra Pacific also indicated in the Application that in recent proceedings, this Commission has recognized the importance of the relative size of Sierra Pacific's contacts with Nevada and California. With respect to electric industry restructuring, the Commission has stated that it "would prefer that.... [Sierra Pacific's plan for establishing market values for generation assets] rely on the regulatory approach adopted in... [Sierra Pacific's] dominant state.... (D.97-12-093, dated December 16, 1997, page 15.)

Granting the exemption requested by Sierra Pacific will not have a negative impact on its California customers because the Commission retains full ratemaking jurisdiction in setting its rates for those customers, including a review of its cost of capital. Sierra Pacific's rates were last reviewed in its general rate case D.93-08-034 in A.92-05-040. Sierra Pacific's cost of capital was reviewed in D.95-11-062 in A.95-05-016. In D.97-12-093 dated December 16, 1997, the Commission applied the provisions of AB 1890 and froze Sierra Pacific's rates at their June 10, 1996 levels, with a 10% reduction for residential and small commercial customers. On December 31, 1999, Sierra Pacific filed A.99-12-041 requesting approval of a proposed distribution performance ratemaking mechanism.

For purposes of this Application and pursuant to § 829 of the PU Code, we will exempt Sierra Pacific's securities issuance transactions from the requirements of PU Code §§ 816 to 830. In addition, pursuant to § 853 of the PU Code, the transfer or encumbrance of Sierra Pacific's property is exempted from the requirements of PU Code § 851 whenever such transfer or encumbrance serves to secure debt.

The authorization given herein is limited to its specific terms and is not to be construed as indicative of full relaxation of the regulatory rights and utilities oversight of this Commission.

In Resolution (Res.) ALJ 176-3030 dated January 6, 2000, the Commission preliminarily categorized this Application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given these developments, a public hearing is not necessary, and there is no need to alter the preliminary determinations made in Res. ALJ 176-3030.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to PU Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. Sierra Pacific, a Nevada corporation, operates as a public utility subject to the jurisdiction of this Commission.
2. Sierra Pacific's 1998 operating revenues for its California operations are 5.3% of total operating revenues.

3. D.88-04-062 exempted the stocks and securities transactions and the encumbrance of utility property of PacificCorp Oregon from the provisions of the PU Code on the basis of its de minimis operations in California.

4. The Commission retains full ratemaking jurisdiction in setting Sierra Pacific's California rates, including a review of its cost of capital.

5. Sierra Pacific's securities issuance transactions are reviewed and regulated fully by the PUCN.

6. Notice of the filing of the Application appeared on the Commission's Daily Calendar of December 22, 1999, and no protests have been received. There is no known opposition to the Application and no reason to delay granting the authority requested.

Conclusions of Law

1. A public hearing is not necessary.
2. The Application should be granted to the extent set forth in the order, which follows.
3. The following order should be effective on the date of signature.

ORDER

IT IS ORDERED that:

1. On or after the effective date of this order, the stocks and securities transactions of Sierra Pacific Power Company (Sierra Pacific) are exempted from the requirements of §§ 816 to 830 of the Public Utilities (PU) Code, provided that such transactions, are subject to regulation by the Public Utilities Commission of Nevada.
2. The transfer or encumbrance of property of Sierra Pacific is exempted from the requirements of PU Code § 851 whenever such transfer or encumbrance serves to secure debt exempted under Ordering Paragraph No. 1., above.

3. Sierra Pacific shall maintain and, within thirty days from request, provide the Energy Division any or all of the statements pertaining to issuance of stocks, bonds or other evidences of indebtedness, and the purposes for which the proceeds were expended (in form and content consistent with General Order No. 24-B).

4. Application 99-12-028 is closed.

This order is effective today.

Dated March 16, 2000, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
CARL W. WOOD
LORETTA M. LYNCH
Commissioners