

Decision 00-06-055 June 22, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Francisco Thermal, Limited Partnership ("SFTLP") (U-908-H), North American Thermal Systems, Limited Liability Company ("NATS"), NRG Energy, Inc. ("NRG"), NRG San Francisco Thermal, Inc. ("NRG SF Thermal"), NRG Energy Center San Francisco LLC ("NRG Energy Center") and NRG Thermal Corporation ("Thermal") for authority to transfer ownership and control of SFTLP to NRG Energy Center and Thermal.

Application 00-03-033
(Filed March 23, 2000)

O P I N I O N

1. Summary

This application seeks approval under Pub. Util. Code § 854 of a transfer of ownership and control of San Francisco Thermal, Limited Partnership (San Francisco Thermal) to NRG Energy Center and NRG Thermal Corporation (NRG Thermal). San Francisco Thermal is a public utility that provides steam heating to about 185 buildings in San Francisco. Applicants state that the transfer is part of a corporate restructuring that will have no effect on the operations or financial resources of San Francisco Thermal. The application is unopposed. The application is granted.

2. Description of Transaction

As part of a nationwide corporate restructuring of thermal projects of NRG Energy, Inc., ownership of all limited and general partnership interests of San Francisco Thermal would be transferred to NRG Thermal, a wholly owned

subsidiary of NRG Energy, Inc. NRG Thermal is the sole member of a new entity called NRG Energy Center. After it is merged with San Francisco Thermal, NRG Energy Center will be the surviving entity taking control of the San Francisco steam heat system and operating thereafter under the NRG Energy Center name.

Like San Francisco Thermal, NRG Energy Center is indirectly wholly owned by NRG Energy, Inc. Applicants state that the transfer of ownership and control does not involve any unrelated third parties. Rather, it is a corporate restructuring that shifts control from one wholly owned subsidiary to another. Applicants state that the purpose of the restructuring is to make corporate governance less burdensome and to have all of the thermal project assets of NRG Energy, Inc., held by the same entity, NRG Thermal.

3. Plan to Transfer

The San Francisco steam heating system was acquired in 1993 from Pacific Gas and Electric Company in a transaction approved by this Commission in Decision (D.) 93-06-038. Ownership has been vested since that time in various limited partnership entities. (See, D.96-02-061 and D.99-04-012.)

The transfer of control proposed in this application will be accomplished through the following steps. First, NRG Energy, Inc. will transfer its 48.9% limited partnership interest in San Francisco Thermal to NRG San Francisco Thermal, Inc. The latter entity would then own a 99% limited partnership interest in San Francisco Thermal. Second, NRG Energy, Inc. will transfer its stock in NRG San Francisco Thermal, Inc., and its membership in North American Thermal Systems, Limited Liability Company (the general partner of San Francisco Thermal) to NRG Thermal. Third, NRG San Francisco Thermal and North American Thermal Systems then would be merged with

NRG Thermal. Finally, San Francisco Thermal would be merged with NRG Energy Center.

Following the transfer of control, NRG Energy Center will be the sole owner of the San Francisco Thermal project, and the sole member of NRG Energy Center will be NRG Thermal. Indirectly, 100% of the project would still be owned by NRG Energy, Inc., although through different entities.

The application states that NRG Energy Center will continue to operate with the same personnel. Rates, terms and conditions available to customers will not change as a result of the change in control.

4. Public Interest

The application states that the transfer of control will serve the public interest by creating a more efficient management structure. The Commission found in D.99-04-012 that NRG Energy, Inc. has sufficient financial resources and technical expertise to provide safe and adequate steam heating service to customers of San Francisco Thermal.

The parties in the application have attached copies of their financial statements and a copy of the reorganization agreement describing the proposed transfer of control.

5. Discussion

Pub. Util. Code § 854 requires Commission authorization before a company may "merge, acquire, or control...any public utility organized and doing business in this state..." The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

The proposed transfer of control promises improved management of the steam heat operations of San Francisco Thermal without deterioration of service for California customers. No changes in existing rates or services are proposed. NRG Energy, Inc. has the financial qualifications necessary to support the operation.

There have been no protests to this application, and the contemplated transfer of control appears to be noncontroversial.

In Resolution ALJ 176-3036, dated April 6, 2000, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in ALJ 176-3036.

The application is granted, subject to the terms and conditions set forth below.

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

Findings of Fact

1. Notice of this application appeared in the Commission's Daily Calendar of March 28, 2000.
2. Applicants seek approval pursuant to Pub. Util. Code § 854 of a transaction that will transfer control of San Francisco Thermal to NRG Energy Center and its sole member, NRG Thermal, both of which are wholly owned by NRG Energy, Inc.
3. San Francisco Thermal is a public utility that provides steam heating to 185 buildings in San Francisco.

4. NRG Energy, Inc., a Delaware corporation with principal offices in Minneapolis, is a wholly owned subsidiary of Northern States Power Company.

5. NRG Energy, Inc. owns and operates directly or through subsidiaries and with other parties, several district heating and cooling facilities and independent power projects throughout the country.

6. There will be no change in current services or rates provided by NRG Energy Center as a result of the transfer of control.

Conclusions of Law

1. The proposed transfer of control is not adverse to the public interest.
2. This proceeding is designated a ratesetting proceeding; no protests have been received; no hearing is necessary.
3. The application is noncontroversial and is unopposed.
4. The application should be approved.

O R D E R

IT IS ORDERED that:

1. San Francisco Thermal, Limited Partnership (San Francisco Thermal); NRG Energy, Inc.; North American Thermal Systems, Limited Liability Company; NRG San Francisco Thermal, Inc.; NRG Energy Center San Francisco LLC (NRG Energy Center), and NRG Thermal Corporation (NRG Thermal) are authorized pursuant to Section 854 of the Public Utilities Code to enter into the transaction, as more fully described in the application and its exhibits, by which ownership and control of San Francisco Thermal will be transferred to NRG Energy Center and NRG Thermal.

2. NRG Energy Center and NRG Thermal shall notify the Director of the Commission's Energy Division in writing of the transfer of control, as authorized

herein, within 10 days of the date of consummation of such transfer. A true copy of the instruments of transfer shall be attached to the notification.

3. NRG Energy Center and NRG Thermal shall file new tariffs incorporating any changes in name, rates, services and management authorized in the transfer transaction.

4. NRG Energy Center and NRG Thermal shall make all books and records available for review and inspection upon Commission staff request.

5. The authority granted herein shall expire if not exercised within one year of the date of this order.

6. Application 00-03-033 is closed.

This order is effective today.

Dated June 22, 2000, at San Francisco, California.

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

President Loretta M. Lynch, being necessarily absent, did not participate.